

Medical Negligence- A Legal Perspective

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Abstract

It is common belief and is correct that people considered the Doctor as another form of God. Doctor who saves the life of a dying person, to whom the person concerned cannot forget his age. A patient takes all hope that the Doctor will treated him with full skill and knowledge. Doctor owes the patient and on breach of this duty, the negligence arises.

Medical negligence is punishable under various laws viz. Torts, Indian Penal Code, Indian Contract Act, Consumer Protection Act 1986 and others.

Keywords: Negligence, Medical Negligence , Consumer.

Introduction

It is common belief and is right that peoples consider doctors in the form of God. They save the life with their utmost efforts. Patients are full of Hope's that the doctor will not let him die. They use their all skills to save the patient. If he breaches his duty, the negligence arises.

Medical negligence is punishable under various laws viz. Tort, Indian Penal Code, Indian contract Act, consumer protection Act 1986 and others.

Aim of the study

Medical negligence is a part of Medical law. Medical negligence is the failure of a medical practitioner in providing proper care and attention. For every breach of a legal right, there is a remedy. This is called "ubi jus ibi remedium". This maxim also apply in medical field. In this paper I am trying to explain it.

Medical Negligence

So far as the profession of Doctor is concerned, the same fully concerned to humanity. Medical profession is treated to be a Noble profession, because it saves a life any body. Nothing is better than serving a sick man, injured and the victim. A patient never expects that the Doctor will never be careless and neglectful towards him so that his life will be in danger.

It is expected that before commencing the treatment of his patient, the Doctor will diagnoses with his full skill and caution and will do necessary investigation.

If a medical practitioner or doctor does mistake by not providing proper care and it harms the patient, is called medical negligence. Medical negligence has caused many deaths as well as adverse results to the patient's health. This is derived from the maxim, "ubi jus ibi remedium". More so, the Medical Negligence is the failure of a medical practitioner to provide proper care and attention and exercise those skills which a prudent, qualified person would do under similar circumstances.

It was held by the Hon'ble Supreme Court of India in Dr. Balkrishnan Joshi V/S Dr. Trimbark Babu Godbele² and A.S.Mittal V/S State of U.P.³ That whenever a patient goes to a Doctor for consultation, the duties of doctor owes to a patient are,-

1. A duty of care in deciding whether to undertake the case,
2. a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment,
3. Liability of administration is also of the Doctor.

A breach of any of these duties gives a right of action for negligence to the patient and a right of demanding damages creates to the patient.

Whom Upon Burden To Prove the Medical Negligence Will Lies

The burden of proof of negligence, carelessness, or insufficiency generally lies with the complainant. The law requires a higher standard of evidence than otherwise, to support an allegation of negligence against a doctor.⁴



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In cases of medical negligence the patient must establish her/his claim against the doctor. The complainant must prove the allegation against the doctor by citing the best evidence available in medical science and by presenting expert opinion.⁵

In Calcutta Medical Research Institute vs. Bimallesh Chatterjee, it was held that the onus of proving negligence and the resultant deficiency in service was clearly on the complainant.⁶

The Victim or His Family Proves the Following-

1. Doctor has duty to his patient,
2. Doctor has breached his duty,
3. Resulting of which, damages caused to victim, and
4. for this reason, the victim has right to get Damages.

In definition of negligence, three elements come,-

1. Having legal duties.
2. Violation of legal duties.
3. Damages due to negligence.

If any negligence is committed from whoever is giving health care related services or neglected or missed by them, then that is treated medical negligence.

Medical Negligence and Law Of Tort

Indulging in such profession where sick man and victim are your customer and who think you an omnipotent, fully expects of care from you.

Originally in the law of Torts there are two principles – Lydia Kerketta, Medical Negligence: A Specific Tort⁷

Subjective Theory

According to this theory, the negligence shows the "Theory of Mind". This condition of mind is different from person to person and the person is liable for his intentional acts. If a person acted with his full capacity and did not commit any negligence, then he cannot be held liable. Subjective theory of negligence is culpable carelessness.

Objective Theory

According to this principle of Polak, negligence is a type of conduct. The negligence is the contrary of diligence and no one describes it as the state of mind. A man may be held liable on the basis of negligence if he sufficiently does not desire to avoid a particular consequence.

In reference to today, medical negligence cannot be looked in the form of mental condition. Person going to the Doctor expects that Doctor will take proper care.

Damages

The three categories of damages available in medical negligence.

1. Compensatory loss for pecuniary damages viz. medical expenses for past and future and loss of wages.
2. Non pecuniary damages for pain and suffering.
3. Punitive damages, awarded to punish the Doctor and to prevent other similar Doctors from making similar mistake.⁸

In the case of Spring Midoz Hospital & Ors. V/S Harjol Ahluwalia & Ors⁹, the Hon'ble Supreme

Court made certain rules for neglecting and negligence to be committed by a Doctor,-

1. Gross medical mistake will always result in a finding of negligence.
2. Use of wrong drug or wrong gas during the course of anesthetic will frequently lead to the imposition of liability and in some situations even the principle of Res ipsa loquitur can be applied
3. Even delegation of responsibility to another may amount to negligence in certain circumstances.

Medical Negligence and Indian Penal Code

Under medical negligence, three types of liability arises

1. Criminal Liability
2. Pecuniary Liability
3. Administrative working

Criminal liability can be imposed on a Doctor when a patient died due to effect of anesthesia during operation or other treatment, and if it is proved that the death was caused with ill will intention or under gross negligence.

Criminal liability is fixed under the Indian Penal Code. Though, in the Indian Penal Code, there no special provisions are given in respect of medical negligence. Section 304-A of Indian Penal Code speaks about causing of death of a person due to negligence. But it given effect when any patient dies due to medical negligence Section 304-A of Indian Penal Code provides as under,-

"304-A¹⁰. Causing death by negligence.- Whoever causes the death of any person by doing any rash or negligence 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."

In the case of Jacob Matheu V/S Punjab State & Ors¹¹, it has been held that in criminal liability, to prove medical negligence it is necessary to prove much strong evidence instead of proving general negligence.

If in the cases of negligence, the patient remains alive, in that event the allegations of Sections 337 and 338 of Indian Penal Code can be imposed.

Except these Sections, there are provisions in Sections 52, 80, 81, 83, 88, 80 and 91 of Indian Penal Code for medical negligence in India.

Section 52 speaks that nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

In the case of Sukaru Kaviraj V/S Express¹² – it is stated that the appellant was convicted by Sessions Court under Section 304-A of Indian Penal Code. Having a dangerous operation became the cause of death of a patient, as resulting of the said operation incurable bleeding started and patient died.

Doctor filed appeal before Calcutta High Court and said that he will not be held guilty for the offence under Section 304-A of Indian Penal Code because, prior to this operation he has performed so many dangerous operations and death was not caused of any body. He has to be given the benefit of Section 52 and 88 of Indian Penal Code because he

performed that work bonafidely and patient has accepted the risk, which means that the operation was performed with his consent.

Bonafides denotes the mental and moral states of honesty and conviction regarding either the truth or the falsity of a proposition, or of a body of opinion; likewise regarding either the rectitude or the depravity of a line of conduct.

It is stated here that it is difficult to determine the due attention and care i.e. the essential elements of bonafide. But, the benefits of Section 88 cannot be given to him because he was not having fully knowledge as to how the operation is to perform. The Court has held that he was guilty but he cannot be punished rigorously because here the consent of deceased was included. Section 80 and 88 reads as under,-

Section-80

Accident in doing a lawful act. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Section-88

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.

Medical Negligence and Consumer Protection Act 1986

In the case of Indian Medical Council V/S V.P. Shantaand Others-¹³ has held that a medical practitioner can be regarded as rendering "service" under Section 2 (1) (o) of the Consumer Protection Act, 1986. In this, it has been stated that availing the services of private medical practitioners, private hospitals and nursing homes are consumers within the meaning of Section 2(i)(d) of the Act if certain criteria are completed. For example- either made the payment or treatment/registration fees have been waived or have been paid by a insurance company.

After this decision, it has been considered that patients of some categories can bring the allegations under Consumer Protection Act 1986.¹⁴

Services are of three types-

1. Services which are free for all.
2. Services which are not free for all but free for the category that is exempted.
3. Services for which payment is made.

Services fallen under category (b) and (c), the provisions of Consumer Protection Act is applicable.

Nihal Kaur V/S Director, P.G.I.M.S.R.-¹⁵

In this case, it has been held that a patient dies a day after the surgery and the relatives found a pair of scissors utilized by surgeon while collecting the last remains. The Doctor was held liable and a compensation of Rs. 1.20 lakhs was awarded by the State Consumer Forum, Chandigarh.

Meadows Hospital V/S Harjot Ahluwalia-¹⁶

In this case, the Court has held that when a young child was taken to a private hospital by parents and treated by the Doctors, and then not only the child but his parents also treated as consumer under the Consumer Protection Act.

Dr. Suresh gupta V/S Government of N.C.T. of Delhi, 4, 2004 Sc of India.-¹⁷

In this case, the Court has held that the legal position on medical negligence is quite clear and well settled that whenever a patient died due to the medical negligence the Doctor was liable in Civil Law for paying the compensation only when the negligence was to gross and his act was reckless as to endanger the life of the patient, then criminal law for offence under Section 304-A of Indian Penal Code, 1860 will apply.

Conclusion

Medical Negligence is a very crucial aspect. It is difficult to conclude to if the Doctor is responsible for medical negligence or not. Although a Doctor is not guilty but he declare liable for medical negligence, it harms doctor's reputation. If he does wrong, he should be punished.

Medical profession is the noblest profession. This profession needs more focus than other profession. If he is careless during performance of his duty, it may be harmful / dangerous for his patient. Many doctors even the specialist sometimes neglects small things to be taken care of while practicing.

If the medical practitioners breach their responsibility towards the patients, he may be punished under Indian Penal Code, Tort, Consumer Protection Act etc.

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