
MEDICAL NEGLIGENCE IN INDIA

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ABSTRACT

Medical professionals are treated as a god in the time of Covid-19 or in general times too. They give relief to the patient who is suffering from any diseases or requires urgent support in a life/death situation. In India, there are poor medical facilities if compared to countries like the United States of America, Japan, and as well as China. Since ancient times medical profession is considered a Nobel profession all over the world. However, in recent times it can be said there is a vast difference between the relations of a doctor-patient. During the last few decades, there are several cases which are popped up because of medical negligence on the part of a doctor and which results in the death of the patient. Due to the increasing number of errors on the part of doctors, Most of the legal system has developed some laws to deal with negligence on the part of Doctors. Hence, this has led to the development of the new branch of Jurisprudence which is Medical Negligence. Hence, any medical negligence will be treated as a tort of negligence or can be treated under Consumer Protection Act, 1986. Medicines are a complex domain. So, sometimes it might be possible that something wrong can go because of not taking proper medicines in proper time, this could result patient to get severely affected and can also cause death. Because of this, it becomes difficult for the consumer protection forum to review these types of cases because this can be stated as flawless technical clarity.

Thus, this type of matter isn't a consideration for the judiciary but still those types of negligence are entertained by the court by calling out other specialized people from the same field and give their technical inputs regarding the medical negligence caused by the doctor.

Introduction

Medical Malpractice is the medical negligence in the part of health management where the patients in here are nothing but low standard treatment while taking all the expense from the patient. By, giving them low-standard treatments patients can get severely infected or may even die because of the treatment given by the doctor. Providing medical safety to a patient is a part of a work that is to be done by a doctor fluently without causing any error, but in the last few decades, there is a major change in the relationship between doctor and patient. When a doctor declines to perform his duty positively this could create many errors to patients. In such a case medical representative is legally responsible for all the harms and injuries caused to a patient. Many cases in the past few decades implicate medical negligence and because of the negligence of doctors, some rights are provided to the patients, to revive back their expense paid for the treatment. For this, there is a separate branch which is made in Jurisprudence regarding medical negligence. Subsequently, to the execution of the consumer protection act, plenty of doctors were being sued for medical negligence caused to a patient in some way or other. But, medical representatives aren't directly liable to any patient rather they are responsible for such acts of medical malpractices.

Section 304A ¹of Indian Penal Code states Causing Death by Medical Negligence

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Negligence is the breach of a duty to care caused by the omission of doing something which a reasonable manner in an ordinary period would do or doing something which a sagacious man would not do, The essential ingredients of negligence are running away from legal duty or negatively performing the duty, breach and inflicted damage. Such negligence is caused by any medical practitioners will be amount to medical negligence. Therefore a lot of incidents took place of medical negligence in India so it was important to create laws related to medical negligence.

Medical practitioners such as doctors or nurses etc. They have vast knowledge about their task and to process knowledge one has to take utmost care and it should be done in such a way that

¹ <https://indiankanoon.org/doc/1371604/>

while operating no human being should die because of negligence on the part of a doctor, doctors should proceed with caution while an operating patient. But the question is can a doctor be held liable if things go south? To answer this question in a simple form, the doctor can't be held liable unless and until negligence is proven. This is because doctors are also human beings with great knowledge in their respective fields. So, there might be a chance of error or mistake which can take place while operating a human being. Other than that if negligence is proved then they can be surely held liable for the negligence caused.

Medical Negligence in India

Medical Negligence can be categorised in 3 parts:-

1. Medical Negligence and Criminal law :

Indian criminal law has put medical negligence or medical practitioners on different level as compared to an ordinary human. As per section 304 A of Indian penal code it states that "whoever causes the death of a person by a negligent act which is not amounting to culpable homicide shall be punished with imprisonment for a term of two years, or with a fine or with both."

Thus, when a person does or engages in any death to other human by rashness or negligence, but without intending to cause and mistake which can lead to death or thinking it like he shall cause death. He should be liable for the offence he participated.

Criminal liability can also be imposed on a doctor or nurse under certain situation. For example if a person dies while administering anaesthesia in an operation; the death must also be due to malicious intention². Many a times there might be possibility that doctor might be engaged vicariously activity, it means that employee causes death of the patient. In this case doctor as well as employees will be liable due to principle of vicariously liability under tort law. There might also be few exception regarding this.

Section 80³ and section 88⁴ contains remedies on the part of doctor who are accused under criminal liability. Under section 80 'nothing is an offence that is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner

² <http://lawcommissionofindia.nic.in/reports/rep196.pdf>

³ <https://indiankanoon.org/doc/602933/>

⁴ <https://indiankanoon.org/doc/862963/>

by lawful means and with proper care and caution.’

And under section 88 of Indian Penal Code states that. Nothing which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

2. Consumer protection act and criminal negligence

Since 1990's there's enormous speculation and debate on whether medical services are explicitly or categorically included within the definition of “Services” as enshrined under Section 2(1)(o) of the buyer Protection Act (CPA). Deficiency of service⁵ means any fault, imperfection, shortcoming, or inadequacy within the quality, nature, or manner of performance that's required to be maintained by or under any law for the nonce effective or has been undertaken to be performed by an individual in pursuance of a contract.

The question that involves the mind is that where can a complaint be filed; the solution is that, a complaint are often filed in⁶ :

- a. The District Forum if the worth of services and compensation claimed is a smaller amount than 20 lakh rupees,
- b. Before the State Commission, if the worth of the products or services and therefore the compensation claimed doesn't exceed quite 1 crore rupees,
- c. Within the National Commission, if the worth of the products or services and therefore the compensation exceeds quite 1 crore rupees.

The positive aspect of this is that there's a minimal fee for filing a complaint.

In the case of *Indian Medical services v. VP Shantha*⁷ brought the medical community within the ambit of ‘service’ defined within the Consumer Protection Act, 1986. This defined the connection between patients and medical professionals by giving contractual patients the

⁵ <https://egazette.nic.in/WriteReadData/2019/210422.pdf>

⁶ http://www.delhistatecommission.nic.in/filing_procedure.htm

⁷ <https://indianlawportal.co.in/indian-medical-association-v-vp-shantha/>

facility to sue doctors if they sustained injuries within the course of treatment in 'procedure free' consumer protection courts for compensation.

3. Medical negligence and Civil law

The position regarding negligence under civil law is extremely important because it encompasses many elements within itself. Under the torts law or civil law, this principle is applicable even though medical professionals provide free services. It is often asserted that where Consumer Protection Act ends, tort law begins.

In cases where the services offered by the doctor or the hospital don't fall within the meaning of 'services' as defined under CPA, patients can take recourse to tort law under negligence and claim compensation. Here, the onus (burden) of proof is on the patient, and he has got to prove that due to the doctor's or the hospital's negligent act, he suffered injury thereby.

Cases of negligence may include transfusion of blood into different blood group, leaving a cotton in patient's abdomen after the operation, removal of kidneys without consent and prescribing wrong medicine resulting in injury.

In the case of the *State of Haryana v. Smt Shantha*⁸, the Supreme Court held that each doctor "has a requirement to act with an inexpensive degree of care and skill." However, since no human is ideal and even the foremost renowned specialist can commit an error in diagnosing a disease, a doctor is often held responsible for negligence as long as one can prove that she/ he's accused of a failure that no medical practitioners with ordinary skills could be guilty of acting with due care.

Liability of Doctors:

A doctor is not necessarily liable in every case where the injury is reported by the patient. It is scientifically proved every individual's body is subjected to various variations in health, which can arise anytime. It is unforeseeable for a doctor too. Therefore, the doctors cannot be

held liable for patients' death, which occurs due to 'enforceability' of their condition. It is argued that it will be doing a disservice to the community at large if the court were to impose

⁸ <https://uniteforreprorights.org/resources/state-haryana-others-v-smt-santra-supreme-court-india-2000/>

liability on doctors and hospitals for everything that happens to go wrong. In the case of *Dr. Ganesh Prasad and Anr.v. Lal Janamajay Nath Shahdeo*⁹

‘Where proper treatment is given, death occurring because of process of disease and its complication, it can’t be held that doctors and hospitals are negligent and orders of lower fora do not uphold the claim and award compensation.

In this case, a four-and-a-half-year-old child affected by cerebral malaria was admitted to the hospital. A life-saving injection was given. As opined by the kid specialist, doses were safe and therefore the treatment was proper. Though the death of the kid is unfortunate, Negligence can’t be attributed to the doctor.

The courts recognized as not being the kind of a breach of the duty of care. At the time when the choice made, it doesn't seem wrong. It is due consideration of all precautions needed while making the decisions to run away from liability if some wrong happens or injury is caused to a person while exercising that decision.

Remedies available to Patients:

A patient who is the sufferer from the negligent act of the doctors can seek remedy under various laws as follows:

- A. Compensatory action: this involves when one has to complain against doctor, staff or hospital (private or government) who committed negligence can seek compensation before civil court under law of torts.
- B. Punitive action: it involves criminal complaint against doctor.
- C. Disciplinary action: it involves seeking of disciplinary action against the medical practitioners

Recommendatory action: it involves writing of complaint before National human rights seeking compensation

CONCLUSION

Here are a couple of criticisms staring within the face of the Indian laws on medical negligence.

⁹ <https://www.lawyerservices.in/Dr-Ganesh-Prasad-and-Another-Versus-Lal-Janamajay-Nath-Shahdeo-200512->

The foremost is that the principle of 'Burden of Proof'. The burden of proof is on the plaintiff. So, if a patient alleges malpractice in medical, the law would require a better standard of evidence to support it. Here, for a standard human or a patient, it becomes very difficult to work out the precise damage and therefore the causal relation between the injury and the fault of the doctor.

Resultantly, the patient isn't ready to prove doctor's fault beyond an inexpensive doubt, since, the sector of drugs is unexpected and unpredictable and anytime anything can happen during a physical body then, it reverts to the plaintiff. Therefore, it's time that the laws dictating upon the medical negligence get changed so on suit patients first. And therefore the patients should be aware regarding their rights against medical malpractices by civil societies through proper studies.

Gandhi said "*It is health that's a person's real wealth and not pieces of gold and silver*". So as an ethical obligation All the concerned authorities whether it's the hospital, Government, Medical Council or the other institution working towards betterment of healthcare facilities should work together and take steps to provide quality healthcare and proper treatment.

Traditionally, courts are very considerate to practice while handling professional negligence.

However, a clinician has certain specific duties towards his patient. If he or she commits an act which other clinicians of his or her status, standard, and competence wouldn't commit or the clinician omits to try and do something which other clinicians would definitely do, the clinician has performed a negligent act. Practicing with ordinary care, diligence and adopting the accepted standards of practice, and respecting the autonomy of the patient is what's expected from a medical practitioner. Additionally, a medical man must act consistent with the copy of the declaration of the Code of Medical Ethics provided by the Indian Medical Council at the time of registration.

SUGGESTIONS

Medical Negligence is seen on a major scale since past few decades, and to deal with that problems proper laws and regulations should be followed. In the time of covid-19 we have less supply of oxygen, injections required to fight covid-19 has a large amount of shortage and not just the medicine or injection there is a big shortage of hospital ICU beds. The point of saying

all this is that this could be termed as medical negligence on the country level why? No proper plan was made to fight covid-19 which resulted in lots of death.

Other than that people who are suffering from diseases other than covid-19 has to suffer. Because all the hospitals are allocated to make the covid-19 wards. And before treating any other disease, one has to show report of covid-19 testing negative which usually takes 18-24 hours in general to get back the report till that time a human can lose his/her soul.

Other than that due to covid-19 people are tested positive day by day and the positive count is increasing day by day so the point of this is that due to increasing patients medical negligence can be reported because it gets difficult for the doctor to keep track on each and every patient. Many people die due to medical negligence and for this not just doctors, nurse or staff are liable but also the whole government.