**Medical Negligence- Recent Trends**

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**Introduction:**

Since the beginning of medical practice, the society has taken the cognizance of medical negligence as well. In India, subsequent to inception of the Consumer Protection Act, 1986 the question of medical negligence became very prominent. The public, patients, and the press including visual media became aware, with this, came the issues of not only civil negligence but criminal negligence also.

Supreme Court verdict in 1995 brought the medical profession under the purview of the Consumer protection Act, 1986.1

As per jurisprudent law in India, elements of Professional medical negligence are:

1. Duty to treat: there should be a doctor- patient relationship established,
2. Dereliction: a physician must conform to standard of a prudent physician,
3. Direct causation between the damage and the procedure,
4. Damages to the patient.

In absence of any of the above, a case of negligence can’t be proven in a court of law.

With advancement of technology and increased literacy rate the Indian society has developed an awareness regarding their rights and at the same time public awareness about medical negligence is growing. The reason is that the degrading standards of professional competence, facilities, and the appropriateness of their therapeutic and diagnostic methods. In earlier times, people were afraid of suing doctors or hospitals, but with the passage of time, the law has played a major role in generating awareness among people regarding their rights.

According to Bolam’s test, a doctor, who acts by a practice accepted as proper by a responsible body of medical men, is not negligent mainly because there is a body of opinion that takes a contrary view.2 But the test came under a rough weather and was faced with a lot of criticism, and therefore, countries like Australia rejected it altogether.

As of the present, after the Bolitho case, recognition of a two-step procedure took place so as to determine the question of alleged medical negligence:3

* Whether the doctor acted by a practice accepted as proper by an ordinarily competent doctor.
* If yes, whether the practice survived *Bolitho*judicial scrutiny as being responsible or logical.

The two-step analysis as followed in the Bolitho case was reiterated and confirmed in many cases, like *French v. Thames Valley Strategic H.A.*Unlike the Bolam’s Test, this test is uncontroversial.

In the context of Indian law, medical negligence comes under 3 categories; Criminal negligence, civil negligence and negligence under Consumer Protection Act. Different provisions regarding the remedy in the form of punishment and compensation are there in 3 laws.

There is a recent increase in number of medical negligence cases in India. This may be attributed due to rise in awareness. This study focuses on the number of alleged medical negligence cases that resulted in death of the patient and were brought to Lady Hardinge Medical College, New Delhi during the period of 2013-17 for post-mortem examination. This study also focuses on the Department vise alleged medical negligence cases.

**Materials and Methods:**

This is a retrospective study of all the cases that were brought to the Department of Forensic Medicine and Toxicology, Lady Hardinge Medical College, New Delhi during the period of 2013-17 for post-mortem examination. The case of Medical negligence was decided based on the history given by the Investigation Officer.

**Observation and Results:**

There is a general rise in percentage of cases of medical negligence deaths brought to us autopsy with year 2016 showing maximum as 1.23%.

|  |  |  |
| --- | --- | --- |
| **Year** | **Number of Alleged Medical Negligence Deaths cases brought for Autopsy (Total number of Autopsies in that particular year)** | **Percentage** |
| 2013 | 4 (630) | 0.64% |
| 2014 | 6 (701) | 0.86% |
| 2015 | 5 (737) | 0.68% |
| 2016 | 10 (811) | 1.23% |
| 2017 | 6 (623) | 0.96% |

Table 1. Number of Alleged Medical Negligence deaths cases brought for Autopsy

Figure 1. Number of Alleged Medical Negligence Deaths cases brought for Autopsy.

Maximum numbers of alleged medical negligence death cases were observed in the age group of 0-10 years i.e. 42%, followed by 21-30 years, 23%.

|  |  |
| --- | --- |
| Age Group | Number of Cases |
| 0-10 | 13 |
| 11-20 | 1 |
| 21-30 | 7 |
| 31-40 | 5 |
| 41-50 | 2 |
| 51-60 | 3 |

Table 2. Age wise distribution of cases.

Figure 2. . Age wise distribution of cases.

There were more female deaths with alleged history of medical negligence accounting for 55% of total medical negligence deaths.

|  |  |
| --- | --- |
| Sex | Number of Cases |
| Male | 14 |
| Female | 17 |

Table 3. Sex wise distribution of Cases.

Figure 3. Sex wise distribution of Cases.

Maximum numbers of alleged medical negligence death cases were observed in Medicine and Pediatrics departments, accounting for 23% each of total deaths due to medical negligence, followed by department of Obstetrics and Gynecology.

|  |  |
| --- | --- |
| Department | Number of Cases |
| Casualty | 1 |
| Pediatrics | 7 |
| OBGY | 6 |
| Medicine | 7 |
| Surgery | 3 |
| Ophthalmology | 1 |
| Anesthesia | 1 |
| Private OPD | 5 |

Table 4. Department vise distribution of Cases.

Figure4. Department vise distribution of Cases.

Though viscera was preserved for chemical analysis in majority of cases but in 23% cases no viscera was preserved. Out of the samples preserved, reports of only 19% cases were submitted for subsequent opinion.

|  |  |
| --- | --- |
| Viscera for Chemical Analysis | Number of cases |
| Not preserved | 7 |
| Preserved but result pending | 18 |
| Preserved and report received | 6 |

Table 5. Preservation of Viscera for Chemical Analysis vise Distribution of Cases.

Figure 5. Preservation of Viscera for Chemical Analysis vise Distribution of Cases.

Though viscera was preserved for Histopathology in majority of cases but in 26% cases no viscera was preserved. Out of the samples preserved reports of only 19% cases were submitted for subsequent opinion.

|  |  |
| --- | --- |
| Preservation of Viscera for Histopathology. | Number of Cases |
| Not preserved | 8 |
| Preserved but result pending | 17 |
| Preserved and report received | 6 |

Table 6. Preservation of Viscera for Histopathology vise Distribution of Cases.

Figure 6. Preservation of Viscera for Histopathology vise Distribution of Cases.

In 52% cases final cause of death was given.

|  |  |
| --- | --- |
| Cause of Death (Report Given or not) | Number of Cases |
| Yes | 16 |
| No | 15 |

Table 7. Cause of Death (Report Given or not) vise Distribution of Cases.

Figure 7. Cause of Death (Report Given or not) vise Distribution of Cases.

Out of the total cases of death allegedly due to medical negligence, 83% cases were primarily treated in Government Hospitals or Institutions.

|  |  |
| --- | --- |
| Treatment in Hospital (Private or Government) | Number of Cases |
| Government | 5 |
| Private | 26 |

Table 8. Treatment in Hospital (Private or Government) vise Distribution of Cases.

Figure 8. Treatment in Hospital (Private or Government) vise Distribution of Cases.

Out of the total cases, 52% cases died within 24 hours of admission.

|  |  |
| --- | --- |
| Duration of Treatment | Number of cases |
| Brought Dead | 1 |
| 0-24 hrs | 13 |
| 24-72 hrs | 8 |
| 3- 7 Days | 3 |
| >7 Days | 6 |

Table9. Duration of Treatment vise Distribution of Cases.

Figure 9. Duration of Treatment vise Distribution of Cases.

**Discussion:**

India records approximately 5.2 million cases a year, ranging from incorrect prescription, wrong dose, wrong patient, wrong surgery, and wrong time to wrong drug.4Of these, the biggest sources are mishaps from medications, hospital-acquired infections and blood clots that develop in legs from being immobilized in the hospital.5 Around 52 lakh medical injuries are recorded every year in India and 98,000 people in the country lose their lives in a year because of medical negligence.6

There is a general rise in percentage of cases of medical negligence deaths brought to us autopsy but almost every year they constitute less than 1% of total cases brought for autopsy.

Maximum numbers of alleged medical negligence death cases were observed in the age group of 0-10 years i.e. 42%, followed by 21-30 years being 23% of total cases. This fact is attributed to the fact that majority of the deaths with alleged history of medical negligence were observed in Pediatrics department.

Maximum numbers of alleged medical negligence death cases were observed in Medicine and Pediatrics departments, accounting for 23% each of total deaths due to medical negligence, followed by department of Obstetrics and Gynecology. It is interesting to note that 16% cases were allegedly OPD patient death.

Even after alleged medical negligence, many a times there are some lapses at the time of performing the post-mortem examination. In our study, though viscera were preserved for chemical analysis in majority of cases but in 23% cases no viscera was preserved. Almost similar trend was observed in samples kept for histopathology.

Out of the samples preserved, reports of only 19% cases were submitted for subsequent opinion which indicates either the charge-sheet was not filed or case got delayed/ withdrawn. This may be due to the fact that many a times, decision to file a case against the attending doctor is taken in heat of the momentresulting due to sudden demise of the near and dear ones.

Out of the total cases of death allegedly due to medical negligence, 83% cases were primarily treated in Government Hospitals or Institutions. Private hospitals contributed only 3% of total deaths. This fact is in contrast to the common perception and may be a shift in pattern. This also points towards the fact that economically lower strata of the society are too becoming aware of possible contribution of doctor’s negligence in the death of the patient.

Most of the times the patient is brought in serious conditions, sometimes the condition being irrecoverable. To save a patient from such a condition becomes a daunting task for the treating doctor, leading to the perception to the patient’s relatives that there was negligence on the part of the doctor. This fact can be inferred from this study as out of the total cases, 52% cases died within 24 hours of admission, whereas 32% patients survived for a period of 24-72 hours. Only 16% deaths were observed in patients surviving initial 72 hours.

**Conclusion:**

Recent trend of rise in number of medical negligence cases not only indicates towards rise in awareness among the general population but also lack of due care by the treating doctors. With increase in number of litigations in medical practice it has become essential for the practicing health professionals to follow the established guidelines, thereby reducing such mis-happenings.

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