



Medical negligence - Marauding monster

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Introduction

“To Err is Human” Negligence can be described as failure to take due diligence which results in injury. A medical professional is expected to have the requisite degree of skill and knowledge. One may find instances of medical negligence resulting in irreparable damage to the victims or their relatives. These cases may have to be definitely brought under the scanner of law. The professional can be sued for providing low quality of treatment and care. The professionals may also be subjected to various laws in case of negligent acts done by them during their practice. Medical negligence is punishable under various laws such as Torts, Indian Contract Act, Consumer Protection Act, Indian Penal Code etc. According to ARM trust, around fifty-two lakhs (5200000) medical injuries are recorded every year in India and ninety-eight thousand (98,000) people in the country lose their lives in a year because of medical negligence. In order to deal with this emerging issue, medical negligence reduction united nation development programme (MNRUNDP) had taken many steps to provide an effective solution and one of the most vital step is

nothing but creating public awareness of medical negligence. On verifying the statistics of medical negligence, the legal structure relating to this issue is not up to the mark.

1. Negligence

Negligence is the infringement of a legal obligation to care. It indicates carelessness in a matter in which the law directs carefulness.

Types

- Medical misdiagnosis
- Surgical negligence
- Prescription and medication errors
- Negligent medical advice

1.1 Medical Negligence

“No doctor knows everything. There’s a reason why it’s called “practicing medicine”

Medical negligence also known as medical malpractice is improper, unskilled, or negligent treatment of a patient by a physician, dentist, nurse, pharmacist, or other health care professional.

1.2 Negligence as a Tort

A tort is a residuary civil wrong. Duties in tort are fixed by the law and such duties are owed in rem or to the people at large generally. Such wrongs can be remedied by filing for unliquidated damages. There may also be cases where concurrent liability may exist under tort and contract. For instance, if there is a contract existing between a patient and a doctor, then the



doctor, for his negligence, will be liable under contract.

1.3 Negligence under Contract

A contract may have express or implied terms. There are situations where there is a contract between medical practitioners and patients. Even in the absence of an express stipulation to the effect that the practitioner will exercise reasonable skill and care in treatment of a patient, it is taken as an implied duty arising out of the contract. Breach of this duty thus results in violation of the contract.

1.4 Negligence as a Crime

Negligence as a crime has a different yardstick. Negligence under tort is determined on the extent of the loss caused whereas negligence under criminal law is dependent on the degree or amount of negligence. Courts have repeatedly held that the burden of proving criminal negligence rests heavily on the person claiming it. Criminal law requires a guilty mind. If there is a guilty mind, a practitioner will be liable in any case. But if, under the criminal law, rashness and recklessness amount to crime, then also a very high degree of rashness would be required to prove charges of criminal negligence against a medical practitioner. In other words, the element of criminality is introduced not only by a guilty mind, but by the practitioner having run the risk of doing something with recklessness and indifference to the consequences. It should be added that this negligence or rashness or must be 'gross' in nature.

1.5 Negligence by professionals

Professionals are persons professing some special skill or job, who are trained to profess in that area specially and bear the responsibility of professing with due care. Such professionals include lawyers, doctors, architects etc. The SC in *Jacob Mathew v. State of Punjab*¹, explained: a professional entering into certain profession is deemed to have knowledge regarding that profession and it is assured impliedly by him that a reasonable amount of care shall be taken to profess his profession. The person can be held liable under negligence if he did not possess the required skills to profess or he failed to take essential amount of care to profess the said profession.

1.6 Negligence under Consumer Protection Legislations

Ever since professions have been included under the purview of consumer protection laws; medical practitioners too have felt the heat. It is on a footing different from any other kind of negligence. Under consumer protection laws, medical negligence is another form of deficiency in service. It is most akin to the liability under the law of torts. But there is stricter and broader liability in this situation as failure to exercise skill and care as is ordinarily expected of a medical practitioner is the test under consumer protection laws.

2. Doctor acting in a negligent manner

A doctor or a medical practitioner when attends to his patients, owes him the following duties of care:



- A duty of care in deciding whether to undertake the case
- A duty of care in deciding what treatment to give
- A duty of care in the administration of the treatment
- Damage to organ due to negligence.
- Wrong treatment due to wrong diagnosis.
- Money receipt or prescription or discharge summary or test reports when not provided.

In *Gian Chand v. Vinod Kumar Sharma*¹ it was held that shifting of the patient from one ward to another in spite of requirement of instant treatment to be given to the patient resulting in damage to the patient's health then the doctor or administrator of the hospital shall be held liable under negligence. Also in *Yagdish Ram v. State of H.P.*¹, it was held that before performing any surgery the chart revealing information about the amount of anesthesia and allergies of the patient should be mentioned so that an anesthetist can provide ample amount of medicines to the patient. The doctor in above case failed to do so as a result of the overdose of anesthesia the patient died and the doctor was held liable for the same.

3. Steps/ Procedure to file complaint pertaining to medical negligence

Medicine is a noble profession and practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise reasonable degree of care. Neither the very highest nor a very low degree of care and competence, judged in the light of the particular circumstances of each case, is that the law requires.

- When treatment not chosen as accepted and established in medical norms/ as per medical research/ available under medical literature.
- Theories of res ipsa loquitur [a thing speaks of itself] – in case any instrument left in the body, a wrong part removed, allopathic treatment given by a homeopathic doctor etc.
- Government hospital liable if contribution from the employee's salary deducted or payment made by insurance company.
- Negligent if three steps necessary are not observed by the medical practitioners. First - to decide whether he has to take up the case or not: Third-whether the treatment given as per the diagnosis made.
- Hospital can also be negligent if 'it is a case of non- availability of oxygen cylinder either because of the hospital having failed to keep available a gas cylinder or because of the gas cylinder being found empty.

4. Conclusion



Medical requires lot of calmness and care. Often many medical professionals be unsuccessful or infringe their duty towards the patients. Medicine one of the noblest professions requires application of mind rather than presence of mind. People in our country are already under pain of many diseases, let's make effective measures to pull down these deaths and concentrate on extemporizing the profession so that people will get effectual medical care.

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