



HOSPITAL MISMANAGEMENT: ROOT OF MEDICAL NEGLIGENCE

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KEYWORDS :

Scene No. -1

A Pregnant Lady was Struggling to give birth her child in a govt. Hospital where experience Doctors were available with all Basic facilities, But some Hospital staff members who were neither Doctor nor nurses or Trained Midwife, tried to execute her normal delivery in an abnormal & inhuman way in which they pulled the baby so forcibly that body of the child divided in two parts and head of the baby remain in the womb. They killed an unborn child as well as created a life threatening Danger to the mother. A mother lost her child and then had to fight for her own survival.

Scene No.-2

A neonatal ward was full of new born babies, who were kept in the incubators. Suddenly the incubators got over heated and a short Circuit happened and the heating machine got started melting. Some of the children got burned severely. Where it is common news that some rats' bitted new born babies in the hospital, even some of them lost their fingers due to rat biting.

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Scene No. 3

An ICU which is the most sensitive & important part of the hospital. So many government Hospital don't have the Basic infrastructure of ICU like proper oxygen, hygiene, Ventilation, cleaning even some of them don't have fans & bed in sufficient no for the patient. In some hospital sealing is falling on the admitted patients and their attendants. So many Hospitals are in critical stage where reconstruction & Resettlement is must for Healthy Medical Institution. Hospitals are essential for the medical treatment of patient for various diseases and health problem as well as accidental injuries.

As per the provisions stated by the Constitution of India, 1950:

Article-47 --Every state has a fundamental duty to provide proper level of nutrition & life standard with Improve Public health.

Article -39-e every state has to follow some principle of policy regarding health & strength of worker, men women and children.

Article -39- f. Serving the opportunities and facilities to the children to healthy development.

The constitution of India classified 3 lists under **Article 246**, Union list, State List and Concurrent List. These are elaborated in detail by **seventh schedule**. According to **state list** Public health and sanitation Hospital & dispensaries are the core subject matter of dealing by states, Clause No. 6 State List which is associated by the concurrent list's clause no. 26 which is governing medical profession. According to **Article 21** it is our fundamental right to maintain good health along with proper health care services.

Constitutionally we have a strong fundamental scenario of good health of human being as well as animal's welfare but practically state governments are not implementing these policies in an honest manner. Most of states are not taking health issues seriously in concern of hospital and dispensary's management. There are community health centers and primary medical center at the grass root level then dispensaries and hospital at upper level. Establishment of these healths caring institution is not in sufficient nos. There are many villages where villagers still don't have an urgent medical assistance. It is true that in so many incidents, people walk 20-40 km for the required treatment. Some of Health centers or dispensaries don't have appropriate scenario of proper working. There are majority of doctors

who don't want to practice in village or in Interior areas. There are a huge vacuum of the facilities with unavailability of basic Equipment & apparatus for medical procedures. Some time an untrained RMS or the nursing staff manage these center of medical treatment, thus we have to see these kind of horrible example of scene – 1,2,3..... These examples are not limited to the core village areas; big cities and renowned hospital are facing the same things in a different manner. In the big hospital problems also exist in bigger status. They don't have sufficient numbers of doctors in proportionate of patient. There are many testing machines or laboratory mechanism is not working properly and they are not able to provide accurate test result of testing samples. They are a long queue of waiting patient for the surgery dates. An unhygienic atmosphere creates infection possibility and unavailability of beds is a big question on the efficiency of hospital management.

Where one side government health centers & hospital are struggling for their basic requirement with many required improvement related to infrastructures; the free medical treatment under various welfare policies and schemes creating a pressure on govt. hospitals. Free medicines, nominal charges of sample tests and surgeries, free food for patient, refunds policies and other liberal policies are being the major cause of increasing no of patients in govt. hospitals. These are the main & basic difference between the public & private hospitals.

In private hospital there are some positive & negative aspects who affect the ratio of patients. Pvt. Hospitals have high range of health service, expensive consultancy fee, and high admission charges with basic facilities, heavy surgery package, costly medicines and sample test, hidden charges of admitted patients for long period. Monopoly of senior doctor and some time so many hidden conspiracies and criminal activities exist there like extortion of money by creating an artificial medical emergency of patients. Some of the Pvt. Hospitals are connected with the rackets of human organs trafficking. They choose the illiterate, poor & vulnerable patients as an easier and manageable target that cannot fight against their powerful management. They throw heavy bribe on the table of complaining authorities and escape safely & become a sophisticated institution in the society. So many Private hospital charges for the medical service to admitted patient by declaring him in "Coma" or holding on ventilation or artificial life support system, while he had died. Hospital management treats a dead body as a recovery machine who maintain the billing amount regularly. It is an inhuman Tactic to the patient as well as his relatives, who try their best to save the life of their loved one. It is an unethical manner of practice. Most of them are looking like 5 star hotels not like Hospital.

Thus there is an individual status of credibility of each hospital of public or private sector. Now private hospitals are also capturing the common people through implementations of state welfare schemes. Many Government Hospitals has no sanitation, no strong infrastructure and no proper construction, where newly constructed govt. hospital are facing the problems like leakage from roof, falling of fall sealing, defected ventilation and some time mere adjustment on the name of expatriation.

Hospitals deals with medical practitioners on ad-hoc or contract basis pattern for the decrease the work pressure of senior Doctors and resident Doctors but it create an atmosphere of irresponsibility; because junior and temporary staff thinks that there status is not stable so how can be they responsible for any default? On other side permanent and senior staff delegates all problems to these practitioners with the outcomes of delegation. They feel safe for such kind of activities. Same situation seems between the junior residents and senior doctor but conclusively the patient becomes the victim of such conflicts.

Most of private hospital believes in Target system. The management authority imposes duties on doctors to fulfill the targets in each department of hospital. Doctors have to manipulate the patient with the Wrong and incomplete information. They promote the "MR" & their Drug Pharmacists co. for the monetary profit but sometime this tactics create an unavoidable situation of decreasing health of the patient or he has a severe stage of disease without proper treatment.

Responsibilities and Legal Liabilities;

Today so many states applies many policies to improve the health management through Hospital but when hospital are facing self decomposition then how can we trust on them. If a person who goes to hospital for curing health issues and in hospital he got injuries through construction default, any infection through unhygienic & unlearned infrastructure, any transitive disease by improper injecting processes and some permanent disability or illness due to inexperienced staffs experimental exercises, then who will be responsible for that? It is a breach of trust or the violation of **sec. 491 of chapter 19th of Indian penal code 1860**- who is related to the criminal breach of contract of services to the person who is incapable or helpless due to bodily weakness or mental disorder & physical diseases. If a person lost life due to gross negligence of hospital management then who will be liable? if a Doctor operated left eye, kidney hand or leg despite of affected of affected right eye, Kidney, hand, or leg, he will be punished for such negligence but if atmosphere of hospital exist with dangerous scenario of infrastructure & in complete facility, create causes of death of patient than who will be punish for such act? An engineer? An electric workman? Cleaning authorities? Suppliers of medical equipment or machines or the working staff on contractual basis appointment?

If a medical practitioner does an act of gross medical negligence he is liable under Tort Law & The Consumer law and in the case of death of patient he is liable for punishment covered by sec. 304-A; Causing death by Negligence. But if a hospital is not fulfilling the basic requirement and equipments and providing service due to mismanaged management, how can we trust on them? A life saving Institution will become a place where life is in danger than nobody will rush to the Hospital and public Health care Dispensary in an Emergency.

Our Indian Budget share is 21% for Health Improvement but we are still facing that many innocent kids died due to unavailable of oxygen cylinder and many children died due to wrong vaccination. In modern scenario we are living in the advance scientific period but still we are fighting from common diseases like Measles, Tuberculosis, Titnes, dengue, swine flu, cholera, Chickengunia, Kango fever which are increasing in villages as well as in cities, but the district hospitals still don't have a Separated care wing with precaution for Sensitive issues like these Disease.

The Health issue gets the 14th largest Funding this year 2019, about rs. 63,538 coror. From the duration of last 5 years it is increasing continuously, in fact budget 2018 introduced a new **National Health Insurance Scheme** which came as the world's largest one covering 100 million household for Rs. 5,00,000 per year per family. But there is a huge difference between policies & their implementation. A poor implementation can be amended and improved but if there is an offending Negligence than Hospital will be liable. It is not mandatory that every time a Doctor does negligent practice, if a Hospital is breaching the the trust of patient who have surrendered himself to the hospital. But when the hospital didn't pay the attention to the duty of care of Patient and perform their duties carelessly and then the patient affected directly with the injuries or damages, Hospital has to pay for such Negligence (1). Hospital will be liable for not providing appropriate medical facilities which are required for the patient.

Hospitals are liable for medical negligence. If they charge for the their service & medical care and then they can be sued for medical negligence under Tort and well as **the Consumer Protection Act, 1986** as per the Definition of 'service' defined under **sec. 2(1)- CPA 1986**, hospital are similarly liable with the Practitioners in **the concern of Vicarious Liability**, if a Hospital is not able to provide appropriate hygiene & sanitation facility. Thus most of cases hospitals are liable directly. Trust & Transparency both are the essence of Patient & Hospital's reciprocal right & duties. If a hospital is not maintaining the transparency to the patient and their attendants, it will be violation of regulation of **Medical Council of India 2002**, as well as unethical professionalism. Hospital has the duty to provide the treatment record including all information concern to the line of treatment of patient

otherwise it will be treated as deficiency of service, which will be govern by the CP Act, 1986. The tactic of unwanted & unnecessary physical tests, manipulated fee charges, bluffing in provided facilities, creating an unsafe atmosphere and an improper maintenance resulting the life threatening injuries or death to the patient & other people in hospital. These will also count in medical negligence. The person or the management who run or management of the hospital have the same legal duty as the practicing Doctor (2),(3).

In our Indian society, if a Doctor is traded as the Avtar of god for the patient who is standing on the edge of death. A hospital is like a Temple where the entire Patient comes for their good health. That's why responsibility of a hospital increases professionally ethically and morally. For the sake of kindness and serving the humanity it is must for the Hospitals that they should run their management with the compassion and pity, not as the recovery mechanism with the intention of looting the attendants and earning profit by playing with their emotion & helplessness, because it is not our inherent culture to be materialistic by preferring it is not our inherent culture to be materialistic by preferring only monetary relief. Our culture is to pray for wellness of healthy wealthy & happy people of the society which is the supreme virtue of humanity.

सर्वे भवन्तु सुखिनः, सर्वे सन्तु निरामया।
सर्वे भद्राणि पश्यन्तु या कश्चित् दुःख भाग्भवेत्॥

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