



## NEGLIGENCE AND MEDICO-LEGAL CONSIDERATION IN ENDODONTICS

### Dentistry

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### ABSTRACT

Negligence arises when a dental practitioner fails to meet the accepted standard of care in diagnosing, treating, or managing dental conditions. Legal complications often occur due to improper diagnosis, substandard procedures, failure to obtain informed consent, or inadequate post-treatment care, leading to complications like infections, nerve damage, or tooth fractures. To mitigate the risk of legal action, endodontists must adhere to established protocols, maintain clear communication with patients, and ensure thorough documentation, thus safeguarding their practice and minimizing the potential for legal disputes.

### KEYWORDS

Negligence, Endodontic treatment, Legal issues, Consent.

### INTRODUCTION

“Do no harm” is a golden rule in dental practice. As dentistry is a precise and demanding profession and dentists are responsible to protect their patient, update their knowledge of the field, and provide the highest level of evidence-based dental care.<sup>[1]</sup> Endodontic treatment is particularly challenging due to several factors; the environment is of the smallest scale clinically in the oral cavity, it is often reliant on tactile sensation without the benefit of direct vision and requires radiographic examination to diagnose, appropriately treat, assess and monitor. Complications can arise during and after endodontic treatment, which can lead to complaints and litigation initiated by the patient. Dentists have a profound responsibility and follow codes of conduct to act in the best interest of the patient. Any circumstances causing lack of duty amount to negligence and may give a chance to a patient to proceed in the court of law.<sup>[2]</sup> To understand the legal status of the clinical error and to prevent future litigations in the court of law, knowledge regarding the medicolegal aspects of particular clinical scenario with respect to the provision of law is required as a need of an hour.

Negligence is the act of omission or submission of an act that is done by dentist who has not done his job or who had done his job carelessly. The Supreme Court of India has observed that the essential components of negligence are three: 'duty', 'dereliction', and 'damage' as stated in the Law of Torts<sup>[2]</sup>. For an act to be considered negligent, dentist owed a certain standard of care but did not maintain that standard.

### Endodontic Negligence

Negligence in the administration of local anesthesia can involve incorrect technique, improper dosing and failure to review a patient's medical history .Such negligence can result in complications like nerve damage, allergic reactions and toxicity<sup>[3]</sup>. Negligence in proper placement of the rubber dam ,failure to ensure whether it is secured properly ,checking for any gaps or leaks that lead to accidentally swallowing or inhalation of material/instrument during procedure<sup>[4]</sup>. This can lead to serious complications including respiratory distress, choking and even injury to lungs or digestive tract. Negligence involving use of sodium hypochlorite occurs when an endodontist improperly uses the chemical, leading to complications such as extrusion causing severe pain, tissue damage, and infection.<sup>[5]</sup> Negligence involving a fractured instrument during endodontic procedure, occurs when an endodontist fails to handle the instrument properly. This can happen if one uses worn-out instruments, applies excessive force, or deviates from standard procedures, leading to complications like blocked canals, infection, or injury to surrounding tissues.<sup>[6]</sup>

### Legal Issues In Dental Practices

While providing the oral healthcare services, a dentist has to follow certain set of standards to avoid any litigation in the name of malpractice<sup>[7]</sup>. Consent is a fundamental and established principle in the Indian Law. Medical or dental records are documentary evidence as per the Indian Evidence Act, 1872. Healthcare malpractice can be challenged under these main categories in the court of law, that is, civil and criminal depending on the nature of offence and Consumer Protection Act, 1986<sup>[8]</sup>.

### Dentists Are Liable For Negligence Under Four Categories:

1. Tortious liability
2. Contractual liability
3. Criminal liability
4. Statutory liability

#### 1. Tortious Liability (Civil Liability)

When a dentist is directly liable for an act of negligence in his clinic or hospital, it is called primary liability<sup>[8]</sup>. Dentist who is employed by a hospital or institution is often not primarily responsible for negligence. The hospital has the liability for the negligence of an employee. However, if the patient is admitted by a dentist in his personal capacity, then the dentist will be personally liable. The remedy for breach of tortious liability is unliquidated damages as awarded by the judge; it is usually in the form of compensation by cash.

#### 2. Contractual Liability

A breach of any aspect of the implied contract may be considered a contractual liability. However, in most instances if there is no written contract, their liability will essentially lie within the realm of tortious liability<sup>[8]</sup>.

#### 3. Criminal Liability

Criminal negligence is considered to be a crime against society and not just the aggrieved part.<sup>[8]</sup> The important offences inviting criminal liability with regard to negligence are: A rash or negligent act resulting in death, (Sec 304 A IPC), an act endangering the life of a person (Sec 336 IPC), a rash or negligent act causing simple injury (Sec 337 IPC) and grievous injury (Sec 338 IPC). Criminal liability is penal and involves punishment in the form of imprisonment or fine or both.

#### 4. Statutory Liability

A dentist is liable if there is any infringement of statutes. They then become accountable to a statutory body. There are many statutes dealing with practice of doctors and dentists, as well as hospitals. Under statutory liability, dentist is liable some acts such as Bio-medical waste (Management and handling) Rules 1988, Drug prescription policy and Drugs and Cosmetics Act, 1990 and Clinical Establishment

Act, 2010.<sup>[8]</sup>

### Legal Process

Dental negligence falls under section 2 (0) of the Consumer Protection Act (CPA) because Indian Dentist Act had no provision to:

- Entertain any complaint from the patient
- Take action against dentist in case of negligence
- Award compensation

A complaint means any allegation in writing by the complainant that he/she has suffered loss or damage due to deficient services.<sup>[7]</sup> It can be related to deficiency causing discomfort, loss of activity, money, workdays and quality of life etc.

1. As provided under section 24A of CPA, a complaint has to be filed within two years of date on which cause of action arises.
2. As per section 13 of CPA, first a copy of complaint has to be sent to dentist directing him to give his version within a period of thirty days, which may be extended up to 45 days. After 45 days, if no reply is provided, then the court orders contempt proceedings against the dentist.
3. During reply, dentist may deny the allegation of the complaint.

It is mandatory to decide the cases speedily i.e. within a period of three months. If, after the proceedings, the District Forum (one or more district form for each district and jurisdiction up to Rs. 20 lakhs) is satisfied that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things.

- To return to the complainant the charges paid.
- Pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

4. Any person aggrieved by an order made by the District Forum may appeal against such order to the State Commission (one state commission for each state and jurisdiction above Rs. 20 lakhs and up to Rs. 1 crore). It also serves as a supervisory agency and has the power to call for the records and pass appropriate orders in any dispute pending or decided by the District Forum or National Commission (one national commission for entire country and jurisdiction above Rs. 1 crore) acts as an appeal agency for decisions of the State Commission. Where the National Commission has served as the court of first instance the Supreme Court of India acts as the court of appeal. within a period of 30 days from the date of the order. The State Commission may entertain an appeal after 30 days if it is satisfied that there was sufficient cause for not filing it within that period. The State or National Commission is required to decide the appeal as far as possible in their 90 days from the first date of hearing.
5. Where a complaint instituted before the District Forum, the State Commission or the National Commission, as the case may be, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the dentist such cost, not exceeding 10,000 rupees, as may be specified in the order.
6. Where dentist or the complainant fails to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, dentist or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than 2,000 rupees but which may extend to Rs.10,000 or with both.

### Consent

The term consent means voluntary agreement, compliance, or permission. It acts as an evidence that the clinician has sought, and been given, permission to intervene and affect the physical integrity of the patient.<sup>[9]</sup>

#### Types Of Consent

##### 1. Implied Consent

It implies consent to dental examination, when a patient approaches the dentist for treatment. Most dental treatment is carried out while the patient is conscious and they are therefore capable to stop the dentist when they wish to.

##### 2. Expressed Consent (Tacit Consent)

It should be obtained for all major diagnostic procedures. When the

patient expresses his consent verbally it is termed as oral or verbal expressed consent and when express in writing is known as written expressed consent.

##### 3. Informed Consent

It is process of obtaining permission of a subject to participate in research and to give an opportunity to decide about his or her healthcare. It also implies that a dialogue has taken place about the nature of the decision, reasonable alternatives, relevant risks, benefits, uncertainties of the decision, comprehension and acceptance of the health-care decision by the patient / subject.

##### 4. Loco (Consent) Parentis

In an emergency situation in case of children, when parents/ guardians are not available, consent can be obtained from the person bringing the child for dental examination or treatment (For example: school teacher, warden, etc.)

##### 5. Blanket Consent

It is a consent taken on a printed form that covers almost everything a dentist or a hospital might do to a patient, without mentioning anything specifically. It is legally inadequate for any procedure that has risks or alternative.

##### 6. Valid Consent

Valid consent consists of three related aspects:

###### A) Voluntariness

Patients should give consent completely voluntarily without any pressure either from the dentist or any third party (e.g. relatives).

###### B) Capacity To Consent

The patient should be in a position to understand the nature and implication of the proposed treatment and consequences.

###### C) Age Of Consent

The age of consent is bound by legal definitions and within the context of the Indian law. This implies that a person above 12 years age can consent to medical/surgical/dental treatment if it is intended for their benefit and undertaken in good faith. On the other hand, according to Section 11 of the Indian Contract Act of 1872 - a competent person of sound mind who has attained the age of majority of 18 years can legally enter into a contract.<sup>[10]</sup>

#### Consent May Not Be Obtained In The Following Situations:

1. Person suffering from a notifiable disease
2. Spread of infection
3. Examination of immigrants
4. Members of armed forces, handlers of food and products
5. Prisoners and criminals
6. Vaccination
7. Child offenders when the Magistrate makes the request
8. Attempted suicide
9. Medical emergencies

### CONCLUSION

For successful and litigation-free endodontic practice, always promise less and deliver more to the patient. Treating a live human being is a challenging task, and assuring positive results is not always possible in the medical field. In clinical practice, taking necessary precautions are better than managing bigger problems at a later date. Appropriate examination and care when diagnosing and treatment planning will help mitigate problems before they arise. Even if the expected results are not evident after following proper scientific treatment, the dentist could not be held liable in the eyes of law.

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