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Medical Negligence and Law - A Study of Judicial Approach in India

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ABSTRACT
Medical negligence, a negligence by the living God, not only common now a days but have become one of the serious issues in India even in whole world. Medical profession, though one of the noblest professions, is not immune to negligence which as a results complete / partial impairment or culminates into another misery or even sometimes death of patient. The magnitude of negligence or deliberate conduct of the medical professionals has many times led to litigation. To carry out this profession with all the care and responsibility towards the patients, doctors are bound with the Oath. However due to rising cases of Medical Negligence in present scenario, it seems that medical practice has become more of a commercial industry resulting into mishandling of the lives of patients who rests their belief and trust with their treating doctor. The aim is to analyze the concept of negligence in medical profession in the light of interpretation of law by the Supreme Court of India with the help of BNS (Bhartiya Nyaya Sanhita or Indian Penal Code Act), MTP Law, tort.

Key Words
Healthcare, Hippocratic Oath, Medical Negligence, Bharatiya Nyaya Sanhita (Indian penal code), Medical termination of Pregnancy act, consumer protection act.

Limitations of the Study
The study is conducted from the point of view of both patients and as well as doctor's interest. It will not be correct, if I say that the doctors are always good but sometimes the negligent behaviors practiced by the doctors leading to reason of damage to patient and in some cases doctors are also charged with the false accusations with an intention to gain monetarily in form of compensations. Now a days it is in regular habit and practice by the patient party to ask for money and beat the doctor heavily even leading to several physical trauma and death. The study has limitation due to the below mentioned reasons that are stated as follows:

- Lack of knowledge of the profession to measure the reasonability in errors caused.
- Lack of medical knowledge amongst the judiciary while passing judgments in the relating cases due to different specialization areas.
- Lack of specific laws directly dealing only with the cases of medical negligence. - Study depends on the data only

The Significance of the Study

The law related to medical science in India for dealing with the cases of medical negligence are very much inadequate. The greater improvement is required in clinical, ethical and legal factors and also in communication to patient party. Justifiable, Adequate and separate laws for cases relating to medical negligence should be made. Suggestion for changes in medical education system by updating the curriculum and awareness of the concept of medical negligence. Direct redressal forum is required for consumers (patients) facing damages due to medical negligence.

Research Methodology

A retrograde method of research has been taken for this study. I have taken the extensive use of the library and also the internet sources. The aim of this study is to present a detailed study on medical negligence in India and law- Judicial approach in India.

INTRODUCTION

Medical profession is the one of the most noble profession among all other profession in India and rest of the world. Patient treat the doctor is like God. They think that the God cannot do any wrong. But In reality, doctors are the human beings. So also the err is human. Doctors may commit a mistake. Doctors may be negligent. The helping staff may be careless. The negligence from both makes the catastrophe. In such event, it is difficult to determine who was negligent, and under what circumstances. In a country like India,we are the law abide by people and committed to the rule of law made by our country. Most of the time, we take such matters to the court and have firm belief on hon'ble judges, who are supposed to decide the negligence. However, the negligence by doctors is difficult to be determined by Hon'ble judges as they are not well oriented in modern medical science. Their decisions are based on amount of negligence, supportive evidence and other experts opinion. Judges apply the basic principles of law in conjunction with the law of the land to make a decision. I would like to go through the light of some court judgments and shall try to understand the reasonable care and duty from a respected person like doctor for the patient care safety. Negligence is the core issue of medical profession and hospitals. Doctors are law abide- by citizen. They do not have minimum knowledge of law and also the interpretation of law regarding medical professionals. It is better to deal with them at the individual negligence level.

MEDICAL NEGLIGENCE

It is very difficult to define the word Negligence. In day to day practices type of incidental act is called as negligence. The word negligence means carelessness. The act or omissions due to carelessness, means not to take proper care resulted into loss, damages or injury. In legal sense negligence,[1] it is the failure to take or to exercise standard / reasonable care. The authoritative text on the subject in India is the Law of Torts by Ratanlal and Dhirajlal.[2] Negligence has been discussed as: Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the

plaintiff has suffered injury to his person or property. The definition involves three constituents of negligence:

1. A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty
2. Breach of the said duty
3. Consequential damage.

Health law[1] refers to a collection of formal rules and obligations that govern public health practices and responses.

The medical law[1] is the branch of law which concerns the prerogatives and responsibilities of medical professionals and the rights of the patient.

The term "medical negligence" is an omnibus one, which has come in vogue to refer to wrongful actions or omissions of professionals in the field of medicine, in pursuit of their profession, while dealing with patients. It is not a term defined or referred to anywhere in any of the enacted Indian laws.

In Smt.Madhubala Vs Govt of NCT of DELHI, 2005(118)DLT 515,2005(82) DRJ92 case. The Delhi High Court laid down in 2005 that in civil law, there are three degrees of negligence-

a. Gross neglect
b. Ordinary neglect
c. Slight neglect

While seemingly straightforward, the concept of negligence itself can also be broken down into four types of negligence: gross negligence, comparative negligence, contributory negligence, and vicarious negligence or vicarious liability. Gross negligence refers to a more serious form of negligent conduct. Gross Negligence'[1] means greater negligence than the absence of ordinary care. It is defined as a conscious disregard for the safety of others, and is considered willful, wanton, and reckless act. It is such a degree of negligence as excludes the loosest degree of care, and is said to amount to dolus.

Gross negligence is a lack of care that demonstrates reckless disregard for the safety or lives of others, which is so great it appears to be a conscious violation of other people's rights to safety. As for example that a doctor is amputating a wrong leg.

In an action for negligence, the plaintiff has to prove the following essentials-

1. The defendant owed the victim a duty of care
2. The defendant breached that duty of care
3. The breach of the duty caused the death of the victim

In State of Haryana v. Santra[3] the supreme court on 24.4.2000 upheld the decree awarding damages for medical negligence on account of the lady having given birth to an unwanted child due to failure of sterilization operation because it was found on facts that the doctor had operated only the right fallopian tube and had left the left fallopian tube untouched. The patient was informed that the operation was successful and was assured that she would not conceive a child in future. A case of medical negligence was found and a decree for compensation in tort was held justified.

However, the apex court has explained in State of Punjab v. Shiv Ram,[4] that "merely because a woman having undergone a sterilization operation becoming pregnant and delivering a

child thereafter, the operating surgeon or his employer cannot be held liable on account of the unwarranted pregnancy or unwanted child. Failure due to natural causes, no method of sterilization being fool proof or guaranteeing 100% success, would not provide any ground for a claim of compensation." The court after referring to several books on Gynecology and empirical researches concluded that authoritative text books on gynecology and empirical researches recognize the failure rate of 0.3% to 7% depending on the technique chosen out of several recognized and accepted ones. Hospitals in India may be held liable for their services individually or vicariously. They can be charged with negligence and sued either in criminal/ civil courts or Consumer Courts. As litigations usually take a long time to reach their logical end in civil courts, medical services have been brought under the purview of Consumer Protection Act, 1986 wherein the complainant can be granted compensation for deficiency in services within a stipulated time of 90 -150 days. Cases, which do not come under the purview of Consumer Protection Act, 1986 (e.g., cases where treatment is routinely provided free of cost at non-government or government hospitals, health centers, dispensaries or nursing homes, etc.) can be taken up with criminal courts where the health care provider can be charged under Section 304-A IPC for causing damages amounting to rash and negligent act or in Civil Courts where compensation is sought in lieu of the damage suffered, as the case be.

Liability of hospitals in cases of negligence, can be a direct liability or vicarious liability. Direct liability refers to the deficiency of the hospital itself in providing safe and suitable environment for treatment as promised. Vicarious liability means the liability of an employer for the negligent act of its employees. An employer is responsible not only for his own acts of commission and omission but also for the negligence of its employees, so long as the act occurs within the course and scope of their employment. The one who acts through another, acts in his or her own interests. This is a parallel concept to vicarious liability and strict liability in which one person is held liable in Criminal Law or Tort for the acts or omissions of another. An exception to the above principle is "borrowed servant doctrine" according to which the employer is not responsible for negligent act of one of its employee when that employee is working under direct supervision of another superior employee [e.g. Where a surgeon employed in one hospital visits another hospital for the purpose of conducting a surgery, the second hospital where the surgery was performed would be held liable for the acts of the surgeon]. In Direct liability, A hospital can be held directly liable for negligence on many grounds. Failure to maintain equipments in proper working condition constitutes negligence. In case of damage occurring to a patient due to absence/ non-working equipment e.g. oxygen cylinder, suction machine, insulator, ventilator etc. The hospital can be held liable. Failure to hand over copies of medical records, X-rays, etc., constitutes negligence or deficiency in service. In India, a provision in respect of medical records has been made in The Indian Medical Council [Professional conduct, Etiquette and Ethics] Regulations 2002,[5] Regulations 1.3.1 and 1.3.2 which state that every registered medical practitioner has to maintain medical records pertaining to its indoor or outdoor patients for a period of at least three years from the date of commencement of treatment in the prescribed form given by MCI and if any request is made for medical records either by patient / authorized attendant or legal authorities involved, the same may be duly acknowledged and documents be issued within the period of 72 hours. Also it must not be forgotten that it is the right of every patient to obtain in writing about his/her medical illness, investigations and treatment given on a prescription/ discharge ticket. Non-providing of medical records to the patients / attendants may amount to deficiency in service under the Consumer Protection Act, 1986. Improper maintenance of cleanliness and/or unhygienic

condition of hospital premises amounts to negligence. In Mr. M Ramesh Reddy v. State of Andhra Pradesh[6] the hospital authorities were held to be negligent, inter alia, for not keeping the bathroom clean [in this case the bathroom was covered with fungus and was slippery], which resulted in the fall of an obstetrics patient in the bathroom leading to her death. A compensation of Rs. 1 Lac was awarded against the hospital. A curious issue is that of liability in cases of polyclinics. Polyclinic means a place where doctors of different specialties practice with common staff and other facilities. Since every doctor is practicing individually, he would be responsible for his own negligence and not for others. But a particular doctor may also be vicariously liable for negligence of staff of the polyclinic, if the negligence occurs during the care of his particular patient in addition to the polyclinic being held liable for the negligence of its staff. The other doctors may get involved as partners of the polyclinic depending upon the agreement between them. Where the ambulance service provider, usually a hospital, professes that the ambulance is equipped with life-saving equipment and such equipment is either absent or non-functioning, it is liable for negligence in case of a mishap.

- The term "vicarious liability" refers to situations wherein one party is made liable for the negligent actions of a third party that they were responsible for.
- As per the legal maxim & rule of vicarious liability, an employer is liable for the negligence of its employees. So, the hospitals become legally liable for any medical malpractice case done by its doctor or any other medical practitioner who has been on roll with the hospital. It is well established that a hospital is vicariously liable for the acts of negligence committed by the doctors engaged or empanelled to provide medical care.
- Comparative negligence is a tort principle used by the court to reduce the amount of damages that a plaintiff can recover in a negligence-based claim according to the degree of negligence each party contributed to the incident. The most common examples are—
- Incorrect medication prescriptions or administration of drugs is one of the most common cases of medical negligence reported.
- When a medical malpractice claim is presented, it is usually a one-sided case because if a patient brought on a medical malpractice lawsuit, that must mean that the medical professional was negligent and that they were the cause of the patient's injuries. While this evidence must be present in order to file a lawsuit, there are certain medical malpractice cases that can derive from the patient's own doing, which refers to contributory negligence (contributing to the negligence).

  For example, a woman who undergoes a C-section is instructed to not lift more than the weight of her baby for at least 6 weeks. If the pregnant woman starts lifting her 4-year old son and suddenly has her wound open which leads to an infection, the doctor would not be found liable for that infection. The mother has a duty to ensure that she would not lift more weight than her baby

The Medical termination of pregnancy (Amendment) Bill 2021

The act regulates the conditions under which a pregnancy may be aborted. The bill increase the time period within which abortion may be carried out.

Currently, abortion requires the opinion of one doctor if it is done within 12 weeks of conception and two doctor if it is done between 12 to 20 weeks.

Two doctors in case of certain catagories of women between 20to 24 weeks.

The bill sets up state level medical boards to decide if a pregnancy may be terminated after 24 weeks in cases of substantial foetal abnormalities.
The board members are gynaecologist, paediatrician, radiologist or sonologist and other members notified by the state government.
A medical practitioner can perform--

1. Who has recognized medical qualification
2. Whose name has been entered in a state medical register
3. Who has such experience or training in gynaecology and obstetrics as prescribed by rules made under the act
4. MBBS trained for MTP
5. PG degree holder

The WHO does not specify any maximum time limit after which a pregnancy should not be terminated.
The MTP act 1971 was an exception to the IPC,to provide the termination of certain pregnancies by registered medical practitioner.

Medical Termination of Pregnancy Law (MTP Law)-

- Sec 312- causing miscarriage –

whoever voluntarily causes a women with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of women, be punished with the imprisonment of either description for term of which may extend to three years or with fine or both and if the women quick with child, shall be punished with imprisonment of either description for term which may extend to seven years and shall be liable to fine.
The example is-State of maharastra v/s flora santuna kutino

The accused had an elicit relationship with a lady who became pregnant. Accused hide the proof their relationship tried her her miscarriage to be done in which she died. The accused was held liable as the miscarriage was not done in good faith.

- **Sec 313-**

Causing miscarriage without women's consent, whether the women quick with child or not shall be punished with the imprisonment for life or with imprisonment which may be extended to ten years and shall also liable to fine.
Example-In the case of Tulsi Devi vs State of UP, a women was convicted under section 313 for kicking a pregnant women and causing amis carriage.

- **Sec 314-**

Death caused by an act done with intend to cause miscarriage---shall be punished with imprisonment either description for term which may extend to ten years and also liable to fine.
If the act was done without the consent of women shall be punished with imprisonment for life or punishment above mentioned.
It is not essential to this offence that the offender should know that the act is likely cause death.
Example
Surendra chauhan v/s state of MP, AIR2000
A person named C, was alleged to have ilicit relationships with the deceased women.
He took her to doctor for the purpose of abortion.Pt died during the process. The doctor was not qualified neither his clinic was approved by govt under MTPact 1971 and not having basic facilities for abortion.the act was done by doctor was furtherance of common intention of C.

Law protecting Doctors

The primary legal framework governing the practice of medicine in India is the Indian Medical Council Act, 1956. The act established the Medical Council of India (MCI), which regulates medical education and the practice of medicine in the country.

Apart from the Medical Council Act, 1956, there are several others laws that provide legal protection to doctors in India.

Some of the laws include—

The Clinical Establishment (Registration and Regulation) Act, 2010

This act regulates the registration and functioning of clinical establishments, including hospitals, nursing homes, and clinics. It provides guidelines for the quality of care and patient safety and prescribes penalties for non-compliance.

The Drugs and Cosmetics Act, 1940

This act regulates the manufacture, sale and distribution of drugs and cosmetics in India. It provides guidelines for the quality, safety and efficacy of drugs and prescribes penalties for non-compliance.

A Doctor can be prosecuted under sections 269(BNS-271), 270(BNS-272), 304-A(BNS-106) or 338(BNS-125b) of the Indian Penal Code 1860.these sections deal with bodily harm caused to the patient and section 304-A pertains to causing death due to negligence. Medical practitioners must be aware of the relevant provisions of the Indian Penal Code1860 (BNS-2024)(**3**).

Section 304A, IPC(BNS -106) reads as, "BNS-106(1) – if a registered medical practitioner causing death by negligence, while performing the medical procedure, they can be punished with upto two years in prison and fine.. The following are some of the issues of medical negligence along with some landmark decisions.

In a well considered order, the apex court felt that bonafide medical practitioners should not be put through unnecessary harassment.

The court said that doctors would not be able to save lives if they were to tremble with the fear of facing criminal prosecution. In such a case, a medical professional may leave a terminally ill patient to his own fate in an emergency where the chance of success may be 10% rather then taking the risk of making a last ditch effort towards saving the subject and facing criminal prosecution if the effort fails. Such timidity forced upon a doctor would be a disservice to society.

The court held that simple lack of care, error of judgment, or an accident is not proof of negligence on the part of a medical professional and that failure to use special or extraordinary precautions that might have prevented a particular incidence can not be the standard for judging alleged medical negligence.

Sec.88 of Indian Penal Code(BNS-26) –

- Without any intention to cause death
- Who has given consent or permission either expressed or implied
- Actions that are done in good faith
- A, a surgeon is knowing that a particular operation is likely to cause death of B,who is suffering under a painful condition, but not intending to cause B's death and intending in good faith,B's benefit performs that operation on B with the consent of B. A has committed no offence.

Sec.89.(BNS-27)-Act done in good faith for the benefit of child or insane person,by or by consent of gurdian.

Sec.92(BNS-30).– act done in good faith for the benefit of a person without consent.
Examples- Z is thrown from his horse and is insensible. A, a surgeon finds that Z required to be trepanned. A, not intending Z's death, but in good faith,for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has commited no offence.

Cr.P.C-357- order pay compensation.
At the time of awarding compensation in any subsequent civil suit relating to the same matter,the court shall take into account any sum paid or recovered as compensation under this section.

Cr.pc-357A- in 2009 introduced in the Cr.Pc. It was incorporated to specifically provide compensation to victims and family members.
The process of victim compensation is set in two methods.

- **DLSA-** District Legal Services Authority
- **SLSA –** State Legal Services Authority

ARE JUDICIARY PROTECTING DOCTORS?

A basic knowledge of medical sciences of hon'ble judges, who deal with the cases relating to medical negligence is of absolute necessary. The need for such knowledge is more required now than before in light of higher value of human life and suffering, and perhaps, rightly so.

Judicial forums, while seeking to identify delinquents and delinquency in the cases of medical negligence, actually aim at striking a careful balance between the autonomy of Doctor to make judgments and the rights of the patient to be dealt with fairly. In the process of adjudication, the judicial forums tend to give sufficient leeway to Doctors and expressly recognize the complexity of human body, inexactness of medical science, the inherent subjectivity of the process, genuine scope for error of judgments, and the importance of the autonomy of the doctors. The law does not prescribe the limit of high standards that can be adopted but only the minimum standard below which the patients cannot be dealth with. Judicial forums have also signaled an increased the need of the doctors to engage with the patients during treatment, especially when the line of treatment is contested, has serious side effects and alternative treatments exist.

After a reference to the general advisory issued by the supreme court[4] for the doctors to be taken as precautionary measures and the guidelines issued by the supreme court for protection of doctors from harassment if criminally prosecuted.

CONCLUSION

The realm of medical negligence is fraught with complexities, particularly when one seeks to apportion liability-be it the doctor's, the hospital's, or both. More often than not, liability is shared, making both the individual medical practitioner and the institution jointly and severally accountable for any breach of duty. In such scenarios, the law has not always tread a clear or consistent path. It is imperative that the study of medical jurisprudence be made a mandatory component in both legal education and judicial examinations, ensuring a more informed judiciary when adjudicating these sensitive matters.

When it comes to assessing negligence, courts are frequently at the mercy of expert testimonies. This dependence becomes particularly acute in cases where the violation of medical protocols isn't glaringly obvious. Herein lies a vexing problem: the very essence of law is its quest for precision and certainty, but the determination of medical negligence often falls prey to subjectivity. The decisions of the judiciary, therefore, tend to wade through murky waters, leaving much room for interpretation, and ultimately, ambiguity. While recent judgments have made commendable strides toward clarifying this area of law, much remains to be done. The judgments, as they stand, often leave a margin for diverse interpretations, sometimes leading to undesirable consequences.

The law governing medical negligence needs to be more unequivocal. A patient, the ultimate sufferer in these cases, should not be left confounded by the complexity of legal wrangling, especially when time and clarity are of the essence. The professional obligations of medical practitioners have rightfully been elevated to a higher standard, demanding exceptional skill and meticulous care. Yet, despite this progressive evolution, the journey toward a coherent legal framework has been anything but smooth. Key cases, such as V.P. Shantha,[8] Jacob Mathew,[9] and Kusum Sharma,[10] have set important precedents, but the judiciary's approach has not been without its inconsistencies. Such vacillation can engender a sense of trepidation in the minds of defrauded consumers, who are left questioning whether justice can indeed be secured.

It is not merely the complexity of the law that daunts the common man, but the very prospect of seeking redress. For many, the path to justice is long and arduous, often spanning years, if not decades. It is submitted that while the apex court has offered clarity on medical negligence, other sectors under the umbrella of consumer protection in India are still in dire need of a similarly settled legal position. To install confidence in the citizenry, and to provide genuine recourse for aggrieved patients, the law must shed its inconsistency and emerge as a beacon of certainty. Only then can we ensure that the rights of the common man are not merely theoretical, but attainable within a reasonable timeframe, fostering a climate of trust in both the judiciary and the medical profession.

Suggestions

1. *Standardization of Protocols*: Clear and enforceable guidelines should be set for medical professionals to follow, minimizing the grey areas that give rise to disputes.
2. *Medical Jurisprudence Education*: As mentioned earlier, incorporating medical jurisprudence into both legal and medical curricula would create a more informed bench and bar, as well as foster a culture of accountability among medical professionals.
3. *Fast-track Courts for Medical Negligence Cases*: Specialised courts or tribunals should be established to deal exclusively with medical negligence cases, expediting the judicial process and ensuring timely justice for aggrieved parties.
4. *Public Awareness Campaigns*: Empowering the public with knowledge of their rights under consumer protection laws and providing simplified legal recourse for those affected by medical negligence can help demystify the legal process.

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