

# Death in dental clinic: Indian scenario

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## Abstract

Deaths during dental treatment or as a result of dental treatment are rare, but the unfortunate fact is that such deaths do occur. Unexpected death of a patient can be emotionally draining and even harrowing to his or her relatives. The death of a patient may bring an enormous feeling of anxiety both at the personal and professional level, stress, profound grief, damage to self-esteem, loss of self-confidence, reputation, and specter of litigation on a dental surgeon. No dentist can be guaranteed to be free of such an incident during the course of his or her practice. The dentist should respond in a compassionate and respectful manner in case of such unfortunate tragic events, and also ensure self-protection. This article emphasizes on prevention of such incidents and throws some light on how to respond in case of an unfortunate death in a dental clinic, including the medico-legal aspects.

**Key words:** Death, dental clinic, medical negligence, medico-legal, vicarious liability

## Introduction

A health-care professional is responsible for the well-being of the patients under his or her care. Considering the dental practice in general, most of the dental treatments are non-emergency and are done on outpatient basis. Cases of health emergency primarily due to bad dental health or as a complication of dental treatment are rare, and they often occur due to underlying medical problems. In spite of adequate care, sudden or unexpected death can occur during the dental treatment because of the underlying causes, such as cardiac arrest or epilepsy, and also due to negligence. Deaths during the course of medical treatment are relatively more common when compared to dental treatments. Though the possibilities of deaths during dental treatments are rare, no one can deny it in absolute terms. There are no statistical data available on the number of deaths in dental clinics across India or in other countries.

However, there are aberrant reports of such incidents in the literature. One of the websites reports that 1 death occurs in every 4,00,000 cases where anesthesia is used in dental offices.<sup>[1]</sup> In England, a total of 178 deaths were found to have occurred where general anesthesia was used before dental treatment during the period 1965-1999.<sup>[2]</sup> The dentist may or may not be negligent in causing the serious injury or death of the patient, but often the public assumes that the dentist has done something wrong. The present day scenario forces health-care professionals including dentists to protect themselves from public rage. Through this article, we have tried to emphasize not only on the prevention of such incidents at the first instance but also on how to respond in case of an unfortunate death in a dental clinic, including the medico-legal aspects.

When a death of a patient happens in a dental clinic, the patient's body should be shifted to a nearby hospital and a

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medico-legal case should be registered before conducting the post-mortem. Intimation to the police of the local jurisdiction may happen through the First Information Report (FIR) filed by either the patient's attendants, and relatives or by the casualty medical officer (CMO) after registering the medico-legal case.

The dentist may prefer to inform the police about the unfortunate event for the protection of his own self from the public outrage.

### Arrest of Doctor by the Police

A medical practitioner is not liable to be held negligent simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another. He would be liable only where his conduct fell below that of the standards of a reasonable competent practitioner in his field.

The dentist may be summoned to the court for recording of evidence and cross-questioning. The dentist needs to follow the rule of the land, failing which arrest warrant may be issued.

### Protection to the Doctors by the Courts

To protect the doctors from frivolous complaints of medical negligence, the Supreme Court of India passed a landmark judgment regarding the arrest of doctors in this regard on February 17, 2009. Certain rules laid down in this connection are as follows:

- 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 to support the charge of rashness or negligence on the part of the accused doctor
- An investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion, preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial opinion applying the Bolam test.<sup>[3]</sup>

### What is Bolam Test?

Bolam test helps in identifying the basic principle relating to medical negligence and it has been approved by the Supreme Court of India in Jacob Mathew's case. This was laid down in the judgement of Justice McNair in Bolam versus Friern Hospital Management Committee (1957) 1 WLR 582 as follows:

"Where you get a situation which involves the use of some special skill or competence, then the test as to whether

there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. *The test is the standard of the ordinary skilled man exercising and professing to have that special skill a man need not possess the highest expert skill.* It is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art".

A doctor accused of negligence should not be arrested in a routine manner simply because a charge has been leveled against him. Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest should be withheld.<sup>[3]</sup>

### Legal Battle

Following an FIR by the patient's relatives and registering of an MLC case after the death of a patient in a dental clinic, there can be an investigation by any of the following legal authorities

- State dental council licensing authorities
- The police from the local jurisdiction area
- The local entity that licenses the facility
- Attorneys on behalf of the patients family
- The news media.

During the course of investigation, the dentist will be questioned on his training and qualifications, licenses to practice, the facilities and infrastructure of the clinic, medical records, and records of the procedures done in emergency.

Every dentist must have a valid qualification and license to practice. A dentist whose license has expired or not renewed and one who treats the patient before the issue of a valid license has committed a criminal offence. It is therefore important for the dentist to have a valid license before beginning the practice and registering themselves at the local state dental council that has to be renewed from time to time as per the regulations.

The dentist may be questioned to know whether he or she was adequately trained and qualified to perform the procedure on the patient. It also includes drugs used, type, mode of usage and the volume of drugs. It is expected that the dentist has basic training for the management of medical emergencies that may arise in dental office and what actions the dentist has taken in such a situation becomes important. In case of a medical emergency, dental surgeon must institute standard care including resuscitation in case of cardiac episodes, for which all dental surgeons must be adequately trained in basic life support.

The doctor-patient relationship involves complete exchange of information. A patient should disclose all the facts relevant to his condition. It is advised to record complete medical history of the patient with signature. It is the duty of the doctor to inform the patient of all the risks involved with the investigations and the treatment planned. The patient should then be allowed to make an informed choice about the course of management he would prefer. There is no accepted principle, which permits a doctor to withhold information from a patient, except where the patient has indicated his desire not to be informed. The dentist's notes in the treatment record should be complete and legible. It should also contain details of medicines administered and the procedures done during the emergencies. All notes should be recorded as soon as possible after the completion of the procedure and the records should not be altered.<sup>[4]</sup>

If any request is made for medical or dental records by the patient or authorized attendant or the legal authorities involved, the same may be issued to the competent authority within 3 days after having obtained a valid receipt for all documents. It is prudent to keep certified photocopies of such submissions.<sup>[5]</sup>

Investigators may also question the dental assistants who were present on the day of such an event, to know the level of preparedness and the efforts done at saving the patient's life. The investigators may look for the inconsistencies between what the dentist says and the assistants say about the event.

Investigating agencies usually look for any kind of malpractice that has led to the death of a patient in a dental clinic that may constitute violation of one or more of the following:<sup>[6]</sup>

- Ethical code of professional conduct, as recognized by the Dental Council of India
- Duties of a dental practitioner as enunciated by the Dental Council of India toward the state, patients, profession, and professional colleagues
- Administrative rules of a health care institution or organization governing its functioning or the conduct of its employees including doctors
- Civil law, under the law of torts
- Consumer law, particularly the Consumer Protection Act, 1994
- Criminal law, under various sections of Indian Penal Code (I-P-C) and/- other statutes. An act of gross professional negligence would constitute a criminal act.

### Competent Authority to Initiate Action in Cases of Malpractice

Malpractice is a violation of code of ethics or professional duties, it may be dealt by the disciplinary council of the professional bodies as described in chapter 7 of the revised

dentist's code of ethics regulations (gazette notification no.DE-97-2014, Dental Council of India).<sup>[5]</sup>

The same violations may also constitute violation of the civil law, in which case the aggrieved party may initiate action either in a civil court under the law of torts or in a consumer court.

If the act constitutes violation of the criminal law, action would be initiated by the state, without reference to the aggrieved party.

Even in cases where criminal action is initiated by the state, the aggrieved party might initiate civil action under either the law of torts or consumer laws.

### Court Proceedings and Judgements

The dentist may be served with a summons from the court of the jurisdiction area after submission of the post-mortem reports, and other records by the various investigating agencies as per the law. The dentist may be called for recording of the actual evidence and cross-questioning by the opponent advocate. The dentist has to state the facts that he may have already said to the investigating agencies. Failure to respond to a summons may invite action under section 87, Criminal Procedures Code (Cr-P-C), 1973, in the form of an arrest warrant being issued to compel appearance.<sup>[7]</sup>

The court may pass the judgment considering all the evidences and facts for a claimed medical negligence.

### Medical Negligence

Medical negligence may be defined as a breach of the physician's duty to behave reasonably and prudently under the circumstances that cause foreseeable harm to a patient. Therefore, while an act of medical negligence is a medical malpractice; all malpractices are not acts of professional negligence. Though the two terms often used interchangeably, in a strict sense malpractice is a wider concept with both criminal as well as civil implications.

#### Negligence in dental practice can be due to Administration of drug in incorrect dosage

A dental practitioner is expected to know the correct indications, dosage, precautions, drug interaction, and contraindications of each and every drug he prescribes. The administration of a drug in an incorrect dosage, resulting in damage or injury to a patient *prima facie* constitutes medical negligence.

#### Negligence in anesthetic practice

Local anesthetics are widely used in dental practice and with rapid advances in the knowledge and practice of local

anesthesia; safer and more effective local anesthetic agents are now available. In spite of all these, the administration of local anesthetics involves some element of risk in the form of allergy. It is always safer to check for allergy by a test dose subcutaneously on forearm in every patient. Failure to administer a test dose where indicated-would constitute negligence, and might be viewed even as gross negligence in case of a fatal outcome, provided the person had given past history of allergic reaction. In any anaphylactic reaction, the treatment administered would also be considered in deciding a case of negligence.

**Negligence during an operation**

Example: Injury to major blood vessel, etc.

**Injury during administration of an injection**

During administration of an injection, a patient might be injured in one of the following ways:

- The administration of wrong drug or solution that can result in very serious consequences
- The administration of injection by a wrong method, i.e., intravenous instead of intramuscularly, etc.,
- The failure to administer a test dose where indicated would constitute negligence and might be viewed as gross negligence in case of a fatal outcome, provided the person has given past history of allergic reaction.

**Failure to respond to emergency medical services**

Failure to provide life-saving medical care to a patient is a breach of professional duty. Such failure would be viewed as the failure to comply with the Supreme Court ruling on the subject.

**Failure in respect of attendance and examination**

A practitioner attending a patient must give full personal attention to the case. Failure to respond with reasonable promptness whenever his patient calls him, or carrying out an incomplete examination, or failure to utilize all diagnostic tools that are available and necessary to arrive at a diagnosis, or failure to give proper and complete instructions for the care of his patient amounts to malpractice. It is incorrect to ask another practitioner to examine or treat his case without the consent of the patient.<sup>[6]</sup>

**Criminal malpractice**

It includes an act performed by the doctor, which is a criminal offence. In order to hold a practitioner criminally responsible for the death of a patient, it must be established that his negligence or incompetence was such that it showed utter disregard for the life and safety of others in a manner that amounts to a crime against the state. Such conduct may, therefore, be punished under the criminal law. Where negligence amounts to a criminal offence, the charge would be for manslaughter. In such a trial, the issue is not of negligence but of the commission of a crime. Therefore, the degree as well as the kind of negligence is examined to

prove whether or not the act of negligence or incompetence constitutes a crime under certain provisions of the law such as section 304--A, (I-P-C).

**Criminal negligence may include**

- The performance by a medical man in his professional capacity of an act forbidden by the law, e.g., the performance of an illegal operation
- The display of gross carelessness by a medical practitioner, either by commission, as to make him responsible for the death of, or serious injury to his patient.

Section 304-A, (I-P-C), 1860:- Causing death by negligence- Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both. In cases of gross negligence resulting in serious injury or death, criminal charges might be pressed against a medical practitioner under other sections as well which include section 278, I-P-C making atmosphere noxious to health. Whoever voluntarily vitiates the atmosphere in any place so as to make is noxious to the health of the persons is general dwelling or carrying on business in the neighborhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Section 88, I-P-C Act not intended to cause death, done by consent in good faith for persons benefit with the patient consent, the doctor has committed no offence.<sup>[8]</sup>

**Clinic establishment related [Table 1]**

**Licenses and registrations**

As per the regulations of the Dental Council of India, a dentist is licensed to practice if he or she possesses the Bachelor of Dental Surgery (BDS) degree from any university recognized by the Dental Council of India. And follow the regulations as per the observations of statutes mentioned in Dental Council Act 1948 and its amendments.

**Infrastructure and facilities**

Dental surgeon shall maintain the required infrastructure and facilities for the dental treatments that he or she intends to provide and also be equipped and adequately trained in basic life-saving procedures. Emergency drugs, oxygen facility, airway securing devices, attached emergency ambulance vehicle, etc., should be readily available.

**Table 1: Legal pitfalls to be taken care in dental practice**

Clinic establishment related	Patient management related
Licences and Registrations	Medical History
Infrastructure and Facilities	Consent
Clinical Assistants	Medical Records
	Response During Emergency



### *Clinical assistants*

There are no clear-cut guidelines on the qualifications of the dental assistants; it is in the best interests of a dentist and the dental practice to train all dental assistants in basic life support for emergency preparedness and response. Mock drills are effective methods for reinforcing emergency training. Whenever possible it is good to maintain the log-book of the employees completing such training and of their participation in practice drills.

### **Patient management related issues**

#### *Medical history*

Patient's past and present medical history is important, it is advised to seek additional information of a particular medical ailment or condition that a patient is suffering from and the dentist may choose to communicate or give references to other specialist doctors when required. The patient may declare the medical health or general health status in a standard medical history declaration form duly signed by the patient. Failure to obtain a proper medical history is negligence on the part of the treating dentist.

#### *Consent*

Consent has to be taken for the examination once the treatment is planned for the patient, all the information related to treatment planned including the alternative treatments, the complications of such treatment, and the consequences of not getting the treatment should be informed to the patient. If the treatment planned includes surgical procedures, the risks involved in the anesthesia and surgery *per se* should also be revealed.

#### *Medical or dental records*

Medical records of the patient are important. Every dentist should have medical or dental records for all the patients and preserve them at least for 3 years from the date of commencement of treatment. The dentist's notes in the treatment record should be complete and legible. It should also contain details of medicines administered and the procedures done during the emergencies. All notes should be recorded as soon as possible after the completion of the procedure and once completed the records should not be altered.

#### *Response during emergency*

In case of a medical emergency, a dental surgeon must activate emergency services and provide essential basic life support. The mere presence of the dentist with the patient and not doing what he or she is expected to do in such emergencies, if proven, amounts to criminal negligence.<sup>[5]</sup>

### **Death of a patient during dental treatment in a hospital and dental educational institutes**

Many of the hospitals have dental facilities and do provide dental treatments by appointing a dentist in

their hospitals. The dental educational institutes appoint dental surgeons where the patients are treated by the students under the guidance of the teaching faculty, or by the faculty of different departments. In case of any kind of negligence in hospital or dental educational institution, the concerned management falls under vicarious liability.

### **Vicarious Liability**

The word "vicarious" is derived from Latin, meaning "substitute". The word liability means the state of being responsible for something in law. The rule of vicarious liability holds that a person becomes liable to pay damages for an act of negligence committed by his assistants or agents in the course of their employment or agency.<sup>[6]</sup>

### **Professional Indemnity for Doctors**

In today's litigious world, the patient's claims on medical negligence can pose a significant threat to the financial security of a medical practitioner.

It is always better to be covered by a professional indemnity that can protect the doctors against the following:

- Claims arising out of bodily injury or death caused by error, omission, and negligence
- Legal liability including defense costs incurred while investigations, cost of representation, and compensation.<sup>[9]</sup>

### **Conclusion**

From the olden times in India, doctors have been likened to gods with well-known phrases such as *vaidyo narayano harihi* that means a doctor is an equivalent to god bear testimony to this. Doctors even now command great respect in the Indian society not only because of the attitude of the people toward doctors but also because of numerous exemplary examples of doctors in India who have served the human kind with selflessness and complete dedication. At the same time, there have been various instances of public abusing the doctors physically upon untoward incidents happening to the patient, in spite of best efforts by the doctors. It is not untrue to say that the corporate model of hospitals and clinics have changed the way the doctors treat the patients in terms of advancements enormously benefitting the public at large, it has burdened the public in terms of cost and in certain cases has led to unethical practices. Such changes have definitely influenced a lot on attitude of the public toward doctors.

In the present times, all the treating doctors, dentists particularly, because of the general perception and the high cost involved in dental treatment, have to be extra careful

in preventing any serious injury to the patient and be well aware of the professional negligence and its consequences.

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