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## CRIMINAL LIABILITY THRESHOLD IN CASES OF MEDICAL NEGLIGENCE

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Aditi Shandage, School of Law, Christ (deemed to be) University

### ABSTRACT

The present paper tries to analyze various case laws dealt in the Supreme Court and High Courts of India which have had doctors and the hospitals criminally liable in cases of medical negligence. Article 304 A of the Indian Penal Code of 1860 deals with negligence in general and sets out general standards. Therefore, ideally the prerequisites to hold a person or an organization criminally responsible is that of mens rea and the degree of negligence. The present paper after analyzing the Supreme Court's Jacob Mathew ruling highlights that having a negligent act of a degree is sufficient to hold a person criminally liable and satisfying the element of mens rea is not essential. The paper starts with discussing philosophical theories of negligence which further links medical negligence towards criminal liability in certain circumstances over civil liability. In the next part of the paper the provisions of Consumer Protection Act 2019 and the Indian Penal Code of 1860 which deal with aspects of negligence are discussed and the ambiguity of these provisions in dealing with medical negligence amounting to criminal liability is highlighted. In conclusion the paper provides a general threshold for criminal liability in medical negligence cases after analyzing a plethora of case laws.

**Keywords:** Criminal, civil, degree, liability, mens rea, negligence, prerequisites, threshold

## Introduction:

When a patient visits a doctor, he or she wants the doctor to treat them with all of the information and expertise that can help solve their medical issue. The arrangement retains the fundamental components of a tort while taking the form of a contract. A physician has obligations to his patients, and any carelessness on the part of the physician may give rise to legal action. Before performing diagnostic procedures or administering therapeutic care, the physician is required to get the patient's prior informed consent.<sup>1</sup> The Consumer Protection Act of 1986 covers the services provided by doctors, and patients can file complaints with the Consumer Courts for resolution. When deciding on different cases of carelessness resulting from medical care, case laws are crucial sources of legal information. Because it contributes to life preservation, the medical field is seen as honorable. For us, life is a gift from God. Therefore, a physician plays a role in God's plan since he is positioned to fulfill His directive. Typically, a patient chooses a physician or institution based on his or her reputation. Patients have two expectations of hospitals and doctors: first, they expect that they will treat them with all the knowledge and expertise at their disposal; second, they expect that they won't do anything to harm the patient in any way, whether through staff negligence, carelessness, or recklessness. A doctor is supposed to apply his specialized knowledge and ability in the most appropriate way, bearing the patient's best interests in mind, even though he may not always be able to save his patient's life. As a result, it is expected that a physician will obtain a report from the patient or conduct any necessary investigations. Additionally, he gets the patient's informed consent before beginning any significant treatment, surgery, or even intrusive examination, unless it's an emergency.<sup>2</sup>

The issue of whether negligence should be made a criminal offense and on what basis, especially when it comes to the actions of medical professionals, showcases a gray area that falls between civil and criminal law. The focus of this paper is on analyzing such acts of medical negligence which draws criminal liability. The paper's broad arguments can be characterized as an attempt to address the debate around the question of whether certain negligent acts of doctors should be criminalized and, if so, what criteria should be used to impose such a penalty.

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<sup>1</sup> Heong, Stanley Yeo Meng. "THE STANDARD OF CARE IN MEDICAL NEGLIGENCE CASES." *Malaya Law Review*, vol. 25, no. 1, 1983, pp. 30–49. *JSTOR*, <http://www.jstor.org/stable/24863889>.

<sup>2</sup> MEDICAL NEGLIGENCE IN INDIA - MANUPATRA, <http://docs.manupatra.in/newsline/articles/Upload/461E58E1-4074-47C1-98EE-22F84BEFC7EB.pdf> (last visited Nov 2023).

Numerous jurisdictions are trying to address the issue of medical negligence being criminalized, and they have addressed it in a variety of ambiguous ways through case law. It's critical to comprehend the many stances courts have taken on this matter across jurisdictions as well as the policy ramifications of their rulings. The paper thus tries to analyze the judgments passed by the higher courts in this matter with an intent to form a criminal threshold for such cases.

This study intends to analyze medical criminal negligence as a legal topic. This paper aims to investigate the theoretical underpinnings and related issues surrounding the criminalization of negligent behavior. Cases that deal with both this area of negligence and criminal law usually follow the sequence of events when a death has occurred. Given this, the majority of the case law that will be used in this paper should make references to similar facts.

The first concern of this paper is to evaluate the philosophical theories revolving around the topic and relating them to the present law. Such a comparison may help us build the criminal liability threshold in cases of medical negligence. This part of the paper discusses Salmond's subjective theory of negligence and Sir Frederick Pollock's objective theory of negligence both of which talk about civil and criminal negligence respectively.

The second concern is situating and analyzing negligence's place within the criminal law system. As has been mentioned in multiple scholarly discussions, the offense takes up a unique and problematic place in this context. The paper also discusses the provisions of Consumer Protection Act 1986 and the provisions of Indian Penal Code which are related to negligence. Further an attempt is also made to address the concerns that have been raised therein and to evaluate whether the existence of an offense such as criminal negligence is detrimental to a valid and coherent theory of criminal law. This pertains to both the conditions that must be met in order for an act of negligence to be considered negligent, such as the absence of the mens rea requirement, and the challenges associated with determining the threshold of negligence that should be considered illegal.

The last part of the paper deals with analyzing various case laws from various different jurisdictions. Here, the paper addresses mens rea and the level of negligence being a prerequisite for criminal offense via medical negligence. With the analysis of these two criteria and case laws the paper tries to form a threshold for criminal liability in medical negligence cases as a conclusion.

The methodology used in the present paper is that of the doctrinal research method. The analysis is done through a qualitative data collection approach. The paper is written on the basis of secondary data sources such as journal articles, book chapters, case laws, commentaries etc. The data used has been collected from reliable sources such as Jstor, SCC Online, Hein Online, Google Scholar, Oxford Publication, Oxford World Press, Proquest etc. Further the method used for analyzing the data is that of context analysis.

## CHAPTER I

### **The Philosophical Approach To Medical Negligence.**

Negligence is the term used to describe an act or omission that results in loss, damages, or injury owing to carelessness, or from failing to take adequate precautions. Legally speaking, negligence is the inability to exercise or take reasonable care. It can be broadly classified into two categories: subjective and objective. Great philosophers Frederick Pollock and John Salmond, respectively, first proposed these two categories.<sup>3</sup>

According to Salmond's subjective theory of negligence, carelessness is wrong when it is willful. In light of this, "negligence fundamentally consists in the mental attitude of undue indifference with respect to one's conduct and its consequences" The benefit of the subjective view is that, in some circumstances, determining whether a man was negligent will depend in part on his mental state. In criminal law, instances of what seems to be negligence may actually be instances of improper intention after considering the party's mental state.<sup>4</sup>

Moving forward, Sir Frederick Pollock's objective theory contends that negligence is an objective fact rather than a subjective quality. It is not at all a specific mentality or type of mens rea, but rather a specific type of behavior. A breach of the duty to exercise care is considered negligence. To take care is to protect oneself against negative effects of one's activities. Negligence is acting in a way that a normal, prudent person would not.<sup>5</sup> Driving at night without a light is negligent because having a light is the sign of a prudent person. Taking care is thus no longer a mental attitude or state of mind. This approach, known as the "objective theory," is

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<sup>3</sup> Winfield, Percy H. "Duty in Tortious Negligence." *Columbia Law Review*, vol. 34, no. 1, 1934, pp. 41–66. JSTOR, <https://doi.org/10.2307/1115632>. Accessed 6 Nov. 2023.

<sup>4</sup> Barelawindia, NEGLIGENCE: THEORIES AND KINDS. - BARELAW BARELAW.IN (2023), <https://www.barelaw.in/negligence-theories-and-kinds/> (last visited Nov 2023).

<sup>5</sup> Pollock on the law of torts, ONLINE LIBRARY OF LIBERTY, <https://oll.libertyfund.org/page/pollock-on-the-law-of-torts> (last visited Nov 2023).

strongly supported by tort law, where it is well-established that negligence refers to a failure to meet the objective standard of behavior for a reasonable person.

Taking into account the two theories of negligence discussed above, it can be said that the subjective theory tends to favor civil negligence while the objective theory tends towards criminal negligence. In *Indian Medical Association v. V.P. Shantha*<sup>6</sup>, the Supreme Court declared the healthcare sector to be a "service" covered by the Consumer Protection Act. They held that a person seeking medical care would be regarded as a "consumer," designating consumer courts as their appropriate court of recourse. But in the modern era, medical negligence cases can also be prosecuted as criminal negligence and lead to criminal responsibility. In numerous instances, hospitals and their doctors have been held criminally responsible under section 304-A of the IPC. A doctor may also be held criminally liable if a patient dies while receiving anesthesia during an operation; the patient's death must also have been caused by the doctor's willful misconduct, malicious intention, or gross carelessness. Therefore, it is safe to say that criminal negligence is governed by the subjective theory of negligence.

Furthermore, the most important component of Roscoe Pound's Theory of Interests which divides social interests into three groups: individual interests, public interests, and social interests. is the weighing and balancing of two competing interests, which must be done in every situation.<sup>7</sup> For the purpose of balancing them, each type of interest is convertible into the other type. Because of this, it is necessary to categorize the competing interests so that they fall into one of the many social interest groups. Now that the competing interests are on the same level, the individual needs to find a way to reconcile them and strike a balance between them so that there is as little friction as possible and as much fulfillment of human desires as possible. According to Pound, the social engineer is responsible for this. Due to its inherent weaknesses, laws like Section 304-A IPC frequently cause conflicts between the interests involved. Therefore, it is important to look at the legal flaws before we try the balancing act.

In light of the aforementioned, the research paper tries to examine the issue of determining what actions of a person or a group constitute criminal culpability in cases of medical

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<sup>6</sup> *Indian Medical Association v. V.P. Shantha* (1995 SCC (6) 651)

<sup>7</sup> Bhumika Indulia, Editor\_4 & Ridhi, BALANCING THE INTERESTS OF STATE WITH THE INTERESTS OF INDIVIDUALS: LAW OF SEDITION VIS-À-VIS ROSCOE POUND'S THEORY OF SOCIAL ENGINEERING SCC BLOG (2022),

negligence. In circumstances of medical negligence, the current legislation solely uses Section 304-A of the IPC to hold a person criminally accountable, however the provision makes no mention of how the acts vary from negligence under civil law. In India, criminal liability for medical malpractice is primarily based on case laws; the lack of precise legislation gives rise to conflicting interests between the parties. The competing friction between criminal and civil negligence must be identified explicitly in order to prevent the misuse of Section 304-A of the IPC and to define precisely what behaviors result in criminal liability and what behaviors result in civil liability.

To hold a doctor criminally responsible for a patient's death, it must be established that there was negligence or incompetence on the doctor's part, which went beyond civil liability. Civil liability for medical malpractice may be attributed either to a doctor or a hospital when any of these persons' acts or omissions causes injuries to a patient; it may be also the hospital's liability for the damage caused by negligence of its staff (doctors and other personnel). Criminal liability would arise only if the doctor did something in disregard to the patient's life and safety. In order to draw the line or threshold separating acts of negligence into civil and criminal culpability and thereby reducing the conflict of interest, legislators must take into account both the subjective and objective theories of negligence and promote Roscoe Pound's Theory of Interest by balancing out legislations.

## CHAPTER II

### **Legislative Approach to Medical Negligence Amounting to Criminal Liability**

In essence, a patient's right to medical care from doctors and hospitals is a civic right. Because of informed permission, fee payment, performing surgery or giving therapy, etc., the relationship somewhat resembles a contract while preserving key tort features. *A.S. Mittal v. State of U.P.*<sup>8</sup>, and *Dr. Laxman Balkrishna Joshi vs. Dr. Trimbarik Babu Godbole and Anr*<sup>9</sup> established that when a doctor is consulted by a patient, the doctor has three obligations to the patient: (a) deciding whether to take on the case; (b) deciding what treatment to give; and (c) administering that treatment. Any of the aforementioned obligations broken could result in a negligence claim, which would allow the patient to sue his doctor for damages. The supreme court noted in the previously mentioned case, among other things, that there are

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<sup>8</sup>A.S. Mittal v. State of U.P. 1989 AIR 1570 1989 SCR (3) 241 1989 SCC (3) 223 JT 1989 (2) 419 1989

<sup>9</sup> Dr. Laxman Balkrishna Joshi vs. Dr. Trimbarik Babu Godbole and Anr 1969 AIR 128 1969 SCR (1) 206

numerous ways in which negligence can manifest itself. These include criminal negligence, gross negligence, hazardous negligence, comparative negligence, ongoing negligence, active and passive negligence, willful or reckless negligence, and negligence per se.

According to the Indian Penal Code, reckless or negligent conduct may result in criminal culpability. Lately, the development of the Consumer Protection Act has given aggrieved parties an easy mechanism and method for granting civil remedies against inadequate medical services. Therefore, with some required revisions, Indian courts have mostly adhered to English Law's tortious liability for medical negligence.<sup>(8)</sup> The judicial process has become necessary in order to provide justice to the masses due to failures, gaps, and ambiguities in the statutory provisions under the C.P. Act as well. The Apex Court has proceeded proactively in their wisdom to administer justice by determining criminal liability under the Indian Penal Code.

In *Indian Medical Association v. V.P. Shantha*<sup>10</sup>, the Supreme Court declared the medical industry to be a "service" covered by the Consumer Protection Act. They maintained that someone seeking medical care would be seen as a "consumer." Therefore the civil liability for medical negligence is covered under the Consumer Protection Act of 1986.

According to Section 14(1)(d) of the Consumer Protection Act of 1986, which also applies to medical professionals, compensation must be given for any loss or harm incurred by the consumer as a result of the other party's carelessness. Additionally, medical professionals are subject to the guidelines established in *Bolam v. Friern Hospital Management Committee*<sup>11</sup>[1957] 1 W.L.R. 582 about the standard of care expected of them.

Considering the legal remedies available for civil negligence by doctors there has been much legal debate regarding whether or not negligent conduct should be punished criminally. For the most part, contractual law and torts law deal with it. Penal sanctions are most likely to be imposed when the negligent behavior has caused a loss of life .

Section 304-A of the Indian Penal Code, 1860 states that an individual may be sentenced to up to two years in prison, a fine, or both if they perform a careless or reckless conduct that constitutes culpable homicide. Further ,section 337 of the Indian Penal Code, 1860 states that if someone does something negligent or rash that endangers the life of another person or their

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<sup>10</sup> *Indian Medical Association v. V.P. Shantha* (1995 SCC (6) 651)

<sup>11</sup> *Bolam v. Friern Hospital Management Committee* [1957] 1 W.L.R. 582

personal safety, they are guilty of the crime. The offender will be penalized with either a fine of up to 500 rupees or a sentence of jail that might last up to six months, or both. A person is liable under Section 338 of the Indian Penal Code, 1860 for any reckless or thoughtless act that endangers the life of another person or their personal safety. The punishment for the offender might be up to two years in prison, a fine of up to one thousand rupees, or both.

All of the requirements outlined in a civil action, namely the existence of a duty to act or not act, the violation of that duty, and the injury caused by the breach must be met in order for negligence to be considered a civil offense.<sup>12</sup> So what must be the difference between using criminal penalties for these kinds of actions instead? Part of the solution lies in the outcome of such negligent behavior most obviously, death. Nonetheless, an examination of the level of negligence demonstrated must also be examined, specifically focusing on whether the act was mere negligence or if the exhibitor showed severe negligence.<sup>13</sup>

Under various parts of the Indian Penal Code, 1860, an individual may face imprisonment and/or a fine if their acts put the lives of others in danger, compromise their own safety, or result in the death of another person. Nonetheless, the court has pointed out that when considering a criminal prosecution in a situation of carelessness, the condition of "mens rea" must be demonstrated to exist. To determine criminal liability, it must be proven beyond a reasonable doubt that the accused did or did not do anything that, in the given circumstances, no other medical professional in his usual senses and prudence would have done or failed to do.

Therefore, the crucial question is whether medical negligence can only result in a criminal offense if the criterion of recklessness is reached, or if it should always meet the mens rea requirement. There are now various Common Law jurisdictions attempting to address and resolve this dilemma.

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<sup>12</sup> NEGLIGENT BEHAVIOR SHOULD BE EXCLUDED FROM PENAL LIABILITY, <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2446&context=facpub>.

<sup>13</sup> Judy Laing et al., PRINCIPLES OF MEDICAL LAW UNIVERSITY OF BRISTOL (2017), <https://research-information.bris.ac.uk/en/publications/principles-of-medical-law> (last visited Nov 3, 2023).



## CHAPTER III

### **The Criminal Liability Threshold In Medical Negligence Cases.**

The courts have cited English cases to support their position that imposing a prerequisite so high of negligence for criminal culpability will help avoid defensive medicine. Despite the fact that this would be required from a practical standpoint, the courts have neglected to investigate whether criminal culpability alone, that is, civil liability would be enough to deter. Additionally, Section 304A of the IPC defines criminal negligence according to the same requirements for all forms of negligence, thus should medical negligence be the lone exception?

Consequently, it is argued that the courts have raised the bar so high in order to shield doctors and other medical professionals from needless and frivolous harassment and litigation, to the point where it would be extremely difficult, if not impossible, for the injured patient to prove his case. At first, it might be beneficial because it would stop all frivolous lawsuits and defensive medical practises, but it also disadvantages the patient or consumer, who is already in a difficult situation because he is a layman and is unaware of the intricacies of the procedure, making it difficult to establish what negligence occurred.

Considering this issue the following part of the paper will be analyzing case laws in the higher courts which have dealt with criminal liability in medical negligence cases so as to draw a threshold for such acts.

A three-judge bench in the *Jacob Mathew v. The State of Punjab*<sup>14</sup> The case was tasked with reviewing the Supreme Court's ruling in the *Dr. Suresh Gupta case*<sup>15</sup> due to concerns about its validity. The treating hospital in the current case appears to have acted with extreme negligence, according to all the evidence. In this instance, the patient was receiving treatment after being admitted to the hospital. He was having trouble breathing the night before he passed away, so someone phoned the doctor. The defendant physician was running late to the ward. He then requested that the patient have a ventilator linked to him in order to aid with breathing. It was later discovered that the oxygen cylinder used to provide the dead with artificial breathing was empty. The patient succumbed in the time needed to replace the same. The Court cites the House

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<sup>14</sup> Jacob Mathew v. State of Punjab (2005) 6 SCC 1,

<sup>15</sup> Suresh Gupta v. Government of NCT, Delhi, (2004) 6 SCC 422

of Lords' ruling in *R. v. Caldwell*<sup>16</sup> when determining the level of negligence necessary to establish criminal responsibility. The Adomako ruling specifically mentions the R vs Caldwell recklessness test, which lacks men's rea and allows "recklessness" to be used in place of egregious negligence.

The noteworthy feature is that the Supreme Court used passages from Macaulay's speech regarding the Indian Penal Code (IPC) 1860,87, which deals with exceptions to and the liability of doctors:

"If A causes miscarriage to Z, not intending to cause Z's death, nor thinking it likely that he shall cause Z's death, but so rashly or negligently as to cause her death, A is guilty of culpable homicide not voluntary, and will be liable to the punishment provided for the causing of miscarriage, increased by imprisonment for a term not exceeding two years."<sup>17</sup>

The current explanation, according to the court, makes it abundantly evident that gross negligence rather than recklessness is the prerequisite for culpability, and that the two must be distinguished. Moreover, Section 304A of the IPC does not mention the requirement of negligence for it to be gross.

High Courts have applied the Supreme Court's *Jacob Mathew ruling*<sup>18</sup> to several issues. Due to the judgment's highly objective standards and dicta, they have frequently been applied without properly contextualizing the relevant facts, which has resulted in blatant injustice. Even when the Supreme Court clarified several issues in later rulings, the same principles have not been applied.

The rulings will show that High Courts have incorrectly applied the flawed standards that the Supreme Court set, which are flawed in the first place. It becomes evident that courts have tried to determine mens rea in negligence cases in a way that is inconsistent with negligence law. This has resulted in many acquittals even in cases where the evidence was crystal obvious to show otherwise.

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<sup>16</sup> R v Caldwell [1982] AC 341

<sup>17</sup> EXTRACT FROM WRIGHT FOR MAR 11 - CARLETON UNIVERSITY, <https://carleton.ca/history/wp-content/uploads/Extract-from-Wright-for-Mar-11-talk.pdf> (last visited Nov 2023).

<sup>18</sup> Supra note.14

For example the High Court of Rajasthan in *Dr. Sarita Upneja v. State of Rajasthan and Another*<sup>19</sup> ruled that a doctor who had improperly given medication intended for cesarean deliveries to a patient having a normal delivery and who had not taken appropriate action to halt excessive bleeding after delivery was not criminally responsible and that the proceedings were annulled.

In *Jacob Mathew case*<sup>20</sup> The Supreme Court made it clear that negligence is treated differently under criminal and civil law. When evaluating medical negligence, the court cannot find that a doctor was negligent simply because they followed a practice that was accepted at the time by the medical community, made a mistake in judgment, or had an accident. It wouldn't be considered carelessness if there was a better course of action or technique of treatment available, or even if a more qualified physician chose to utilize a different approach. Furthermore, the yardstick for determining negligence cannot be the disregard for extraordinary measures that could have prevented a specific incident.

The appellant in *Juggan Khan v. The state of Madhya Pradesh*<sup>21</sup> was a licensed homeopathic physician. A woman went to him for guinea worm treatment after viewing an advertisement. She became agitated after taking the medication he prescribed, and even after certain countermeasures were given, she passed away that evening. A murder conviction was obtained for the appellant under Section 302 of the IPC. The court determined that prescribing hazardous medications without conducting adequate research or having knowledge of them was irresponsible.

It is clear from these examples that the law governing doctors' criminal culpability has been twisted by rulings and improper implementation that demonstrates a lack of knowledge of the essential elements of the precedent that the courts are required to follow.

### **Conclusion:**

In conclusion the threshold for criminal liability in cases of medical negligence is not something that is clearly set out in the Indian Penal Code or in the Consumer Protection Act. The Indian Penal Code merely just addresses negligence in general. There is a need for insertion

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<sup>19</sup> *Dr. Sarita Upneja v. State of Rajasthan and Another* 2008 Cril 3097

<sup>20</sup> *Supra* note.18

<sup>21</sup> *Juggan Khan v. State of Madhya Pradesh*, MANU/SC/0078/1964 : AIR 1965 SC 831

of clauses related to medical negligence amounting to criminal liability in either of the two mentioned legislations. Such new laws can bring in clarity thereby holding the right person liable and giving justice to the aggrieved party.

The paper then analyzes the ratio and logic that was brought through various case laws wherein the medical professionals were criminally held liable. The majority of cases highlight the mens rea and level of negligence as the prerequisite for criminal liability. The Supreme Court as mentioned above stated that mens rea is not a criteria that needs to be compulsorily fulfilled where as when it comes to the level of negligence, the court again reiterated that the amount or level of negligence is not essential. The basic drawing out of these cases is that medical negligence will amount to criminal liability when the medical professional negligently causes the patient's death unless and until it was by accident. The above mentioned threshold must therefore be that of any negligent behavior amounting to death of the patient irrespective of the mens rea element.