Chapter

1

Introduction to Medicolegal Issues

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"As a doctor, you don't practice medicine; rather you become the medicine yourself."

INTRODUCTION

Medicine is an inexact science but certainly better than law in exactness. Hence one cannot predict with certainty an outcome of legal cases in court of law. Outcome of legal cases depends on the particular facts and circumstances of the medical case, and also the personal knowledge, perceptions, notions of the judicial bench who is hearing a particular case. With same facts and circumstances of the medical case, appellate courts reverse, revise, and review judgements of lower court. Axiom "you learn from your mistakes" is too little honored in regarding healthcare cases when pleaded in court of law. Negligence by doctors has to be determined by bench who are not trained in medical science. Bar and bench nowadays increasingly question and avoid relying on medical experts' opinion, medical scientific literature. Bar and bench decide medicolegal on the basis of basic legal principles of reasonableness and prudence. Bar and bench are more busy with legal technicalities, procedural law and admitted evidence. There is often a thin dividing line between accident, misadventure, complications occurring in medicine and alleged negligence causing damage. The development of law pertaining to professional misconduct and negligence is far from satisfactory. The legislations are not adequate.

Medical Ethics

Medical ethics for all practical purposes may be defined as a code of conduct accepted voluntarily by critical care medical practitioners. Under National Medical Commission Act, 2019[1], which replaces Medical Council of India Act, 1956[2], it will have one of the four autonomous board shall be Ethics and Medical Registration Board (EMRB) to maintain a National Register of licensed medical practitioners and regulate professional conduct.

Ethical Oaths

The Hippocratic Oath is an oath historically taken by physicians. It is one of the most widely known of Greek medical texts. In its original form, it requires a new physician to swear, by a number of healing gods, to uphold specific ethical standards.[3]

Criticisms

Although the Hippocratic Oath has been accepted as one of the major sources for medical ethics and was considered as a "taken-for-granted ethical system," it started to be challenged in the mid-1960s in the United States.[4] Sir William Osler said, "The philosophies of one era may become the absurdities of the next era, and the foolishness of yesterday may become the wisdom of tomorrow."[5]

Hippocratic ethics came under criticism as the result of a series of changes in society. As Pellegrino and Thomasma remark, "better education of the public, spread of participatory democracy through civil rights, feminist, and consumer movements, decline in the sense of communally shared values; heightened senses of ethnicity; and a distrust of authority and institutions of all kinds. These forces were accentuated in medicine by the specialization, fragmentation, institutionalization, and depersonalization of healthcare that occurred simultaneously with an expansion in the number and complexity of medical ethical issues".[6]

Uncertainty of Patient's Life in Practice of Medicine

Variability is the law of life. No two faces are the same, so no two bodies are alike, and no two individuals react alike and behave alike under the abnormal conditions

where human being are pushed to edge of "life and death" known as "critically ill" condition to be taken care by medical personnel.

If we ran car agency and sold a defective car, the customer can come back and we can arrange a repair or replace car. But, in medicine there is often "no second chance". It is a very risky profession. Success needs no proof but death and disability needs lot of explanations from medical practitioners.

Doctor–patient Relationship (DPR)

Doctor–Patient relationship is a Fiduciary relationship. The word Fiduciary derives from the Latin word for 'confidence' or 'trust'. The bond of trust between the patient and the physician is vital to the diagnostic and therapeutic process.

Depersonalization and Hospital–patient Relationship

New terminology of hospital–patient relationship is emerging because of mediclaim insurance policy. Patients prefer hospitals which provide treatment which is reimbursable under mediclaim insurance policy. Hospitals which can provide cashless treatment under mediclaim insurance policy are most loved by patient party. Patient is least interested as to which doctor is going to treat his ailment.

Trust Your Patients

Trust has traditionally been considered a cornerstone of effective doctor–patient relationships. The need for interpersonal trust relates to the vulnerability associated with being ill, the information asymmetries arising from the specialist nature of medical knowledge, and the uncertainty and element of risk regarding the competence and intentions of the practitioner on whom the patient is dependent. Without trust patients may well not access services at all, let alone disclose all medically relevant information.

Rights and Duties of Patients and Doctors

1. Duties to patient.
2. Duties to public.
3. Duties towards law enforcers.
4. Duties not to violate professional ethics.
5. Duties not to do anything illegal or hide illegal acts.
6. Duties to each other.

Duties of the Patient/Attendant

1. He must disclose all information that may be necessary for proper diagnosis and treatment.
2. He must co-operate with the doctor for any relevant investigations required to diagnose and treat him.
3. He must carry out all the instructions as regards drugs, food, rest, exercise or any other relevant / necessary aspect.
4. In the case of a private medical practitioner, he must compensate the doctor in terms of money and money alone.

Help of Communication Skills

"The patient will never care how much you know, until they know how much you care by talking to him."

Counseling of patient party is needed to disclose risks and risk associated with patient's treatment, procedure, surgery and complication of disease, drug and treatment before obtaining informed consent.

Medical Documentation and Record Maintenance

Patients and doctors may forget but records will always remember.

Issues related to audio taping, video recording and photography on pen camera, smart phones and personal camera is in grey area.

Confidentiality and privacy are essential to all trusting relationships, such as that between patients and doctors. Moreover, in a healthcare context, patient confidentiality and the protection of privacy is the foundation of the doctor–patient relationship.

Consent, Assent, Approval, Permission and Dissent

In India informed consent, real consent, assent, approval and permission by patient party in medical practice is treated synonymously in legal parlance. Dissent or negative consent or refusal in medical practice is antonym of consent. Slowly consent shall be replaced by "contract for medical services"

Proof of Negligence

A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed.

To Err and Lie or Not

To err is human and to forgive is divine. Saying sorry or apologies requires great strength in character. Patients and legal machinery takes this otherwise. In India moment you say sorry patient party will put you in merry go round of legal wheel, where punishment

starts; moment it starts wheeling. The end of merry go round ride may take decades.

Sudden Unexpected Death (SUD)

It is rather impossible to find a medical professional who would say that they never faced a medicolegal (ML) situation called "sudden unexpected death" (SUD) and world at large gazing in their face as if they were responsible for death.

Ethical Code under NMC 2019

Under National Medical Commission Act which replaces Medical Council of India Act, 1956, it will have one of the four autonomous board shall be Ethics and Medical Registration Board (EMRB) to maintain a National Register of licensed medical practitioners and regulate professional conduct. National Medical Commission Act ratified the Medical Council of India is empowered by Section 20A read with Section 33(m) of the Indian Medical Council Act, 1956 (102 of 1956) to enact Regulations called the Indian Medical Council (professional conduct, etiquette and ethics) Regulations, 2002 with approval of Central Government, Gazetted on 6th April, 2002.

The remedies, which existed before Consumer Protection Act, 2019 (CPA or COPRA) came into being:

1. Supreme court
2. High courts
3. Civil courts and special civil judge
4. Permanent lok adalat
5. Criminal courts like Judicial Magistrate, Metropolitan Magistrate and Session's Court
6. Local police station, in case of death due to negligence doctor could be sued under Section 304 A of IPC.
7. Local police station, in case of injuries caused by medical or surgical reasons, Sections 336, 337, 338 of IPC can be applied.
8. Consumer Protection Act, 2019
9. A complaint against doctor could be lodged with local state medical council who after conducting enquiry is authorized to suspend or even terminate registration of a doctor.
10. Human rights commissions

Laws Available Against Medical Negligence[7]

(a) Civil Law

Every individual has rights and in order to protect the rights there are legal remedies. According to law of torts, a doctor shall be responsible for his negligent act. According to Sec. 70 of Indian Contract Act, there is a contract (oral, written or implied) between a doctor and a patient, and both parties are bound by it. If a doctor does not give complete or appropriate treatment then he/she may be held liable. Similarly, if a patient does not pay the fees, doctors can file a civil suit for recovery of fees separately. Doctors can legally take advance deposit before starting treatment. However, it is against the law to keep any patient in confinement on the ground of nonpayment of fees. It is a matter of wide knowledge, civil suits are most expensive, time-consuming and cumbersome.

(b) Criminal Laws

In order to protect the community, the government has the right to punish the wrong doer, through various agencies. Criminal laws and police are usually not involved in doctor–patient relationship unless there is gross rashness or negligence resulting either in death or serious injury. Some of the common sections of Indian Penal Code (IPC) which are applicable to doctors include: (i) Sec. 52 and 92 are related to good faith; (ii) Sec. 87–91 which are related to consent, (iii) Sec. 304-A which is related to death of patient due to negligent act (iv) Sec. 312–316 are related to causing abortions or miscarriage without proper consent; (v) Sec. 319–322 read with 336, 337, 338 deal with causing grievous hurt, or disfigurement endangering the life; (vi) Sec. 340–342 are related to wrongful confinement of patient; (vii) Sec 383, 384 related to extortion, (viii) Sec. 405, 406 criminal breach of trust, and (vii) Sec. 499 and 500 which is related to defamation.

(c) Specific Laws

These include the clinical establishment act, under National Medical Commission Act, 2019 further it has ratified old medical council rules, regulations vis a vis promulgated new rules regulation under the NMC Act, MTP Act-1971, PCPNDT Act-1994, biowaste rules, labor laws, shop and establishment act, income tax and professional tax, etc.

Consumer Protection Act-2019 (CPA or COPRA)[8]

CPA was implemented in 2019. Medical services were brought into its purview since 1995. Since then the doctor–patient relationship has deteriorated faster. A consumer can approach District Commission, State Commission, National Commission and finally the Supreme Court according to jurisdiction or amount of damage claimed. The limitation period is two years; however, it can be extended at courts discretion if sufficient reason is shown.

In 2021 a PIL, by "*Medicos Legal Action Group (MLAG) vs Union of India* (through Secretary, Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution) (High Court of Judicature at Bombay) Public Interest Litigation No. 58 of 2021"[9] was filed by a group 'MLAG' seeking exemption of

healthcare professionals from CPA 2019. This PIL was rejected by Bombay High Court on 25.10.2021 and reaffirmed IMA vs VP Shantha and others. III, (1996) CPJ I (SC).[10] The Bombay High Court even imposed the fine of Rs. 50,000 against this group MLAG. This cleared the position of CPA 2019 that it still covers healthcare professional. This matter as SLP under article 136 was rejected by Hon'ble Supreme Court of India on 29.4.2022 making Consumer Act 2019 applicable to doctors.

The Consumer Protection Bill 2019 proposed before 17th Lok Sabha adopted by the Rajya Sabha. Its signed by president and now gazetted to replace CPA-1986. In CPA-2019 definition of word 'services' under clause 2 at Seriatim 42 does not include the word 'Healthcare' as against the definition in the original Consumer Protection Bill of 2019. The Hon'ble Minister while piloting the bill categorically stated that 'commensurate with the recommendations of the Parliamentary Standing Committee on Consumer Affairs, the 'Healthcare' has been kept outside the ambit of the Consumer Protection Act.

The word "healthcare" was never used explicitly defined in 2(1) (d) of CPA 2019 similarly again not defined in new Section 2(11) of deficiency in CPA-2019. Though 'healthcare' is not included in CPA-2019 in definition creating new Section 2(11) read with 2(42) on deficiency and services in CPA-2019 but position is same as it was in CPA 1986.

As all doctor's know in 1995 doctors were included as service provider and patient as consumer after the decision of IMA vs VP Shantha (three judges bench). This judgement is not overruled till date by Supreme Court. In the present case Consumer Protection Act, 2019 is akin to Consumer Protection Act of 1986 where 'Healthcare' is not explicitly included in the definition of the word 'Services'.

Even after CPA-2019, the consumer commissions have given judgments on a number of cases of medical negligence. The Supreme Court of India has crystallized the law in detail following the case of IMA vs VP Shantha and others. III, (1996) CPJ I (SC) that settled the difficulties in deciding the medical negligence under previous repealed consumer protection act. Prior to the consumer Protection Act, 2019, the civil remedy was available to a patient against medical negligence, under the law of torts by way of compensation. However, before CPA was enacted, only a few cases relating to such negligence came up before the courts under the law of torts.

The CPA 2019: What is New?

1. Earlier a patient wanting to claim compensation of Rs. 20 lakhs had to file a complaint before the District Commission, to the State Consumer Forum, if he wanted to claim Rs. 20 lakhs to 1 crore and to the National Commission, if the claimed amount was above 1 crore. Now, for a compensation up to Rs 1 crore (reduced to Rs. 50 lakhs from 30.12.2021), he has to complain to the District Forum, from Rs 1 crore to 10 crores (reduced to Rs. 2 crores from 30.12.2021) to the State Commission and to National Commission for compensation above Rs 10 crores (reduced to more than 2 crores from 30.12.2021). As a consequence doctor can now expect patients to claim higher compensation against doctor because up to more than two crores w.e.f. 30.12.2021). Patient will not have to travel to Delhi and can conveniently file the complaint. So doctors get prepared to increase professional indemnity insurance covers to save erosion of your wealth due to vagaries of litigation. Recently, in December 2021, there is some relief under consumer protection rules notified have lowered pecuniary from limit 1 crore to 50 lakhs for district, Rs. 2 crores for state from 10 crores, and 10 crores to above Rs. 2 crores for national commission.[11]
2. Earlier, if doctor had operated or treated a patient in Mumbai, the patient could file a complaint only in Mumbai. Under the new Act, if doctor had done a cholecystectomy on critically ill patient from Jharkhand, patient has a right to file a complaint against doctor in any district of Jharkhand's Consumer Commission and one will have to defend in that particular commission in Jharkhand.
3. If doctor fails to issue a bill or receipt to a patient (for whatever reason, maybe inadvertently) this is unfair trade practice, and makes liable to face under the CPA-2019 and may have to pay compensation.
4. If doctor discloses personal information given by a patient (unless required by law) doctor can face action under the new CPA-2019. Hence, strict confidentiality, secrecy is to be maintained by doctor.
5. Earlier, in all consumer forums (now renamed as consumer commissions), one of the members on the bench had to be necessarily a former judge/ advocate for 5 years or ex-High Court or Supreme Court Judge. Under the new CPA there may not a single person who has any knowledge of law can be appointed.

6. Earlier the appointment of the members of the commission had to be appointed by a state judicial committee. Now central government will appoint members by a notification. Hence expect any Tom, Dick and Harry without any qualifications to be on the consumer commission.
7. Now a mediation cell will be attached to every forum to facilitate Alternate Dispute Redressal (ADR) except in cases of death in alleged medical negligence cases.
8. Earlier , if doctor did not comply with the orders of the commission doctor could face a jail term between one month and three years and a fine between Rs 2000 and Rs 10,000. Now doctor will face imprisonment of up to three years with a fine not less than Rs 25,000 and extendable to Rs 1 lakh.
9. There is no penalty for false and vexatious complaints by patients. Section 26 of CPA 1986 is removed.

How Should a Doctor Approach the Case of Litigation under CPA/COPRA?

Doctors should not avoid responding to a case. One should send reply to legal notice as early as possible. The explanation should address misunderstandings, misrepresentation and other discrepancy or wrong points made out in written statement in reply to complaint including explanation to differentiate between complication and negligence. It is advisable that doctors attend the court in person along with lawyer (proxy attendance should be avoided). Always take help of medicolegal experts in backroom preparation for affidavits of colleagues and expert witness along with enclosing medical literature and relevant case laws, whenever necessary. They should give medical scientific references relevant to the case and demand questionnaire in lieu of cross-examination, wherever possible.

Don'ts in CPA/COPRA

Doctors should not show antagonistic or negative attitude towards judges or presume that they are on the side of the litigant, even if their attitude or body language seems unfavorable. They should not disrespect commission/court. Care should be taken not to hand over unnecessary details and documents unless they are specifically asked for. Mere litigation under CPA should not make a doctor fearful. Avoid suffering from medical malpractice syndrome or medical malpractice stress syndrome (MMSS) describes the traumatic experience that physicians go through after being sued for malpractice.

We are in a transitory phase. None the less since in India more than two-thirds populations reside in village's hence the transition is getting protracted. But at least in cities, doctor–patient relationship is reduced to name-sake being replaced by insurance managed five star Hospital–patient relationship. Even in villages several government schemes like Ayushaman Yojana, PMJAY, Rajiv Gandhi Arogya Yojana and similar named insurances for below poverty line population is bringing hospital–patient relationship to forefront bidding bye-bye to doctor–patient relationship. The current medicolegal issues, new clinical establishment act, third party insurance, five star corporate culture replacing doctor owned clinic, nursing homes and hospitals, no capping of compensation, guidelines on reusing single use costly medical consumable items avoiding proper sterilization at least two more times, avoiding sex determination of unborn fetus, new guidelines and law related to infertility and artificial insemination, *in vitro* fertilization and embryo transfer (IVF-ET), surrogate mother, hair transplant, stem cell therapy corneal (with respect to interstate use) and organ donation and transplantation, new law and guidelines on end of life situations and euthanasia, DNR and living wills. We expect concrete guideline to regulate all these; much more is to be done by government and courts after consulting the medical experts in the field. The future of medicolegal issues is struggle of survival of doctor–patient relationship which is getting replaced by managed healthcare by insurance companies by making medical services being re-booted with commercialization, corporatization, and instrumentations, monitoring gadgets, computerization, robotic surgeries, laparoscopic surgeries in the name of better and safe medical services with five-star ambiences. Doctor–patient relationship is being replaced by insurance managed five-star hospital–patient relationships.

State of Healthcare in India

In India, majority of citizens requiring medical care and treatment fall below the poverty line. Most of them are illiterate or semiliterate. They cannot comprehend medical terms, concepts, and treatment procedures. They cannot understand the functions of various organs or the effect of removal of such organs. They do not have access to effective but costly diagnostic procedures. Poor patients lying in the corridors of hospitals after admission for want of beds or patients waiting for days on the roadside for an admission or a mere examination is a common sight. For them, any treatment with reference to rough and ready diagnosis

based on their outward symptoms and doctor's experience or intuition is acceptable and welcome so long as it is free or cheap; and whatever the doctor decides as being in their interest, is usually unquestioningly accepted. They are a passive, ignorant and uninvolved in treatment procedures. The poor and needy face a hostile medical environment marked by inadequacy in the number of hospitals and beds, non-availability of adequate treatment facilities, utter lack of qualitative treatment, corruption, callousness and apathy. Many poor patients with serious ailments (e.g. heart patients and cancer patients) have to wait for months for their turn even for diagnosis, and due to limited treatment facilities, many die even before their turn comes for treatment. This is not true for non serious ailments. What choice do these poor patients have? Any treatment of whatever degree is a boon or a favour, for them. The stark reality is that for a vast majority in the country, the concepts of informed consent or any form of consent, and choice in treatment, have no meaning or relevance.[12]

Doctors in Government and Charitable Hospitals

The position of doctors in government and charitable hospitals, that treat them, is also unenviable. They are overworked, understaffed, with little or no diagnostic or surgical facilities and limited choice of medicines and treatment procedures. They have to improvise with virtual non-existent facilities and limited dubious medicines. They are required to be committed, service oriented and non-commercial in outlook. What choice of treatment can these doctors give to the poor patients? What informed consent they can take from them?[12]

Doctors, Hospitals, Nursing Homes and Clinics

On the other hand, we have the doctors, hospitals, nursing homes and clinics in the private commercial sector. There is a general perception among the middle class public that these private hospitals and doctors prescribe avoidable costly diagnostic procedures and medicines, and subject them to unwanted surgical procedures, for financial gain. The public feel that many doctors who have spent a few crore or more for becoming a specialist, or nursing homes which have invested several crores on diagnostic and infrastructure facilities, would necessarily operate with a purely commercial and not service motive; that such doctors and hospitals would advise extensive costly treatment procedures and surgeries, where conservative or simple treatment may meet the need; and that what used to be a noble service oriented profession is slowly but steadily converting into a purely business.

Comparisons of Government and Private Doctors

But unfortunately not all doctors in government hospitals are paragons of service, nor fortunately, all private hospitals/doctors are commercial minded. There are many doctors in government hospitals that do not care about patients and unscrupulously insist upon 'unofficial' payment for free treatment or insist upon private consultations. On the other hand, many private hospitals and doctors give the best of treatment without exploitation, at a reasonable cost, charging a fee, which is reasonable recompense for the service rendered. Of course, some doctors, both in private practice or in government service, look at patients not as persons who should be relieved from pain and suffering by prompt and proper treatment at an affordable cost, but as potential income-providers/customers who can be exploited by prolonged or radical diagnostic and treatment procedures. It is this minority who bring a bad name to the entire profession.[12]

State Responsible for Healthcare but General Practice is being Replaced by Specialization

Healthcare (like education) can thrive in the hands of charitable institutions. It also requires more serious attention from the state. In a developing country like ours where teeming millions of poor, downtrodden and illiterate cry out for healthcare, there is a desperate need for making healthcare easily accessible and affordable. Remarkable developments in the field of medicine might have revolutionized healthcare. But they cannot be afforded by the common man. The woes of non-affording patients have in no way decreased. Gone are the days when any patient could go to a neighborhood general practitioner or a family doctor and get affordable treatment at a very reasonable cost, with affection, care and concern. Their noble tribe is dwindling. Every doctor wants to be a specialist. The proliferation of specialists and superspecialists, have exhausted many a patient both financially and physically, by having to move from doctor to doctor, in search of the appropriate specialist who can identify the problem and provide treatment. What used to be competent treatment by one general practitioner (UK, USA, Canada, New Zealand, Australia has GP system, where nothing moves with out visiting GP) has now become multi-pronged treatment by several specialists. Law stepping in to provide remedy for negligence or deficiency in service by medical practitioners, has its own twin adverse effects. More and more private doctors and hospitals have, of necessity, started playing it safe, by subjecting or requiring the patients to undergo various costly diagnostic procedures and tests to avoid any allegations of negligence, even though they might have already identified the ailment with

reference to the symptoms and medical history with 90% certainly, by their knowledge and experience. Secondly more and more doctors particularly surgeons in private practice are forced to cover themselves by taking out indemnity insurance, the cost of which is also ultimately passed on to the patient, by way of a higher fee. As a consequence, it is now common that a comparatively simple ailment, which earlier used to be treated at the cost of a few rupees by consulting a single doctor, requires an expense of several hundred or thousands of rupees on account of four factors: (i) commercialization of medical treatment; (ii) increase in specialists as contrasted from general practitioners and the need for consulting more than one doctor; (iii) varied diagnostic and treatment procedures at high cost; and (iv) need for doctors to have insurance cover.

Having said that for 1.4 billion population, india has most accessible, cheap and affordable healthcare system in world with most health indicators comparable to world. India has healthcare system for haves and have-nots, though healthcare quality and planning is missing. India has at lowest rung zhola chaap doctors, village doctors, alternative therapy doctors, chemist, nurses (qualified and unqualified, BHMS, BUMS, Siddha, BAMS, MBBS, MD, DM, MCh at highest rung of ladder to treat patient as suitable to their pockets and desires.

Fear of Litigation

Unfortunately the fear of litigation and violence from patients/relatives has made most doctors defensive; this has resulted into increased clinical investigations, costlier medicines and increased hospitalizations, which in turn has resulted in even more deterioration in doctor–patient relationship, thus establishing a vicious cycle. "There are, in truth, no specialties in medicine, since to know fully many of the most important diseases a man must be familiar with their manifestations in many organs." Compartmentalization of medicine has made medical profession less sensitive to human feelings and more or less mechanical. If something bad happens to patient then it is labeled as complication and not negligence. Doctors in India can find some solace from the fact that the situation here is still not as bad as in Europe or USA where litigation is order of the day. There is ambulance chasing medicolegal advocates. It would be unjustified to say that it is the emancipated and enlightened social order of "Google" knowledge, which is at fault and responsible for decaying relations between physician and patient. Key to every aspect of medical, surgical and all related interactions with patient party is doctor–patient relationship. Let us examine factors which resulted in increasing deterioration of the doctor–patient relationship.

1. A family doctor can facilitate better understanding between patients and specialists. The cheerful friendly family doctor (general practitioner) is slowly disappearing since neither patient nor doctors opt for them. This is because of increasing craze for specialization in medicine on part of doctor as well as patient party and slow depletion of primary care doctors (general practitioner). Family doctor (general practitioner) practice should be slowly revived.
2. Doctors and medical institutions live in an "unvirtuous cycle" of referral and kickback that poisons their integrity and destroys any chance of a trusting relationship with their patients. Unethical and greedy attitude of some doctors tarnishes the reputation of entire community and nurtures distrust against doctors in general.
3. Doctors are not formally trained communication skills and counseling should learn and be ready to use in their practice. Good communication skills are very important buffers against litigations and violence.
4. Indian print and electronic media feels that it is spicy to project negative aspects of medical profession to earn higher *Target rating point* (TRP). Media persons like to report in about lawsuits and violence against doctors, which encourages lawlessness or abuse of process of law.
5. Increased number of investigations and increased number of hospital admissions. The reasons for increased number of investigations is to document everything which is part of defensive attitude of each and every doctor and also as per evidence based medicine. Sometimes mediclaim patients demand unnecessary investigations and admissions to hospital. Admission and investigations increase expectations of patients about guaranteed early cure if investigated well vis a vis doctors tend to do more and more investigations for fear of losing the patient to competitor doctors, if they do not investigate. Also it is no surprise that investigations and procedures are abused as a means of milking patients without hurting any ones sentiments. Mechanization and ease of doing pathology tests and procedures has lead to increased demand of investigations to meet voracious appetite of lab machines. This tendency is further promoted by some hospitals, pathology laboratories and other diagnostic centers who offer commissions to referring doctors. Such incidences are few but this has become common knowledge among people and has decreased their trust in doctors.
6. Generally, the conflicts and tensions have increased in society. People have become edgy and

ready to fight at the smallest reasons and pretexts and sometimes even without any reason. This tendency extends to their relationship with medical fraternity doctors also in view of today's turbulent and aggressive society which changes like hues of sky in monsoon season.

7. Patients know that if they misbehave with one doctor and go to another doctor, they will be readily accepted by next doctor. This is because of lack of unity amongst doctors and oversupply of doctors in urban areas.

What Doctors can do to Correct and Fix the Situation Prone to Litigations

1. Doctors should stop playing ingenious Gentleman "Don Quixote". Do not do heroic things beyond level of once competence and expertise. In such cases it is better to ask for a second opinion or refer the patient to a center where the level of expertise, mechanization and modern gadgetry is enough to deal effectively with illness.
2. Atmosphere of transparency honesty and documentation is always sensed by patient party in positive way. These qualities in a doctor are good buffers to hostile behavior of patient party and also reduce litigation.
3. Patients should be kept informed at all times perpetually. The doctor should not appear to patient as though he is hiding factual position of patient's condition. Doctor should answer all queries in clear, understandable language explicitly. Doctor should formally learn communication skills for situations which are litigation prone. Doctor should learn and develop good rapport with patients/relatives by using non verbal body language in addition to effective verbal language. Doctor should speak by making eye contact with patient party so that patient party should not sense and perceive the explanation given by doctor otherwise.
4. Uniform fee structure to all should be displayed in waiting rooms as per NMC ethics (old MCI Ethics 2002). The fee structure which should match with services that the doctor provides by expressly give break up of each thing performed and done by him. Patients should feel that they are getting their money's worth by paying to doctor. Remember, doctor's fee and other charges should be reasonable and in consonance with expertise, area of practice and location and comparable to peers.
5. Always invest at least 10% of the earned money in repairs, maintenance and upkeep of ambience of place and strive hard to invest in providing better facilities for patients each year. Replace weighing scales, BP instruments stethoscope instead self repairing them each time in front of patient when instrument fails to work. Worn out equipment and instruments are rather bane then boon.
6. Whenever a medical test or hospital admission is necessary, reasons for their necessity should be discussed with the patients. Doctors should avoid unnecessary hospital admissions and investigations mediclaim insurance should not lure doctors to hospitalize patients and even medical insurance policies should allow out patient reimbursement of expenses if possible.
7. Doctors can use appropriate humor, judiciously. Pleasant, mild and timely humor comes from lighthearted people and makes tense atmosphere and situations easy. Humor always befriends people so also patients.
8. Doctors should develop a genuine interest in patients and their ailments. Patients slowly over years now tend to dislike a doctor who responds with monosyllables and looks disinterested. Paternalistic attitude is and bane then boon. Doctors should develop humane and healing approach instead of a mechanical attitude of examining patient and treating one and all in straitjacket.
9. When doctor refers serious patients to corporate hospitals then it should be for proper reasons and not mechanical referral just to wriggle out of odd situation. Charges at corporate hospitals are often exorbitant and leave big holes in the pockets of the patients making them more toxic and litigation prone towards referring doctor.
10. In absence of adequate staff and qualified doctors, serious patients requiring round the clock expert monitoring should not be admitted to nursing home. It is mandatory that nursing homes have adequate staff and qualified doctors even during night.
11. Doctors should maintain proper documentation of all cases and never manipulate medical records.
12. All junior doctors, paramedical and supporting staff should be trained to behave humbly and respect patient party. Everyone should be trained not to give unqualified, unnecessary comments in response to questions asked by patients. Their comments often lead to confusion amongst doctors and patients and subsequent litigation.
13. As all of us are aware patients can be very unreasonable. Hence despite all precautions and positive steps from a doctor's side tensions, problems may arise from patient party. Remember, mistakes do occur. When a tussle with patient party occurs then they will highlight that

mistake which may not be responsible for bad outcome. Hence, it is advisable that every doctor be covered with medical indemnity insurance to manage unavoidable risks arising out of this profession. The medical malpractice case may wipe away the professional earnings and savings due to high compensation culture existing in indian legal machinary.

SUMMARY AND CONCLUSIONS

The medical profession was considered to be one of the noblest professions. Doctors are no longer regarded as infallible and beyond legal questioning. Corporatization of healthcare has made it like any other business in eyes of law. The medical profession is has to pay at commercial rates for premises, machines, men, water and electricity hence they are forced to be guided by the profit motive. Rapid advancements in medical science and technology have proved to be efficacious tools for the doctors in the better diagnosis, monitoring and treatment of the patients. Since all these advancement do not gravitate to each and every medical practitioner, the mismatch of infrastructure leaves big holes for prosecuting doctors by alleging negligence. Bar and bench does not understand this prevalent gap of medical infrastructure available to each medical practitioner and exigencies of economics of medical care. The patient party chooses the cheapest healthcare facilities available in the area in which they live in without comparing the benefits. The trade-offs of cheapest obviously is not best. Obviously when more often than not unless it is not complicated case the strategy works out but medically in complicated cases, one stands to lose precious time—what in medical parlance is known "golden hour" like in heart attacks and brain strokes.[13,14]

DO'S AND DON'TS

1. Follow laws connected to healthcare.
2. Follow ethics connected to healthcare.
3. Do everything diligently prudently with due care and caution.
4. Document all what is done.
5. Take consent.
6. Don't fear litigation.

MCQ

1. Consumer Protection Act, 2019 covers healthcare service:

a. Yes
b. No
c. Don't know

Ans: a

REFERENCES

1. National Medical Commission Act, 2019.
2. Medical Council of India Act, 1956 (repealed and replaced by National medical commission act, 2019).
3. https://www.nlm.nih.gov/hmd/greek/greek_oath.html assessed on 17.01.2022.
4. Fabrice Jotterand (2005) The Hippocratic Oath and Contemporary Medicine: Dialectic Between Past Ideals and Present Reality? Journal of Medicine and Philosophy, 30:1, 107-128, DOI: 10.1080/03605310590907084.
5. https://www.brainyquote.com/quotes/william_osler_393275 assessed on 17.01.2022.
6. Pellegrino, E.D. and Thomasma, D.C. 1993. The virtues in medical practice, New York: Oxford University Press.
7. Tiwari S K, Legal Aspects in Medical Practice, Indian Pediatrics 2000; 37: 961-966, http://www.indianpediatrics.net/sept2000/sept-961-966.htm assessed on 17.01.2022.
8. Consumer Protection Act, 2019 (replaces repealed Consumer Protection Act 1986).
9. Medicos Legal Action Group (MLAG) versus Union of India (through Secretary, Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution) (High Court of Judicature at Bombay) Public Interest Litigation No. 58 OF 2021.
10. IMA vs V.P Shantha and ors. III, (1996) CPJ I (SC).
11. https://www.ndtv.com/business/govt-notifies-new-rules-for-consumer-commissions-national-bodys-jurisdiction-enhanced-2680187 assessed on 17.01.2022.
12. Samira Kohli vs. Prabha Manchanda—In Samira Kohli vs. Prabha Manchanda Dr. & ANR 1(2008)CPJ 56 (SC).
13. Baldwa M, Baldwa V, Padvi N, Baldwa S. Legal Issues in Medical Practice, Published by CBS Publishers & Distributors Pvt Ltd, India, 2018, ISBN 10: 938647834X ISBN 13: 9789386478344.
14. Baldwa M, Baldwa V, Padvi N, Baldwa S. Legal Issues in Critical Care, Published by CBS Publishers & Distributors Pvt Ltd, India, 2022, ISBN: 978-93-90709-13-7.