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Review Article

Medical Negligence and Remedies: A Challenge to Medical Profession

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Abstract

Medical negligence litigation has become a common experience for the medical practitioners. It is important to know what constitutes a medical negligence and take preventive steps. The doctor has certain duties to his patient who comes to him for treatment for his illness. If there is any deficiency of duty or service due to commission or omission causing damage to the patient, it amounts to medical negligence. When there is a litigation of medical negligence, a legal procedure is followed to address the complainant. The doctor has to be aware of the medico-legal procedures and laws dealing with alleged medical negligence cases. It will help them to take precautions and follow safe medical practice.

Keywords: Medical Negligence; Litigation; Consent; Communication; Consumer Court; Civil Court; etc.

Introduction

Since ancient time, doctor and patient relationship was based on trust and faith. There were only few who mastered this profession with their knowledge, skill and experience. It was a noble profession dealing with the healing of sickness and doctors were considered next to God. But with time the situation has changed. With the advancement of allopathic medicine, there has been revolution in the management of human diseases.

Patient's have various options for treatment of their disease and the life expectancy of the people has increased due to better medical care and survival. There has also been change in the awareness of the public about medical treatment options and legal avenues due to better education and boom in the information technology. This has led to numerous litigations of medical negligence against the treating doctors.

The USA adopted four consumer rights in 1962 and UNO adopted guidelines for consumer protection in 1985. In 1986, the consumer protection Act (CPA) was passed in India. In IMA Vs P Shanta, the supreme court held that all medical services shall come under Sec. 2(1) of the CPA. Since then act there has been a sudden surge in the medical negligence cases lodged in the consumer court.

History of Healer Liability Suits [4]

Code of Hammurabi was the rule of law prepared by the king of Babylon (1792-1750 B.C). It described a scaled fee schedule for surgical services, which was linked to the outcome of the surgery, so if not met, resulted in severe penalties. It required documentation of diseases and therapies, including prescription benefits. The code fully explained patient's rights according of proclaimed King's code. It is clear that fees were fixed for treatment and penalties for the improper treatment. From there the concept of crime, tort and negligence were recorded.

There are various reasons for the increase in the litigation against the doctors which is a cause of concern:

1. The media has played a significant role in spreading the awareness of CPA Act, 1986 and also the rights of the patients. The trial by media is not uncommon.

2. The consumer activist have strengthened the consumer voice and encouraged the consumer to lodge cases. It has led to increase in the incidence of frivolous litigations.
3. There has also been increased and unrealistic public expectations from the doctors.
4. The doctor community also has a role in polluting the trust of the patient by too much commercialization of the medical services especially in the private sectors affecting the doctor patient relationship.
5. The patient has easy access to legal firms specialized in medical negligence case and the patient relative may be misguided by the money making lawyers who exploit the situation.
6. The practicing quacks has contributed to significant litigations and damage to medical practice.
6. It is also known that the medical doctors has been a soft target of litigations. Many a times the court and the administrations are unconcerned. There has been an increase in the incidence of hospital violence, especially in the emergency department.
7. There is a wrong public thinking that suing for medical mishaps is a way to obtain easy money or get their high medical bills waived off.
8. It is worth mentioning that the doctors are also not aware of the medico-legal issues in the practice and there is not enough medicolegal experts to guide them.

These increased litigations against doctors has also led to various consequences:

1. There is damage to the reputation of the medical professionals.
2. The doctors have started practicing defensive medicine. They have started advising more investigations than before. The diagnosis and management of the patient has been more on the basis of laboratory investigation than clinical diagnosis to avoid litigations.
3. The practice of defensive medicine has increased the cost of the health care and burdened the patient.
4. The doctors have started taking indemnity insurance to guard themselves against the medical litigations.
5. There is an increase hospital violence and violence against the doctors.
6. Medical litigations has led to the closure of many small medical establishments/nursing homes.
7. The affected doctors are taking early retirements and even changing profession.
8. In long term this may affect the popularity of the medical profession and fail to attract the best talents.
9. Now every patient today is a potential litigant and every doctor today is a soft target.

What is the Meaning of Negligence? [2]

As per Black's law dictionary Negligence means: the omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do or the doing of something which a reasonable and prudent man would not do.

What is Professional Negligence?[2]

As quoted in Black's law dictionary (Reich Vs City of reading), Professional negligence is the negligence committed by a professional person. Professional is one engaged in one of the learned professions or in an occupation requiring a high level of training and proficiency. The following specific occupations have been accorded professional status: Architecture/ Engineers/ and quantity surveyors, Surveyors, Accountants, Solicitors, Advocates (Barrister), Medical practitioners and Insurance Brokers.

What is Medical Negligence?[2]

It is defined as absence or want of reasonable degree of skill, knowledge and care on the part of a medical practitioner in the treatment of a patient with whom a relationship of a professional attendant is established, leading to his /causing bodily injury/ damage or permanent disability or death/loss of life of the patient.

When does the liability of medical negligence arise?

To charge a doctor for Medical negligence, the following four fold test need to be applied:

1. *Duty*: Existence of a duty of care towards a patient.
2. *Dereliction of duty*: Failure of the doctor to provide reasonable degree of care and skill in the treatment of the patient.
3. *Damage*: Dereliction/breach of duty or care leading to damage/injury to the patient. The damage should have been foreseeable by a reasonable physician.

4. *Direct Causation:* The damage must have been directly caused from the dereliction of duty and not from any other cause or without which the injury would not have occurred.

What are the Damages to a Patient?

The damages to the patient could be in various forms like loss of earnings, expenses in the treatment of injury sustained, reduction in life expectancy due to the damage, reduction in the normal pleasure of life, pain and suffering (physical or mental), loss of potency, aggravating the pre- existing condition and death. The term damage means physical, mental or functional injury to the patient.

What is Reasonable Degree of Skill, Knowledge and Care?

As per Halsbury,s laws of England [2]" The law requires that the practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. The law does not expect the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case." Circumstance of the case in judging the cases of medical negligence, means the time, place, and the opportunity available to the practitioner when he undertakes the care of a patient. Depending on the these circumstances, different standards may become applicable while judging cases of alleged medical negligence.

The Bolam,s Test is the classic statement of the test of professional negligence. In Bolam,s test (John Hector Bolam Vs Friern hospital management committee, (1957) 1WLR 582, Justice McNairJ held: "But where you get a situation, which involves the use of some special skill or competence, then the test whether there has been negligence or not is not the test of the man on the top of a clampham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man excercising and professing to have that special skill. A man need not possess the highest expert skill at the risk of being found negligent. It is well established law that it is sufficient if he excercises the ordinary skill of an of an ordinary competent man excercising that particular art".

It was mentioned by the supreme court in the Indian Medical Association (IMA) Vs P Shanta case that the practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of particular circumstances of each case is what the law requires.

In a way it can be mentioned that the Medical practitioner are said to have committed medical negligence when he does something which a doctor of average prudence does not do or does not do something which a doctor of average prudence does, with similar qualifications, experience and facilities under similar circumstances.

What is Gross Negligence?

In Jacob Mathew Vs State of Punjab case (2005), the supreme court said that no criminal case should be filed against a doctor during the course of treatment of patient, unless the negligence is very gross, amounting to recklessness. The court did not define what is gross negligence. As per Black's law dictionary, "Gross negligence is defined as the intentional failure to perform a manifest duty in reckless disregard of the consequence". Ordinary negligence, is based on the fact that one ought to have known results of the acts, while gross negligence rests on the assumption that one knew results of his acts, but was recklessly or wantonly indifferent to results.

What is deviation from normal practice liability?

There is a usual and normal practice. The doctor has not adopted it. The course in fact adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary care. It must be remembered that there may be more than one accepted normal practice or standards.

Types of Medical negligence

There are two types of negligence, namely civil and criminal negligence. As per Indian law, there is no proper definition for civil negligence. But criminal negligence is equated with Sec 304 A IPC which says "whoever causes death of any person by doing a rash and negligent act not amounting to culpable homicide shall be punished with imprisonment of up to 2 years, or with fine or with both" In such cases it has to be proved beyond reasonable doubt that there was a gross negligence, amounting to recklessness on the part of the doctor causing injury or death of the patient. This legal Section is applied in death due to road traffic accidents also. Regarding medical negligence various courts have commented that, a driver who is driving rashly and responsible for the accident and loss of life and a doctor treating to save the life a patient and acting in good faith

cannot be put in the same category. There needs to be a separate section to deal with medical negligence.

What is not negligence?

The people and law enforcing agencies (police and court) should know that not all cases of complains are medical negligence.

1. Mere occurrence of a complication

There are number of known complications associated with the treatment or surgery, which happens inspite of all precautions. It is generally communicated to the patient /relative in the informed consent.

2. Mortality Per se

The death of the patient itself should not be perceived as medical negligence. The patient might have died inspite of all the best medical care.

3. Failure of response to treatment

Many disease/infection may not respond to the standard line of treatment/Medicine due to various factors. It should not be considered as negligence, if the patient dies.

4. Bonafide error of Judgement [5]

The doctors are not perfect as God. They are also human being like all others and they may make errors unintentionally/inadvertently. Every errors should not be treated as medical negligence. In state of Maharashtra Vs Dr. Sou jayashree Ujwal Ingole (Criminal appeal no. 639 of 2017, SC), the supreme court of India clearly has said that error of judgement by doctor is not a criminal negligence and he cannot be tried under 304 A IPC for rash and negligent act.

5. Difference of opinion

The doctors may have difference of opinion regarding the treatment of patient according to their knowledge and experience and both may be correct in their own ways conforming with the acceptable practice of science. It should not be used to frame medical negligence.

6. Opting one of several acceptable options

Two doctors may follow two different options of treatment/management as per their preferred choice which is as per standard normal practice. The difference of methods used for treatment should not be considered as medical negligence.

7. Medical /surgical accidents

There are therapeutic misadventures in the course of treatment, which are unpredictable and occurs inspite of following all standard procedures and precautions. The doctor cannot be blamed for such accidents.

Standard of Proof/Level of Proof

It is the level of proof required in a legal action to convince the court that accuser's allegation is true. In civil trials the level of proof is based on balance of probability. It conveys that it is more likely than not or mathematically the probability of being guilty (doctor being negligent) is > 50% [7].

In civil negligence the burden of proving negligence lies more with the patient/complainant, whereas in criminal negligence the doctor has to prove his innocence as it becomes state Vs the doctor.

Res ipsa Loquitor (The truth speaks for itself)

In such situation burden of proof shifts to the doctor when alleged event cannot occur without negligence or events exclusively under respondent's control. The examples of Res ipsa loquitor are: Amputation of the wrong leg, enucleation of the wrong eye, Leaving instrument /sponge inside abdomen, operating on the wrong side of brain etc.

Legal Sections in India and Medical negligence [1]

In India the criminal negligence of the doctor may be prosecuted in a criminal court under Section 304 A IPC (Causing death by negligence) : Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. It is a cognizable offence, bailable, non compoundable and triable by magistrate of the first class.

Investigation Procedure followed in Medical negligence cases

The police receives a alleged complaint of medical negligence from the patient party, when there is a death of the patient while receiving treatment against

the treating doctor/hospital. The police takes the body for the medico-legal autopsy. It is generally conducted by the board of doctors constituted by the head of the dept. of Forensic Medicine or the head of the hospital. The autopsy report is submitted to the investigating officer. The investigating officer request the state Govt. to constitute a board of doctors to examine the case. The state Govt. can constitute the board or may refer the case to State medical council. The board deliberates and opines on the medical negligence issue and submits the report to the investigating officer who then decide the legal course.

Various Forums to Approach against Medical Negligence

1. Civil court
2. Criminal court
3. Consumer court
4. Medical councils

The civil court and consumer court can award compensations and medical council of India [3] can issue warning or order penal erasure of his name to prevent him from practicing medicine. In consumer court the complaint has to made within 2 years from the cause of action and no fees is charged. Appeal can be made within one month from the date of the decision.

Landmark Judgments pertaining to medical negligence in India

1. Pt. Parmanand Katara Vs Union of India (1989)

It was held by the Supreme court that the doctor has to immediately start treatment of a patient under emergency. The outcome of the judgement was that the doctor has no right to chose a patient in case of emergency and medical duties of a doctor take precedence over legal duties.

2. IMA Vs VP Shanta (1995) 6 SCC 651

The judgment in this case clarified that i) All Medical services (private or government) will be included under the CPA, except those who offer free services to all patients at all times.

II) Services rendered by the doctors and hospital where it is partially free to certain poor patients is also included under 2 (1) of CPA.

3. Dr. Suresh Gupta Vs Government of NCT Delhi (2004)

The supreme court stated that the negligence through lack of proper care, precaution and attention or inadvertence might create a civil liability, it does not create a criminal one. It could be termed criminal only when a) the doctor exhibits a gross lack of competence or inaction or wanton indifference to his patient's safety, which is found to have arisen from gross negligence. b) his negligence or incompetence shows such disregard for life and safety of his patient as to amount to a crime against the state c) Where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it.

4. Jacob Mathew Vs State of Punjab (2005)

The patient was gasping in the ward. The doctor arrived in the ward within 20 minutes and connected the oxygen supply. It was found that the oxygen cylinder was empty. They looked for another oxygen cylinder. But by the time the cylinder arrived the patient died. The supreme court held that the doctors were not criminally liable and the Nonavailability of oxygen cylinders makes the hospital civilly liable. The court justified the use of word gross. It observed, negligence in the context of medical profession necessarily call for a treatment with a difference. To infer rashness or negligence on the part of profession, in particular a doctor, additional considerations apply. The word gross has to be used to denote criminal negligence of a doctor. It is true that the word gross has not been used in S. 304 A, IPC, yet it is settled that in criminal law, negligence must be of such a high degree as to be gross. The expression rash or negligent act as occurring in S.304A, IPC has to read as qualified by the word grossly. Mens rea has to be proved in criminal negligence, but not in civil negligence. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e, gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground of action in civil law but cannot form the basis for prosecution in criminal law. Bolam test, as a test of medical negligence was approved for application in India.

Supreme Court directed the Central Government to frame guidelines for prosecution of doctors U/S 304A IPC. Till then the court gave the following guidelines to be followed, to save the doctors from unnecessary harassment and undue pressure in performing their duties.

1. There is a need to protect doctors from frivolous and unjust prosecution
2. No criminal case should be filed against a doctor during the course of treatment of patient, unless the negligence is very gross, amounting to recklessness

3. For negligence to amount to an offence, the element of mens rea must be shown to exist
4. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree
5. The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to rash or negligent act within the domain of criminal law under section 304-A IPC
6. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government services qualified in that branch of medical practice
7. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been leveled against him)
8. Finally a doctor may be arrested only if investigating officer believes that she/he would not be available for prosecution unless arrested.

5. *Martin F. D, Souza Vs Mohd. Ishfaq (2009)*

The supreme court held that, even the consumer fora has to take an opinion from the competent doctor before taking decision against the negligent doctor to avoid harassment to doctors.

6. *V. Krishna Rao Vs Nikhil Super Specialty Hospital (2010)*

The supreme court held that expert opinion is not required for compensation in consumer forum. The reason was that there are two types of case, simple and complicated case. In simple cases like res ips loquitor or where negligence is obvious, there is no need for expert opinion. It tends to waste time. In complicated cases the complainant may be asked to approach the civil court for appropriate relief.

As per Sec.3 of COPRA provides that the provisions of the act shall be in addition to and not in derogation of the provisions of any other law for the time being.

However if any of the parties wants to bring in expert evidence on their own, the forum should consider the facts and circumstance of the case, and may allow the parties to adduce such evidences if it is appropriate to do so in the facts of the case. The discretion is left to judges.

Violation of Various Acts pertaining to medical field

a) PCPNDT Act, 1994

b) The transplantation of Human Organs and Tissues Act, 1994

c) MTP Act, 1971

d) Consumer Protection Act, 1986

e) Mental Health Act, 1987

f) Human Anatomy Act, 1948

g) Delhi Clinical Establishment Act, 2010.

Common Mishaps in Medical Practice

1. Mishaps in Anaesthetic practice

The common mishaps are: mistaken identity, incorrect positioning of the patient, faulty anesthetic equipments, electrocution or burns, fault with intravenous equipments, mishaps with drugs, monitoring of vital signs, human errors, mistake in intubation by the incompetent junior doctor etc

2. Mishaps in Surgical Practice

It consist of negligence due to anaesthesia and negligence primarily by surgeon

a. Acts of Omission

The common acts of omission are: failure to inspect, palpate or assess surgical condition properly, failure to decide whether surgery is required or not, failure to decide correct surgical path, delay in planning operation leading to complications, failure to use diagnostic techniques properly, failure to take informed consent, failure to carry out operation properly, failure to provide good postoperative care, failure to detect postoperative complications, failure to provide instructions and precautions to patient, failure in follow up of patient regularly

b. Acts of Commission

The common acts of commission are : Informed consent not taken, operation conducted on wrong patient or on wrong side, operation more extensively carried out than consented by the patient, leaving swabs/instruments/syringe in the body after surgery, use of infected instruments or unsterile operation theatre, unnecessary cutting of body

tissues, applying plaster casts too tight or too light for a longer time than required, committing major blunder like cutting of big vessel or respiratory passage inadvertently, declaring the brain dead case dead without proper examination and making doubly sure, disregard or undignified management of dead patient etc.

c. Negligence by operating assistants

d. Corporate negligence during surgery

The common corporate negligence are: Faulty instruments, inadequate facilities in OT, recruiting unqualified staffs, shortage of oxygen cylinders, emergency drugs etc.

3. Mishaps in obstetric and gynecological practice

a. Common obstetrics litigations

The common obstetric litigations are: Brain damage in babies, perinatal deaths, maternal operative injuries, perineal tear, instruments/swabs retained in surgery, antenatal problems

Some common errors in care during labour are: Failure to diagnose the onset of labour , failure to induce and maintain proper uterine contractions, failure to monitor mother's exhaustion and well being, failure to monitor fetal heart rate, failure to detect fetal distress and to act promptly, Failure to act when the child is obstructed, failure to inform the patient and her relatives about the progress of labour and likely foreseable complications.

Some common errors in obstetric anaesthesia are : Delay in including anesthesia due to delay in arrival of anesthetist or lack of proper arrangements, inexperienced anesthetist or staff, lack of prior contact of mother with anesthetist, failure to inform mother about possible complication of anesthesia, failure to exercise by mother about the selection of anaesthesia of her choice within operative limits and safety, common errors and complications of anesthesia and resultant damage to child or mother.

Some common errors in obstetric operative procedures are: Failure to appreciate indications of assisted vaginal delivery like maternal distress, fetal distress and prolonged second stage of labour , attempting to do vaginal delivery when above signs are present, the delivery is being supervised by inexperienced junior doctor, there is delay in decision making to do assisted vaginal delivery, complications due to forceps applications, perineal trauma may be due to delay in repairing episiotomy or tear in vagina, unnoticed damage to anal sphincter or rectal mucosa, or retained swab.

b. Common Gynecological litigations

The common gynecological litigations are: Failed sterilization, ureteric damage, perforation of uterus, ectopic pregnancy undiagnosed, contraceptive failure/complications.

The common mishaps in gynecological surgical procedure are: Perforation of uterus and ureteric damage, inadvertently ovarian tissue may be removed while over treatment in pregnancies, ectopic pregnancy may be misdiagnosed as incomplete abortion or vice versa, impaired fertility or ovarian function due to surgery, interference in coital function as a result of alteration of vaginal anatomy.

The common mishaps in laparoscopic procedures are **:** Air embolism while performing diagnostic procedures, uterine perforation is a known complication of hysteroscopy, infection, pneumoperitonium, anesthetic complications.

The common errors in sterilization are: Failure in the form of undesired intrauterine pregnancy, ectopic pregnancy, injury at the time of operation. The failure of procedure may be due to woman pregnant at the time of operation, recanalization of tube, rings or diathermy coagulation are not properly applied, wrong structure is occluded.

c. Common antenatal mishaps

The common antenatal mishaps are: Failure to counsel about complications due to advanced maternal age, failure to refer to genetic tests where indicated like in advanced maternal age, previous history of abnormal fetus or family history of congenital malformation or genetic disorders, failure to diagnose pregnancy in various tests, failure to take proper history, do proper obstetrics examination and advise proper investigations, failure to monitor fetus growth correctly, failure to monitor patient's health properly like improper handling of pregnancy-induced hypertension etc., failure to do ultrasound on routine interval, failure to detect congenital anomaly and inform mother.

d. Mishaps/complications in neonatal care

Neonatal care is a very important aspect of completion of birth process. It is also a potential area where a lot of litigations can start with. If something goes wrong with the baby, it raises a lot of hue and cry Some common errors in neonatal care are: Failure to anticipate the need of pediatric help in delivery of high risk births, failure to attend congenital abnormalities that have already been detected in

sonogram and to provide pediatric assistance according to that, Failure/delay to provide resuscitation in time leading to brain damage, failure/delay to providing suction properly leading to complications or death, failure to communicate well with family in case of still birth or abnormal or brain damaged baby, failure to provide reasonable care for preterm baby, inadequate infrastructural facilities to deal with any pediatric emergency, carelessly declaring the preterm baby dead, undignified handling of dead baby etc.

Safeguards to Avoid Medical Negligence

a) Develop a good system in the hospital

Research repeatedly tell us that more often than not, errors are related to poor systems rather than people. It is essential to Change and improve the work culture of the place, slowly. Work Culture of the hospital simply put is the way we do things around here. Work Culture can be changed but the rewiring of practice takes time and concerted effort. It is not a course that one can attend and learn from, but a continuous cycle of learning and reinforcing good practice.

b) Better communication

Various studies have shown that the poor/inconsiderate/uncompassionate communication [6] is at the core of why patients sue the doctor. So investing in a programme, which embeds a culture of transparency, openness and compassionate communication, makes both moral and financial sense. Compassion is not an add-on option and it has to be demonstrated in practice as much as felt. Hospitals need to have more of a facilitating attitude towards compassionate practices and create a guideline to support it. A compassionate attitude of staff in clinical practice is more important than all the fancy science, star profiles, flashing monitors and state of the art kit put together. Don't do a non-apology practice. An apology is not an admission of guilt but it is an acknowledgement of the pain they have been through. It builds a positive attitude showing concern for the patient's suffering.

- Talk to patient, explain and care. All patients should be fully heard and communication should be effective and complete
- Be polite and treat the patient with respect and dignity
- Do not try to conceal information if some complication occurs or something goes wrong. Do not lie to the patient (speak the truth in love)
- Must spend adequate time to explain in details to the patient about the treatment and the various option available
- Give complete instruction regarding dosage and side effects of medicines. Never assume patient knows it
- All information should be tangible, trustworthy open and accessible
- Do not argue over fees or charges. Settle it amicably. If patient does not pay, if possible forget it

c) Good documentation and record keeping

- Keep a copy of every document given to the patient, and insist for an acknowledgement
- Preserve a case summary including short history, investigation reports and treatment given
- If surgery/referral refused, take it in writing from the patient/relative that they are aware of the risk of such refusal
- The medical record has to preserved in the hospital for the standard duration and disposed off only after proper documentation
- Maintain confidentiality of the medical record. Do not show the medical records or share patients information without his permission

d) Always Obtain Informed and Valid Consent in writing.

Informed Consent: Disclosure of the nature of the proposed procedure, its reasonable alternatives, material benefits, risk and uncertainties related to each alternative, possibility of alteration of the procedure, opportunity to clear all doubts/queries, acceptance by the patient & relatives with understanding. In case of tubal ligation explain the patient about recanalization and failure rates of procedure.

Valid Consent: voluntary consent without any coercion, devoid of fraud and undue influence. Person should be competent to give consent ($\geq$ 18 yrs), properly informed consent and Procedure specific consent. *Consent from Spouse* is to be taken in **t**ermination of pregnancy, Sterilization, artificial insemination, donation of the sperms and any operation that can have a bearing on the sexual rights of the spouse.

e) Develop a suitable and effective grievance redressal mechanism for resolving patient complaints

f) Do not overstate your qualification (A higher degree of case is expected from a specialist)

g) Do not give blanket assurance or guarantee the results

h) Keep only qualified assistants

i) Do not give any diagnosis on telephone

j) Do not prescribe medicine without examining the patient

k) Doctor should be 100% sure before death is pronounced (Neonatal deaths) [6]. Respect human dignity and the dead should be handled with sensitively and respect.

l) Update yourselves with the recent medical knowledge and developments

m) Conduct regular studies on the nature of medical negligence cases and patient complaints

n) Develop a code of conduct for the doctors based on existing laws

o) Identify measures for providing qualify medical services at the most affordable price

p) Keep yourself updated about the laws in relation to medical practice (MTP Act, PNDT Act, CPA, Organ transplantation Act etc.) and negligence cases in the court

q) Learn from each case

r) Indemnity insurance

s) Ethical clinical practice

t) Work within your limits

u) Liberal with necessary investigations and 2nd opinion

v) Timely and proper referral if required

w) Be sensitive to the patient's misery

x) Have a good legal advisor

y) Code of conduct for patients should be developed

z) Promote medical professionalism. It can be done by leadership commitment, developing supportive institutional policies, program or model to guide graduated interventions like surveillance tools to capture allegations, process for reviewing allegations and interventions, organizing multi level training for staffs, develop resources to help unprofessional colleagues, victims (staff, patient, student, trainees, colleagues).

Above all, health and safety of the patient should always prevail over profit and personal convenience. It demands placing the interest of patient above us.

Conclusion

Medical negligence is an important issue to be dealt with in the medical practice. It can be safely avoided if we adopt adequate precautions. The individual as well as institutional or system lapses should be dealt with and promote a culture of medical professionalism [8]. The medical professionalism consists of professional excellence, humanism, accountability and altruism. This can be achieved by practicing medicine with good understanding of its ethical and legal aspects, good communication skills and clinical competence. It worth mentioning that the purpose of holding a professional liable for his act or omission, if negligent, is to make the life safer and to eliminate the possibility of recurrence of negligence in the future

References

1. PC Sarkar. Sarkar,s Criminal Major Acts. 8th Edition, 2015,Lexis Nexis, Gurgaon, India.
2. Dr. Jagdish Singh, Visghnu Bhushan. Medical Negligence and Compensation. 3rd Edition, 2007, Bharat Law Publications, Jaipur, India.
3. Indian Medical Council (Professional Etiquette and Ethics) Regulations, 2002.
4. T Halwani, M Takrouri. Medical laws and ethics of Babylon as read in Hammurabi's Code (History). The Internet Journal of Law, Healthcare and Ethics. 2006;4(2):1-8.
5. Dr. Sou Jayshree Ujwal Ingole Vs State of Maharashtra, criminal appeal no. 636 of 2017, SC.
6. https://www.ndtv.com/blog/when-baby-is-handed-to-parents-in-plastic-bag-by-an-oxford-doctor-1783226 (12/6/2017).
7. Anil Aggarwal. Textbook of Forensic Medicine and Toxicology. Avichal publishing company, New Delhi. Ist Edition, 2014.
8. Medical and Professional Health and Wellness. Dewey, Swiggart. Vanderbilt University, Medical Centre, 2013.