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RESEARCH ARTICLE

PROFESSIONAL DEVIANCE IN MEDICAL FIELD - A TIME TO RETHINK

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ABSTRACT

Medical profession is the noble profession as it directly concerns with saving the life of human being. Earlier doctors were treated like God by "thankful patients" who think them as Saviours of human race. With increasing general health and legal awareness doctor- patient relationship have no longer been a healthy relationship and transformed into a service provider and consumer relationship. Doctors are proud of their noble profession and fully aware of their responsibility towards their patients. Though, majority of doctors are decent and law abiding citizens of medical ethics, few are associated with malpractice and act illegally only for greed of money. This professional deviance not only harms the patient's health but also encouraging white collar criminality in the medical profession and the society.

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INTRODUCTION

Unlike other professions, medical profession is far different in serving to humanity. Doctors were considered as Gods by patients until the enactment of Consumer Protection Act (CPA). Increasing general awareness among masses and influence of negative publicity of doctors in the media, this noble profession of health services is looked upon with doubts and suspicions. Nowadays doctors are maltreated by patients and their relatives, causing assaults to doctors and initiating litigations against them for compensation. Still doctors are proud of their profession and serve the patients with ethics and responsibility.

Doctors are considered as most reputed and responsible citizens of the society. They are considered to be inculcated with principles of moral and ethics. But, sometimes it has been heard about commission of illegal acts by medical professional violating their professional and legal norms. Usually in the entire tenure of medical profession, the health professionals could add good money in to his income and pay taxes honestly. But there are also doctors who involved in the corruptions, including issuance of false medical certificates, helping illegal abortions, providing secret services to criminals, by giving expert opinion in criminal cases leading to acquittal of true criminals and selling sample drugs and medicines to patients or chemists. Dilatory tactics adopted by few members of this profession in treatment of their patients with the only view to extract huge amount of money from

them, is a big black spot on this profession. For such professionals it has become an accepted norm, particularly with those who do not have a good practice or having only a marginal earning.

Doctors are also human beings having their own needs of life. They are considered as white collar personality without any defect and expected to have morals, ethics and professionalism while treating their patients. But as a human being to fulfill the never ending demands, some doctors get involved in unethical practice in their profession leading to white collar crimes. Like other professions, medical profession could also offer lucrative opportunities for the criminal acts and unethical practices, which is the main cause for loss of faith over this profession. Crime in medical profession enhances day by day which is essentially an outcome of competitive economy.

The well known Hippocratic Oath is still subscribed to all graduating students in many medical schools or if they do not actually take the oath, they accept its philosophy to profess ethically. But today such noble profession of medical services become the part and parcel to such deviance. "Deviation" is interpreted as a frank violation of an operational rule, or a variation in practice that departs from standard and increase in risk to people. Professor Sutherland defined White collar criminal (WCC) as, "A person of upper socio-economic class who violates the criminal law in the course of his occupational or professional activities". James Cameron, an eminent journalist described in the following words: "it is denied by

nobody indeed, the totality and persuasiveness of India, corruption is almost a matter of National pride". A WCC is more dangerous to society than ordinary crimes, because the financial loss to the society from WCC is much more than other known crimes such as burglaries, robberies etc. and the injury or damage caused as a result of WCC affects large body of society.

In the recent era W.C.C. are mostly related to health, wealth, weight and measures, food, standards, insurance, banking, tax matters and computer related crimes such as banks frauds, insurance frauds, counterfeiting, drug trafficking, human trafficking are all master planned crimes by well educated persons or professionals.

Implication of medical professional deviance or white coat crime (Wcc) in modern society

Financial loss to the patients

Financial loss of patient and society at large from Wcc is probably much more than the financial loss from traditional crimes.

Social damage to morals

Ordinary crimes cause some inconvenience to the victims only and occasionally, when repeated in succession causes great loss to general community. But medical professional deviances destroy the moral and ethics and promote social disorganization. Since these crimes are generally causes violation of trust, they create the feeling of distrust towards the medical profession not for that victimized patient but also evenly spread out to the entire community.

Types of deviances

1. Professional deviance
2. Official deviance
3. Police deviance

Professional deviance is adoption of such practice by professional which is not expected to adopt. Every Profession has some code of conduct, to be followed by such professionals. In simple words professional deviance denotes those activities which do not conform to the norms and expectations of the members of a particular profession.

Causes of increased cases of professional deviance in the medical field

Increased industrialization, urbanization, growing competitive tendency, greed and lack of morals, ethics and lack of vigorous punishment are some causes of any types of deviance. There are some additional causes for such deviances are as follows.

1. Majority of people in our country are poor and illiterate and economically backward. They blindly follow what the health professional advised to them due to the trust on the doctors. They do not have adequate knowledge so they become easy prey for exploitation by such professionals. Whereas educated people who are well aware of such illegal acts of these professional deviants, are helpless to fight against such practices based on money, flattery and opportunism.
2. Increased professional deviance due to strong back up of corrupt politician, who always support them to perform their illegal activities. In return such deviant

professionals finance politicians at the time of election or help them in any illegal acts.

3. Changing tendency of people to accumulate wealth by all means, when they find acute shortage of jobs and other opportunities for their children, as there is no guarantee from the State to provide livelihood.

Medical negligence and professional deviance differentiated

Negligence is define as, "Omission to do something which a reasonable man would do or doing something which a prudent and reasonable man would not do".¹ In cases of medical negligence, the person is bound to have certain standard of duty and care by his professional ethics and he fails to accomplish that duty and care. In negligence, there must be element of 'guilty mind' i.e. *mens rea* and also due to that act the patient has suffered injury /damage. Also subsequent damage should be closely related (nexus) or inter related.

Whereas professional deviance in medical field includes, deviation from ethical norms and morals of that profession such as issuing false medical certificates, performing illegal abortions or by giving false expert opinion in criminals cases etc.

Ethical Malpractice

Violation of Ethics of medical practice in any form is considered as ethical malpractice. No fine is imposed for it but it invokes the condemnation of the professionals in the field. When such complaint has lodged and facts have proved that the practitioner is guilty, the name of that Medical Practitioner would be removed from the rolls of the Medical register and his practicing licence would be cancelled or suspended.

Criminal malpractice in Medical profession

1. Medical examination of a female patient: Medical examination of a female patient without her consent amounts to criminal malpractice. The treating doctor should obtain the consent of the female patient or her guardian for her medical examination. A male medical practitioner should always examine a female patient in the presence of another female (Section 18 of the Workmen's Compensation Rules, 1924).
2. Performing a professional duty under the influence of drugs or an intoxicant amount to an act of criminal malpractice. Eg. A registered homeopathic practitioner prescribed the administration of a dose of stramonium to be taken with a leaf of "Dhatura". On consumption of which the patient died. Since 'Dhatura' leaf is a poisonous substance which does not constitute a part of Homeopathic medicine, its prescription without thoroughly studying its effect was held as rash and negligent act punishable under Section 304 – A of I.P.C.

Deviances/malpractices which are commonly committed by the person belonging to medical profession include

1. Submitting false post mortem reports, prepared by the examiner doctor to shield criminals and murderer.
2. Issuance of false Medical certificate.
3. Demanding and receiving commission from suppliers of medicines, other equipments and instruments to hospitals.
4. Selling of medicines, injections and X-ray films, etc. which are supplied to public hospitals to private shops by the doctors and associate staff.

5. The most common instances are illegal abortions, which includes procuring, assisting or attempting to procure illegal abortions.
6. Performing pre-natal sex-determination test, which is banned by Indian law and after confirmation about female foetus doctor help to abort and kill that female foetus.
7. Presenting false medical reports in rape cases and dowry deaths to save the criminals from hands of prosecution for money.
8. Patients who come for operation and treatment at public hospitals and having personal contact or influence upon doctors or who otherwise please them with monetary consideration reported to be attended with particular attention and preference.
9. Making fake, illegal and misleading claims of medical cure through advertisement in newspapers, magazines, radio and television.
10. Prescribing medicines which one is not authorized to prescribe having regards to his training or the system of medicines. Like an Ayurvedic doctor prescribing allopathic medicines.
11. Some doctors attend the patient who has been under the care of another practitioner or sometimes attend patients when under the influence of drink and drugs just because of monetary gain.
12. Not attending the patient who is already under his treatment if doctor's illegal demands are not fulfilled by such patient or from his family members.
13. Some doctors provide secret services to criminals by giving expert opinion in court of law leading to their acquittal.
14. Doctors, avoiding consultation in certain situation without care of life of patient e.g. In case of poisoning when diagnosis is in doubt or when any case has taken a serious turn and operation is to be performed immediately or if there is any accident case occur in hospitals.
15. Treating the patient or refusing to treat patient solely on religious or personal grounds.
16. Kidney racket is a most illegal practice adopted by few devil doctors with the help of some criminals. They purchase kidney from poor and needy persons for very low price and then sell it with great profit. Sometimes at the time of serious operations steals kidney from patient's body, such cases are common today.
17. Advising unnecessary expensive tests and reports just for gaining marginal cut from that test.

Controlling measures for medical deviance

1. Through Governing bodies and enactment.
2. Social awareness and imparting education about morals and ethics.
3. Execution of stringent punitive laws to such deviance.

These are following Acts to regulate code of professional conduct and professional ethics:

1. Indian Medical Council Act, 1956
2. Indian Medical Degree Act, 1916
3. Indian Dentist Act, 1948 etc.

All above Acts with their amendments enumerate rules and code of conduct, known as professional ethics.

Cases of medical deviance in India

Syed Akbar vs. State of Karnataka case²

Criminal malpractice occur, when a doctor during the course of treatment violates the provisions of penal law and subject himself to prosecution by the state or to a complaint by the concerned party.

Facts of the case: A plastic surgeon may alter the features of ridge characteristics of a criminal to erase the identification so that his foot print / full proof identification mark gets destroyed which generally happens in United States of America and some advanced country which amounts to an unlawful act. A doctor is duty bound to report all cases of violence coming to his knowledge, in which the commission of criminal acts suspected. If he fails to abide by this provision of the law, he will be liable for punishment under Section -202 of Indian Penal Code (I.P.C.).³ A doctor, if willfully make false a birth or death certificate or prepares a fraudulent affidavit for any purpose or willfully attempts to conceal the nature of a criminal act, is making him liable for criminal proceeding.

Jaggan Khan vs. State of MP⁴

A Kaviraj, who was not a qualified Surgeon, cut the internal piles of a patient by an ordinary knife resulting of which the patient died of profuse bleeding. The Kaviraj was convicted under Sec.304-A IPC for his rash and negligent act. He pleaded for the benefit of Sec. 88 of the IPC saying that what he did was in good faith and he had obtained the consent of the patient and in the past he had performed several operations of same type. His plea was unacceptable to the court and he was held liable.

Parmananda Katara Vs. Union of India⁵

Supreme Court gives a bold judgment that, it is the professional obligation of all doctors whether Government or private, to extend the medical aid to injured immediately to preserve the life without waiting legal formalities to be completed with the police under Criminal Procedure Code (CrPC). Article 21 of Indian Constitution, casts the obligation of those who are in charge of the health community and preserve life so that the innocent may be protected and the guilty may be punished. The given judgment by S.C. is a very significant ruling of the Court. It is submitted that if this decision of the court is followed in its true spirit it would help in saving the lives of many citizens who die in accidents because no immediate medical aid is given by the doctors on the ground that they are not authorized to treat medico-legal cases. When all doctors of this country would follow the rulings of the court earnestly and devote their profession for the services of patients and needy people of society that would become the true inspiration beyond the concept of professional ethics.

DISCUSSION

Saving the life of human is the noblest deed of all. Doctors directly deal with life of patient and at times when patient is most vulnerable with the immediate of life and death, health and illness become dependent upon the technical knowledge and integrity of doctor. Thus, doctor has the unique involvement with his patient. But only to satisfy their own greed, certain criminal minded professionals play with the life of patient and perform all illegal acts in order to collect more and more money. Nowadays private hospitals are equipped

with all latest technologies with skilled doctors and staff. To maintain prestige of such hospital and their doctors they need lot of money, which they collect illegally from patients. These persons may not break the law but they violate its spirit and commit crimes which are not only anti-social but also injurious to patient's health.

However this is not to say that, all doctors are deviants or performed illegal practices. Large numbers of doctors are most sincere, having great concerned towards their patients and also have concerned towards moral, ethics of their profession and their main aim is to maintain honor of this noble medical profession.

In today's modern society social, economical and political offences are increasing abundantly with multifaceted problem. In our country where large scale starvation, mass illiteracy and ignorance affect the life of people, such socio-economic crimes create havoc especially when affected the noble profession of health. Barnes Teeters define W.C.C. as "A violation of criminal law by a person of upper socio-economic classes in the course of his occupational activities and such crimes adversely affects the health and material welfare of the community and threatens the entire economic fabric of the society."

It is clear that the growing problem of socio-economic crimes shocks the bone-marrow of the economic and health structure of our nation. Majority of health care providers are well mannered, law abiding citizens and follow ethical principles to save human life. But, only because of few deviant doctors whole medical profession is unnecessarily blamed today. Such deviant doctors refuse to follow the principle of medical ethics, which are laid down by medical council of India or respective council. They never devote their services to their patients and needy people of the society. They only work for money and deviate from the true inspirational concept of medical professional ethics.

Control of deviance in medical profession is a crucial task for the criminal justice administration in our country. Nowadays India is totally in the grip of such socio-economic offences. The reason of enormous increase in such crimes in recent decades is found to be greed for money and prestige, dream of luxurious life and fast developing economy.

CONCLUSION

This article enlightens about the evil practices developed in the noble profession of health. Like other prestigious professions, medical profession has also been in the grip of deviance and corruption. This noble profession not only affects the economy but also affects the health of society at large. But only because of few greedy people in this noble profession it is wrong to blame the entire community of health care providers, because every doctor follows ethical principles of morality to save the life of every needy patient.

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