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Legal Remedies Related to Medical Negligence in India

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ABSTRACT

“Next to creating a life, the finest thing a man can do is save one” -Abraham Lincoln
The medical profession, which is known to be one of the noblest professions, has no immunity to negligence and medical negligence has become one of the concerned and serious issues in the entire nation. It is evidently a serious concern, and according to statistics, around 52 lakhs of medical injuries are recorded every year in India and out of which 98,000 are of medical negligence, and around 11 people die every hour in this country due to this. Medical practitioners who are held liable for negligence or deficiency in service under The Consumer Protection Act, 1986, are not an exception to this rule. It is the duty of the doctor to take proper care and caution to avoid any mishap and any negligence which can have life-changing effects on the patients. The awareness among the public is increasing, and hospital management is facing complaints regarding the facilities, unprofessionalism of doctors, and the appropriateness of their therapeutic and diagnostic methods at an increasing rate. This article mainly deals with various dimensions of medical negligence and the remedies that are available against medical negligence.

Keywords: *Medical Negligence, liability, unlawful, statute, penalty, diagnosis, anaesthesia, the standard of care, complaint, onus, the burden of proof, Medical Council, Compensation*

I. INTRODUCTION

The phrase “medical negligence” refers to the unlawful acts or omissions of medical practitioners while performing their duties and interacting with patients. There are three types of penalties for legally cognizable medical negligence: (i) criminal culpability, (ii) monetary liability, and (iii) disciplinary action. The repercussions of violating specific statutory provisions precisely, such as those under the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994, are not included in the aforementioned category.²Criminal liability can

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² Amit Agrawal, Medical negligence: Indian legal perspective, Annals of Indian Academy of Neurology, vol.19, No.5, 2016, pp. 9-14, <https://annalsofian.org/article.asp?issn=0972-2327;year=2016;volume=19;issue=5;page=9;epage=14;aulast=Agrawal;type=3>

be seen under the provisions of the Indian Penal Code, 1860 (“IPC”), which are general in nature and do not specifically lay down the provision for “medical negligence”. For instance, Section 304A of IPC, which lays down the provision for the death of a person by any rash or negligent act and this offence is punishable up to 2 years of imprisonment, used to deal with both cases of accidents caused due to rash and negligent motor vehicle driving and also medical negligence leading to the death of a person. Other provisions of IPC, including Section 337 (causing hurt) and Section 338 (causing grievous hurt), are also often deployed in relation to medical negligence cases. Another repercussion of medical negligence can be in the form of imposition of penalties pursuant to disciplinary action.

The professional conduct of medical practitioners or doctors is governed by the Indian Medical Council (IMC) (Professional Conduct, Etiquettes, and Ethics) Regulations, 2002, promulgated under the IMC Act, 1956; govern the professional conduct of medical practitioners or physicians. The Medical Council of India (MCI) and the respective State Medical Councils are given the authority to conduct disciplinary action, which might result in the practitioner’s name being permanently withdrawn or suspended. Medical negligence may or may not be included under professional misconduct, as professional misconduct is a broader term, and in the case of lawyers, it is not only professional misconduct but other misconduct as well that may lead to the imposition of disciplinary penalties, such as the advocate’s violation of the prohibition of liquor under the Bombay Prohibition Act, 1949; and perhaps a reverberation may be extended for cases of medical negligence by medical professionals.

II. TYPES OF MEDICAL NEGLIGENCE

There are different ways in which medical negligence can occur, and it mainly occurs when a medical professional deviates from the standard of the care that is required. Some of the types of medical negligence are as follows:

1. **Misdiagnosis:** It occurs when a doctor fails to diagnose what condition a patient is suffering from, and this may be because the patient has a different illness or because the health professionals do not notice their condition at all. The consequences of medical misdiagnosis may result in a condition-worsening and potentially life-changing experience to patients. It can also take place where there is a delay in identifying the condition.
2. **Delay in diagnosis:** It is treated as medical negligence if it would have been reasonably diagnosed by another doctor at a correct time and without delay. Any delay in the

diagnosis and treatment of the disease can reduce the chance of recovery for the patient and can also cause undue injury to the patient if the illness is left untreated.³

3. **Prescription and Medication Errors:** These mistakes may take the form of the wrong medication or dosage being given to the patient and giving medications to the patient without asking for their allergies or medical history. The repercussions of the wrong medication can be serious and can range from digestive problems to death.
4. **Surgical Negligence:** It includes foreign objects being left in patients or in the wrong area of the body being operated on. In some cases, due to the result of clerical mistakes, the surgery was operated in the wrong area of the body, and it can also take place where the patient didn't fully consent.
5. **Errors in the administration of anaesthesia:** Anesthesia is a risky part of any major surgery, and it requires an anesthesiologist to administer and monitor its effect on the patient. The anesthesiologist has to review the patient's history, condition, medications, age, etc. and has to determine the most suitable of all medicine of all the medicine to use before administering anaesthesia on the patient. This malpractice of anaesthesia can occur during the pre-operation medical review or during the procedure itself.
6. **Injuries during Pregnancy and Childbirth:** It encompasses any injury suffered by the mother or infant during or after the pregnancy. These ailments, including cerebral palsy, intestinal damage, and maternal diabetes, can have life-altering consequences for both mother and child. Negligence can also manifest itself in wrongful birth claims, such as when a vasectomy fails, or parents are not informed that their kid would be born with certain damage.
7. **Negligent Long-Term Therapy:** Some medical diseases need long-term treatment or care. This long-term neglect might be caused by a failure to follow up on therapy or by the doctor's inability to appropriately monitor the effects of treatment.
8. **Pregnancy and Birth Injuries:** It includes any harm the mother or baby suffers either during or after the pregnancy. These injuries can have life-altering ramifications for both mother and child, for example - cerebral palsy, bowel trauma and maternal diabetes. The negligence can also take the form of wrongful birth cases, such as where a vasectomy failed, or parents were not warned that a child would have been born with a specific injury.

³ Snyder-Wenner, Six Common Types of Medical Malpractice, SNYDER & WENNER TRIAL ATTORNEYS, (28 October, 2015) <https://snyderwenner.com/six-common-types-of-medical-malpractice/>

9. **Long-Term Negligent Treatment:** Some medical conditions need long-term treatment or care. This long-term negligence can be caused due to the failure to follow up with treatment or the doctor's failure to monitor the effects of treatment properly.
10. **Negligent Medical Advice:** Patients are meant to be advised on any risks, side effects or alternatives available by the medical professionals, and if they fail in giving advice to the patient and something subsequently goes wrong with the treatment, medical negligence may have taken place.

III. ESSENTIALS OF MEDICAL NEGLIGENCE AND STANDARD OF CARE

Medical negligence is defined as any act or omission that a wise practitioner of average competence, knowledge, and experience would not do. Medical negligence fundamentals comprise the four "D's," that are as follows: (i) there is a responsibility to patients; (ii) there is a failure in the duty to patients; (iii) this immediately leads in; and (iv) harm to the patient or family, this may be a physical, mental, or financial loss.

According to Justice Denning, it would be a great disservice to the community at large; if there is the imposition of liabilities on doctors for each and everything that happens to go wrong. The standard of care is proportionate to the duty performed; for example, a paediatrician is expected to offer greater care than a general practitioner while caring for a kid.

The causal link between the breach and the harm is required for establishing negligence responsibility, and this cause must be "direct" or "proximate." The causative relationship might be either direct or proximal, and in both circumstances, carelessness can be assigned. The finding of medical negligence cannot be avoided in the case where the patient received 50% of the burns and died 40 days after the date of a wrong blood type transfusion despite receiving substantial post-detection of error care; the causal relationship between the transfusion of wrong blood type and death was proximate.

The degree of care means the level of care a prudent health care professional would render in similar circumstances in the same community. The doctor or medical practitioner is expected to possess a reasonable degree of skill, knowledge and a reasonable degree of care.⁴

In the Jacob Mathew Case, the Hon'ble Supreme Court laid down certain guidelines to protect doctors from unjust prosecution, and it was further observed by the Court that these guidelines would hold good till the Government frames guidelines in consultation with the Indian Medical Association.⁵ Even after four years of this aforementioned case, there were no guidelines

⁴ Laxman Balkrishna Joshi (Dr.) v. Dr. Trimbak Babu Godbole, AIR 1969 SC 128

⁵ Jacob Mathew v. State of Punjab, AIR 2005 SC 3180

framed by the Government, and in another case of *Martin F. D' Souza*, the Supreme Court reiterated the need for guidelines to strike a balance between the interests of the patients and that of doctors against unjust prosecution and the Court further laid down certain additional safeguards in this case.⁶ In another case, it was clarified by the Hon'ble Supreme Court that the services rendered by a medical professional are the services within the definition of the Consumer Protection Act, and hence, the medical practitioners can also be liable for the deficiency in service under the act. The medical professionals have civil liability under the aforementioned act and can also be held criminally liable for their negligence under the provisions of the Indian Penal Code, 1860.⁷ The aforementioned case (*V.P. Shantha*) also turned out to be a weapon being abused and wielded indiscriminately by certain patients. So, there is a need to strike a balance between the need to protect patients and the need to protect the doctors from undue harassment and humiliation. There are no guidelines provided by the Government, so this difficult task of striking a balance has been left to the courts of law.

In the case of *Kusum Sharma v. Batra Hospital*, the Supreme Court observed that a doctor often adopts the procedure which involves a higher element of risk, but in doing so, he honestly believes that there will be greater chances of success for the patient. And if on the doctor's part there is a higher risk taken in good faith to redeem the patient's suffering and it did not work and yield the desired results, then this may not amount to medical negligence.

IV. BURDEN OF PROOF

The burden of proof in case of medical negligence lies with the complainant. A higher standard of evidence is required to support an allegation of medical negligence. The patient must establish his/her claim against the doctor and also has to prove that the act of the doctor was negligent. The burden of establishing carelessness and a flaw in the doctor's service was plainly on the complainant in one of the cases, according to the Court. In another instance, *Kanhaiya Kumar Singh v. Park Medicare & Research Centre*, the Court stated that carelessness must be proven rather than assumed.

V. SHIFTING OF ONUS

Normally, the burden of proof lies on the complainant but under some circumstances, when the conduct of the medical professional betrays proper management, the burden shifts on the doctor. The patient must prove a positive act of omission, but he/she need not produce evidence to establish the standard of care as the entire surgical procedure is carried out inside the

⁶ *Martin F. D' Souza v. Mohd. Ishfaq*, (2003) 3 SCC 1

⁷ *Indian Medical Association v. V.P. Shantha*, 1995 SCC (6) 651

operation theatre in the absence of the patient's attendants.

The onus changes in English law when the adage "res ipsa loquitur" is applied. This adage essentially implies that one's actions speak for themselves. It can only be used in circumstances where the harm was caused by an equipment malfunction or where the plaintiff was involved in a complicated operation. It is utilized when the plaintiff is unable to determine the specific nature of the carelessness that caused his damage, and there is no explanation of how the defendant inflicted the injury. The injury must be of such nature, which 'does not normally happen' in the circumstances unless there is some negligence.

VI. MEDICAL NEGLIGENCE COMPLAINT

A complaint is an allegation made by the complainant in written form. There are some statements and some important facts included in it to establish a case that a customer has suffered loss or damage due to the deficiency of any service. There is a requirement of a minimal fee for filing a complaint before the district consumer redressal forum for medical negligence cases. When a complaint about medical negligence is filed, there is a notice sent to the opposite party to submit its version of the case within 30 days after admission of the complaint, and after this, there will be proper scrutiny of the complaint by the forum, then, the forum will ask either for filing an affidavit or for producing evidence in the form of judicial precedents, expert opinion, etc.

The procedures that are needed to be followed while filing a complaint about medical negligence case:

- The complaint must be filed with the local police and the State Medical Council.
- In the case where it is filed by the police only, the report can be sent to the State Medical Council.
- If the Council finds the report serious, then it can send it to various other courts under the relevant sections.
- If the case is criminal in nature, then it will be against the state versus the health professional or the hospital.
- The doctor's license can also be suspended for a relevant period of time if it is found by the council that the case poses a serious danger to the life of the patient.
- Appropriate punishment will be provided to the doctor for negligence while taking into consideration all the facts and circumstances of the case.

- If there is no satisfaction on the patient's side with the judgement, he/she can make an appeal to the Medical Council of India.
- The consumer courts can also aid the patient in seeking monetary compensation. The Consumer Courts cannot punish the guilty; it can only provide compensation.
- If the complainant is still not satisfied with the decision of the Consumer Court, then he/she can approach the National Consumer Dispute Redressal Commission.

VII. COMPENSATION CLAIM

Compensation is the civil liability in the form of damages. In case of breach of duty of hospital or doctor in operating or supervising, they are vicariously liable for the wrongs committed and are liable to pay damages in the form of compensation. For the wrong done by an employee of a hospital, the hospital shall be liable for causing harm to the patient by acting negligently.

In the case of *Mr M. Ramesh Reddy v. State of Andhra Pradesh*, the Court held the hospital authorities to be negligent for not keeping the bathroom clean due to which an obstetrics patient fell in the bathroom and died therein. Rs. 1 lakh was awarded to the complainant as compensation against the hospital.

All the medical facilities fall under the purview of the Consumer Protection Act, 1986. In the case of *Indian Medical Association v. V.P. Shantha*, the important question of whether a medical practitioner could be said to render services under Section 2 (1)(o) of the Consumer Protection Act, 1986 was discussed by the Court.

VIII. LANDMARK JUDGEMENTS ON MEDICAL NEGLIGENCE

In the famous *Anuradha Saha Case*, where the wife was suffering from drug allergy, and the doctors were negligent in prescribing appropriate medicines, which aggravated the patient's condition and led her to death. The Hon'ble Apex Court held that the doctor was liable for medical negligence and awarded compensation worth Rs. 6.08 crore.⁸

In another instance, in *Krishan Rao v. Nikhil Super Specialty Hospital*, a woman was treated for malaria fever but was not appropriately treated. An officer in the Malaria Department filed a lawsuit against the hospital for completing his wife's treatment poorly. In this case, the *res ipsa loquitor* principle was invoked, and the spouse was given Rs 2 lakhs in compensation.

In the case of *A.S. Mittal and another v. State of U.P. and others*, the Hon'ble Supreme Court dealt with the case of a mishap in the 'Eye Camp' in U.P., and the cataract surgery was

⁸ Dr. Kunal Saha vs. Dr. Sukumar Mukherjee, III (2006) CPJ 142 NC

performed negligently, which led to the permanent damage to the Eyesight of 84 patients and the Court held that the doctors were liable for this medical negligence.

IX. CONCLUSION

This article clearly points out that there is a need to evaluate the manner in which India chooses to address medical negligence. This issue becomes more serious when one realizes the additional expenses that an aggrieved person must bear if he/she decides to file a complaint, including travelling expenses, the cost of litigation, etc. Medical negligence can have a life-altering effect on the patient and may increase his/her suffering. The usage of the equipment and medical tools in the medical sector must be done with due care and caution as it can lead to injury to the consumer (patient). Another great concern is that the services which are provided free of cost are excluded from the scope of the Consumer Protection Act, 1986, and this creates a problem for the patients who suffer due to medical negligence. There must be some serious introspection and analysis were done in the medical profession, and medical ethics also need to be reformed so as to serve the people with complete righteousness.
