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MEDICAL NEGLIGENCE IN INDIA

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Abstract

Medical Negligence is a rising issue in India, creating serious risks to patient safety and healthcare quality. Despite being one of the best professions, the medical field is not liable for negligence, often resulting in severe consequences such as a patient's death or disability. This paper goes through the interpretation of negligence in the medical profession by the Supreme Court of India, aiming to comprehensively analyze its legal, social, and economic dimensions. Through a thorough review of literature, case studies, and legal documents, the study explores the challenges in identifying, proving, and addressing instances of medical negligence. Methodologies include examining relevant laws, analyzing case studies, and reviewing scholarly articles. Key findings underscore the issue's complexity, including barriers to justice for affected patients, implications for healthcare provider accountability, and the necessity for legal and healthcare reforms. Medical Negligence not only impacts individual cases but also breaks public trust in the healthcare system and imposes economic burdens.

KEYWORDS - Medical Negligence, Negligence, Tort Law, Res Ipsa Loquitur

Introduction

It is very difficult to define negligence; however, the concept has been accepted in jurisprudence. The authoritative text on the subject in India is the 'Law of Torts' by Ratanlal and Dhirajlal.[1468] Negligence has been discussed as:

Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property.

The definition involves three constituents of negligence:

(1) A legal duty to exercise due care on the part of the party complained of towards the party

complaining the former's conduct within the scope of the duty;

(2) Breach of the said duty; and

(3) Consequential damage.

Negligence is a failure to exercise the care toward others which a reasonable or prudent person would do in the circumstances, or taking action which such a reasonable person would not. Negligence is accidental as distinguished from "intentional torts" (assault or trespass, for example) or from crimes, but a crime can also constitute negligence, such as reckless driving. Negligence can result in all types of accidents causing physical and/or property damage, but can also include business errors and miscalculations, such as a sloppy land survey.

[1468] Law of Torts, Ratanlal & Dhirajlal, Twenty-fourth Edition 2002, edited by Justice G.P. Singh; pp.441-442

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The following elements may typically be required to prove negligence:

- The defendant owed a duty of care to the plaintiff;
- The defendant made a breach of that duty;
- Harm to the plaintiff
- Defendant's actions are the proximate cause of harm to the plaintiff
- Defendant's actions are the cause-in-fact of harm to the plaintiff

Let's discuss these **essentials** in detail

- **Duty of Care**: This refers to the legal obligation of an individual or entity to act reasonably to avoid causing harm to others. In medical negligence cases, doctors owe a duty of care to their patients to provide treatment that meets the accepted standard of care.

Case Law Example: In the landmark case of **Kusum Sharma & Ors. v. Batra Hospital & Medical Research Centre & Ors. (2010)**[1469], the Supreme Court of India held that hospitals and doctors owe a duty of care to their patients. The court emphasized that healthcare professionals must adhere to the standard of care expected of them, failing which they can be held liable for negligence.

- **Breach of Duty**: This occurs when the defendant fails to uphold the duty of care owed to the plaintiff. In medical negligence cases, this may involve errors in diagnosis, treatment, or surgical procedures that fall below the accepted standard of care.

Case Law Example: In **Jacob Mathew v. State of Punjab & Anr. (2005)**[1470], the Supreme Court of India held that a breach of duty occurs when a doctor fails to exercise reasonable care and skill in diagnosing or treating a patient. The court emphasized that doctors must adhere to the standards of their profession, and any deviation from these standards may constitute negligence.

- **Harm to the Plaintiff**: This refers to the actual damage or injury suffered by the plaintiff as a result of the defendant's breach of duty. In medical negligence cases, harm may manifest as worsened health conditions, permanent disabilities, or loss of life.

Case Law Example: In **Martin F. D'Souza v. Mohd. Ishfaq (2009)**[1471], the Supreme Court of India emphasized that for a claim of medical negligence to succeed, the plaintiff must prove that the negligence caused actual harm or injury. Mere dissatisfaction with the outcome of treatment is insufficient to establish negligence.

- **Proximate Cause:** This refers to the direct connection between the defendant's breach of duty and the harm suffered by the plaintiff. The harm must have been a foreseeable consequence of the defendant's actions.

Case Law Example: In **Achutrao Haribhau Khodwa v. State of Maharashtra & Anr. (1996)**[1472], the Supreme Court of India held that to establish proximate cause in medical negligence cases, there must be a direct link between the negligent act and the harm suffered by the patient. The court emphasized that the harm must not be too remote or speculative.

- **Cause-in-Fact**: Also known as "but-for" causation, this element requires showing that the harm suffered by the plaintiff would not have occurred but for the defendant's negligent actions.

Case Law Example: In **Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka & Ors. (2009)**[1473], the Supreme Court of India held that the plaintiff must prove that the harm suffered would not have occurred but for the defendant's negligence. The court emphasized the importance of establishing a causal link between the negligence and the harm.

Concept of Medical Negligence

'Negligence' was added to the common law in the seventeenth century with the increase of horse and buggy highway collisions. The

[1469] MANU/SC/0098/2010
[1470] 27088.pdf
[1471] 2009 AIR SCW 1807
[1472] 15962.pdf
[1473] CIVIL APPEAL NO.4119 OF 1999

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beginning of the seventeenth century noticed a slow but steady transformation from an action of trespass on the case to an action for negligence[1474]. The concept of negligence in its present form is not of Indian origin but is patterned in English law, where negligence is a separate tort. Hence it is important to know the English position relating to the same.

In the beginning, it was considered as inadvertence as opposed to intentional dereliction of legal duty. Carelessness is actionable only when there is a duty to take care and when failure in that duty has resulted in damage. At the same time, carelessness assumes the legal quality of negligence and entails the consequence of the law of negligence[1475]. Every profession requires some specialized skill and learning. Persons involved in the exercise of the requisite skill could be liable for negligence if they failed to take that special care. In English law, the rule is *imperitia culpa annumerature* (want of skill is reckoned as a fault).

According to Winfield, in one form or another a fair amount of negligence in the sense of doing what a responsible man could not do, or not doing what he would do was covered by medieval law[1476].

In re, R.V.Bateman case, the liability of physician and their duties was discussed[1477]. The court stated that if a medical practitioner holds himself out to be a skilled practitioner he is under an obligation to use due caution, diligence, care, knowledge, and skill in the treatment. The law requires a fair and reasonable standard of care and competence; irrespective of the fact that he is a qualified or unqualified practitioner by a lower standard. He need not undertake treatment if the practitioner considers it to be beyond his competence.

It is also immaterial whether he rendered the service gratuitously or for reward. The standard of care and competence ought to be fair and reasonable. It should neither be an abnormally high standard nor a very low one. While adjudicating upon the standard of care to be observed by medical man, one should also have regard to some other relevant factors such as professional position, specialization, state of medical knowledge, development, availability of facilities, locality, etc[1478]. This was the stand adopted by the English Court system.1479

Definition and meaning of medical negligence

Medical Negligence, as the name suggests is misconduct by a medical practitioner or doctor by the lack of providing enough care, thereby, resulting in the harm caused to the patient and thus a breach of a doctor's duties.

Medical Negligence is a combination of two words i.e. 'Medical' and 'Negligence'. Negligence means an act done recklessly by an individual which results in foreseeable damage to another. Negligence is an offense under the Indian Penal Code, Indian Contracts Act, Consumer Protection Act, Tort, etc.

Medical Negligence is a serious crime in India as professionals i.e. doctors are deemed to be experts in their field, and any patient that visits or is treated by a doctor expects to be healed or cured or bettered and not mistreated and harmed even more. A doctor is supposed to be careful while performing his/her duties, as his/her being negligent can directly result in harm to the patient, and could also be a matter of life and death.

To err is human. Even though doctors are given the same position as Gods in India and believe that their problems will be cured and they will be completely healed, sometimes, even the doctors make mistakes that can result in immense hardships to patients.

Types Of Medical Negligence

[1474] Dr.Gourdas Chakrabarti., The law of Negligence, Calcutta,. Cambray & Co, Private Ltd Publication, 8th edition , 1996, p.4

[1475] Donoghue v. Stevenson, (1923) A.C. 562 per Lord Mc Millian.

[1476] Malcolmkhan and Michelle Robson, Medical Negligence , London , Canvedish Publication, 1997 edition, 34. p.23

[1477] 1925 94 L. J .KB 791

[1478] Supra

[1479] Medical negligence law a critical study- Badarinath, N. V.

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Several types of medical negligence can occur in the healthcare industry.

Here are some of the most common types:

Misdiagnosis:

When a healthcare professional fails to properly diagnose a patient's medical condition, or provides a diagnosis that is incorrect or delayed, this can lead to harm or injury to the patient.

Surgical Errors:

These can include errors in administering anesthesia, performing surgery on the wrong body part, leaving surgical instruments inside the patient's body, and other similar errors.

Medication Errors:

These can include prescribing the wrong medication or dosage, failing to account for potential drug interactions, or administering medication incorrectly.

Failure to Obtain Informed Consent:

When a healthcare professional fails to obtain the patient's informed consent before performing a medical procedure, the patient may not have been aware of the risks involved and may have suffered harm or injury as a result.

Failure to Provide Adequate Follow-up Care:

After a medical procedure or treatment, healthcare professionals have a duty to monitor the patient's condition and provide appropriate follow-up care. Failure to do so can result in harm or injury to the patient.

Birth Injuries:

Negligence during childbirth can result in injuries to the baby or mother, such as brain damage, paralysis, and other serious injuries.

Anesthesia Errors:

Anesthesia errors can occur when a healthcare professional administers too much or too little anesthesia or fails to monitor the patient's vital signs during the procedure.

Essentials Of Medical Negligence

To establish medical negligence, certain essential elements must be proven. These essentials include:

Duty Of Care:

The healthcare professional must have had a duty of care to the patient. This means that they had a legal obligation to provide care that meets the expected standard of care.

Breach Of Duty:

The healthcare professional must have breached their duty of care by failing to provide treatment that met the required standard. This breach of duty can occur through an act of omission or commission.

Causation:

The breach of duty must have caused harm or injury to the patient. It must be shown that the harm or injury was a direct result of the healthcare professional's breach of duty.

Damage:

The patient must have suffered harm or injury as a result of the healthcare professional's breach of duty. This harm or injury can be physical, emotional, or financial.

Res ipsa loquitur

The Latin maxim **"res ipsa loquitur"** means that "the thing speaks for itself."

In the context of medical negligence, "res ipsa loquitur" means that the circumstances surrounding the injury or harm suffered by the patient are such that they would not have occurred without negligence on the part of the healthcare professional. In other words, the injury or harm is such that it suggests that the healthcare professional was negligent, and the burden of proof shifts to the healthcare professional to prove that they were not negligent.

The doctrine assumes the following:

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- Nature of injury gives the clue that without negligence it could not have happened.
- There was no involvement of the patient himself in the injury in any way.
- The injury happened under the circumstances which were under the supervision and control of the doctor.

If these conditions are met, the plaintiff can rely on the principle of "res ipsa loquitur" to establish a presumption of negligence on the part of the healthcare professional and shift the burden of proof to the defendant to prove that they were not negligent.

It's important to note that the principle of "res ipsa loquitur" is not applicable in all medical negligence cases, and each case must be evaluated on its own merits. Additionally, even if "res ipsa loquitur" is established, the plaintiff must still prove all other elements of medical negligence, including duty of care, breach of duty, causation, and damages.

Case Laws Related to Legal Maxim In India

There are several case laws in India where the principle of res ipsa loquitur has been applied in cases of medical negligence. Here are some examples:

Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole (1969)[1480]:

In this landmark case, the Supreme Court of India held that the principle of res ipsa loquitur could be applied in medical negligence cases when the facts and circumstances of the case suggested that negligence had occurred, and when the burden of proving negligence was on the defendant.

Spring Meadows Hospital and Anr. v. Harjol Ahluwalia (1998)[1481]:

In this case, the National Consumer Disputes Redressal Commission (NCDRC) applied the principle of res ipsa loquitur to a case where a surgical patient suffered from an injury to their urethra during surgery. The NCDRC held that the injury was of a type that would not ordinarily occur in the absence of negligence and that the burden of proof was on the hospital to prove that they were not negligent.

Poonam Verma v. Ashwin Patel and Ors. (1996)[1482]:

In this case, the Supreme Court of India applied the principle of res ipsa loquitur to a case where a surgical patient suffered from a facial nerve injury during surgery. The court held that the injury was of a type that would not ordinarily occur in the absence of negligence and that the burden of proof was on the defendant to prove that they were not negligent.

Jacob Mathew v. State of Punjab (2005)[1483]:

In this case, the Supreme Court held that res ipsa loquitur could be applied in medical negligence cases where the injury was of a type that would not ordinarily occur in the absence of negligence, and where the facts surrounding the injury suggested that the healthcare professional was responsible.

These cases demonstrate that the principle of res ipsa loquitur has been recognized and applied in Indian courts in cases of medical negligence, where the facts suggest that the healthcare professional was responsible for the harm suffered by the patient. However, it is important to note that the application of this principle will depend on the specific facts and circumstances of each case.

Liability of Doctors or Medical Professionals

The liability of professionals committing wrong (negligent acts) can be of the following types, based on the injury that is suffered by the victim. These are:

Civil Liability

A doctor is a person who possesses special knowledge and skills in the field of medicine and is expected to use this knowledge to treat

[1480] 1969 AIR 128, 1969 SCR (1) 206
[1481] SCALE 456 (SC)
[1482] 1996 SCC (4) 332
[1483] (2005)6SCC1

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the patient with reasonable care. Thus, when a wrong is committed by such a professional, he/she is liable to pay damages in the form of compensation to the patient.
Civil liability is usually when the claim for damages suffered is in the form of compensation. Only civil liability arises in less serious matters or cases. If a breach of duty of care is caused while operating upon a patient, the hospital or the doctor under whose supervision such negligent act or omission was caused, is held liable for such wrong. In other words, if someone is an employee of a hospital, then even if the employee hurts the patient by acting in an incompetent manner, the hospital will also be held vicariously responsible for the damage or injury caused.
A consumer case also falls under the category of civil liability. Since the doctor is providing his/her services and the patient is receiving these services, a case in the consumer court can also be filed under the **Consumer Protection Act.**

Criminal Liability

Criminal liability arises in case of more serious matters. For example, if a patient has died after a treatment and it is found that it was due to the negligent behavior of the medical professional, a case under **Section 304A of the IPC** can be invoked of allegedly causing death by rash or negligent act. Criminal liability involves the punishment of the wrongdoer. Thus, according to **Section 304A of the Indian Penal Code**, whoever causes the death of any individual due to a rash or negligent act (not amounting to culpable homicide), shall be punished for imprisonment up to two years or for a fine, or both. Criminal and Civil cases in Medical Negligence can run side by side, which means that remedies under the two are not mutually exclusive but co-extensive. The two-civil and criminal differ in their main context and consequence. While criminal law aims to punish the offender who caused the injury due to his/her negligence, the objective of civil law is not to physically punish the wrongdoer but to reimburse or compensate the victim. Thus, both civil and criminal remedies can be sought at once, depending upon the facts and circumstances of each case.

Related Provisions For Medical Negligence In India

In India, medical negligence cases are governed by the Indian Penal Code, 1860, the Consumer Protection Act, 1986, and various judgments by the Supreme Court and High Courts. Here are some provisions and defenses related to medical negligence cases in India:

Provisions:

- **Section 304A of the Indian Penal Cod**e: This section deals with causing death by negligence. If a medical professional causes the death of a patient due to negligence, they can be punished with imprisonment for up to two years or a fine or both.
- **Section 337 of the Indian Penal Code**: This section deals with causing hurt by an act endangering life or personal safety. If a medical professional endangers the life or safety of a patient due to negligence, they can be punished with imprisonment for up to six months or a fine, or both.
- **Section 338 of the Indian Penal Code**: This section deals with causing grievous hurt by an act endangering life or personal safety. If a medical professional causes grievous hurt to a patient due to negligence, they can be punished with imprisonment for up to two years or a fine or both.
- **The Consumer Protection Act, 1986**: Under this act, patients have the right to file complaints against medical professionals and seek compensation for medical negligence.

Defenses:

- Error of Judgment: If a medical professional makes a reasonable and honest error in judgment while treating a patient, it may not be considered negligence.
- Emergency Situations: If a medical professional acted in good faith to save a

patient's life in an emergency, they may not be considered negligent.

- Contributory Negligence: If the patient contributed to their injury or death through their negligence, the medical professional may not be held entirely responsible.

Supreme Court Landmark Judgements

There have been several landmark judgments by the Supreme Court of India in cases of medical negligence. Here are some of the significant ones:

1. Dr. Kunal Saha Represented By Sri vs Dr. Sukumar Mukherjee And Ors.[1484]

The first judgment that comes into our mind with the highest amount of compensation granted to date is what is famous as the Anuradha Saha Case. In this case, the wife was suffering from a drug allergy and the doctors were negligent in prescribing appropriate medicines for the same which ultimately aggravated her condition and led to the death of the patient. The court held the doctor liable for medical negligence and awarded compensation amounting to Rs. 6.08 crore.

2. V.Kishan Rao Vs Nikhil Super Speciality Hospital[1485]

Where a lady who was to undergo the treatment for malaria fever was treated differently. An officer in the Malaria Department filed a suit against the hospital authorities for performing the treatment of his wife negligently, who was undergoing treatment for typhoid fever instead of malaria fever. The husband got the compensation of Rs 2 lakhs and in this case, the principle of *res Ipsa loquitor* was applied.

3. Bolam vs. Friern Hospital Management Committee (1957)[1486]**:**

In this case, the court established the "Bolam Test," which states that a medical professional is not guilty of negligence if they have acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular field.

4. Indian Medical Association v. V.P. Shantha (1996)[1487]**:**

This case established the concept of 'informed consent,' which means that a patient must be fully informed of the risks involved in a medical procedure before giving consent. The Supreme Court held that failure to obtain informed consent from a patient can amount to medical negligence.

5. Martin F. D'Souza v. Mohd. Ishfaq (2009)[1488]**:**

In this case, the Supreme Court outlined the standard of care that medical professionals must adhere to. The court held that a medical professional must have the knowledge and skills that are expected of a reasonably competent practitioner in their field.

6. Samira Kohli v. Dr. Prabha Manchanda (2008)[1489]**:**

This case addressed the issue of vicarious liability in cases of medical negligence. The Supreme Court held that a hospital can be held liable for the negligence of its employees, even if the hospital itself was not directly at fault.

7. Malay Kumar Ganguly v. Dr. Sukumar Mukherjee (2009)[1490]**:**

This case dealt with the issue of expert opinion in medical negligence cases. The Supreme Court held that expert opinion can be used as evidence in a medical negligence case, but it should not be the sole basis for deciding whether negligence occurred.

8. Kusum Sharma v. Batra Hospital & Medical Research Centre (2010)[1491]**:**

In this case, the Supreme Court established that a patient has the right to receive compensation for medical negligence, even if they did not suffer any physical harm. The court held that mental agony and trauma suffered by a patient due to medical negligence can also be compensated.

9. Sishir Rajan Saha v. The state of Tripura[1492]**:**

[1484] 2011
[1485] 2010
[1486] [1957] 1 WLR 582
[1487] 1996 AIR 550, 1995 SCC (6) 651
[1488] (2009) 3 SCC 1)
[1489] 2008 Air Scw 855
[1490] AIR 2010 SC 1162
[1491] 2010 LawSuit (SC)
[1492] AIR 2002 Gauhati 102

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In this case, it was held that if a doctor did not pay enough attention to the patients in government hospitals as a result of which the patient suffers, the doctor can be held liable to pay compensation to the patient.

10. Jacob Mathew v. State of Punjab[1493]:

The Supreme Court in this case explained that a professional entering into a certain profession is deemed to know 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 amounts of care to profess the said profession.

11. Gian Chand v. Vinod Kumar Sharma[1494]:

It was held that shifting of the patient from one ward to another despite the 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.

12. Jagdish Ram v. State of H.P[1495]:

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 amounts of medicines to the patient. The doctor in the 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.

13. Mr. M Ramesh Reddy v. State of Andhra Pradesh[1496]:

In this case, the hospital authorities were held to be negligent, inter alia, for not keeping the bathroom clean, which resulted in the fall of an obstetrics patient in the bathroom leading to her death. A compensation of Rs. 1 Lac was awarded to the hospital.

14. Dr. Suresh Gupta's vs Govt. of NCT[1497]:

The Supreme Court in 2004 held that the legal position was quite clear and well settled that whenever a patient died due to medical negligence, the doctor was liable in civil law for paying the compensation. Only when the negligence was so gross and his act was as reckless as to endanger the life of the patient, criminal law for offense under section 304A of the Indian Penal Code, 1860 will apply.

15. Dr. Laxman Balkrishna Joshi vs. Dr. Trimbark Babu Godbole and Anr.[1498]:

In this case, it was laid down that when a doctor is consulted by a patient, the doctor owes to his patient certain duties which are: (a) duty of care in deciding whether to undertake the case, (b) duty of care in deciding what treatment to give, and (c) duty of care in the administration of that treatment. A breach of any of the above duties may give a cause of action for negligence and the patient may on that basis recover damages from his doctor. In the aforementioned case, the apex court interalia observed that negligence has many manifestations – it may be active negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, gross negligence, hazardous negligence, active and passive negligence, willful or reckless negligence, or negligence per se.

Conclusion

Medical negligence is a serious issue in India that can result in harm to patients, loss of life, and emotional distress for their families. The legal framework for medical negligence in India is based on the Indian Penal Code, the Consumer Protection Act, and various judgments by the Supreme Court and High Courts.

Medical professionals have a legal and ethical duty to provide the best possible care to their patients and to avoid any harm caused due to negligence. Patients also have the right to seek compensation for any harm caused due to medical negligence. The Supreme Court of India has delivered several landmark judgments related to medical negligence that have

[1493] AIR 2005 SC 3180
[1494] AIR 2007 (NOC) 2498 (H.P.)
[1495] AIR 2008 H.P. 97
[1496] 2003 (1) CLD 81 (AP SCDRC)
[1497] AIR 2004 SC
[1498] AIR 1969 SC 128

established important principles, including the Bolam Test, the applicability of the Consumer Protection Act to medical services, and the duty of doctors to disclose all material risks to their patients.

Medical professionals must be aware of their legal and ethical obligations and patients to be informed of their rights to ensure that medical care is provided in a responsible and accountable manner. Ultimately, the goal of the legal framework for medical negligence in India is to ensure that patients receive safe and effective medical care that upholds their dignity and well-being.

Medical negligence is a complex issue, and it requires a multifaceted approach to address it effectively. The legal framework, combined with ethical guidelines and patient awareness, can help ensure that patients receive the best possible medical care and that medical professionals are held accountable for their actions.

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