

The Doctrine Res Ipsa Loquitur (The Things Speaks Itself) and its medicolegal aspects according to Ayurveda w.s.r. Panchkarma Procedures

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Abstract:

Introduction: *Res Ipsa Loquitur* is a Latin phrase that means the thing speaks for itself. It is a very popular doctrine, in the law of torts. In cases, where the evidence is itself sufficient to prove the guilt of the defendant, so out of any circumstantial evidence or an object which itself show that an act has been committed. It shows that the accident would not have occurred if the defendant had not been negligent. If the complainant cannot prove negligence on the defendant's part, the defendant cannot be made liable. So, the principle of *Res Ipsa Loquitur* came into action under which a litigant can use circumstantial evidence to establish negligence.

Aim: To Study the situations where *Res Ipsa Loquitur* is applicable related to *Panchkarma* procedures

Objectives:

1. To Study the *Res Ipsa Loquitur*
2. To create awareness about medical negligence in *Ayurveda* practitioners

Material and Method: Several *Ayurvedic* classic texts, research journals, and websites were consulted as sources for this study.

Discussion: In *Ayurveda* in many situations *Res Ipsa Loquitur* is applicable. *Ayurvedic* treatment, especially *Panchakarma* therapy, is successfully receiving greater attention in this day and age of new emerging diseases. However, *Panchkarma* treatment can even be fatal if it is administered by an unqualified individual, performed incorrectly, or without following the necessary safety protocols.

Conclusion: Before performing *Panchkarma* procedures, *Ayurvedacharyas* must be aware of the potential complications along with suitable treatments, as well as the laws concerning medical practice. Therefore, it's important to increase awareness among *Ayurvedic* professionals.

Keywords: Medical negligence, *Res Ipsa Loquitur*, *Ayurveda*, *Panchkarma* procedures, Consumer protection act.

Introduction:

The main objective of doctors is to improve the quality of life of people and reduce sickness and suffering. They treat people as their knowledge and expertise. So doctors must exercise an ordinary degree of skill; if they fail to do so, that act becomes a negligent act.

Medical negligence may be defined as want of reasonable degree of care and skill or wilful negligence, on the part of a medical practitioner in the treatment of a patient with whom a relationship of professional attendant is established, so as to lead to his bodily injury or to the loss of his life¹.

The Latin phrase "*Res Ipsa Loquitur*" means "the thing speaks for itself²". In cases, where the evidence is itself sufficient to prove the guilt of the defendant, so out any circumstantial evidence or an object which itself shows that an act has been committed. It shows that the accident would not have occurred if the defendant had not been negligent.

After the Consumer Protection Act^{3,4} came into force some patients registered legal cases against doctors after that it was seen that some doctors were negligent in their medical service, and they claimed and received compensation.

Panchkarma therapy is successfully gaining more and more attention in this era where there are many diseases arising due to lifestyle and environmental changes. *Panchakarma* treatment can be even life-threatening if it is not done by a qualified person, done inappropriately, and if not using proper precautions.

As patient's safety is more important, there is a need to create awareness among *Ayurveda* practitioners about medical negligence, especially *Res Ipsa Loquitur*.

Aim: To Study the situations where *Res Ipsa Loquitur* is applicable related to *Panchkarma* procedures

Objectives:

1. To Study the *Res Ipsa Loquitur*
2. To create awareness about medical negligence in *Ayurveda* practitioners

Material and Method:

Various *Ayurvedic* classic texts including *Charaka Samhita*, *Sushrut Samhita*, *Ashtanghridaya*, *Manusmriti* and *Kautilya Arthshastra* were consulted as source material. Apart from this, various research journals and websites have been thoroughly explored.

Examples of Res Ipsa Loquitur:

1. Failure to give anti-tetanus serum in case of injury causing tetanus.
2. Burns from the application of hot water bottles, from x-ray therapy, or cauterization.
3. Giving poisonous drugs carelessly.
4. Breaking of needles while giving an injection.
5. Blood transfusion misadventure.
6. Failure to remove the swabs during the operation may lead to complications or cause death.
7. Failure to remove the instruments during operation may lead to complications or cause death.
8. Loss of function in any limb as a result of prolonged splinting.

Examples of Medical Negligence and Res Ipsa Loquitur in Ayurveda practice (Especially in Panchkarma procedures):

1. Not taking consent before *Panchkarma* procedures.
2. Burns from the application of *Swdana*(Sudation or *Ayurvedic* sweat therapy) by *Swedanpeti* or *NadiSwedan*(Tube sudation method).
3. Burns from the high temperature of the oil while performing *Shirodhara*.
4. Burns during *Agnikarma*(Thermal micro cauterization).
5. Burns during *Ksharkarma*(Application of Alkalis in treatment).
6. The patient got HIV and HBV while performing *Siravedha*(Controlled bloodletting through veins).
7. The patient goes into shock due to heavy bleeding while performing *Siravedha*.
8. Not choosing *Bastinetra* according to the patient's age which further causes harm to the patient.
9. Poisoning from *Jalauka*(leech) while performing *Jalaukavcharan*(leech therapy) because of not checking the poisonous- nonpoisonous nature of *Jalauka* (leech)
10. Death due to *Viddhakarma*(Micro-needling therapy) due to *Marmaghata*.
11. Not stopping anti-platelet treatment (Ecosprin, Clopidogrel, Warfarin, etc.) before the *Raktmokshana* procedure (Therapeutic bloodletting).
12. The patient goes in shock due to not measuring blood pressure before or during the *Panchkarma* procedure, particularly in the case of *Virechana*(Therapeutic Purgation)/ *Vamana*(Therapeutic emesis).
13. Not appointing female attendants while performing the *Panchkarma* procedures on female patients.
14. Giving poisonous drugs carelessly.

Essentials of Res Ipsa Loquitur^{5, 6}:

1. Presence of Negligence
2. Control by the defendant
3. Freedom from Contributory Negligence

1. Presence of Negligence:

For the element of *Res Ipsa Loquitur* to be made applicable in any case, the accident should be such as which could not have happened if the ordinary course of things had happened without negligence.

Ex. *P. M. Ashwin (Master) v. Manipal Hospital* ^{7, 8}

Both the legs of the plaintiff, a new born baby were burned and scalded permanently on account of an extremely hot water bag kept by the nurse in the operation theatre while an operation was going on. Admittedly, the heat was transmitted to the legs of the baby from a metallic platform on which the baby was kept. The doctrine of *Res Ipsa Loquitur* was held applicable. Compensation of Rs 12,50,0000 was granted, as detailed below:

- (a) For injury sustained by the child Rs. 2.00 lakhs
- (b) For pain and suffering to the child Rs. 2.00 lakhs
- (c) For future loss of ability, medical treatment such as plastic surgery etc. Rs. 1.50 lakhs
- (d) Pain and agony to the parents Rs. 2.00 lakhs
- (e) Unliquidated damages for negligence on the part of the respondents Rs. 5.00 lakhs.

The defendants were held accountable because they were unable to establish that they had not been negligent. Nurse and doctors had to take extra care during operation, the defendants will be held liable for the same under this principle. In such cases, direct evidence of proving negligence is not important, but the complainant has to establish a prima facie case, either by direct or circumstantial evidence of the defendant's negligence.

2. Control by the defendant:

The event that resulted in the damage must be directly under the defendant's or his representative's control. It may not always be necessary for the defendant to have control over every aspect of the situation, but if the actions leading up to the events were in the hands of someone else instead of the defendant, then the event alone is not enough to convict the defendant.

Ex. *Nihal Kaur v. Director, P.G.I., Chandigarh, 1996*⁹

Scissors or other instruments were left in the body of a patient during an operation. Then his condition worsened and he died. After cremation, scissors were discovered among the ashes. The defendants of the deceased received a judgment of Rs. 1, 20,000.

3. Freedom from Contributory Negligence:

The third criterion for the concept is that neither the plaintiff nor any other party contributed to the harm that the defendant suffered. If it is found that the complainant or third party contributed to the act that caused damage to the complainant, then the principal shall not apply.

Ex. *Md Aslam v. Ideal Nursing Home*^{10, 11}

Chand Bibi wife of the complainant was operated upon for the removal of uterus. During the postoperative period, despite the repeated medical advice she consumed cream, *roti*, meat and *dal, puri* and fried egg. The sutures disrupted and she had to undergo an emergency operation to close the abdomen. During last part of the closure of the abdomen, patient developed cardiac dysrhythmia and hypotension. A cardiac specialist was immediately called to attend and after treatment when the cardiologist gave clearance, the further stitching to close the abdomen was performed, but she died next day. The National Commission held that there was no delay in conducting the operation and on record it was clear that the patient was not following the advice given to her. Since large number of people was visiting the patient, it might have caused the infection. Appeal dismissed without costs.

Res Ipsa Loquitur in Medical Practice:

Res Ipsa Loquitur is a legal doctrine that is applied when a patient suffers harm as a result of a medical professional's negligence. *Res Ipsa Loquitur* is applicable only where it can be established that there is some tangible evidence of the negligent act.

Ex. *Mrs. Aparna Dutta v. Apollo Hospital Enterprises Ltd., 2000*¹²

As there was discovered to be a cyst near one of her ovaries, the plaintiff underwent surgery to have her uterus removed at the defendant's hospital. The hospital surgeon who conducted the surgery erred by leaving an abdominal pack inside the patient. A second procedure removed the same. The case of *Res Ipsa Loquitur* was held to apply when foreign material was left in the body after the procedure. To make up for their negligence, the hospital administration and the surgeon were ordered to pay the plaintiff Rs. 5, 80,000 in damages (Rs. 80,000/- by way of special damages, besides Rs. 5,00,000/- as damages awarded to the plaintiff for the pain).

Where the maxim does not apply:

When the sole conclusion to be drawn from the circumstances is that the accident would not have happened but for the defendant's negligence, the maxim "*res ipsa loquitur*" is applicable. The rule does not apply when there are conflicting possibilities for inference or when it is unclear what caused the negligence.

Ex. *K. Sobha v. Dr. Mrs. Rajakumari Unithan, 1999*¹³

The 35-year-old plaintiff, who had an 8-year-old son, sought advice from the defendant who was a gynecologist, regarding the failure to conceive another child. She had been told to do test tubing to clear any potential fallopian tube obstructions. With the plaintiff's consent, the essential procedure was performed by simply blowing air into the vagina using the instrument while applying controlled pressure.

Subsequently, some infection occurred in the complainant's reproductive system and the same had to be removed. There was no evidence to suggest that the defendant was negligent in any way that may have led to the infection. But the infection's origin remained unidentified. As a result, it was determined that the case did not involve *Res Ipsa Loquitur* since the case's facts did not support the inference of negligence.

Medicolegal aspects Ayurveda point of view:

In *Ayurveda Aacharya* mentioned the good and bad qualities of *vaidya* and guidelines regarding behavior. In *Samhitas*, the word "*Mithya*" which means false, illusive incorrect, erroneous, wrong, and improper, has been used to describe negligent medical treatment. In *Charaka Samhita* used this word in the sense of wrong treatment. In *Sushruta Samhita*

uses the word "*Mithyopchara*" in the sense of improper conduct. *Charakacharya* in chapter 9 of *Sootrasthana* of *Charaka Samhita* states that good knowledge, practical experience, cautiousness, and purity of mind are four attributes desirable in a doctor i.e. *Vaidyaguna*¹⁴. *Charakacharya* clearly outlined four ethical principles of a doctor are sensitive nature and friendliness towards patients, enthusiasm towards curative treatment and telling the truth about incurable diseases i.e. *Vaidyavritti*¹⁵. He had further defined '*Praanabhisara vaidya*' *Vaidyavritti*¹⁶ i.e. life saver. As per *Charakaachaarya* '*Praanabhisara vaidya*' is who conversant with treatment which breaks the pathological process, having knowledge about mode of action of drugs used in treatment. He should have good memory, understanding power and intelligence to apply it at right time with logical reasoning.

According to *Sushrutaachaarya*, a person must meet two basic requirements in order to be eligible to pursue a career in medicine: they must have studied extensively and be familiar with key aspects of medical science, as well as have witnessed and experienced key procedures. *Acharya* goes on to say that performing surgery or engaging in the medical profession required the king's consent¹⁷. Present day also medical professionals are required to register before beginning their practices.

Medicolegal issues also may arise by *Vaidya*, so that is why instructions are given through the terms like *Shishyopnayana*, *Vaidya Gunas*, *Yogyasutriya*, *Updrava*, *Sadhya Asadhyata*, *Krityaakrityavidhi*, *Yantra Shastra Gunas* in *Sushruta Samhita*.

Medicolegal issues may arise when there will be *Aatiyoga* (complications) of any procedure like heavy loss of blood during *Siravyadha* can lead to death, toxic *Jalauka* (Leech) application lead to pain, cosmological harm, and death, burns during *Agnikarma*, *Swedana*, and *Ksharkarma*, for these consequences practitioner is liable for punishment.

In the ancient era "*Manusmriti*"¹⁸ lay down comprehensive measures for the protection of human being from irresponsible Physicians. He told that a quack is to be fined heavily. The penalties provided by the king in the cases of negligence of the physicians varied as per the severity of the lapse on the part of the physician and taking into account all other accompanying circumstances. "*Kautilya's Arthashastram*"¹⁹ states that if the death of a patient occurs due to the carelessness of a physician, he should be punished with a middle level of penalty, i.e. 500 *Pana* (silver coins) and growth of disease due to negligence or indifference of physician should be regarded as assault or violence. However, the damage for medical negligence varied based on the severity of injury or loss of life. *YajnavalkyaSmriti*²⁰ mentioned 1000 *pana* as the highest penalty for medical negligence.

Discussion:

Since the Consumer Protection Act was enacted, there has been an increase in litigation against doctors; as a result, physicians anticipate playing the defensive position.

In ancient times laws were limited to *Vaidya* and the king, but nowadays things are changed many rules related to the medical field have come into focus and people are also aware of laws.

The causes of litigation for a doctor can be; ignorance of concern laws, non-communication, misinterpretations, incomplete knowledge, lack of practical skills, etc. The patient wants to sue the doctor for negligence, irrespective of the reason.

Before performing any kind of *Panchkarma* procedure consent should be taken from the patient or the patient's close relatives, If not taken and if an undesirable incident occurs then the doctor can be punished with negligence. Likewise every *Ayurveda* practitioners should keep medical records of IPD patients for 10-15 years, OPD patients for 3-5 years and medico-legal registers and case sheets for 10 years or till the disposal of ongoing cases²¹. The ten complications together mentioned for *Vamana* (Therapeutic emesis) and *Virechana* (Therapeutic Purgation) karma are *Adhmana* (Bloating), *Parikartika* (Anal fissures), *Srava* (Over secretions), *Hrudgraha* (Tightning of the chest), *Gatragraha* (Tightening of body), *Jeevadana* (Hypovolemia), *Vibhramsha* (Light headedness and joints), *Sthambha* (Stiffness of body), *Upadrava* (Complications in form of various diseases) and *Klama* (Fatigue)²². These complications are caused either due to *atiyoga* or *ayoga* of the therapy. Complications of *Basti* (Medicated enema) are *Ayoga*, *Atiyoga*, *Klama*, *Adhmana*, *Hikka* (hiccups), *hrutparapti* (Regurgitation), *Urdhvaprapti* (Vomiting), *Pravahika* (Dysentery), *Shirarti* (Headache), *Angarti* (Body ache), *Parikarti* (Anal fissures) and *Paristrava* (Anal oozing) etc²³. Other *Panchkarma* procedures also may lead to complications like allergic reactions, swelling and infection from leech application, scalds (damage of the skin because of moist heat) due to hot oil in *Snehana* (OleationTherapy) procedure and during *Swedana* (steam bath), profuse bleeding in case of *Siravedha*, blindness and deafness in case of *Dhumpana* (Medicated smoke) and vasovagal shock due to *Uttarbasti* (Insertion of medicated oil or decoction through vagina and uterus after *Shodhana*).

Prior investigations should be done by *Ayurvedacharya* for instance prior to *Siravedha*, tests for bleeding time (BT), clotting time (CT), prothrombin time test, and international normalized ratio (PT-INR) should be carried out. Ultrasonography of abdomen should be done before *Virechana* to rule out cholelithiasis and any other obstructive ailments. Before *Vamana*, blood pressure needs to be measured to prevent any medical issues. Instructions must be given in emphasized manner preferably in written format in case of literate patient in his understandable language or mother tongue. In case of an emergency, *Ayurveda* practitioner should have emergency medications, an ECG machine,

and access to hospitals with emergency departments. As well as *Ayurveda* practitioners should have indemnity insurance policy for safe practice.

Therefore, *Ayurvedacharyas* should be aware of their medico legal consequences while performing *Panchkarma* procedures due to the possibility of any errors landing into medico legal situation²⁴. Additionally, practitioners of *Ayurveda* should be knowledgeable about allopathic medicine if they are engaged in allopathic practice²⁵.

Conclusion:

Res Ipsa Loquitur is applied primarily in all prima facie cases, where at first instance the negligence on the part of the defendant is evident and without which the injury would not have occurred. In this situation, the defendant must provide evidence that eliminates the presumption that he was negligent.

Res Ipsa Loquitur can also apply to an *Ayurveda* (*Panchkarma*) practitioner who is negligent, so doctor must possess consent for procedures like *Agnikarma*, *Siravyadha*, *Jalaukavcharana* and other *Panchkarma* procedures.

Before performing *Panchkarma* procedures, *Ayurvedacharyas* should be aware of the potential complications along with suitable treatments, as well as the laws concerning medical practice.

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