

Legal Implications of Dental Practice in India: A Critical Review of Court Cases in India

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ABSTRACT

The dental profession is a deeply revered relationship with the patients. But it is ironic that in recent times, the attacks on doctors have become common. Such incidents are increasing at an alarming rate and are reflective of an ailing Indian healthcare system. The reasons cited for such acts are patient dissatisfaction after treatment, false complaints and acquisitions, and highlights by the media. This has made the healthcare system more sensitive and vulnerable. Though such incidents can be resolved between patients and dentists, sometimes patients seek help from the court. A legal case against the dentist causes social, psychological, and financial instabilities. Therefore, every health professional in order to avoid such litigations should have an idea about the rules and regulations guiding their profession, the law and ethics pertaining to their practice, and standard protocols to follow in everyday routine. The data gathered for this review article were from Internet search of court cases recorded. The following article is an attempt to review the court cases and throw light to the rightful steps to minimize the risk.

Keywords: Court cases, Dentist, Errors, Negligence, Punishment.

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INTRODUCTION

The health profession has long been considered as a noble profession. The doctor or dentist frequently alleviates patient's distress and, on numerous instances, saves lives. The impact of health professionals in improving standards of health and well-being in society has reflected well on the medical and dental professions.¹ However, in recent times, the patient–doctor relationship has undergone major transformation. There's an increase in attacks and assaults are in a rise. Voltaire once said that the physician amuses the patient, while nature cures the disease.² Innumerable incidents of violence against doctors are reported nearly on a daily basis across India—some resulting in grievous injuries.³ Therefore, every doctor either medical/dental must have knowledge of law and ethics related to his professional field. Ethics and laws go hand in hand. Ethics is the study of morality—careful and systematic reflection on and analysis of moral decisions and behavior, whether past, present, or future. Morality is the value dimension of human decision making and behavior, whereas law refers to body of official rules and regulations, legislation, judicial opinions, and the like that is used to govern a society and a formal mechanism of social control.⁴

Throughout the world, the public has become more aware of their rights—legal literacy supplemented by modern legislations has made the society increasingly compensation oriented.⁵ India is no exception and, in recent years, there has been a steady rise in the number of all classes of claims in which damages are sought for personal injuries—whether they are sustained in road accidents, at the work place, or in health services.⁶

A breach of the duty that results in injury to the patient is called negligence. Such negligence can result in lawsuit against the dentist. Dental practitioners must be aware of the legal elements, as there are greater possibilities of dentist encountering such cases, particularly in the context of patient empowerment and increased desire for improved personal appearance.⁷

The question arises what leads to such incidents? Perhaps no single cause is apparent. The increase in the number of medico

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legal cases for the same medical profession is come under attack due to the negligence of a few doctors or the work of quacks or due to some unscrupulous patients who want to make a fast buck out of the doctor.⁸ Poor image of medical professionals projected by the newspapers and media has led the general people to belief that doctors are the greatest villains, extortionists. Lack of faith in judicial system, the inactivity of the police, and the impression that the police will take no action and can easily be bribed are other contributing factors.⁹ With all these factors, the healthcare professionals have to protect themselves and avoid any malpractice. Hence, the aim of the present study is an attempt to enlighten the ongoing increase of assault and throw light on the rightful steps to protect the dentist.

AIM AND OBJECTIVES

Aim

Legal implications of dental practice in India: a critical review of court cases.

Objectives

- To analyze the court cases related to medical and dental practices in India.

- To review the legal implications of the court cases.
- To suggest measures to avoid the litigations.

MATERIALS AND METHODOLOGY

A collection of published information sources was used as reference material for this, including articles and official reports with detailed description of medico-legal cases and malpractice. These materials were located on research platforms (Web of Knowledge and PubMed) and Indian consumer forum using the terms “legal court cases in India” and “mishaps and malpractice by dentist.” Articles only in English were considered. A broad review of the documents was undertaken from the year 2015–2018 to identify the key indicators to bridge the gap on existing knowledge of legal and ethical issues of dentistry.

Highlights of Selected Cases

Case of Carrying Out Treatment without Consent

Case 1: Dr Mohan Dhawan vs Mrs. Gertrude D’souza, August 2017, Chandigarh: The patient visited the dentist as a part of her tour to India and had taken a dental tourism package for \$10,500 (nearly Rs. 7 lakh) that included implant procedure and other amenities. She was assured by the manager at the clinic that after paying Rs. 7 lakh through cheque to the doctor, the money would be refunded to her if she didn’t find the services satisfactory. However, On August 24, 2017, two days after, she landed back in the United States, the crowns and abutments that had been placed a day before her departure fell off. She contacted Dhawan who allegedly didn’t help her, saying he didn’t have Wi-Fi to connect with her from August 25 to 30. Thereafter, he allegedly stopped taking her calls. A complaint was lodged. The court observed that Gertrude D’Souza was allured to get implants fixed in India at competitive rates and that Dhawan performed a surgery without her consent. Dhawan has been charged under sections 420 (cheating), 467, 468, and 471 (forgery) of the Indian Penal Code in the case registered on March 19 at the Sector-19 police station.¹⁰

Do’s

- Do take the consent specifically and cautiously.
- Also, explain the procedure in a language known to the patient.

Don’t

- Do not allure the patient and overcharge for treatment.

Case 2: Dr Jayesh Dube vs Saroj Cheda, October 2015, Mumbai: The patient visited the dentist with a complaint of pain in the jaw. On examination, the patient was advised for extraction for one tooth and other one can be salvaged. He also told her that the extracted tooth would be replaced with a new one that would last for 15–20 years. The procedures, which were to cost around Rs. 24,000, included teeth cleaning, root canal, and fixing a new bridge. Cheda said that Dr Dube took measurements for a new bridge and she paid him Rs. 4,000. The patient alleged that the procedures were incomplete and she experienced pain. Then, the dentist advised her to undergo digital X-ray. X-ray revealed some remnants of extracted tooth and the patient was told that it could be cancerous. While performing the procedure, the bridge broke and that would be charged extra. When she protested, he asked her to get a second opinion. Cheda said that other dentists informed her that the

procedures done were faulty and she had to complete the treatment with another dentist. But Dr Dube claimed that Cheda had filed a false complaint to avoid paying his fees. The forum said that there was no evidence to prove Cheda’s claims about the cancer scare caused by Dr Dube. But it relied on the opinion of expert dentists regarding the procedures conducted on Cheda. The experts said that the procedures were performed in a negligent manner, which was enough to prove her allegations.¹¹

Case 3: Dr Naveen Ram vs Abhiram May 11, 2017, Kolar: The patient visited the dentist with a complaint of ear pain and was administered medicines by Naveen Ram, a trained dentist, which immediately worsened his condition, killing him a few hours later. Abhiram’s relatives alleged that Naveen Ram was not a qualified doctor and his negligence caused the boy’s death and case was registered. The Kolar District Health Officer (DHO) Dr Vijay Kumar said that Naveen Ram was a dentist (BDS) by training. Kolar Deputy Commissioner KV Thrilok Chandra ordered for an enquiry over Abhiram’s death and the dentist was withheld from practice.¹²

Do’s

- Do ensure the required skills/expertise before performing any procedure.
- Refer a patient to an expert if needed.
- Do diagnose the condition properly before undertaking the treatment and keep reviewing the same.

Don’ts

- Do not proceed with any treatment till an appropriate diagnosis is made.
- Don’t practice as a specialist if the degree is not recognized by Dental Council of India (DCI).
- Don’t consider experience as an alternative to qualification.

Case of Faulty Treatment and Unethical Behavior

Case 1: November 2016, Delhi: The patient had approached the doctor on April 18, 2010, at his clinic near Daya Memorial Hospital, with a complaint of pain in her first molar. She was advised root canal but finding the same was not possible; she was told to go for crown bridging. She paid Rs. 6,000 for a model. After treatment, she started experiencing pain. And, the doctor advised her full capping. Following further discomfort, he tried removing the crown but failed. The complainant then went to All India Institute of Medical Sciences (AIIMS) for a second opinion. She was told that the fixing of the crown was faulty and should be removed of crown bridge. When she confronted the doctor with the report from AIIMS, he got infuriated and demanded to know the name of the doctor she had met there so that he could complain against him. The opinion of a doctor from Maulana Azad College was the same as that of AIIMS. The freelancer then complained before the dental council. She was told to approach the Tamil Nadu State Dental Council, which had given the dentist a license to practice. Since the doctor had threatened her on phone, she filed a complaint at the Vasant Vihar police station. Later, she appeared before the Tamil Nadu State Dental Council. Since the doctor failed to appear before the council, the case was proceeded ex parte. The case was lodged with consumer forum and the doctor was held guilty for faulty treatment. He was fined Rs. 2 lakhs and had to pay the compensation within a month—failing which he had to pay interest on the amount at the rate of six percent per annum.¹³

Case 2: Dr (Captain) Jabir Singh Dhody, Dr Raman Gambhir vs Lt Colonel Indergit Singh Cheema, January 2015, Chandigarh: The patient visited the dentist with a complaint of pain in upper jaw. The tooth was extracted and the cavity was prepared for impeding implant. Cheema was told to pay Rs. 21,000 in advance on March 2013 but received the implant and receipt on July 18. However, the implant showed signs of failure as there was mobility, which caused tremendous pain. Dr Gambhir, the visiting implantologist who had fixed the implant, removed it and advised to wait for some time for re-implant. Both the doctors were held liable.

Verdict: The principle of *res ipsa loquitur* (the principle that the mere occurrence of some types of accident is sufficient to imply negligence) operates and the complainant does not have to prove anything as the thing proves itself. The evidence on record proves that the doctor has indulged in unfair trade practice and deficiency in service and is also guilty of medical negligence. Consequently, the complaint is partly allowed. Thereafter, the Forum directed the doctor to refund the amount of Rs. 21,000 to the complainant with interest rate of 9% per annum from March 4, 2013, onward till realization, to make payment of an amount of Rs. 20,000 to the complainant as compensation on account of medical negligence, deficiency in service, unfair trade practice, and resultant harassment to the complainant, and to pay litigation costs to the tune of Rs. 10,000 to the complainant.¹⁴

Do's

- Mention about the complication, if involved.
- Any other alternative treatment option available.

Don't

- Don't use inappropriate words, and threatening is unethical and unacceptable.

Cases of Cautious and Ethical Practice

Case 1: Dr Jyoti Oberoi vs Avatar Kaur, January 2018, Mumbai: Avatar Kaur approached Dr Oberoi, who runs the Gurukripa Medical Trust in Andheri, in January 2016 for fixed dentures. Because her teeth had suffered extensive damage, Dr Oberoi placed 11 implants held in place with an equal number of screws and scheduled placement of fixed dentures in July the same year. However, according to the doctor, Kaur never turned up for the follow-up treatment in July and sent a legal notice instead in September seeking a compensation of Rs. 5 lakh for, what she claimed was a botched-up job which had left her in great amount of pain and was unable to eat. The patient further sent legal notices and claimed to seek Rs. 35 lakhs for the botched-up work. The complainant and her daughter registered case with Mumbai police and also approached the Maharashtra State Dental Council. The Government Dental College was asked to review the case. The report not only cleared Dr Oberoi of any negligence, but also rubbished the complainant's accusation that there was an attempt by the doctor to overcharge. In June 2018, a friend of the dentist procured a video showing Avatar Kaur enjoying a heartfelt meal at the Gurudwara without any apparent discomfort. The case was further reviewed and dentist was freed from all accusations.¹⁵

Case 2: Dr Veeresh Magalad vs Abdul Khader Bagalkot, December 2017, Hubballi: The patient visited the dentist with a complaint of tooth pain and was advised to undergo extraction. Following the treatment, there was profuse bleeding. Three days after the incident,

the patient was admitted in intensive care unit (ICU). However, he did not survive. A complaint was lodged against the dentist under Indian Penal Code (IPC) 304. On further investigation, it was stated that the patient already had systemic disease (low platelet count, white blood cells (WBCs), and red blood cells (RBCs) which neither the patient nor any family knew about it. So, the dentist was not informed. Therefore, the dentist was not found guilty as other precautionary measures were taken.¹⁶

Do's

- Do record the time and date of patient visit.
- Document the medical history, and refer to the physician for consent.
- Do document the follow-up properly.
- Do explain the risk and cost of the procedure properly.

Don't

- Rely on patients words for his medical condition, if any major issue is suspected.

DISCUSSION

The relationship between doctor and patient is based on trust and confidence. Doctors should be clear while taking the cases, they must decide whether to undertake the case they must decide what treatment to give, and they must take care in the administration of that treatment. A breach of any of these duties gives the patient a right to act for negligence. Mistakes occur in every profession, as it does in life. It is probably every individual's duty to avoid errors and foresee the potential for mistake but, on occasions, it simply may become unavoidable. Unfortunately, in the health profession, mistakes could result in serious consequences for the patient and, in turn, lead to the doctor/dentist being made answerable. In case of health professionals, negligence means failure to act in accordance with the standards of a reasonably competent health professional of the same field. The potential for civil lawsuits against dentists is very real. When a dentist is proved for civil liability and can result in monetary compensation to the patient, the consumer is proved for deficient services of the dentist. However, the onus is on the patient to prove that the doctor was negligent and that the injury was a consequence of the doctors' negligence. The potential for criminal liability of dentists is relatively low—in the event of death occurring during the course of dental treatment, proof of gross negligence alone will hold against the dental practitioner. Individual dentists have the responsibility to act in the patient's best interest and to provide the highest standards of clinical care. An important component of clinical care is the informed consent, which corresponds to the basic principle of patient autonomy and respect. The process of informed consent is also helpful in improving the dentist-patient relationship. There is the need for maintaining the records officially and professionally to protect against any commercial, legal, and medico-legal litigation. The best defense is avoiding the lawsuit in the first place, and maintaining ethical standards is the key for successful practice.

RECOMMENDATIONS

- There is need for similar studies and frequent audit of medical negligence cases to find out the new and emerging causes of medical negligence in the future.



- Doctors and hospital owners are advised to go for Indemnity Insurance cover of adequate limit to prevent loss by complementation to the stakeholders.
- With increasing cost of healthcare, claims for medical negligence are bound to be raised in the future. Government should increase funding for healthcare and coverage by health insurance so that the cost of healthcare can be controlled to some extent.
- Medical ethics teaching and training on soft skills, especially of communication skills, will go a long way in not only improving the quality of healthcare and satisfaction of patients but also preventing medical negligence cases.
- Need for classification of medical negligence cases.
- Need for further research and timely update of the knowledge.

CONCLUSION

The prevention of malpractice litigation can be done in primary, secondary, and tertiary levels. Primary prevention includes good communication and informed consent. The concept of informed consent has come to the fore in recent years, and many actions have been brought by patients who alleged that they did not understand the nature of the medical procedure to which they have given consent. Communicate with the patient and take proper consent after explaining the condition. All information must be explained in comprehensible nonmedical terms, preferable in local languages about the diagnosis, nature of treatment, risks involved, prospects of success, prognosis if the procedure is not performed, and alternative methods of treatment. Secondary prevention includes accreditation of hospital, quality assurance program, proper medical records, regular patient satisfaction surveys, and creation of medico-legal cells and medical organizations. Tertiary prevention is through medical indemnity insurance and countersuits.

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