

# Dental Negligence and Consumer Protection Act- The Indian Scenario

Shweta Vilvadrinath\*, Sonali Kadam, Rashmi Ingle, Dnyaneshwar Rathod

Department of Oral Medicine and Radiology, Government Dental College and Hospital, Mumbai.

## ABSTRACT

In recent years, the doctor-patient relationship has evolved drastically. Healthcare professionals are increasingly being viewed as providers of service. In addition to this, the ever-growing patient population is becoming more informed and aware of their rights. Owing to this increased public awareness of medical and dental negligence, hospitals in India are facing complaints regarding facilities, standards of treatment care, appropriateness of therapeutic and diagnostic methods and competence. Due to the lack of knowledge among dental professionals, there is an increased risk of malpractice which can occur in any stage of treatment starting right from history taking to follow-up of the patient. This necessitates the need for the dentist to be aware of the various dental negligent acts and legal procedures available in India and this article aims to highlight the same.

**Keywords:** Dental negligence, Dental malpractice, Consumer Protection Act.

*Int J Eth Trauma Victimology* (2024). DOI: 10.18099/ijetv.v10i01.06

## INTRODUCTION

### The concept of negligence

The term “negligence” means failure to take proper care in doing something. It is derived from the Latin word *neglego*. In Indian legal parlance, “Negligence” refers to the failure to exercise due professional care that is expected of a doctor. A qualified doctor owes a duty of care and diligence towards society at large. Breach of this duty due to which the patient suffers an injury is punishable by law.<sup>1</sup> Dental negligence can arise from an act or omission by a dental practitioner or by deficiency of services or unfair practices.

For an act to be considered negligent, the following aspects must be present:

- Doctors owed a certain standard of care.
- The doctor did not maintain that standard.
- And injury resulting from the lack of care.
- A connection between the negligent act and the resultant injury.<sup>2</sup>

When is it not negligence?

- Inability to obtain consent form in an emergency.
- Patients’ dissatisfaction with the progress of treatment.
- Inability to get desired relief.
- Precedence of one patient over the other based on priority.
- Charging an amount that the patient thinks is exorbitant.<sup>3</sup>

### Consumer Protection Act (CPA)

In India, the Consumer Protection Act was enacted in the year 1986. It was only in the year 1995, that following the landmark case of Indian Medical Association vs VP Shantha, the medical and dental profession was brought under the ambit of this act.<sup>4</sup> However, someone needs to decide whether a proper standard for the treatment has been met. For this “The Bolam Rule” is followed.

**Corresponding Author:** Shweta Vilvadrinath, Department of Oral Medicine and Radiology, Government Dental College and Hospital, Mumbai, e-mail: drshwetavilvadrinath@gmail.com

**How to cite this article:** Vilvadrinath S, Kadam S, Ingle R, Rathod D. Dental Negligence and Consumer Protection Act- The Indian Scenario. *Int J Eth Trauma Victimology*. 2024;10(1):32-34.

**Source of support:** Nil

**Conflict of interest:** None

**Received:** 10/06/2024;

**Received in revised form:** 26/06/2024;

**Accepted:** 28/06/2024;

**Published:** 30/07/2024;

The Bolam Rule opined that a doctor is not guilty of negligence if he has acted following the practice accepted as proper by a responsible body of medical men.<sup>5</sup>

All services rendered to the patient by a dental professional are covered under the CPA and hence it becomes imperative for dentists to be aware of such laws, which are valuable for patients, healthcare professionals and the community as a whole.<sup>6</sup>

### Liability of dentists

*Dentists are liable under four heads*

- *Tortious liability*
  - Primary- when the dentist is directly liable for an act of negligence in his clinic.
  - Vicarious- the hospital has the liability for negligence of an employee.

- *Contractual liability*

A breach in the contract issued between the dentist-patient wherein the dentist is under a duty to treat with care as well as continue to treat and not terminate until the patient is cured/ the patient terminates the treatment.

- *Criminal liability*

Criminal liability is penal and involves punishment in the form of imprisonment fine or both.

- *Statutory liability*

A dentist is liable if there is an infringement of any statutes and is liable to a statutory body.<sup>2</sup>

The important offences inviting criminal liability according to the Indian Penal Code include:

- Sec 304A IPC- negligent act resulting in death.
- Sec 336 IPC- an act which endangers the life of a person.
- Sec 337 IPC- a negligent act causing a simple injury.
- Sec 338 IPC- a negligent act resulting in grievous injury.<sup>3</sup>

## Legal process

### *Procedure for complaining*

- District level- compensation up to a limit of 5 lakhs.
- State level- compensation of 5-20 lakhs.
- National level- compensation of more than 20 lakhs.

Within 30 days from the date of the decision, an appeal can be filed in the higher commission.<sup>7</sup>

### *Procedure*

Under section 24A of the Consumer Protection Act, a complaint should be filed within 2 years of the date of the act. According to section 13 of CPA, a first copy of the complaint has to be sent to the dentist who is required to reply with his/her version within 30-45 days. The dentist may choose to deny the allegation. If no reply is provided within the stipulated time, the court proceeds with the complaint against the dentist. It is mandatory to decide the cases within 3 months.

If the complainant is not satisfied with the result of the district forum, he/she may apply to the State Commission or National Commission within 30 days from the date of order of the District Court. The State or National Commission is required to decide the appeal as far as possible in 90 days from the first date of hearing.<sup>3, 8</sup>

If the complaint is found to be frivolous, the complainant is dismissed and the complainant is supposed to pay the dentist a fine, not exceeding 10,000 rupees. If the dentist or the complainant fails to comply with any order passed by the courts, they shall be punished with imprisonment for a period of 1 month to 3 years and a fine not less than 2000 rupees which may extend to 10,000 rupees.

## Protecting the dentist

### *Indemnity insurance*

Professional indemnity insurance is a type of insurance that protects a business owner or professional if a client alleges that the business behaved negligently or failed to perform work adequately. India has its version of professional indemnity insurance, provided by several insurance entities. However, it is reported that many dentists do not have insurance and if and when legal proceedings are initiated, the entire burden is borne by the dentist.<sup>9</sup>

To protect the doctors from frivolous complaints of dental negligence, the Supreme Court of India passed a landmark judgement on February 17, 2009.

- A private complaint should not be entertained unless the complainant has produced *prima facie* evidence before the court in the form of a credible opinion given by another competent doctor.
- An investigating officer should, before proceeding against the accused doctor, obtain an independent medical opinion, from another competent doctor, preferably in government service, qualified in that branch of medical practice.<sup>10</sup>

## The Indian Scenario

Public awareness of dental negligence in India is growing. A large number of individuals are now aware of dental quackery, inefficient and incompetent dental care and negligence on the part of the dentist. The other side of the coin, however, shows cases wherein the dentist has been falsely accused and this may lead to a detrimental effect on the dentist's professional and personal life. Cases have also been reported wherein, dentists have been physically assaulted by patients due to unsatisfactory treatment. These factors necessitate the need for dentists to be aware of the various negligent acts, non-negligent cases, the legal proceedings for the same and indemnity insurance.

A study was conducted by Radhika T. et al, to evaluate the awareness about medico-legal aspects and the Consumer Protection Act amongst dentists in Chennai which showed that most of the participants were aware of medico-legal aspects but were not well-informed about the Consumer Protection Act.<sup>5</sup>

A systematic review of relevant cross-sectional observational studies was conducted regarding the level of knowledge and awareness of CPA amongst the dental professionals of India which showed that a majority of the participants were aware of the existence of CPA, however, knowledge of the basic rules and regulations was lacking.<sup>6</sup>

Recent times have seen a rise in the number of cases of negligence against dental professionals.

An analysis of judgements on dental negligence claims in Indian Consumer Redressal Forums by Thavaraja R. et al, collected 111 cases of dental negligence from which 44 dentists were found guilty, 30 dentists produced at least one evidence in their favour out of which 23 outcomes were in the dentists' favour. They estimated the mean compensation claim to be INR 5,77,287/- ± 9,05,898/-.<sup>1</sup>

Joshi A. et al carried out a study to classify negligence in oral surgery and classified it as professional negligence, manufacturer negligence and patient negligence.<sup>11</sup>

## DISCUSSION

It is said, "We all make mistakes, and it is not until we make mistakes that we learn." Unfortunately, in the health profession, mistakes could result in serious complications which in turn results in the dentist being answerable.

Records are the most important factors needed to prevail in a lawsuit. Written notes, photographs, consent forms,

radiographs and investigations must be meticulously kept. Legally, dental records have more weight than a patient's recollections.

The potential for lawsuits against dentists is present, however the number of instances wherein the dentist is found guilty is reasonably low.

However, the legal process is stressful and can also impair the social standing of a doctor, hence the best defence is avoiding the lawsuit in the first place.

Further, it becomes imperative to equip dental professionals with knowledge regarding negligence, the Consumer Protection Act and the legal process that follows. Incorporating this information into the dental curriculum is the need of the hour.

## REFERENCES

1. Thavarajah R, Saranya V, Priya B. The Indian dental litigation landscape: An analysis of judgments on dental negligence claims in Indian Consumer Redressal Forums. *J Forensic Leg Med.* 2019 Nov; 68:101863. doi: 10.1016/j.jflm.2019.101863.
2. Bhadauria US, Dasar PL, Sandesh N, Mishra P, Godha S. Medico-legal aspect of dental practice. *Clujul Med.* 2018 Jul;91(3):255-258. doi: 10.15386/cjmed-764. Epub 2018 Jul 31.
3. Goel K., Goel P., Goel S. Negligence and its legal implications for dental professionals: a review. *TMU J Dent.* 2014 Sept; 1 (3): 113-118.
4. Supreme court of India. Indian Medical Association vs V.P. Shantha. Judgement Information system 1995; 6 SCC- 651.
5. Radhika T, Nadeem J, Arthi R, Nithya S. Awareness about medico legal aspects and Consumer Protection Act among dentists. *J Forensic Odontostomatol.* 2017 Jul 1;35(1):1-8.
6. Singh G, Gambhir RS, Singh S, Talwar PS, Munjal V. Knowledge and awareness of the Consumer Protection Act among dental professionals in India: A systematic review. *Indian J Dent.* 2014 Jul;5(3):146-51. doi: 10.4103/0975-962X.140831.
7. Kukreja, Pankajl; Godhi, Suhas S2; Basavaraj, P3. Consumer Protection Act and Medical Negligence - A Brief Insight. *Journal of Indian Association of Public Health Dentistry* 9(Suppl 2):p S522-S527, July 2011.
8. Savanur S. Book 'Dento-legal aspects of CPA'.
9. Bhanushali V, Shivakumar KM, Patil S, Kadashetti V. Knowledge, attitude, and practice of professional indemnity insurance among dental practitioners in Maharashtra State, India. *J Int Clin Dent Res Organ.* 2018;10:17-22.
10. Seshappa KN, Rangaswamy S. Death in dental clinic: Indian scenario. *J Forensic Dent Sci.* 2016 May-Aug;8(2):61-6. doi: 10.4103/0975-1475.186376.
11. Joshi A, Jain A, Soni HK. Foreign Bodies in Extraction Socket: An Outcome of Negligence and Proposal of a Classification with its Medico-legal Implications. *J Maxillofac Oral Surg.* 2021 Dec;20(4):649-656. doi: 10.1007/s12663-020-01394-z.

