

Challenges of New Healthcare Reform Act 2017 and Possible Rise of Defensive Medicine in Nepal

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ABSTRACT

Hippocratic oath, written 4th or 5th century BC, is still the binding mantra for physicians, which swears to fulfill to the best of one's ability and judgement, and treat sick human beings not just illness. But with changing health trends in southeast Asia region, there is a dramatic shift in patients and patients' party expectations regarding treatment, recovery, complications, and death. Such expectations have led to violence against physicians and shift towards alternative medical practice. This article explores the possible rise of defensive medicine and its broader implications in health care system in Nepal with regard to the new 'Muluki Aparadh Samhita Ain 2074/Criminal (Code) Act 2017'.

Keywords: Changing health; criminal act; defensive medicine; muluki ain, Nepal.

INTRODUCTION

With an establishment of legitimize evidence based medicine, medical decision is directly challenged by protocols and uncontrolled flow of informations through internet, contributing to an opinion making culture, and any deviation in large is taken as a negligence or malpractice due to mistaken convictions.¹ In terms of an adverse event, the blame has been shifted to the care-providers, mostly the physicians, resulting in violence against them. Despite inability of the state to curb on these incidents, introduction of new "Muluki Ain" concerning medical negligence and malpractice is another setback to the struggling health care system in Nepal.

WHAT IS CRIMINAL CODE ACT 2074?

The 'Muluki Aparadh Samhita Ain 2074/Criminal (Code) Act 2017' has been promulgated by the Legislature Parliament as per authority provided by Article 296 (1) of Nepalese constitution. Chapter 19 of this act deals with 'Elaaz Sambandi Kasur' which is crime related to medical Treatment.²

SECTION 230, SUBSECTION (2)

states that any person with a considerable long experience (without authorized Medical license) on treatment are allowed to operate minor wounds or prescribe simple medications to the patient, suffering from minor diseases without serious adverse outcome on them.

SECTION 231

This section states that medical treatment should not be done with bad intention. **Subsection (1)** dictates that health care professional are not allowed to treat anyone with intention to kill or making disable, provide treatment than that should be required or give or prescribe those medicines which cause death or disable despite knowing their effect or that was needed to be to known or perform surgical procedures or surgery of wrong organs of the body or make those organs disable or remove from the body.

Subsection (2) states if above crime is done or promoted then punishment will be as

- a. if death occurs then crime is as a killer
- b. if disabled then crime is same as one disables others

WHAT ARE THE POSSIBLE CONSEQUENCES OF THIS ACT?

This law (section 230, subsection 2) can discourage the practice in pre-existing certified medical professional and possibly invite the growth of non-professional and traditional healers (dhami and jhakris) in Nepalese health care system. Similarly, categorizing health care services under criminal act (section 231) will promote defensive medicine (DM) with wider financial and adverse health implications in Nepalese patients. This can lead to a medical crisis as many healthcare professionals work

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in a resource limited settings without malpractice and litigation insurance.

WHAT IS A DEFENSIVE MEDICINE?

DM is a medical practice, guided by a perceived awareness of avoiding malpractice or negligence even at the expense of patients' benefit.³DM directly contributes to an excessive vigilance leading to an assurance based practice including unnecessary second opinions, additional tests, and even referral with both medical as well as economical implications. Around 2/3 hospital doctors in UK and 60-90% of physicians in US practice DM.⁴Although an exact data from many developing countries including Nepal is lacking, we can safely conclude that the practice is not uncommon and possible to rise in coming days.

WHAT ARE THE FINANCIAL AND HEALTH RELATED IMPLICATIONS?

DM is one of the most common reason for overdiagnosis, mainly due to fear of possible litigation, and is devoid of any substantial health benefits.⁵With 6.7 health human resource (2.1 physicians and 4.6 nurses/midwives) per 10,000 populations and 50 hospital beds for the same population, the adverse financial and health care implications of DM in Nepal can be overwhelming.⁶Avoiding high risk surgery, ordering unnecessary diagnostic tests, and referral of patients increases health care expenditure and prolong treatment periods significantly increasing health care burden.⁷

DISCUSSION

Nepalese healthcare system is still evolving and many challenges remain unanswered. Framing strict rules to regulate medical practice has always been counterproductive for optimal practice. Although medicine is largely an analytical science based on guidelines, physicians' decisions at times depend on particular clinical scenarios and need for customization of treatment procedure. Similarly, complications, recovery and death are not predictable and beyond the scope of the physicians. These events neither can be governed by the guidelines nor guided by the protocols. Interestingly, many of these questions related to adverse events can only be answered through probabilities and these mere chances in present context of criminalising medical negligence creates unnecessary and unrealistic mistrust and aggression against the caregivers.

Health care profession is guided by medical ethics and doctrine of beneficence according to the Hippocratic Oath. The judiciary system in Nepal is not ready to deal with the technicality of the medical litigation at present, and there is a strong demand from medical

fraternity to consider medical negligence as a deviation from social or civil responsibilities and addressed it on civil court. It resonates with the international context where the criminal action is only justified in the case of gross negligence and medical manslaughter (negligence leading to death), explained beyond the balance of medical probabilities without reasonable doubt.⁸ Undeniably, the narrow definition of medical negligence and the new criminal act will rather complicate the existing scenarios than help it. We recommend all the concerned authorities and stakeholders to come together and create an optimal working environment for all the healthcare professionals to work without the perceived fear and mental apprehension.

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