Safeguards of interest of patients as consumers from Medical Negligence

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Abstract—Used to be the time when Doctors were equivalent to God but over the time such situation has apparently changed and now they are into money making. The prophecy has changed over the years. Maybe it is the greed for money which has highly risked the lives of consumers. Not only money making but there are other reasons also which makes the patient suffer like lack of knowledge in the field of medicines, surgical negligence and errors, mistake in reading diagnostic reports, over supplying of anesthesia, etc. In the law of negligence, professionals such as lawyers, doctors and architects are persons professing some special skill. Any task which is required to be performed with a special skill would generally be undertaken to be performed only if the person possesses the requisite skill for performing such task. Whenever any case of medical negligence arises, the burden of proof to prove the medical practitioner as guilt lies on the consumer as patient. Frequently patients are unconscious when the negligent act occurs or there is insufficient documentation regarding the health care practitioner’s participation during the medical procedure. When this is the case, it may be difficult to prove negligence, even with the assistance of experts. In such circumstances, some states allow patients to rely on a legal doctrine called “res ipsa loquitur” to establish liability.


I. INTRODUCTION

1.1 Health Laws
A country’s power is vested in its citizen and prior to everything should be the health of the citizens. Health has always been an issue of great value which needs to be taken into consideration. “Health is wealth”, is one such proverb which should be kept at utmost priority. Law and health has a very common mechanism since the very beginning. It is an essential part of health practice. Law is a mechanism in public health work which is used to establish certain rules and regulations for healthy behavior and to help create the social conditions in which people can be healthy. If these rules aren’t implemented the population of such a large country would be plagued by health crisis. Health laws govern the functioning of governmental bodies and privatized institutions.

1.2 Emergence of health laws
Pertaining to various health crises which could affect the general population of the country, such health laws were needed to be established. Over the past few years, certain developments have taken place in the field of science particularly focusing on health and medical sciences. But in order to get them in working, some laws were introduced. Earlier, the atmosphere and water bodies were free from pollution and impurities but as the time passed by, humans started littering wastes around and their technological developments emitted certain harmful pollutants which were a threat for mankind as well as lives present in the biosphere. In order to combat such problems, health laws were made and over the time, amendments in these laws were also done. These laws helped people at a large scale especially those residing in the rural areas as they had no access to any medical services. Thus, preventing many diseases and health related factors from emerging and leading to the betterment of the people.

1.3 Measures by Government and Private organizations
Government and its legislative authorities have over the time introduced various laws in the constitution so as to take measures from evolving of any health crisis. Government also introduced many new acts in order to preserve the rights of the citizens of India. In the Directive Principles of State Policy, it is the duty of the state to monitor the health and other medical form factors thus, making it necessary for the state to ensure that people are getting each and every facility that could prevent any disease and also giving rehabilitation to the needy ones and the ones residing in rural areas.
In India, health comes in the concurrent list. Hence, making an implementation of health laws are the responsibility of the state as well as central Government. In the enactment and implementation of health laws the following department of the state and central Government play the important roles:

- Ministry of Health and family welfare
- Labor Ministry
- Department of women and child welfare
- Public works department
- Central pollution control board
- State pollution control board
- Ministry of Food
- Department of transportation and communication
- Ministry of Forestry and Environment

Many private organizations and NGOs have done a commendable job in securing the lives of people by providing free check-ups, vaccinations, medicines and food which is essential for living. They are financed by many charitable as well as anonymous people. Organizations such as WHO, goes to rural areas and set up free medical aid camps in order to ensure that no health crisis are enraged.

Thus, basic criteria behind upbringing such issues is that each and every citizen of India is getting proper and necessary health services and build a strengthening health infrastructure for healthier environment.

II. AN OVERVIEW

Certain analogies and news have been into the ears from a very long time pertaining to medical negligence and the outcome remains the same i.e., the consumer getting suffered under the hood of medical negligence. Such mal practices have resulted in a huge impact on the mentality of the society. Used to be the time when Doctors were equivalent to God but over the time such situation has apparently changed and now they are into money making. The prophecy has changed over the years. Maybe it is the greed for money which has highly risked the lives of consumers. Not only money making but there are other reasons also which makes the patient suffer like lack of knowledge in the field of medicines, surgical negligence and errors, mistake in reading diagnostic reports, over supplying of anesthesia, etc.

Government has introduced some of the provisions and enactments in law which talks about life of the citizens of India, medical negligence and its consequences. It has been stipulated in the Article 21 of The Constitution of Indiathat No one shall be deprived of his or her life except procedure established by law. The law of Tortsunder the heading Negligence explains about medical negligence. Section 304A of Indian Penal Code,1872 lays emphasis on causing death by negligence. The conduct of medical negligence was brought under the Consumer Protection Act 1986. It defined medical care as a “service” that was covered under the Act, and also clarified that a person seeking medical attention may be considered a consumer if certain criteria were met. Also Section 2(1) (d) of Consumer Protection Act 1986, defines consumer as the person availing services by paying for them and in respect of the payment demands for maintaining or availing of services from that particular person or institution.

III. NEGLIGENCE IN THE EYES OF LAW

3.1 Negligence

Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: ‘duty’, ‘breach’ and ‘resulting damage’.

3.2 Negligence by professionals

In the law of negligence, professionals such as lawyers, doctors and architects are persons professing some special skill. Any task which is required to be performed with a special skill would generally be undertaken to be performed only if the person possesses the requisite skill for performing such task. A tort of negligence consists of a legal duty to take reasonable care and breach of duty arises when the medical practitioner does not profess such reasonable care and duty, resulting in causing damage to the consumer as the patient. This is a civil wrong.

Negligence in terms of contract arises when the breach of duty takes place. When the medical practitioner fails to exercise reasonable skill and care in treatment of a patient, it is taken as an implied duty which
breaches out of the contract and results in violation of the contract.

The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea i.e., guilty mind, must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher. In order to prosecute a medical practitioner for negligence under criminal law, it must be shown that there must be some failure to comply with the duty of reasonable care on behalf of medical practitioner which in no medical practitioner in his ordinary senses and prudence would have done or failed to do.

The Supreme Court in Jacob Mathew v. State of Punjab, explained: a professional entering into certain profession is deemed to have knowledge regarding that profession and it is assured impliedly by him that a reasonable amount of care shall be taken to profess his profession. The person can be held liable under negligence if he did not possess the required skills to profess or he failed to take essential amount of care to profess the said profession.

3.3 Burden of Proof on Consumer as patient
Whenever any case of medical negligence arises, the burden of proof to prove the medical practitioner as guilt lies on the consumer as patient. Frequently patients are unconscious when the negligent act occurs or there is insufficient documentation regarding the health care practitioner’s participation during the medical procedure. When this is the case, it may be difficult to prove negligence, even with the assistance of experts. In such circumstances, some states allow patients to rely on a legal doctrine called “res ipsa loquitur” to establish liability. The principle of res ipsa loquitur is said to be essentially an evidential principle and the said principle is intended to assist a claimant who, for no fault of his own, is unable to adduce evidence as to how the accident occurred. In Calcutta Medical Research Institute v. Bimalesh Chatterjee, it was held that that onus of proving negligence and the resultant deficiency in service was clearly on the complainant.

IV. RIGHTS OF THE CONSUMERS AS PATIENT

Rights of patients are derived from Human Rights, Constitutional Rights, Civil Rights and Consumer Rights. Right to a healthy life is an integral part of right to life as mentioned in Article 21 of the constitution. Basic optimal health care is the right of every Indian citizen and it is the duty of state as well as Central Government to provide and ensure that all the facilities are being provided to them. But if there is some mishap, then the patients may recall their rights and fight for themselves. Following are the rights of the patients:

- Right to considerate and respectful care
- Right to information on diagnosis, treatment and medicines
- Right to obtain all the relevant information about the professionals involved in the patient care
- Right to have prompt treatment in an emergency
- Right to get copies of medical records
- Right to get details of the bill

Patients should take utmost precautions while exercising the aforementioned rights. They should go through each and every document before signing and giving any affirmative response for further treatment. They should be aware of the consequences arising out of the treatment. The patient and family members must seek advice from more than one medical practitioner and the one which suits them should go for that one. The original bills and reports must be kept safely. Every medicine and document must be scrutinized twice. The patients and family members must keep the bills of drugs prescribed to them. In Poonam Verma v. Ashwin Patel and Ors., the doctor who was entitled to practice in homeopathy only, was held under a statutory duty not to enter the field of any other system of medicine. Since he trespassed into a prohibited field and prescribed medicine to the patient causing the death, his conduct held amounted to negligence per se actionable in civil law.

V. ANALYTICAL VIEW

Thousands of cases of medical negligence are reported every year. Various forms of medical negligence cases are present, such as hospital negligence, clinical negligence during child birth/pregnancy, hospital misdiagnosis, surgical negligence, anaesthesia negligence and many such cases. Due to this negligent behaviour by such authorities and individuals,
patients suffer a lot and at times die of such mal practices. Patients and their families seek out for justice by suing those practitioners and authorities. According to National Health Service Litigation Authority, during 2007-2011, 66,059 claims of negligence have been reported. Following are the number of claims reported yearly:

2007-2008 (5470)
2008-2009 (6088)
2009-2010 (6652)
2010-2011 (8655)
2011-2012 (11707)

VI. CONCLUSIONS

Medical negligence being one of the most serious issues in India should not be neglected at any cost. Still, citizens of this country do not take any actions on such issue as they are unaware of their rights. There is no centralized collection of data on negligence cases filed in India and since India being one of the developing countries, constant efforts must be made to bring down the incidence of negligence and curb the consequences of medical errors. So, the area that needs to be developed in India is the internal regulation of medical boards that can only be done by the Government. So, Government must look into these allegations and must constitute boards that could decide such cases neutrally and without any biasness so that a fair and transparent report could come out.

Tribunals and other consumer redressal forums are made for patients as consumers to fight for their rights. If any injustice is sought, they may check into these forums. But as a disadvantage, consumer forum takes a lot of time to decide the exact compensation to be paid to the patient. It is believed that by improving medical boards we will see a big change in cases of medical negligence in few years. For the consumer forum, it is necessary that justice should be done as soon as possible and patient should not suffer anymore. There is no specific time in the country as to when a case will be decided. In some cases, it takes 5 years to reach in the state consumer forum while some cases are also disposed of in a year or two. Many PILs are also filed so as to provide justice to the public at large and assuring them a sigh of relief. Thus, money making and other political agendas must be set aside while public health must be kept at first.

REFERENCES

[5] Indian Medical Association v. V. P. Shantha & Ors.,1995 6 SCC 651
[7] AIR 2005 S.C. 3180 (Envisages the carelessness of doctor was a major fault as there was unavailability of staff and equipment which were needed when the patient was in the urgent need. Therefore, any prudent person at that time would have reasonable care in the particular matter)
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