Clinical Investigation

Survey of anaesthesiologists' reactions to implementation of laws related to anaesthesia practice

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ABSTRACT

Background and Aims: The anaesthesiologists' understanding and knowledge of law has an important bearing on issues, related to anaesthesia practice. Lack of such knowledge could also lead to misperceptions affecting both patient care and professional practices. The aim of the study was to find out exact nature of apprehension of the anaesthesia providers towards the implementation of the law related to anaesthesia practice. **Methods:** A prospective survey of 875 anaesthesia specialists was conducted during informal meetings personally by the investigator and the responses to a standard set of queries were noted. Also included were the remarks and suggestions related to each query. Three different set of practitioners depending on the place of work (teaching hospital, corporate hospital and small establishments) were queried. **Results:** The opinions of all three groups of anaesthesiologists did not differ materially. The opinions and views were similar in many aspects and controversy existed in few areas. Major confusion was about how much information should be provided to patients before anaesthesia to obtain informed consent. Opinions were offered for prevention of litigations and how to face litigations but there was the lack of clarity on these issues. **Conclusions:** The anaesthesiologists are invariably confused about how exactly they should prevent litigations or respond to them. The majority expressed need for intervention by Indian Society of Anaesthesiologists (ISA) to prepare protocols and set up medico-legal cells.

Key words: Anaesthesiology, anaesthesiologist, consent, law, opinion, practice

INTRODUCTION

All over India there are more than 20,000 anaesthesiologists practicing the art and science of anaesthesiology.[1] The anaesthesiologists practice in different setups, such as teaching institutes, corporate hospitals and smaller nursing homes.[2] The techniques, equipments and overall circumstances are different in every level of anaesthesia practice.[2] However all of them have a similar kind of apprehension, as far as the legal issues are concerned. The legal issues are discussed in many conferences, continuing medical educations and in informal meetings among fellow anaesthesiologists. Inspite of these discussions, each and every anaesthesiologist is worried about legal issues.[3] There is a need to address this issue at national, state and city levels, through specialist bodies such as the Indian society of Anaesthesiologists (ISA). With these considerations in mind, it was decided to conduct a survey to elicit the existing knowledge, perception and opinion of the individual anaesthesiologists in regard to legal issues in anaesthesia practice. The results could help to formulate protocols to alleviate such apprehension regarding legal issues.

METHODS

The survey was performed by asking 875 anaesthesiologists about their views regarding the legal issues, if they have faced any such problems and how are they placed regarding the legal

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problems. The investigator met them individually, over a period from May 2012 to April 2014, during various scientific meets of the anaesthesiologists. In the survey, only the opinions of anaesthesiologists, who were in anaesthesia practice for more than 3 years were taken in the account. This excluded opinions of post-graduate students. A questionnaire was prepared for the purpose [Table 1]. The questions were asked in the informal group talk and the results are entered by the investigator in the data sheets specially prepared after analysing the responses of individual anaesthesiologist towards various issues [Table 2].

RESULTS

During the period of May 2012 to April 2014, the author attended 13 scientific programs related to anaesthesiology. During these scientific meets attended by anaesthesiologists, the author interviewed the anaesthesiologists informally in the free time. The interview was of a group, but opinions of individual anaesthesiologists were noted. Opinions were also extracted from individuals during the informal chat. All of them freely exchanged their opinions. They were analysed and entered in the specially made data sheets. Table 3 shows the various scientific programmes covered and the number of anaesthesiologists interviewed according to their type of practice. The freelance practitioners interviewed constituted majority in numbers. The responses gathered from the anaesthesiologists were analysed and the same are depicted in Table 4.

Table 1: Different category wise questions asked to individual anaesthesiologist in the informal talk

Category	Number	Questions asked
Pre-operative fitness	1	Who should give fitness for anaesthesia?
	2	Are we doing enough preoperative investigations?
	3	Who should do preoperative optimization of patients from legal point of view?
Consent	4	Who takes patient's consent?
	5	What information you offer to the patient to obtain informed consent
	6	Is it necessary to take "Table death consent"?
	7	Do you yourself sign consent form?
Theatre conditions	8	Is your theatre well equipped from medico-legal point of view?
	9	Shall our association declare minimum mandatory theatre conditions applicable all over India?
Anaesthesia notes	10	Do you record all your procedures?
	11	Are you happy with available recording systems? If not suggest
Indemnity Insurance	12	Do you have indemnity insurance cover?
	13	Are you happy with insurance company services?
Legal litigations	14	Are you facing any legal litigation?
	15	How to prevent legal litigations?

Table 2: Data sheet specially prepared for survey at different scientific meets

Questions	Opinions
Who should give fitness for anaesthesia?	Anaesthesiologist
	Physician
	Surgeon
	Doesn't matter
Are we doing enough preoperative investigations?	More
	Less
	Enough
Who should do preoperative optimization of patients from legal point of view?	Anaesthesiologist
	Physician
	Surgeon
	Any concerned
Who takes patient's consent?	Surgeon
	Anaesthesiologist
	Hospital staff
What information you offer to the patient to obtain informed consent?	Anaesthesia risk
	Death risk
	Theatre conditions
	Multiple factors
Is it necessary to take "Table death consent"?	Yes
	No
	No opinion
Do you yourself sign consent form?	Yes
	No
	Sometimes
Is your theatre well equipped from medico-legal point of view?	Fully equipped
	Incomplete
Shall our association declare minimum mandatory theatre conditions applicable all over India?	Yes
	No
	Some other opinion
Do you record all your procedures?	All
	Few
	Nil
Are you happy with available recording systems? If not suggest	Yes
	No
Do you have indemnity insurance cover?	Yes
	No
Are you happy with insurance company services?	Yes
	No
	No comments
Are you facing any legal litigation?	Yes
	No
How to prevent legal litigations?	Record keeping
	Good equipments
	Rapport
	Protocols
	Any other

Table 3: Scientific programs covered for the survey and the number of anaesthesiologists interviewed, according to their type of practice

Scientific program	Number	Anaesthesiologists interviewed			
		Teaching	Corporate	Free lance	Total
ISA sponsored CME	6	95	47	155	297
State conferences	2	32	25	113	170
National conference	2	28	32	146	206
State CME	1	2	12	83	97
City branch CME	1	4	2	42	48
City branch meeting	1	2	4	51	57
Total	13	163	122	590	875

Total duration of survey: - 30th May 2012 – 27th April 2014. ISA – Indian Society of Anaesthesiologists. CME – Continuing Medical Education

DISCUSSION

The medico-legal aspects are always of immense importance from the practicing anaesthesiologists' point of view. There is a lot of apprehension regarding implications of the law in anaesthesia practice. This is why every conference or meeting of anaesthesiologists leads to the discussion on legal issues. Hence, it was decided to study the nature of apprehension amongst anaesthesiologists regarding implications of the law related to anaesthesia practice. A questionnaire was prepared and sent to few anaesthesiologists as a pilot study. The response was very poor and it

Table 4: The responses obtained from the anaesthesiologists for the different questions asked

Questions	Opinions	Anaesthesiologists interviewed			
		Teaching faculties	Corporate colleagues	Free lance	Total
Who should give fitness for anaesthesia?	Anaesthesiologist	144	86	471	701
	Physician	11	8	54	73
	Surgeon	1	6	14	21
	Doesn't matter	7	22	51	80
Are we doing enough preoperative investigations?	More				
	Less	134	31	481	646
	Enough	29	91	109	229
Who should do preoperative optimization of patients from legal point of view?	Anaesthesiologist				
	Physician	3	15	118	136
	Surgeon	7		42	49
	Any concerned	153	107	430	690
Who takes patient's consent?	Surgeon			46	46
	Anaesthesiologist				
	Hospital staff	163	122	544	829
What information you offer to the patient to obtain informed consent?	Anaesthesia risk	18	25	31	74
	Death risk	3		7	10
	Theatre conditions				
	Multiple factors	38	31	91	160
Is it necessary to take "Table death consent"?	Yes	156	112	511	779
	No				
	No opinion	7	10	79	96
Do you yourself sign consent form?	Yes	1	2	4	7
	No	141	95	460	696
	Sometimes	21	25	126	172
Is your theatre well equipped from medico-legal point of view?	Fully equipped	24	98	53	165
	Incomplete	139	34	537	710
Shall our association declare minimum mandatory theatre conditions applicable all over India?	Yes	163	122	546	831
	No				
	Some other opinion			44	44
Do you record all your procedures?	All	133	119	108	360
	Few	30	3	356	389
	Nil			126	126
Are you happy with available recording systems?	Yes	35	53	119	207
	No	128	69	471	668
Do you have indemnity insurance cover?	Yes	161	118	579	858
	No	2	4	11	17
Are you happy with insurance company services?	Yes		3		3
	No	24	34	110	168
	No Comments	139	85	480	704

Contd..

Table 4: Contd...

Questions	Opinions	Anaesthesiologists interviewed			
		Teaching faculties	Corporate colleagues	Free lance	Total
Are you facing any legal litigation?	Yes		2	5	7
	No	163	120	585	868
How to prevent legal litigations?	Record Keeping	117	96	539	752
	Good equipments	111	110	542	763
	Rapport	45	47	198	290
	Protocols	109	71	132	312
	Any other				

was not possible to extract replies from any of those anaesthesiologists. Hence, it was decided to study the responses during informal talks. The questionnaire was decided to be applied as 'Group administered questionnaire', an approved method of survey. The advantages claimed are convenience and high response rate. It is easier to approach more number of respondents and during discussion interviewer can clarify the questionnaire if needed.[4]

As the freelance practitioners are generally more worried, being without an institutional cover, the number of freelance practitioners was more in the survey. Whenever and wherever medico-legal issues are discussed, the freelance practitioners are always in a good number. The opinion of anaesthesiologists who has at least 3 years standing in the profession was taken into account. This excluded younger specialists and students who were yet to get proper experience in the specialty. Such exclusion was decided as opinions after actual practical experience, and facing problems will be more helpful for my study.

Fitness for any anaesthetic procedure is a seriously discussed topic amongst anaesthesiologists. Many textbooks of anaesthesia and professional bodies of anaesthesiologists give ample importance to this aspect of anaesthesiology.[5] But it is a common observation that many of the patients are referred to physicians for their opinion on medical illness, who ultimately come back to the anaesthesiologist with a fitness certificate (physician's fitness). Majority of anaesthesiologists dislike the fitness certificate from a physician, but do insist on sending patients for physician's opinion pre-operatively for assessment of medical illness if present. The majority (701/875 – 80.11%) opined that anaesthesiologists only shall decide fitness for anaesthesia. Few (80/875 – 9.14%) were not bothered who gives fitness, while few colleagues did not mind giving this responsibility to physicians (73/875 – 8.34%) and surgeons (21/875 – 2.4%). This opinion was with a comment that it does not matter who gives fitness certificate, as ultimately it is anaesthesiologist's discretion to administer anaesthesia.

As a safety cover against litigations, the majority of anaesthesiologists felt that asking for fewer investigations may be interpreted as negligence and hence insisted on battery of investigations before accepting patient for anaesthesia. There are discussions and guidelines available in the textbook of anaesthesia regarding the quality and quantity of investigations to be obtained before anaesthesia.[6] but as individual anaesthesiologist, everyone decides to err on safer side by doing maximum possible investigations before administration of anaesthesia. In this survey, the majority (646/875–- 73.84%) opined that we are doing less investigations than ideal while only 229 out of 875 (26.17%) opined that enough investigations were done for pre-operative evaluation. The reason offered for doing less investigations was the compromising attitude of anaesthesiologists because of economic constraints. The anaesthesiologists working in corporate setups could order investigations to their satisfaction (91 of 122). This reflects economic freedom of anaesthesiologists working at corporate hospitals. Kumar and Srivastav in their review article on role of routine laboratory investigations in pre-operative evaluation state that, 30 – 60% tests continue to be greatly in excess of that recommended.[7] The reasons the authors quote for doing more number of laboratory tests are, difficulty in changing previous work pattern or behaviour, fear of cancellation of surgery, missing some important information during evaluation, and institutional requirement. In the present survey, the anaesthesiologists opined that they were doing fewer investigations than needed. The reason could be the same as those quoted by the authors; the clinicians firmly believed that more the investigations better is the safety. On other words, the anaesthesiologists believe that more investigations must be done because

of the reasons quoted, but are not doing because of the economic constraint and doing less laboratory investigations may be taken as negligence. This aspect needs more detailed study and education of the anaesthesia practitioners. Many of the anaesthesiologists want ISA to prepare guidelines regarding pre-operative investigations pertaining to our setups.

Actual pre-operative optimization of the patient is done in the surgical wards only. When asked who should undertake the task of optimization of the patient, majority of anaesthesiologists (690 of 875 – 78.85%) said that it must be done in surgical wards only. Surgeons need to take help of any specialist to make the patient fit for anaesthesia. Few (136/875 – 15.54%) opined that physicians are better for the purpose while even less (49/875 – 5.6%) thought that it is surgeon's duty, but nobody expressed that the anaesthesiologist had responsibility for preparation of patient for anaesthesia. The anaesthesiologists did complain that the drugs started by the attending doctor pre-operatively were not suitable for the technique of anaesthesia they were going to offer and the anaesthesiologists had to modify the technique or had to struggle significantly for the safe conduct of anaesthesia. The textbooks of anaesthesia do have chapters on optimization of patients before anaesthetizing them.[8] The American board of Anaesthesiology defines anaesthesiology as practice of medicine dealing with assessment of, consultation for and preparation of patient for anaesthesia.[9] However, nobody likes to take up the responsibility of pre-operative optimization of the patient or preparation of the patient for anaesthesia on themselves.

Consent for surgery and anaesthesia is an important aspect of management. This important issue is many a times left to a clerical staff of the hospital. In present survey, majority of anaesthesiologists did agree that the job is done by some class 3 or 4 employees of the hospital. 829 of 875 (94.74%) committed that consent was taken by hospital staff only, while few (5.26%) said that it was surgeon's responsibility. Majority protocols of anaesthesia practice have ensured entry of consent in the list[10] but are taken as only checking the consent taken by hospital staff. But every anaesthesiologist felt concerned about the consent and opined that the consent form must be appropriate. Due to non-availability of a standardised consent format, many anaesthesiologists try to prepare their own format of consent form, taking help of any and every model he comes across. Many anaesthesiologists hope that ISA comes up with ideal consent form.

The consent is always an informed consent, but there is a lot of controversy and confusion regarding the information offered to the patient. Very few anaesthesiologists agreed that they conveyed information of anaesthesia risk (74 of 875 – 8.45%), whereas 160 of 875 (18.28%) convey multi-factorial risk to the patient. Only 10 out of 875 (1.14%) explained the death risk to the patients for routine surgery and anaesthesia. Risk to life is one such controversial issue, majority felt that although every anaesthesia procedure carries 'life risk', explaining it to patients and their relatives will create unnecessary chaos. It is always stressed theoretically to inform death risk for every anaesthetic intervention.[11] No anaesthesiologist informs the operating theatre conditions and facilities to the patient before surgery. Only thing that is informed in many consent forms is about possibility of shifting to higher centres if need arises.

Every anaesthesiologist's nightmare is death of the patient on table. For patients of American Society of Anaesthesiologists physical status V (E), many a times it is difficult to avoid death on table and majority of anaesthesiologists think that for medico-legal safety, as a rule, informed consent we must take 'on table death' consent from the relatives of moribund patients. How far this is useful in preventing legal litigations is of doubtful value. No textbook or professional body advises the so called table death consent. There is no such entity as table death consent in literature, but many anaesthesiologist colleagues (779/875 – 89.02%) insist that for moribund patients such consent must be taken. 10.98% had no opinion on this issue, but no one resisted the idea of table death consent.

Consent is permission for something to happen or agreement to do something.[12] Consent is actually a bilateral contract between two parties but in my survey I noted that majority of anaesthesiologists (696/875 – 79.54) never signed the consent form themselves, while (172 out of 875 – 19.65%) signed the consent form sometimes. Even the surgeons also do not counter sign the consent form in majority of places. Specific guidelines are available on this aspect including from anaesthesiology professional bodies.[13]

The majority of anaesthesiologists opined that at many places they were working in compromised operating rooms. On direct questioning everyone replied that

the operation theatres they were working in were adequately equipped, but overall they were still worried about medico-legal implications of inadequate theatre equipments. A little detailed probing revealed that defibrillators were not available in many operating rooms. Even few minor theatres at teaching institutes and corporate hospitals lacked such essentials. Only 165 of 875 (18.85%) maintained that the theatres they were working were fully equipped and the number was more from the corporate sector (98 of 122 – 8.03%).

Regarding the role of ISA, majority (831 of 875 – 94.97%) felt that ISA should prepare guidelines regarding theatre equipment that could be applicable to every type of operation theatre. Paradoxically, few of the anaesthesiologists (44 – 5.02%) were concerned that since theatres at peripheral smaller nursing homes were very much compromised and if ISA publishes a list of minimum mandatory operating room standards, then anaesthesiologists working at periphery may face litigations. The guidelines are generally expected to protect patients, as well as the practicing anaesthesiologists. The guidelines of ISA are available at the website of ISA.[14]

Record keeping is the most vital part of the medical management. It not only helps in postoperative management of the patient but also saves anaesthesiologists from legal issues.[15] In spite of the importance of record keeping, anaesthesiologists do not keep record for each and every case. Only 360 of 875 (41.14%) informed that they kept record of all cases, while 389 (44.45%) wrote notes for very few of their cases. 126 (14.4%) did not write any kind of anaesthesia notes. The teaching institutes and corporate hospitals were better placed regarding this aspect, as the protocol of those institutes made everyone to write notes (133/163 – 81.59 and 119/122 – 97.54% respectively). The anaesthesiologists working freelance at smaller nursing homes were reluctant to keep records. Many of them wrote notes of major cases only. The moderate and minor cases were not entered optimally; many had a 'one-liner record'.

Majority of anaesthesiologists (668 – 76.34%) were not happy with the present methodology of anaesthesia charts, labeling it cumbersome. There were very few suggestions for improvement of record keeping. The electronic record keeping was the main hope of the better record keeping for many anaesthesiologists.[16] The individual anaesthesiologist was expecting the ISA for suggesting ideal record keeping tool.

For the fear of legal litigations, indemnity insurance is a protective cover. Any professional body of anaesthesiologists' advice to have an insurance cover for anaesthesia practice.[17] In the survey, majority (858/875 – 98.05%) of anaesthesiologists had their indemnity insurance policy running. Irrespective of the place where they worked, everyone opted for indemnity insurance, but the amount for which cover was taken varied individually. The anaesthesiologists who were not covered presently ascribed it to defaulting in renewing the insurance.

About the services of the insurance company, many people (704 – 80.45%) did not have any particular issue. Few people had complaints with the insurance companies (19.2%). The reasons expressed were that the companies were not much interested in promoting the indemnity schemes and such schemes did not fall in the priority category of the company plans. Regarding few medico-legal cases revealed during the survey, the concerned anaesthesiologists were not happy with company's service. There was a common appeal from all anaesthesiologists to ISA to look in this matter and start our own Indemnity Insurance scheme.

Actual number of anaesthesiologists facing legal litigations is very low; 7 that is 0.008% had faced or were facing medico-legal problems, lesser than western data[18] but overall fear of medico-legal litigations was 100%.

Every one practicing this vital branch of medicine is worried about medico-legal litigations. All had suggestions for others to combat litigations. The various suggestions made by colleague anaesthesiologist were:

- Good record keeping (752 – 85.94%)
- Observing minimum mandatory operating room standards (763 – 87.20%)
- Rapport with patients, surgeons and hospital staff (290 – 33.14%)
- Preparing protocols for every action or procedure (312– 35.65%).

The freelance practitioner does not believe in protocols, but the teaching faculty members (66.87%) do insist on protocols. Overall record keeping and good equipments carry much weightage for achieving safety. Few other suggestions from many colleagues were,

- Regular updating of knowledge
- Rapport with fellow colleague, anaesthesiologists
- Optimum preoperative investigations.

Regarding the litigations every anaesthesiologist thinks that whatever happens in the theatre is a collective responsibility of Surgeon, Anaesthesiologist and the hospital administrator. Regarding indications of surgery every anaesthesiologist felt that it was the prerogative of the surgeon only and anaesthesiologist was not in a position to influence that aspect of treatment.

The majority of anaesthesiologists felt that ISA should have medico-legal cell at every city, district, state, zone and national level to help members. Guidance from these cells can help the member to prevent or fight litigations.

Inspite of textbooks advising to curtail investigations the practicing colleagues think that investigations are necessary to wipe out negligence tags. This concept must be explored by another targeted survey. This survey is based on a group administered questionnaire, which has few limitations; like privacy of the respondent is not totally ensured and they may not get enough time to think and respond.[4] So also influence of dominating nature of a single or multiple individuals in the group can bias few opinions. But inspite of these limitations we can expect better reflection of opinions in this survey because the population surveyed is elite and well educated anaesthesiologists. However more tangible data can be obtained by individually administered questionnaire.

CONCLUSION

A survey of anaesthesiologists was done to access perception of law related to their clinical practice. All types of practitioners were included in the study but the apprehension depicted by every one of them was similar in nature. The assessment of fitness for anaesthesia must be the domain of anaesthesiologists only. The present operation theatre conditions need to improve and anaesthesiologists want ISA to take lead in specifying operation theatre standards, pre-operative investigations and consent strategy. A suggestion of setting of medico-legal cell at all levels will alleviate apprehension. Regular interaction with legal experts is the need of the hour. Uniformity at national level regarding all these factors can defuse the apprehension amongst anaesthesiologists for legal issues. The professional indemnity insurance also needs streamlining from insurance companies and ISA also needs to support the members.

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