

# Knowledge about Legal Aspects of Medical Negligence in India among Dentists– A Questionnaire Survey

P.K.Uma<sup>1</sup>, Pratibha Ramani<sup>2</sup>, Herald. J. Sherlin<sup>3</sup>, Gheena.S<sup>4</sup>, Gifrina Jayaraj<sup>4</sup>,  
K.R. Don<sup>5</sup>, Archana Santhanam<sup>5</sup>

<sup>1</sup>III Year MDS, Post Graduate Student, <sup>2</sup>Professor and Head, <sup>3</sup>Professor, <sup>4</sup>Reader, <sup>5</sup>Senior Lecturer, Department of Oral and Maxillofacial Pathology, Saveetha Dental College, Saveetha University, SIMATS, Chennai, India

## Abstract

**Introduction:** Medical negligence is the breach of legal duty to care which includes the damages, and establishing causation. Awareness towards medical negligence is increasing day by day among patients. Recent court rulings have also been in favour of the complainants where there is proven case of negligence which has encouraged others to take up their grievances. There is no special subject where dentists learn about legal aspects of medical negligence. Hence this study was done to assess their knowledge on legal aspects of medical negligence.

**Materials and Method:** An online questionnaire with 15 questions regarding legal aspects of medical negligence was sent to 100 dentists of a well reputed dental college. The completed forms were evaluated. The results were calculated as percentage and tabulated as graphs.

**Result:** The awareness was less among dentists for most of the questions. Majority of them knew the term medical negligence but terms least known were *res ipsa loquitur*, *bolam's test* and *Bolitho case*. The other questions had less than an average response.

**Conclusion :** The survey results showed that the knowledge of dentists regarding the legal aspects of medical negligence was poor. This survey assessed the knowledge of the dentists and also enlightened the respondents with answers pertaining to the questions. More awareness must be created so that doctors are more careful and hence patients benefitted.

**Keywords:** Medical negligence, law, knowledge.

## Introduction

Medical negligence is the breach of legal duty to care which includes the damages, and establishing causation<sup>(1)</sup>. After the Consumer Protection Act, 1986, numerous cases are reported against doctors due to

public awareness which is growing now in India. A breach of this duty gives a patient the right to initiate action against negligence<sup>(2)</sup>. Recent court rulings in favour of the complainants where there is proven case of negligence has encouraged others to take up their grievances<sup>(3)</sup>. Medical error is the third leading cause of death in the US, accounting for 2.5 lakh deaths every year. But no such data is available in India. Patients often allege that doctors try to save each other even when the case is re-referred to medical boards for investigation<sup>(3)</sup>. Cases of medical negligence are also heard of in the field of dentistry but no data is available on the percentage per year. Recently, in December 2018, there was a case which involved a private dental clinic in Ambattur, Chennai, where the court asked the dentist to pay back the patient the treatment cost along with a sum of Rs.15,000 for

---

### Corresponding Author:

**P.K.Uma**

III Year MDS, Post Graduate Student,  
Department of Oral and Maxillofacial Pathology  
Saveetha Dental college, Saveetha University,  
Address: 162, Poonamallee High Road,  
Velapanchavadi, Chennai .  
Mail ID: umacherry@gmail.com  
Phone No.:9443434569

mental agony caused during the process due to medical negligence. This study is important because there is no special subject where the dentists are exposed to law and medical negligence in their curriculum, hence assessing their knowledge and creating awareness will make the dentists more responsible towards their patients.

### Materials and Method

An online questionnaire consisting of 15 questions regarding knowledge on legal aspects of medical negligence was sent to 100 dentists of a well reputed dental college in Chennai, South India. The survey was conducted between October 2018 to January 2019. The details regarding the age, gender and years of experience in dentistry was collected with each form. The respondents had to choose between options 'know' and 'don't know'. If the respondent knew the answer, he/she had to check it with the answers that were provided after the questionnaire section and then choose the option 'know' if it correlated or the option 'don't know,

'if the answer was wrong or did not correlate with the right answers. The scores were given as good, fair and poor if the number of known responses were between 60-100%, 30-59% and 1-29% respectively.

### Results

81% of the respondents were between 20-30 years of age, 75% were females and 60% had experience less than 5 years. The age distribution, gender and years of experience are represented in Fig 1-3. Among the 15 questions regarding law and medical negligence in India, knowledge was good regarding the terms and questions on medical negligence, consumer protection act, arrest of the doctor and punishment for medical negligence, knowledge was fair regarding the terms Burden of proof, Civil negligence, Criminal negligence, punishment for free services and the Standard to judge the negligence of the doctor and knowledge was poor for terms like Implied undertaking, *res Ipsa loquitur*, Bolam's test, Bolitho case and Vicarious liability. The results of the survey are tabulated in Table 1.

Table 1: The responses(in %)for the medicolegal terms and questions

S.No	Knowledge on	% Who knew	% Who didn't know
1	Medical negligence	91	9
2	The Standard to judge the negligence of the doctor	45	55
3	Implied undertaking	29	71
4	Res Ipsa loquitur	2	98
5	Bolam's test	2	98
6	Bolitho case	3	97
7	Civil negligence	51	49
8	Criminal negligence	60	40
9	Punishment for medical negligence	66	34
10	When can a doctor be arrested?	40	60
11	Are you punishable for free services?	39	61
12	When is the dr not punishable?	47	53
13	Vicarious liability	14	86
14	Burden of proof	24	76
15	Consumer protection act	69	31

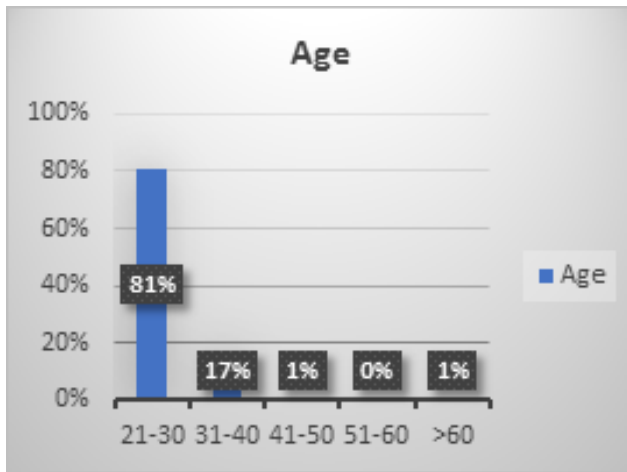


Figure 1: Graph depicting age distribution

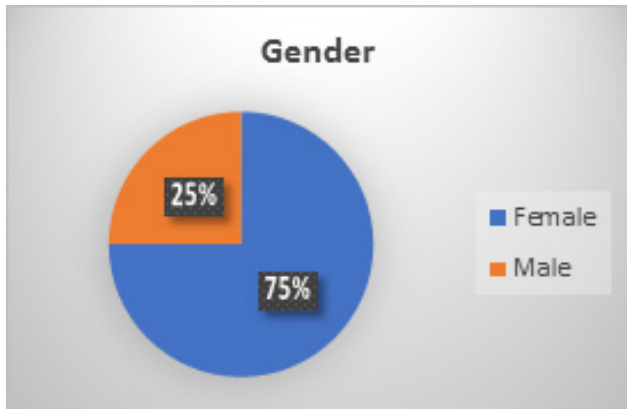


Figure 2: Graph depicting gender distribution

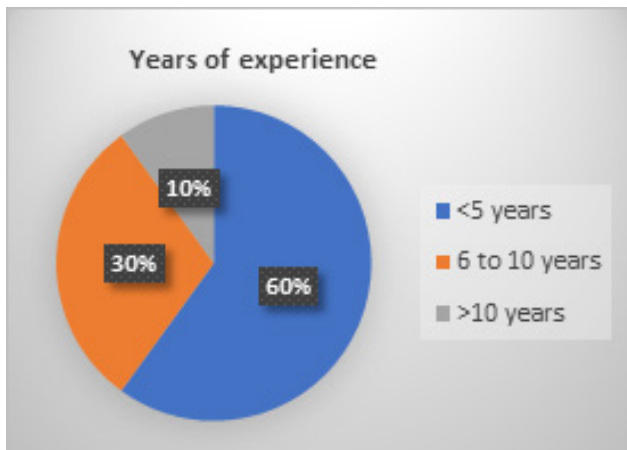


Figure 3: Graph depicting years of experience

### Discussion

Doctors are expected to deliver good service at all times. But if there is a breach in the duty due to an act of commission or omission then they are said to be medically negligent. The consequences that follow when a patient takes this legally is of great importance to the doctor. Knowing the laws that govern medical negligence will help the doctors serve patients better and more cautiously .

A study by AIIMS forensic department has revealed wrong treatment is the most common reason for people to complain about medical negligence, followed by lack of care, no treatment and forced discharge<sup>(3)</sup>.

People are more educated now than before. They are aware of their rights. In the medical field, the public can procure their rights through Consumer protection act. 69% of them knew the term consumer protection act. Consumer protection act came out in 1986 which means any fault, imperfection, shortcoming, or inadequacy in the quality, nature, or manner of performance that is required to be maintained by or under any law for being in force at that given time<sup>(2)</sup>. This term has also been used for other services consumed including medical services.

Doctors must exercise an ordinary degree of skill <sup>(4)</sup>. No doctor can give a warranty of the perfection of their skill or a guarantee of cure. If the doctor has adopted the right choice of treatment, if she/ he is skilled and has worked with a method best suited to the patient, she/ he cannot be blamed for negligence if the patient is not totally cured <sup>(5)</sup>. Dr Abhishek Yadav, who led the study in AIIMS , told that allegations were found to be more in common in groups of children and adolescents (50%) with a declining trend with increase in age<sup>(3)</sup>.

Better characterizing these events can educate providers with the goal of improving patient care<sup>(1)</sup>.

Among all the questions medical negligence which is breach of the said duty; and consequential damage that follows was the term maximum known. This may be due to frequency of hearing more than the other terms.

Its understood that any professional in their field (law, medical, engineering) acquires and has the skill that profession needs after graduating. A doctor need not possess the highest expert skill. The standard of the accused doctor is adjudged with an ordinary doctor of the same profession with ordinary skills<sup>(6)</sup>.

Majority of them did not know the term Implied undertaking which means that any person who offers medical advice and treatment implicitly state that they have the skill and knowledge to do so, that they have the skill to decide whether to take a case, to decide the treatment, and to administer that treatment<sup>(7)</sup>. Doctors said lack of communication between the doctors and patient is a major cause of discontent. “Doctors should refrain from making vague promises of complete recovery and should always explain the complication

or unforeseen danger associated with the treatment procedure,” said a doctor at AIIMS <sup>(3)</sup>.

The questions with the least responses were Res ipsa loquitor, Bolam’s test and Bolitho case. The principle of res ipsa loquitor is ‘thing speaks for itself’. For e.g. prescription with the wrong medicine or a cotton swab/ instrument inside the lesion during surgery. With nearly 5,000,000 Indians dying due to medical negligence every year, experts claim that a specialised course for doctors and hospital staff focusing on how a critically ill or injured patient should be handled could bring down the figure by almost 50 per cent<sup>(8)</sup>. There are examples of few cases in Tamil Nadu recently which got medical negligence to limelight like 1) a case where HIV infected blood was transfused to a 8 month pregnant lady ,2) an accusation against a gynaecologist for leaving a sanitary napkin behind during the C-section.3) A lady was misdiagnosed as pregnancy positive but had a tumour instead. This is mainly due to medical negligence. In certain circumstances no proof of negligence is required beyond the accident itself<sup>(9)</sup>.

2)According to Bolam’s test, a doctor, who acts by a practice accepted as proper by a responsible body of medical men, is not negligent mainly because there is a body of opinion that takes a logical reasonable view. The typical rule for assessing the appropriate standard of reasonable care in negligence cases involving skilled professionals. The law imposes a duty of care between a doctor and his patient, but the standard of that care must be in accordance with the responsible body of opinion (medical board), then he is not considered negligent. This is known as Bolam test propounded by McNair J in Bolam v. Friern Hospital Management Committee (1957) 2 All ER 118 in the UK. It has been approved and followed by the courts in India<sup>(10)</sup>.

3)Bolitho case is causation must be proved to bring a claim in negligence and whether the doctor acted by a practice accepted as proper by an ordinarily competent doctor. In his opinion delivered in the Bolitho case, Lord Browne-Wilkinson indicated that experts should direct their minds to the question of comparative risks and benefits in order to reach a defensible conclusion on the matter in question. A clinical conclusion which does not have risk analysis at its heart is not likely to be deemed a responsible conclusion<sup>(11)</sup>. Over time, the Bolam test evolved in the English courts and was made stricter by the Bolitho case. But the Indian courts still follow the

Bolam test.

More than half knew the term civil negligence which means the professional shows negligence but does not cause death of the patient. Less than half knew the term criminal negligence but the punishment given was known by greater number of them. Section 304A[10] of the Indian Penal Code of 1860 states that “ whoever causes the death of a person by a rash or negligent act not amounting to culpable homicide. The doctor shall be punished with imprisonment for a period of two years, or with a fine or with both. ” but this is used to deal with both cases of accidents caused due to rash and negligent motor vehicle driving and also medical negligence leading to the death of a patient.

Sections 80 and 88 of the IPC(Indian Penal Code) contain defences for doctors accused of criminal liability. Nothing is an offence that is done by accident or misfortune and without any criminal intention under Section 80. A private complaint of rashness or negligence against a doctor may not be entertained without prima facie evidence in the form of a credible opinion of another competent .In addition, an independent opinion should be received from an investigating officer, preferably of a government doctor. A doctor may be arrested only if the investigating officer believes that she/ he would not be available for prosecution unless arrested which was known by majority of them<sup>(12)</sup>. Negligence cannot be attributed to a doctor merely because the doctor chooses one procedure over other, he won’t be liable when done with proper care and caution.

Before, doctors were not liable for their services individually or vicariously if they do not charge fees. Now under the torts law or civil law, they can be punished even if the doctor provides free services. Less than a quarter knew that many a time the doctor will also be responsible vicariously, meaning thereby if his employee/servant rashly causes the death of a patient. In that case, the employee as well the doctor will be liable due to the principle of ‘Vicarious Liability’ under Tort law<sup>(13)</sup>.

Burden of proof is on the one who complains. Patient has to try and prove the doctor’s fault. If a patient alleges malpractice in medical field, the law will require a higher standard of evidence to support it. The best evidence available in medical science presented with expert opinion is required by the complainant to prove negligence by the doctor. It was held that negligence has

to be established and cannot be presumed<sup>(14)</sup> and it must be proved by the onus as in *Kanhaiya Kumar Singh vs Park Medicare & Research Centre*. Informed consent, full details of the patient, details of investigations and the treatment provided must be maintained by the hospital as precautionary measures.

### Conclusion

This survey is the first of its kind to assess the knowledge of dentists and make them familiar with terms regarding legal aspects of medical negligence in India. The survey results have shown that there is less awareness among dentists regarding law and medical negligence. Limitations of this study would be choosing the sample in a single institution. In future, research should be carried out on a larger sample to assess the knowledge of dentists, conduct education programmes for evolved dentists, and a subject on the basics of medical law which would include legal aspects of medical negligence must be added to the dental curriculum for evolving dentists since knowledge regarding this is important for both the doctors and patients since both their rights and dignity have to be maintained.

**Competing Interests:** Nil.

**Funding support:** Nil.

**Ethical Clearance:** Obtained from the ethical committee of Saveetha Dental College and Hospitals, Chennai.

### References

- Royce TJ, Dwyer K, Yu-Moe CW, DeRoo C, Jacobson JO, Tishler RB. Medical Malpractice Analysis in Radiation Oncology: A Decade of Results From a National Comparative Benchmarking System. *Int J Radiat Oncol Biol Phys*. 2018 Nov 13;
- K K S R Murt Medical negligence and the law *Indian Journal of Medical Ethics Vol IV No 3 July-September 2007*.
- Medical negligence cases rising: Study - Times of India [Internet]. The Times of India. [cited 2019 Jan 31]. Available from: <https://timesofindia.indiatimes.com/city/delhi/medical-negligence-cases-rising-study/articleshow/57844510.cms>
- Shali DS. Medical Negligence in India: Current Issues and Ethics. 2017;6.
- Bala R, Chanana A. Recent legal aspects of medical negligence. *International Journal of Ethics, Trauma & Victimology* [Internet]. 2016 Jul 29 [cited 2019 Jan 31];2(1). Available from: <http://www.myresearchjournals.com/index.php/IJETV/article/view/11134>
- Jerjes W, Mahil J, Upile T. English law for the surgeon II: Clinical negligence. *Head Neck Oncol*. 2011 Dec 21;3:52.
- State Of Haryana & Ors vs Smt. Santra on 24 April, 2000. 2000;7.
- Nearly 50 Lakh Indians Die Due To Medical Negligence Every Year In Different Hospitals [Internet]. *indiatimes.com*. 2018 [cited 2019 Jan 31]. Available from: <https://www.indiatimes.com/news/india/nearly-50-lakh-indians-die-due-to-medical-negligence-every-year-in-different-hospitals-355619.html>
- (PDF) Doctrine of res ipsa loquitur- Application in medical negligence cases [Internet]. ResearchGate. [cited 2019 Jan 31]. Available from: [https://www.researchgate.net/publication/273771233\\_Doctrine\\_of\\_res\\_ipsa\\_loquitur\\_Application\\_in\\_medical\\_negligence\\_cases](https://www.researchgate.net/publication/273771233_Doctrine_of_res_ipsa_loquitur_Application_in_medical_negligence_cases)
- Agrawal A. Medical negligence: Indian legal perspective. *Ann Indian Acad Neurol*. 2016 Oct;19(Suppl 1):S9–14.
- Samanta A, Mello MM, Foster C, Tingle J, Samanta J. The role of clinical guidelines in medical negligence litigation: a shift from the Bolam standard? *Med Law Rev*. 2006;14(3):321–66.
- Nair MRH. Supreme Court judgement on criminal medical negligence: a challenge to the profession. *Indian Journal of Medical Ethics* [Internet]. 2005 Oct [cited 2019 Jan 31];(4). Available from: <http://ijme.in/articles/supreme-court-judgement-on-criminal-medical-negligence-a-challenge-to-the-profession/?galley=html>
- Ganesh K. Patient-doctor relationship: Changing perspectives and medical litigation. *Indian J Urol*. 2009;25(3):356–60.
- Raveesh BN, Nayak RB, Kumbar SF. Preventing medico-legal issues in clinical practice. *Ann Indian Acad Neurol*. 2016 Oct;19(Suppl 1):S15–20.