Litigations in Obstetric and Gynecological Practice: Can it be prevented? A Probability to Possibility

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Abstract

Background Litigation in medical practice is becoming a global problem. So it is necessary to know what constitutes negligence and what is required to prove it and how far it is preventable.

Objectives To analyze the prevalence and reasons for litigations in Obstetrics and Gynaecology for medical negligence and deficiency in service. To analyze on what grounds negligence was proved and to know whether it was preventable.

Materials and Methods It is a retrospective analysis of the judgments obtained from all the District Consumer Courts of South India and was specifically analyzed for reasons in filing the case, nature of settlement, and factors considered in deciding negligence especially in the field of obstetrics and gynecology.

Results Totally 1317 cases were found on medical negligence and deficiency in service, with 347 (26.34 %) cases on Obstetrics and Gynecology (OBG) topping the list. Out of 347 cases on OBG 312 (89.91 %) cases were settled in the Courts. Negligence was proved in 98 (31.41 %) cases and 214 (68.59 %) cases were dismissed without compensation. 77 (24.68 %) cases on gynecology were filed with common reasons for litigation being Post-op complications, intraop complications (11.68 %), extension of surgery beyond consent (2.6 %) and out of 235 (75.32 %) cases on Obstetrics, tubectomy failure (23.82 %), birth asphyxia (10.21 %), traumatic injury to new born (5.96 %) were the common reasons for litigations. Inadequate documentation and improper consent were the main factors considered in deciding negligence on part of the doctors.

Conclusion With reasonable skill and care in diagnosis and treatment, proper documentation and legally valid consent it is not probable but possible to prevent litigations.

Keywords Litigation · Consumer court · Medical negligence · Consent · Birth asphyxia · Obstetrics and Gynecology

Introduction

Litigation in medical practice is becoming a global problem. Public awareness of medical negligence in India is growing [1, 2]. Hospital managements are increasingly facing complaints regarding the facilities, standard of professional compliance and the appropriateness of their therapeutic and diagnostic methods [2]. Obstetrics and Gynecology is one of the important clinical specialties in medical field. Its role in service for the cause of maternal and child health needs appreciation. This professional accountability is practically two fold, as they have to ensure quality in managing the health of mother and newborn both and unfortunately a bad outcome is nearly always thought to be due to medical negligence. Gradually medicolegal problems in India are gaining more and more importance, despite poverty, lack of health education and unsatisfactory infrastructure in most health care setup. After the Consumer Protection Act come into force from 1986 and when Supreme Court of India included the medical profession under Consumer Protection Act and adding fuel to the fire, some patients have filed legal cases against doctors and have established that the doctors were negligent in their service and have claimed and received compensation [2].

Objectives

1. To analyze the prevalence and reasons for litigations in obstetrics and gynecology for medical negligence and deficiency in service.
2. To analyze on what grounds negligence was proved and
3. To know whether it was preventable or not.

Materials and Methods

This is a retrospective review analysis of all judgments on medical negligence and deficiency in services from all the District Consumer Courts of South India, i.e., Karnataka, Tamil Nadu, Kerala, and Andhra Pradesh. The judgments from January 1, 2008 to December 31, 2013, were considered for analysis. The judgments were obtained from the official Web site of the Consumers Forum in the Country maintained by National Informatics Centre, Ministry of Communication and Information Technology. Phrases like Dr, hospital, nursing home, clinics, maternity home, medical colleges, labs, and medical center were typed in the search box and the judgments were obtained. The cases related to all medical specialties' were considered for the study. The cases were analyzed state-wise also. The cases filed in the court would have been either dismissed as there is no prima fascia from the doctors or negligence might be proved with compensation, cases might be settled outside the courts, complaint might be withdrawn, complainant might be absent, or the filed cases might not be pressed; so all cases were categorized as they were settled, and cases related to obstetrics and gynecology were specifically analyzed for the reasons in filing the case, nature of settlement, and factors considered in deciding negligence in the cases and whether it was preventable or not.

Results

A total of 95,412 judgments were obtained from all the district consumer courts of South India, out of which 1317 (1.38 %) judgments were on medical negligence and deficiency in service. In total there were 308 (23 %) judgments from Karnataka, 469 (36 %) judgments from Tamil Nadu, 281 (21 %) judgments from Kerala, and 259 (20 %) from Andhra Pradesh. Maximum cases were from Tamil Nadu (Table 1).

In these 1317 judgments on medical negligence, 347 cases were on obstetrics and gynecology amounting 26.3 % of all the cases and topping the list followed by

Table 1 Total no of judgments against medical negligence and deficiency in service from all four states

States	Total no of judgments analyzed	No of judgments on medical negligence <i>n</i> (%)
Karnataka	38,123	308 (23)
Tamil Nadu	15,538	469 (36)
Kerala	26,492	281 (21)
Andhra Pradesh	15,259	259 (20)
Total judgments	95,412	1317 (1.38)

orthopedics with 196 cases (14.9 %) followed by general surgery with 163 cases (12.4 %) Table 2.

In these 347 cases from obstetrics and gynecology, 98 (28.2 %) cases were proved negligent and compensation was awarded, and 214 cases (61.7 %) were dismissed without any compensation, eight cases (2.3 %) were settled outside the court, in seven cases (2 %) complaint was withdrawn, complainant was absent in 11 cases (3.2 %), and nine cases (2.6 %) were not pressed. Overall 90 % of cases were settled in the court of law (Table 3).

Three hundred and twelve cases were settled in the courts in which 235 cases (75 %) were on obstetrics and 77 (25 %) were on gynecology, in which 78 cases (33.2 %) in

obstetrics were proved negligent and 20 cases (26 %) in gynecology (Table 4).

The common reason for filing cases in obstetrics (Table 5) was tubectomy failure and maternal death, issues related to birth asphyxia, and neonatal death and traumatic injuries to new born, and the common reasons in gynecology were postoperative complications including death, intraop complications, and complications following D and C. (Table 6).

Factors Considered by Court in Proving Negligence by Doctors

(a) Majority of the cases were proved negligent for incomplete consents. Many patients filed cases giving the reason that they did not understand the nature of medical procedure to which they gave consent, for which the National Commission has stated the concept of “informed consent” in which all information must be explained in comprehensible non-medical terms preferably in local language about the

1. Diagnosis
2. Nature of treatment
3. Risks involved

Table 2 Distribution of cases according to specialty

Specialty	Karnataka	Tamil Nadu	Kerala	Andhra Pradesh	Total	%
Obstetrics and gynecology	85	128	71	63	347	26.3
Orthopedics	38	65	52	41	196	14.9
General surgery	36	60	34	33	163	12.4
General medicine	26	26	29	29	110	8.4
Ophthalmology	18	41	23	28	110	8.4
General practitioners	18	34	9	5	66	5
Pediatrics	11	28	17	11	67	5.1
Urology	7	15	8	10	40	3
ENT	7	12	9	4	32	2.4
Cardiology and CTVS	9	5	10	8	32	2.4
Neurosurgery and Neurology	11	8	4	4	27	2.1
Pathology	11	6	2	8	27	2.1
Radiology	6	10	2	4	22	1.7
Anesthesia	6	9	5		20	1.5
Medical and surgical gastroenterology	4	8	1	3	16	1.2
Plastic surgery	1	5		2	8	0.6
Nephrology	6	1	1		8	0.6
Pediatric surgery	3	2		2	7	0.5
Pulmonology	2	1	3	1	7	0.5
Dermatology	1	3		2	6	0.5
Psychiatry	2	2	1	1	6	0.5

Table 3 State-wise distribution of cases in obstetrics and gynecology the manner of settlement

State	Negligence proved with compensation <i>n</i> (%)	Case dismissed <i>n</i> (%)	Settled outside court <i>n</i> (%)	Complaint withdrawn <i>n</i> (%)	Complainant absent <i>n</i> (%)	Case not pressed <i>n</i> (%)	Total
Karnataka	19 (22.4)	62 (72.9)	–	1 (1.2)	–	3 (3.5)	85
Tamil Nadu	34 (26.5)	84 (65.6)	2 (1.6)	2 (1.6)	2 (1.6)	4 (3.1)	128
Kerala	22 (31)	29 (40.8)	6 (8.5)	4 (5.6)	8 (11.3)	2 (2.8)	71
Andhra Pradesh	23 (36.5)	39 (61.9)	–	–	1 (1.6)	–	63
Total	98 (28.2)	214 (61.7)	8 (2.3)	7 (2)	11 (3.2)	9 (2.6)	347

Table 4 State-wise distribution of cases in obstetrics and gynecology which were settled in the court

State	Obstetrics			Gynecology		
	Total cases	Negligence proved	Case dismissed	Total cases	Negligence proved	Case dismissed
Karnataka	63	16 (25.4 %)	47 (74.6 %)	18	3 (16.7 %)	15 (83.3 %)
Tamil Nadu	90	30 (33.3 %)	60 (66.7 %)	28	4 (14.3 %)	24 (85.7 %)
Kerala	35	12 (34.3 %)	23 (65.7 %)	16	10 (62.5 %)	6 (37.5 %)
Andhra Pradesh	47	20 (42.6 %)	27 (57.4 %)	15	3 (20 %)	12 (80 %)
Total	235	78 (33.2 %)	157 (66.8 %)	77	20 (26 %)	57 (74 %)

Table 5 Reasons for filing cases in obstetrics

Sl no	Reason	Total no of cases	%	Negligence proved with compensation	Case dismissed without compensation
1	Tubectomy failure	56	23.8	14	42
2	Maternal death	50	21.3	23	27
3	Issues related to birth asphyxia and neonatal death	24	10.2	9	15
4	Issues related to abortion and MTP	20	8.5	7	13
5	Postoperative complications	20	8.5	4	16
6	Postpartum complications	16	6.8	3	13
7	Traumatic injury to new born	14	6	7	7
8	Failure in prenatal diagnosis of congenital anomalies	13	5.5	4	9
9	Failure to make proper diagnosis and to execute standard level of care	12	5.1	1	11
10	Leaving behind swab/foreign body during LSCS or normal delivery	4	1.7	3	1
11	Operating without proper consent	3	1.3	3	–
12	Change in sex of the baby	1	0.4	–	1
13	Wrong documentation of blood group	1	0.4	–	1
14	For doing tubectomy without proper authority	1	0.4	–	1

4. Prospects of success
5. Prognosis if the procedure is not preformed and alternative methods of treatment.
The three important components of such consent are information, voluntariness, and capacity.

- (b) Failure to detect internal hemorrhage following major vaginal operations or hysterectomy or injuries to bladder and ureters and failure to diagnose intestinal injuries while laparoscopic port insertion amount to negligence.
- (c) Failure to diagnose major congenital anomalies in the fetus like absence of the arms, lower limbs,

Table 6 Reasons for filing cases in gynecology

Sl no	Reason	Total no of cases	%	Negligence proved with compensation	Case dismissed without compensation
1	Postoperative complications including death	44	57.1	9	35
2	Intraoperative complications	9	11.7	5	4
3	Treatment failure	5	6.5	1	4
4	Wrong diagnosis and failure to execute standard level of care	4	5.2	2	2
5	Complications following D and C	4	5.2	–	4
6	Operating on the wrong site	2	2.6	1	1
7	Allegations for not performing the required surgery	2	2.6	–	2
8	Operating without consent	2	2.6	–	2
9	Extension of surgery beyond consent	2	2.6	1	1
10	Leaving a foreign body inside the abdomen	2	2.6	1	1
11	Blood transfusion reactions	1	1.3	–	1

intrapartum and intrauterine hypoxia, inadequate resuscitation of the baby without calling pediatrician to delivery room, undue delay in conducting cesarean causing irreversible brain damage in an already hypoxic fetus, and omission to remove swabs from the vagina or abdominal cavity or to monitor PPH also amount to negligence.

- (d) Undue delay in shifting a critically ill patient to a higher center, operating in a setup where no proper emergency facilities are available when needed like availability of oxygen, blood when needed, and ambulance facilities to shift the patient are considered as negligence.
- (e) For issues like change in sex of the baby, it is always better to attach a tag to the baby which contains name of the mother and father, sex, time of birth, birth weight, date of birth, and preferably a foot print to be taken.
- (f) If consent is taken for a diagnostic purpose, it cannot be used for therapeutic purposes, e.g., a consent taken for diagnostic laparoscopy cannot be used for conducting hysterectomy or oophorectomy even though it was necessary amounts to negligence. If such things are anticipated, a prior consent after explaining all the pros and cons should be obtained separately, even for extension of surgery beyond consent, e.g., doing oophorectomy after hysterectomy for a diseased ovary amounts to negligence. Such extensions/additions in surgery can be done without consent only in dire emergencies to save the life of the patient and should be in a position to defend it later.

Discussion

Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of

human affairs would do, or doing something which a prudent and reasonable man would not do [3]. The components of negligence are there should be an existence of a duty to take care, failure to attain the standard level of care causing breach in the duty, such breach in duty should cause injuries, and such injuries should cause consequential damages which are evident [4]. In reality, doctors are human beings. And, to err is human. Supreme Court verdict in 1995 brought the medical profession under the purview of the Consumer protection Act, 1986. The “World Consumer’s Right Day” is celebrated globally on March 15 and the “National Consumer’s Right Day” on December 24 each year in India to create awareness among consumer’s about their rights [5].

The judgment in the case of Indian Medical Association v/s V.P. Shantha was a landmark judgment because the Supreme Court cleared all the confusions regarding the scope of the act and defined certain terms such as *consumer*, *service* with regard to the provisions of the Consumer Protection Act [6].

Consumer means any “person” who hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [6]. A person who receives medical treatment in government or charitable Hospital, which provides treatment to one and all free of cost, is not a consumer under the act. A person who receives treatment in a government or charitable hospital which provides treatment free of cost to some and on consideration to some would be a consumer, even if he has not paid any fees. In case of death of patient who is a consumer, legal heirs (representatives), of the deceased will be considered as “consumer.” If the payment has been made by any person who is not a legal heir of the deceased, he too will be considered as “consumer.”

Service rendered to any person at a government hospital/ health center/ dispensary or even a private setup where no charge whatsoever is made from any person availing the services and all patients (rich and poor) are given free service is outside the purview of the expression service. The payment of a token amount for registration purpose only at the hospital/ nursing home would not alter the position. Such patients cannot be called consumers.

So it is clear that there should be contract between the patient and the treating doctor either by paying his fees or by providing any other beneficiary service, which the patient should be in a position to prove it. Even if the patient has paid certain token amount as OPD registration fees and not as charges for availing the treatment, he/she cannot become a consumer.

According to a study by Dr. Ashish Jha of Harvard School of Public Health, of the 421 million hospitalizations in the world annually, about 42.7 million adverse events of medical injury take place, two-thirds of which are from low-income and middle-income countries. India records approximately 5.2 million cases a year. A report by the Association of Medical Consultants shows that there were 910 medicolegal cases against doctors between 1998 and 2006 in Mumbai. Now they are going up by 150–200 cases every year [5]. This shows the burden of the problem due to increasing public awareness and a convenient method in filing a law suit at the consumer forum as compared to the law of torts.

Litigations are always more in the field of obstetrics and gynecology. In Japan both maternal and perinatal mortality rates remain low, and healthcare safety in obstetrics and gynecology department is considered to be excellent from a global perspective, and despite such good care, the percentages of medical negligence cases filed against obstetricians are increasing [7]. Issues related to pregnancy and child birth attracts more law suits as pregnancy is believed to be a physiological process, and any deviation from normal is considered to be abnormal [8].

In our study most of the cases were proved negligent for incomplete consents, improper postoperative monitoring, failure to diagnose injuries during the intraoperative period, improper documentation, treating a patient in a place without proper facilities, failure to diagnose major congenital anomalies in the baby like absence of the arms or legs, and if there is an undue delay in shifting a critically ill patients to a higher center for further management, leaving behind foreign objects inside the abdomen and performing any procedure on a patient under a single blanket consent which will not hold good under any circumstances, as the consent should be very particular about what has happened and what will be the further treatment with all the anticipated benefits and risks. If the above-mentioned things are

closely analyzed, all of them are preventable mistakes. If a doctor had given some extra time to each patient in explaining and taking consent with proper documentation of the procedure with pre-op findings, a bit more vigilant before finishing a surgery, close postoperative monitoring, and timely referrals. Certain minute things which are mentioned above counts a lot for day-to-day practice in a long run without any hurdles, but doctors are humans and are bound to make mistakes but those mistakes should be corrected at an appropriate time before any damage has occurred. So the law describes that a doctor is not negligent if he acts to the standard of care at that point of time and not any extraordinary care that could have prevented a complication.

In present days the fear of litigations defensive practice is increasing among the practitioners and can be well said that it is deeply enrooted into our day-to-day practice. *Defensive medicine* is defined as “medical actions, performed mainly in order to refrain from being sued, rather than actually aiding the patient” [9]. The best example for this is the rates of cesarean sections are increasing these days. In a cross-sectional survey done among the obstetricians and gynecologists practicing at tertiary medical centers in Israel, 97 % felt that their daily work practice is influenced by concern about being sued for medical negligence and not only by genuine medical considerations and 87 % of them were more likely to offer the cesarean section option, even in the absence of a clear medical indication [9]. On the other hand, what we feel is that too much of defensive practice is also not good. What if a patient questions in the consumer forum for an unnecessary cesarean? without proper indication, so any decision making should be properly indicated.

However, the Indian legal system has consistently recognized the hazards associated with the medical practice. The Indian law protects the doctors from criminal liability through Sections 88 to 92 of Indian Penal Code (IPC), because the law presumes that a doctor always acts in good faith for the well-being of his patient [8]. For example ‘A’ is a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z’s death, and intending, in good faith Z’s benefit, performs that operation on Z, with Z’s consent. ‘A’ has not committed any offense.

The role of obstetrics and gynecology in service for the cause of maternal and child health needs appreciation, but the professional accountability is practically two fold, as they have to ensure quality in managing the health of mother and newborn. Litigations can pop out from nowhere, and now it is time to treat every patient as a potent litigant and also very high compensations are being awarded by the consumer forums in the recent past as seen in Dr Kunal Shah’s case and Indraprastha Apollo

Hospitals, New Delhi, it is always better to have an indemnity insurance policy with us.

Conclusions

To prevent law suits, it is necessary to have a healthy *rapport* and communication not only with patients but also with their families and with fellow doctors, showing *respect/regards* toward the patients, relatives and their feelings, an attitude of care and concern with humanistic approach, treatment for appropriate indication with a *rationale practice* and by maintaining good *records*, because a bad result added to a bad record equals liability regardless of the facts and standard of care practiced. A good record speaks of good care. So it should be complete, accurate, legible, relevant, timely and generously informative. A doctor should be cautious while passing *remarks* against another doctor, and it should be avoided in the presence of the patient and by avoiding the facts which speak for themselves (*Res ipsa Loquitur*). The *risks* and *results* of the proposed treatment should be explained to the patient for proper decision making.

However, litigations are always more in obstetrics, because of high expectations. Everyone will be awaiting for a positive outcome. If any untoward effect happens either to the mother or to the baby, their dreams will be shattered which not handled with caution will end in litigations. So if reasonable skill and care in diagnosis and treatment, proper documentation and legally valid consent are not followed in practice, a situation might come where there will be a maternity home on one side and a law firm dealing with medical malpractice on the other side of the building, but if followed in practice, it is not a probability but possibility to prevent litigations.

Compliance with Ethical Standards

Conflict of interest Authors declare no conflict of interest.

Ethical Approval This article does not contain any studies with human participants performed by any of the authors as it is a study of analyzing the judgments from the consumer courts which is available to public, so it does not need any ethical approval or informed consent.

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