



Legal Aspects of Dentistry

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Abstract

Dentists as health care professionals have a duty and standard for patient care. Any violation in the duty and practice makes dentists liable to negligence & legal action. Law protects the dentists as well as ensure ethical practice. Thorough knowledge about Medico-Legal aspects is mandatory for smooth execution & delivery of productive services. This provides protection against commercial, legal and medico legal litigation. The legal proceedings are strenuous and upsetting to negotiate so it's always better to prevent. Once a legal lawsuit is filed it not only becomes a financial burden but also drains one emotionally and psychologically. The relationship of law and dentistry depends upon the concept of– Ethics, Consent and Negligence. This review thus provides an overview of ethical standards, consents and their types, negligence, determination of negligence, liabilities of dental practitioners and solicitors in dental practices, which comprehensively form an integral part of the medico-legal aspect of dental practice.

Keywords: law and dentistry, medico legal aspect in dentistry, ethics, consent, negligence.

Introduction

The concept of law is unique and defined as — ‘an aggregate of rules enforceable by judicial means in a given country’. Every aspect of human activity is influenced by law, dentistry in this regard being no exception.¹ Dentistry and medicine today are professions dealing with health and well-being of an individual and in recent times, there has been an increased level of awareness and anxiety among medical professional and the patients. This can lead to the increase in medico-legal lawsuits against dentists in the past decade. Knowledge of dentistry and medicine is as important as knowing the law governing their practice. Law and medicine go side by side, and an in-depth understanding of law is essential for a safe and sound clinical practice.² Legal and ethical considerations are considered to be implicit and integrated parts of good clinical practice across the whole world. The present times witness growth seen in public awareness of dental negligence in

India. Dental ethics is a moral obligation that encompasses professional conduct and judgment imposed by the members of the dental profession. The dentists (Code of Ethics) regulations were laid down by the Dental Council of India (DCI) in 1976 and later it was revised in the year 2014. It is the duty of every registered dentist to read these regulations, understand his responsibilities, and abide by the same for the good of the patient and himself.

Dental jurisprudence is a set of legal regulations set forth by each state's legislature describing the legal limitations and regulations related to the practice of dentistry, dental hygiene, and dental assisting. The interface between Law and Dentistry is mediated by important statutes relating to health, the chief among which involves drug and cosmetics act, dentists act etc. There are several acts which have a direct and indirect bearing on the dental profession.³

The core issues in dental ethics are the ethics of dentist patient relationship, patient's confidentiality and the need to obtain informed consent. Although law and ethics have similarities, law may be better defined as 'the sum total of rules and regulation by which a society is governed'. Health care Malpractice can be challenged under two main categories in the court of law, that is, civil and criminal depending on the nature of offense. A third degree lies under the Consumer Protection Act (CPA) 1986 where professional services provided by the dentist can be challenged. Records are the most important factors needed to prevail in a lawsuit. Therefore, there is a need for oral health professionals to update their understanding on ethics, informed consent, CPA and its amendments and professional indemnity insurance.

Medical negligence cases came under the tort of negligence or under the Consumer Protection Act, 1986.

The remedy is mainly damage that occurred during treatment including pain and mental suffering. Hence in every medical negligence case the patient is bound to prove the loss suffered by him due to the negligence of the defendant.⁴ The Supreme Court of India in a number of cases observed that different courts and tribunals have discretion in judging compensation paid to patients thus causing unpredictability. Hence the Court emphasized about the need for a proper framework to identify just, fair, and adequate compensation in case of medical negligence.⁵

This review paper seeks to examine the different methods available for assessing damages in medical negligence cases. It also tries to identify the problems involved in various methods of assessing damages and tries to propose a better framework for assessing the case. But before discussing the relationship of law and dentistry one must be familiar with certain terminologies like Ethics, Consent and Negligence – which will be discussed in the following literature.^{6,7,8}

Discussion

The concept of medical negligence has been recognized since ancient times. In India as well as other parts of the world since ancient times, certain duties and responsibilities were borne by persons who entered the sacred medical profession. The Hippocratic Oath that the medical practitioners take exemplifies these duties and responsibilities. In India this concept is not a new one. The ancient text of Charaka clearly proves it.

However, medical negligence and the legal aspects of medicine have acquired great significance in recent periods. Awareness among people regarding the fundamental rights guaranteed by the Constitution has increased in the last few decades which has brought the medical profession under the scrutiny of both the public and the judiciary. The introduction of COPRA had a

great influence and changed the scenario dramatically. Thus, the conflict between law and medicine is a recent development in India and an early and amicable solution is most desirable.^{8,9} Civic consciousness of medical and dental carelessness and slackness in India is growing which is causing upsurge in complaints regarding facilities, standards of professional skill and suitability of therapeutic and diagnostic methods.¹⁰ There are lots of acts and laws in Dentistry but before that one should know about what ethics, consent and negligence is. (Fig.1)



Figure 1: Ethics

Ethics

Definition: Ethics technically deals with the professional code of conduct. These rules every dental student should learn before graduating. They affect every resolution made at the dental office that could be the association with the patient, staff or other professionals. It's the fundamental objective to furnish excellent services to the patients. It also prevails around the human values, responsibility, culture, ideology and morality.^{11,12,13,14,15,16}

Ethics Involve Following Principles: (Fig.2)

Patient autonomy: Dentists at all times should regard the self-resolution & privacy of the patient. They are righteous to take decisions for their treatment, therefore, to keep the respect of patient's decision an informed consent is mandatory. The Dentist should explain the

treatment options, its pros and cons along with other treatment facilities available thereby respecting the final decision of the patient.⁶

Non-maleficence: It states to not harm the patient. Dentists should reconsider procedures which solve one issue and begin a new one, in such condition, evaluate the treatment by keeping in mind its advantages and disadvantages. At any point in a procedure if a dentist feels a lack of skills, he shouldn't hesitate to call a specialist.

Beneficence: It directs to aid in doing good. It should be inculcated in daily practice to provide benefits to the patient. Like timely adequate functioning of the patient with good aesthetic treatment as the patient desires.

Justice: It states equity. It is the moral responsibility to be legitimate in all the dealings with patients, staff & society. There should not be any type of racial, gender, caste, creed discrimination.

Veracity: It is the truthfulness and respect of the self-esteem of the relationship with the patient. This involves trust in maintaining the intellectual, billing, and advertising integrity of the patient.

Confidentiality: It is the right of the patient to expect that all communications and case records related are confidential. And the dentist must respect it. This also includes professional conduct and etiquette which should not include any kind of commercialism. With the difficulties dentists face these days one should succumb to gifts, Continuing Dental Education programs, trips, etc. Even not provide substandard treatment to patients, refer cases to specialists and not fear of loss of patients.^{17,18,19,20,21}



Figure 2: Principles of Ethics

Consent

Definition: Consent is for safeguarding the rights of the patient as well as the dentist. It helps in better exercise of the patient's autonomy. It also demands a mature decision by the provider and safeguarding his interests. Audio-visual aids could be used to teach patients about treatment procedures thus enhancing informed consent.

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These provide a considerable proof and documentation although it's been categorized under the following:

Competence: It states that the patient suffices with the ability to understand the treatment completely also with its limitations though this depends upon several factors like age, educational qualification, intelligence, cognitive function, locus of control and anxiety levels.

Voluntariness: In this the patients agree to the treatment without compulsion.

Information and knowledge: It means that sufficient comprehensible information is disclosed to the patient regarding the nature and consequences of the proposed and alternative treatments.

Types of Consent (Fig.3)

Implied consent: Refers to when a patient is unassertive about the consent. This doesn't need to be documented

but is understood by an excellent communication where the dentist provides the details of procedures.⁷

Verbal consent: here verbally the patients agree to certain routine diagnostic procedures following a well-documented record of the procedure.

Written Consent: This is mandatory for procedures that involve risk to life like sedation, administration of anesthetics, restorative & endodontic procedures along with the surgical procedures & administration of medications.

Implied consent: The patient who comes to the dentist suggests that he is willing to undergo the procedures.

Expressed consent: or tacit consent is a strategic consent written in the most pleasant languages.

Informed Consent: It is expressed in the patient's language about the diagnosis, treatment, advantages, limitations, etc.

Proxy Consent: When consent is given by parent, guardian or close relative

Blanket Consent: It's a printed consent that involves anything and everything a dentist or the hospital can do to a patient.

Informed consent: Should be such that should specify the treatment plan, the outcomes along with the benefits and limitations, any possible risk of the materials used, the treatment alternatives along with the cost of the procedures & consequences of treatment. This should be immediately computed with the patient's & dentist's signature and date. Special care should be taken to have a readable signature and name. ²⁴

Consent cannot be considered in cases of emergencies, compulsory drug screenings, procedures related to mental disorders & when the court of law has directed for any treatment. In the case of minors, consent is obtained from the parents or if any legal guardian as they are not mature enough to decide their well-being. If the

adult accompanying the child is not a legal guardian, they are not allowed by the court of law to decide such cases a telephonic consent may be obtained.

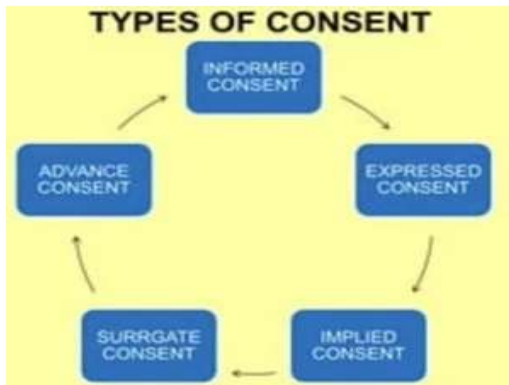


Figure 3: Types of Consent

Negligence

Definition: Alderson defined negligence as — ‘the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do’.⁸ (Fig.4)



Figure 4: Negligence

For an act to be considered negligent, the following aspects must be present:

1. Doctor owed a certain standard of care.
2. Doctor did not maintain that standard.
3. An injury resulting from lack of care.
4. A connection (proximity) between the negligent act and the resultant injury.

Types of Negligence: (Fig.5)

1. **Doctors negligence**

(a) Civil negligence: This happens when the patient demands money as compensatory damages. Here both the dentist for a fee as well as the patient can file a case. These cases are dealt with in the civil court or consumer courts. As per the court directive, the dentists must pay compensation without criminal proceedings. Sometimes even the dental council is involved for temporary or permanent removal of name from practice. But in either case, the patient has to prove negligence against the dentist.²⁵

(b) Criminal negligence: This happens when a case is registered against the dentist for negligence. If guilty dentists are prosecuted under various sections of Law.

2. **Patient negligence:** Here the patient is negligent. The patient is not responsible enough to give a proper history which in due course of proving fatal. The patient is not taking medications or following instructions properly; in such cases, dentists must prove the patient's negligence.
3. **Contributory negligence:** Here both the dentist and the patient are negligent, but the burden is on the dentist. It is usually dealt within the civil courts and doesn't contribute to any criminal charges.
4. **Composite negligence:** Here the injury is caused by the combined negligence of two or more dentists. The claim can be divided by the dentist or if the patient claims from anyone then they are liable to pay.
5. **Corporate negligence:** Here the dentist is not responsible but the concerned corporate or the hospital is responsible e.g., Use of outdated instruments or medications at a hospital.

When is it not Negligence?

Normally, carelessness is not culpable or a ground for legal liability, as there is no wrongful intention but in medical negligence carelessness is taken seriously and

the law has imposed a duty of carefulness on the doctor or health worker. But many other acts which the patients commonly complain about, do not fulfil the requirements mentioned earlier.⁸ A review of consumer cases shows that some of the situations mentioned below, do not come under medical negligence, e.g.

1. Inability to obtain consent form in an emergency.
2. Patient's dissatisfaction with progress of treatment.
3. Inability to get desired relief.
4. Precedence of one patient over the other based on priority.
5. Charging an amount that the patient thinks are exorbitant



Figure 5: Claim of Dental Negligence

Elements of Negligence

Legally the tort (civil wrong) of negligence can be established against a dental practitioner only if the following elements are present:

1. Dentist has a duty to care for the patient.
2. A violation of the above duty.
3. An injury to the patient.
4. A proximate relationship between the violation and the injury.

Supreme Court guidelines under the medical negligence in India are as follows

- Government of India along with the Medical Council of India should formulate certain

rules/regulations to regulate aspects of negligence in medical practitioners.

- To make a case against a doctor, the complainant must submit evidence of a prima facie (at first sight) case before the authorities take cognizance of the act.
- The investigating officer must also, independently, obtain an impartial and unbiased opinion of a doctor who practice in the same field in the same regard (preferably a government hospital)

Aspects of negligence with regards to dental practice:

Negligence can occur in any aspect of proficient practice, whether history taking, advice, examination, testing or failing to test, reporting and acting on results of tests, or treatment. The standard is one of realistic care, not of excellence. The court will decide having gazed at all the circumstances whether the health expert has been negligent. Negligence is different from mistake or error of judgement. Nowadays medical and dental practitioners should have knowledge of the law leading the practice of medicine because they both share the same platform and go hand in hand. In today's scenario when we go through the dental and medical curriculum in India, there is more weight in developing the technical aspects and skills, but it lacks in ethical facet. The inclination of legal action against doctors is an issue of supreme concern which damages the esteem of white-collar jobs by media (electronic and print), certified accountability and decision making.

Awareness for dentists:

Various studies have been reported regarding the awareness and importance of consent from patients in dental practice. Additionally, the growing patient population is becoming more conversant and alert of their rights, as a result taking action by contacting the consumer forum to lodge their complaints. Kumari et

al.,²⁶ and Gupta et al.,²⁷ have reported a lack of knowledge in dentists about informed consent and its importance in medico legal issues. They have also emphasized that training on legal jurisprudence and legal medicine is necessary for dentists to guard themselves from civil or criminal proceedings.

Sikka M et al.,²⁸ said many dentists knew about Consumer protection act, but the basic awareness about rules and regulations was low. They also observed that taking consent with written contract was not followed routinely, showing a lack of concern among the professionals. Senthil Kumar et al., and Haripriya through their studies inferred that there is an urgent need to update medical and dental health care professionals regarding medico-legal issues and consumer protection act to be on safer side legally.²⁹ Prasad S et al. reported in their study that MDS faculty dental professionals have more awareness of consumer protection act compared to other dental professionals.³⁰ A dental practitioner in case of legal issues can take the help of a competent legal representative who specializes in such litigation. It is very important to maintain dental records so that they can be produced as evidence in the consumer court in the event of a malpractice and dental insurance claim. In a study, it was found that up-to-date knowledge is missing in the dental professionals in terms of medico-legal jurisdiction, and it needs to be revamped as soon as possible and added to the curriculum of BDS undergraduate students, to make them aware of the present scenario.³

Acts and law in dentistry

The Dentists Act of 1948 - The Dentists Act was passed for regulating the medical practice of the dentist profession. This Act extends to the whole of India. It consists of 55 sections and a Schedule. The Dentist Act was passed by parliament in an association with All

India Dental Association on the 29th of March 1945. It was subsequently amended in 1993. This Act established the Dental Council of India under section 3.8,³¹

List of Amending Acts and Adaptation Orders (Fig.6)

- A. **The Adaptation of Laws Order, 1950.**- It shall be deemed to have come into force on the 26th day of January, 1950
- B. **The Dentists (Amendment) Act, 1950 (58 of 1950)**-In this Act, unless there is anything repugnant in the subject or context, —the Council means the Dental Council of India constituted under section 3. —Dentistry includes the performance of any operation on, and the treatment on any disease, deficiency or any lesion of, human teeth or jaws, and the performance of radiographic work in connection with human teeth or jaws or the oral cavity.
- C. **Madras Adaptation of Laws Order, 1954.**- Clause 4 of the Mysore Adaptation of laws order, 1956 issued under responds does not apply to transactions of the licensee effected on behalf of the principals residing outside the Madras state.
- D. **The Dentists (Amendment) Act, 1955 (12 of 1955)**-In clause after the words, figures and brackets the Indian medical council act, 1933, the words or specified in any other law for the time being in force in any state, shall be inserted.
- E. **The Adaptation of Laws (No. 3) Order, 1956.**- By the adaptation of laws order, 1950. After the formation of new states in pursuance of the state's Reorganization Act, 1956 (Act 37 of 1956), Sub-sections (2) of Mysore immediately before November 1, 1956. It extends to the whole of India.
- F. **The Repealing and Amending Act, 1957 (36 of 1957)**- Is one of the periodical measures by which enactments which have ceased to be in force or have become obsolete, are repealed or as the case may be

amended to remove any formal defect in any such enactment which comes to notice during its administration.

G. The Dentists (Amendment) Act, 1972 (42 of 1972)- In the Penal code, in sub-section (1) of section 153A, in clause the word —orll shall be inserted at the end, after clause the following clause shall be inserted, namely-organizes any exercise, movement drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely to use criminal force or violence.

H. The Delegated Legislation Provisions (Amendment) Act, 1986 (4 of 1986)- It is an Act to regulate the profession of dentistry. Whereas it is expedient to make provision for the regulation of the profession of dentistry and for that purpose to constitute Dental Councils:



Figure 6: Acts & Laws in dentistry

Interpretation-In this Act, unless there is anything repugnant in the subject or context

- A. **The Council** means the Dental Council of India constituted under section 3;
- B. **Dental hygienist** means a person not being a dentist or a medical practitioner, who scales, cleans or polishes teeth, or gives instruction in dental hygiene;
- C. **Dental mechanic** means a person who makes or repairs denture and dental appliances;

D. Dentistry includes:

- 1. The performance of any operation on, and the treatment on any disease, deficiency or lesion of, human teeth or jaws, and the performance of radiographic work in connection with human teeth or jaws or the oral cavity;
- 2. The giving of any anesthetic in connection with any such operation or treatment;
- 3. The mechanical construction or the renewal of artificial dentures or restorative dental appliances;
- 4. The performance of any operation on, or the giving of any treatment, advice or attendance to, any person preparatory to, or for the purpose of, or in connection with, the fitting, inserting, fixing, constructing, repairing or renewing of artificial dentures or restorative dental appliances, and the performance of any such operation and the giving of any such treatment, advice or attendance, as is usually performed or given by dentists;

E. Dentist means a person who practices dentistry;

F. Medical practitioner means a person who holds a qualification granted by an authority specified or notified under section 3 of the Indian Medical Degrees Act, 1916 (7 of 1916), or specified in the schedules to the 4[Indian Medical Council Act, 1956 (102 of 1956),] 5[or specified in any other law for the time being in force in any State,] or who practices any system of medicine and is registered or is entitled to be registered in any 6[State] medical register by whatever name called;

G. Prescribed means prescribed by rules or regulations made under this Act;

H. State Council means a State Dental Council constituted under section 21, and includes a Join State Council constituted in accordance with an agreement under section 22;

- I. **Register** means a register maintained under this Act;
- J. **Recognized** dental qualification means any of the qualifications included in the schedule.
- K. **Recognized dental hygiene qualification** means a qualification recognized by the Council under section 11;
- L. **Registered dentist** — ‘registered dental hygienist’ and — ‘registered dental mechanic’ shall mean, respectively, a person whose name is for the time being registered in a register of dentists, a register of dental hygienists and a register of dental mechanics.

Amendment of Dentist Act (1948)

An Act further to amend the Dentists Act, 1948 But it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows: -

1. **This Act may be called the Dentists (Amendment) Act, 1993.** It shall be deemed to have come into force on the 27th day of August 1992.
2. **After section 10 of the Dentists Act, 1948 (hereafter referred to as the Principal Act),** the following sections shall be inserted, namely:

Notwithstanding anything contained in this Act or any other law for the time being in force.

- A. No person shall establish an authority or institution for a course of study or training (including a postgraduate course of study or training) which would enable a student of such course or training to qualify himself for the grant of recognized dental qualification.
- B. No authority or institution conducting a course of study or training (including a postgraduate course of study or training) for grant of recognized dental qualification shall-
- i. Open a new or higher course of study or training (including a postgraduate course of study or training) which would enable a student

of such course or training to qualify himself or the award of any recognized dental qualification.

- ii. Increase its admission capacity in any course of study or training (including a postgraduate course of study or training). except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

3. Dentist amendment act 1993

4. Dentist amendment act 2016

- The Dentists (Amendment) Bill, 2016 was introduced by Minister of Health and Family Welfare, Mr. Jagat Prakash Nadda in Lok Sabha on July 19, 2016. The Bill seeks to amend the Dentists Act, 1948. The Act provides for the constitution of the Dental Council of India (DCI). The DCI regulates: (i) permission to start colleges, courses or increase the number of seats, (iv) registration of dentists, and (v) standards of professional conduct of dentists; among others.
- The Bill seeks to replace the Dentists (Amendment) Ordinance, 2016. The Bill states that its provisions will come into force from May 24, 2016.
- The Bill seeks to introduce a uniform entrance examination for all dental educational institutions. This would be applicable at the undergraduate and the postgraduate level.
- The Bill states that in case a state has not opted for the uniform entrance examination, then the examination will not be applicable at the undergraduate level for the academic year 2016-17. This provision will apply to state government seats in government and private dental colleges.
- The Bill states that the entrance examinations will be conducted in Hindi, English and other languages.

- The Bill provides powers to the DCI to frame regulations with regard to: (i) the authority designated with the conduct of the exams, (ii) the manner of conducting the exams, and (iii) specifying languages other than English and Hindi in which the examinations may be conducted.

5. Dentist amendment act 2019

- The Dentists (Amendment) Bill, 2019 was introduced in Lok Sabha by Mr. Harshvardhan, Minister of Health and Family Welfare on June 27, 2019. The Bill amends the Dentists Act, 1948. The Act regulates the profession of dentistry and constitutes: (i) the Dental Council of India, (ii) State Dental Councils.

Composition of the dental councils: Under the Act, composition of the Dental Council of India, State Dental Councils, and Joint State Dental Councils includes representation from dentists registered in Part B. The Bill seeks to remove the mandatory requirement of the representation of dentists registered in Part B in these Councils.

There are other enactments which in certain situations affect the practicing dentist. These include the Consumer Protection Act (COPRA), Indian Contracts Act, and Indian Penal Code. A dentist should have acquaintance with the main provisions of these acts. He should know the responsibilities and precautions to be taken to avoid untoward happenings, including legal problems. He should also be familiar with his legal liabilities and the meaning of some terms used. Due to lack of knowledge by dental practitioners or professionals, there is an increased risk of malpractice lawsuits in complex procedures. Negligence is the breach legal duty of care. A breach of this duty gives the patient right to initiate action against negligence.^{32,33}

The Consumer Protection Act

In India, the Consumer protection act [CPA] was enacted in 1986, to protect the interest of consumers. It was only on the 13th of November 1995, which the medical/dental profession was brought within the ambit of CPA by the supreme court of India.⁴

The Consumer Protection Act, 1986 (Fig.7)

The Consumer Protection Act, 1986 was passed by the Indian Parliament in December 1986. The first amendment to the Act came into force on June 1991 and further the Act was amended by the Consumer Protection (Amendment) Ordinance (No:24 of 1993) dated June 18th, 1993.^{34,35}

The Act provides the definition of the various terms used in the Act. Some important definition having a bearing on its application to services rendered by the medical profession was not expressly or categorically included within the definition of services. But two types of services, i.e., services free of charge or the service under a personal contract were expressly excluded from the purview of the Act. Hence, the services, which are free of charge or under a contract of personal services, are not covered within the definition of the services under the Act and any claim with respect of such services, will not come under the jurisdiction of the CPA. Later it was held by the National Commission that the definition of service has a broader meaning. It is made available to potential users when parliament has unambiguously defined the expression 'service' in such broad language and in widest amplitude. It is further held that the activity of providing medical assistance for payment carried on by hospitals and member of the medical profession falls within the scope of the expression 'service' as defined in section 2(1)(o) of the Act. Finally, it has been decided by the Supreme Court of India in a landmark judgment that the medical profession is

covered within the definition of service and that will come under jurisdiction of the Consumer Forum.^{36,37}



Figure 7: Consumer Protection Act

The definition of service excludes two types of service: -

A. Service rendered free of charge

B. Service rendered under a contract of personal service

Medical Negligence is the commission or omission of an act by medical practitioner or health care provider, deviating from the accepted standards of medical profession that has been included in the Consumer Protection Act (CPA), to protect the interests of the patients in case of any unethical treatment rendered by the doctor. Earlier, there was no effective adjudicative body for getting the grievances of aggrieved patients redressed. The Indian Medical Council Act, 1956 as amended in 1964, says that the violations of the regulations made by the Council shall constitute misconduct. Secondly, it was a tough task to get access to the state headquarters of the Council. And lastly, there was no power to the Council to award compensation to the injured patients or complainants. The development of law pertaining to professional misconduct and negligence on humanitarian grounds should start medical treatment in such cases. Further, when the patient has crossed the dangerous stage, it would be comfortable for both the patient and doctor to handle the situation.¹⁰ (Flowchart.1)



Flowchart 1: Consumer Protection Act

The medical services which are excluded from the preview of Consumer Protection Act are:

1. **Under the personal service contract**, i.e., where a medical professional, in an employee's capacity, renders some professional service to his employer. In other words, wherever there is master and servant relationship between the recipient of the medical treatment and the doctor, the same would fall outside the purview of the definition of service under the Act.
2. **At a government or non-government hospital/health center/dispensary**, where charge or whatsoever is not collected from any patients, whether rich or poor, would fall outside the purview of service under the Act.

The Supreme Court of India, in deciding the cases of medical negligence, has followed a liberal satisfactory. Still now, the entire field of medical negligence is not covered by adequate cross-sectional observational studies was conducted regarding the level of knowledge and awareness of CPA among dental professionals in India. Five studies out of 44 were finally included in the present review, after conducting both an electronic and manual search of scientific databases. The potential biases were reported, and appropriate data was extracted by the concerned investigators.³⁸

More than 90% of the study subjects in one of the studies were aware of the CPA, as compared to other

studies. In two studies, when queried about the correct time during which a patient can sue a doctor, very few subjects (18 and 23.2%) answered correctly. Almost 90% of the subjects took some form of consent in one of the studies.

The Consumer Protection Act, -1986 On 24th December 1986, the government of India, to safeguard the interest of the consumer, enacted a comprehensive legislation, the 'Consumer Protection Act, 1986' referred to as 'The Act'. It was later modified, and the amendments came into effect on March 15, 2003. It was an act to provide better protection of the interests of the consumers and for that purpose to make provisions for establishment of consumer councils and other authorities for the settlement of consumers' dispute and for matters connected therewith.³⁹

Who is a 'Consumer'?

Consumer, in the medical and dental profession, is:

1. A patient who pays to get services of doctor /hospital
2. Any person who pays for the patient
3. Legal heirs /representatives of such patients
4. Spouse, parents and children of the patient

The Meaning of the Word 'Service' (Flowchart.2)

On the meaning of the word "service" in relation to the medical profession, the Supreme Court in Indian Medical Association v. V.P. Shantha & Ors. (Supra) came to the following conclusions: -

1. Service rendered to a patient by a medical practitioner (except) where the doctor rendered service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of "service" as defined in section 2(1) (o) of the Act.

2. The expression "contract of personal service" in section 2(1) (o) of the Act cannot be confined to contracts for employment of domestic servants only, and the said expression would include the employment of a medical officer for the purpose of rendering medical service to the employer.
3. Service rendered at a government hospital / health center / dispensary or at non-government hospital / nursing home where no charge whatsoever is made from any person availing the service and all patients (rich and poor) are given free service, is outside the purview of the expression "service" as defined in section 2(1) (o) of the Act. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.
4. Service rendered at a non-government hospital / nursing home where charges are required to be paid by the person availing such services falls within the purview of the expression service.
5. Service rendered at a government hospital / health center / dispensary or at a non-government nursing home where charges are required to be paid by persons who are in a position to pay and persons who cannot afford to pay are rendered service free of charge would fall within the ambit of the expression "service" as defined in section 2(1) (o) of the Act irrespective of the fact that the service is rendered free of charge to persons who are not in a position to pay for such services. Free service, by such doctors and hospitals would also be "service" and the recipient a "consumer" under the Act.
6. Service rendered by a medical or hospital / nursing home cannot be regarded as service rendered free of charge, if the persons availing the service has taken an insurance policy for medical care where under the policy charges for consultation diagnosis and

medical treatment are borne by the insurance company and such service would fall within the ambit of 'service' as defined in section of the Act.

7. Similarly, where as a part of the conditions of service, the employer bears the expenses of medical treatment of an employee and his family member dependent on him, the service rendered to such an employee and his family members by a medical practitioner or a hospital / nursing home would not be free of charge and would constitute "service" under section of the Act.

Alternative Legal System for the Doctors

The foremost question which comes to the mind of doctors is why does the medical profession need to be included in the consumer protection act? This necessity arose because the existing laws of the land which provide for action in cases of medical negligence under the Law of Tort and Indian Penal Code, have some well documented problems. These include the following:

1. Delay, which, in medical negligence cases, tends to be greater.
2. The cost of bringing an action, which is notoriously high in relation to the sums recovered in damages.
3. Limited access to the courts.
4. Success depends on proof of both negligence and causation (which can be particularly difficult in cases of medical negligence).

Doctors and Consumer Protection Act (Flowchart.2)

Hence the necessity to provide an alternate system which would be easily accessible, speedy and cheap, gave birth to the Consumer Protection Act. This Act was made applicable to the doctors because there are no equivalent provisions in the Indian Medical Council Act, 1956; or the dentists act 1948, ^{40,41,42,43,44,45,46}

1. To entertain any complaint from the patient.

2. To act against the Medical Practitioner in case of negligence.
3. To award any compensation, etc. in case negligence is proved.



Flowchart 2: (Consumer Protection Act)

The reasons why medical services had to be included under the Consumer Protection Act (CPA) are

1. Increasing knowledge of one's rights as a patient.
2. Doctors and hospitals are no longer held in high esteem as they were held before.
3. No cost is involved if a complaint is filed in the District Forum or State/ National Commission under the CPA, since a patient can make out his case and argue it himself and
4. A complaint is decided within a short span of three to four months under the CPA, while it usually takes years in the civil and criminal courts.

Who is Liable to the Consumer Protection Act?

1. Doctors with independent practice rendering only free services.
2. Private hospitals charging all.
3. All hospitals having free as well as paying patients, they are liable to both.
4. Doctors or hospitals paid by an insurance firm for treatment of a client or an employer for the treatment of an employee.

Who is not liable to Consumer Protection Act

1. Doctors in hospitals, which do not charge their patients.
2. Hospitals offering free services to all patients.

Victims of medical negligence, considering action against an erring doctor, have three options: -

1. **Compensatory mode** - Seek financial compensation before the Consumer Disputes Redressal Forum or before Civil Courts
2. **Punitive/Deterrent mode** - Lodge a criminal complaint against the doctor.
3. **Corrective/ Deterrent mode** - Complaint to the State Medical Council demanding that the doctor's license be revoked. The Jurisdiction of Civil Court was never disputed but its scope was limited for damages only.

Procedures for lodging a Complaint

The redressal agency has a three-tier structure:

1. **District level:** at this forum a person can claim compensation for damage up to a maximum limit of Rs: 5 lakhs. A district judge and 2 other members chair this of which one of whom shall be a woman.^{47,48}
2. **State level:** At this level the claim for compensation is enhanced to Rs: 5 – 20 lakhs & high court judge & 2 other members chair it.
3. **National level:** Here the compensation claimed is more than 20 lakhs. This forum consists of a Supreme Court judge and 4 other members.

Provision for Appeal Within 30 days from the date of decision, appeal can be filed in the higher commission.

1. Appeal against district forum, before state commission.
2. Appeal against state commission, before national commission.

3. Against national commission, before Supreme Court.

Preventive Steps Against Litigation Can be summarized into Do's and Don'ts which all surgeons must keep in mind: -

Do's for Doctors

1. Mention age & sex of the patient. In a pediatric prescription, weight of the patient must also be mentioned.^{8,49}
2. If, after completing the examination, the patient / attendant feels that something has been left out or wants something to be re-examined, oblige him.
3. Always face the patient. Maintain eye contact that is comfortable to the patient. Some patients tolerate very little eye contact. Learn to observe out of the corner of your eyes.
4. In case you have been distracted / inattentive during the history taking, ask the patient / attendant to start all over again. He will never mind it. As far as possible, consultations should not be interrupted for non-urgent calls.
5. Mention "diagnosis under review" or "quote; under evaluation" until the diagnosis is finally settled.
6. If the patient / or attendants are erring on any count make a note of it or seek written refusal.
7. Record history of drug-allergy.
8. Write names of drugs clearly. Use correct dosages and mention clearly method & interval of administration and mention side effects.
9. Prescribe with caution during pregnancy / lactation.
10. Adjust doses in case of a child / elderly patient and in renal or hepatic disorders.
11. Mention where the patient should contact in case of your non-availability / emergency.
12. Update your knowledge and skill from time to time. Many doctors tend to deteriorate in their knowledge,

skills & attitude, over a period of time. Not only do they make any attempt to update themselves, but also, they slip downwards.

13. Always obtain a legally valid consent before undertaking a surgical / diagnostic procedure.
 14. Routinely advise X-rays in injury to bones & joints and related diseases of bones / joints.
 15. Always rule out pregnancy before subjecting the uterus to X-ray.
 16. Always read reports carefully & interpret the results of tests / X-rays properly and make a note of it. In case of any doubt, recheck with the lab / diagnostic center.
 17. In all instances of swab cases & "instrument cases", the surgeon in charge is generally held directly or vicariously liable for negligence. The surgeon in charge must therefore personally ensure that such mishaps do not occur.
 18. The period for the surgeon's responsibility extends to and includes post-operative care. He must, therefore, ensure proper post-operative care of the patient.
 19. In case of death of a patient occurring while undergoing surgery / diagnostic procedure, the higher hospital authorities / police authorities must be informed without loss of time. In such cases, autopsy/post-mortem is mandatory.
 20. In case the hospital / clinic claims to provide 24-hour emergency service, availability of necessary equipment in working order and competent staff within reasonable time is mandatory.
3. Don't insist on the patient telling the history of illness or being examined in the presence of others. He has a right to privacy and confidentiality.
 4. Don't prescribe a drug or indulge in a procedure if you cannot justify its indication.
 5. Don't prescribe or administer a drug which is banned, e.g. Analgin, Oxyphenbutazone etc.
 6. Don't over-prescribe or under-prescribe any drug.
 7. Don't prescribe multiple drugs. Such prescription may be due to inability to form a correct diagnosis or other causes. Possibilities of drug interactions increase with polypharmacy.
 8. Don't do anything beyond your level of competence. Competence of doctors, nursing staff is defined by their qualification, training, experience and competence of a hospital/nursing home is defined, in addition to the competence of its doctors and nursing staff by the availability of various equipment's in working order and back-up support, e.g., handling of cases of accident/emergency, severe reaction to drugs, anesthesia, etc. and availability of resuscitative equipment., etc.⁴⁰
 9. Don't refuse if the patient/attendant wants to leave against medical advice. It is their right. Document this properly.
 10. Never avoid a call for help from a nurse on duty at night. In all probability, a genuine emergency may be there.
 11. Don't refuse the patient's right to know about diagnosis & treatment of his illness.
 12. Don't refuse the patient's right to examine and receive an explanation about your bill regardless of the source of payment; whether it is reimbursed by the government or by his employer/insurance company.

Don'ts for Doctors

1. Don't prescribe without examining the patient.
2. Never examine a female patient without the presence of female nurse / attendant.

13. Don't refuse the patient's right to know about the hospital rules & regulations.
14. Don't dump hospital garbage including used disposables in the open. It should be properly incinerated / destroyed to prevent spread of disease or reuse by unscrupulous persons.
15. Don't refuse first-aid/medical care in accidents & emergency cases even if it is a medico-legal case. Practitioners had more awareness as compared to academicians and combined practitioners.³¹

Conclusion

Medical practitioners of our country are hardly taught about the rights of a patient in their medical curriculum. It is now high time they gain adequate knowledge about the rights of patients so that they do not violate them even unknowingly during their practice. The number of medical negligence lawsuits is increasing day by day in India, and the threat of litigation has increased significantly after the Supreme Court brought Medical Profession under the purview of **the Consumer Protection Act, 1986**.⁴ The people are now confident enough while visiting doctors and getting treated and can rely on consumer forums to get fast redressal in case of any deficiency in service. The doctors also treat the patients with greater care and caution than they earlier used to because of this law.^{50,51}

Dentistry in India is governed by the dental council of India. The DCI is responsible for ensuring high ethical and legal standards for the dental profession. As an individual dentist, they have the responsibility to act in patients' best interest and to provide the highest standards of clinical care. Any important component of clinical care is the informed consent which corresponds to the basic principle of patient autonomy and respect. The process of informed consent is also helpful in informing the dentist patient relationship. There is the need for

maintaining the records officially and professionally to protect against any commercial, legal and medico legal litigation.⁵³ This can result in monetary compensation to the patient or the consumer, for deficient services on the part of the dental profession. Professional Indemnity (PI) insurance policies that cover the professional people against their legal liability to pay damages arising out of negligence in the performance of their professional duties. However, once a negligence lawsuit is filed against the dentist, a complex legal maze is opened.^{52,53}

The best defense is avoiding lawsuits in the first place and maintaining ethical standards which is the key for successful practice. As the awareness in developing societies is increasing people are changing their attitude towards medical and dental procedures which increases the probability of sewing dental practitioners for their misconduct. Morality or ethics may differ from person to person, but Law is universal and is applicable to all, hence minimum threshold of ethics imposed by law should be a prerequisite. The law should not be a source of fear or an obstruction in the delivery of professional services. The law, when applied properly, always brings peace and discipline, and a sense of equality prevails. Compensation has punishments to civil wrong and criminal act respectively. It tries to restore peace in uniformity and a correct intent can help to escalate society in a better way. In this context, the profession should take an inward look and correct Malpractices and distortions, which have given a negative image to a noble profession. Incorporating medical teachings not only helps in uplifting medical and dental practice, but also maintains professional secrecy. We must also understand the aim of medicine is not doing any harm, as while healing and helping we must not harm patients.

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