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Medical Negligence: A Critical Study

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ABSTRACT

Medical Negligence has these days have become one of the major issues in India. Our experience discloses to us that the medical profession is perhaps the noblest profession. Patients normally consider the doctors as God who are going to treat their disease, medical problems and at last, they will be cured and healed by them and we at least anticipate that they should be cautious while performing their obligations toward their patients.

Medical Negligence is similarly named as clinical negligence that is the wrong, inept, ill-advised, or imprudent treatment of patients by their doctor, dental specialist authority, nurture, or other restorative administration specialists. In 1995, the SC judgment for the case Indian Medical Association v. V.P. Shanta and Ors brought the medical administrations inside the scope of the governance characterized in the Consumer Protection Act 1986. This characterized connection between diligent and clinical experts by enabling legally binding patients to prosecute specialists in the event that they sustained wounds over the class of treatment in 'process free' consumer protection courts for remuneration. There is an immediate need to check expanding patterns in the number of medical negligence cases and the crumbling nature of health care in India. A study of decided medical negligence cases can give an understanding of the purposes behind medical negligence cases, factors primarily liable for medical negligence and an effect on the doctor-patient relationship, and so on. The current paper aims to examine the idea of negligence in medical professions in light of the interpretation of the law by the Supreme Court of India.

I. INTRODUCTION

No Doctor knows it all. There is a reason why it is called medicine practicing.

Let us first comprehend what really Negligence is as we probably know there are various definitions of negligence as it comes under various facets of law, for instance, contract, tort, crime, and so forth. As in layperson terms, we can interpret negligence as a deletion to take proper care over something which results in damage. In other words, we can term it as

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carelessness, neglectful, or say doing of something which a reasonable man would not do. In legal expressions, we can say failure of a responsibility to take care of something which outcomes in damages.

The notion of negligence and negligence law appeared in a very famous case of **Donoghue v. Stevenson**[3] until this case's conventional view was that there were a number of relationships that generated a particular obligation, including that of a doctor and patient, employer and employee. Apropos to another well-known **English case King v. Phillips**[4] it was seen that an issue of carelessness develops exactly when there is immediate damage to the offended party by a wrongdoing and the damage ought to be unsurprising. As a result, in short, we can say that damage is an essential ingredient to compose negligence.

Negligence is a failure of duty of care so it gives another person legal right which should be esteemed. As per Charles's worth and Percy in a current forensic speech, Negligence has three implications. They are:

1. A perspective, which is against the goal.
2. Careless lead.
3. The failure of obligation to fare thee well.

Committing mistakes is a part of human nature, but sometimes these mistakes cause harm to another person to such extent sometimes which costs their lives and one of such negligence we have termed as Medical Negligence. Patients generally see the doctors as God as it is them who are going to treat their condition, health issues and at last, they will be cured and healed by them and we at least expect them to be careful while releasing their duties towards their patients. But as we say, even God has made some mistakes and ultimately doctors are human and no human is perfect, but their mistakes guide to severe injuries and sometimes result in the death of their patients. Medical Negligence is additionally named as medical misconduct that is the wrong, undeveloped, ill-advised, or careless treatment of patients by their doctor, a dental specialist, nurture, or other medical care experts. English law has not made any special provisions for negligence made by doctors, they are clearly treated as one expert among others. In the very recent case of **R. V Prentice & Suleman Adomako and Holloway**[5], the court dealt concurrently with two cases of alleged medical manslaughter by flagrant negligence. History shows that the perspective of medical negligence has been shifted from crime to tort approach. In earlier human civilization, the code of Hammurabi

[3] [1932] UKHL 100
[4] [1953] 1 QB 429
[5] [1994] QB 302

developed by Babylon's king centuries before the Christian era proposed that the doctor's hand was cut if any patient died during a surgery. The problem of medical negligence can be found in Manusmriti, Charaka Samhita, etc.

Therefore it was considered more as a crime than a tort. But with the rapid progress of civilization, this discernment was changed, and it was being treated as tort so that the judiciary can award damages to the victim. The legal instrument on medical negligence has developed moderately through a order of judgments over a time period. As shown before the idea of negligence, is minimal not quite the same as professional negligence, for experts, for example, medical specialists an extra viewpoint was included through a test distinguished as the Bolam test[6] which is also a recognized test in India.

The famous MC Nair made the scrutiny:

"A specialist isn't at fault of negligence if he acted in concurrence with a exercise acknowledged by a capable group of medical hands skilled in that specific workmanship."

This methodology has been accepted in India in the case of **Jacob Mathew v. State of Punjab**[7] after a comprehensive survey and reasoning of both English and Indian judgment discovered that:

"A legal practitioner does not tell his client that the client shall win the case in all circumstances. A physician would not persuade the patient of a full recovery in every case.

A surgeon cannot and does not assure that the result of surgery would invariably be beneficial, much less to the expanse of a hundred percent for the person operated on. The only affirmation which such a professional can give or can be understood to have given the suggestion is that he is possessed of the necessary skill in that branch of the profession which he is practicing and while pledging the performance of the task submerged to him he would be exercising his skill with reasonable competence."

II. MEDICAL NEGLIGENCE – LAWS IN INDIA

In the situations of Indian law, medical negligence comes under three categories that are:

1. Criminal negligence
2. Civil negligence
3. Negligence under the consumer protection act

Various provisions regarding the compensation in the form of punishment and the remedies

[6] Bolam v. Friern Hospital Management Committee, [1957] 1 WLR.
[7] Appeal (crl.) 144-145 of 2004

are covered under these laws.

(A) Criminal Law and Medical Negligence:

Indian Penal Code has set out the medical occupation on an alternate frontal area when contrasted with ordinary individuals. Section 304A of the IPC 1860 states that "whoever causes the death of an individual by a rash or negligent act not amounting to culpable will be homicide rebuffed with detainment for a time of two years or with a fine or with both". Consequently, criminal liability can also be obligatory upon a medical practitioner under particular situations wherein the patient dies in between the time of managing anesthesia during the time of operation. Death must also be due to poisonous intention or whole negligence[8].

Despite the provisions provided to the patient mentioned above, there are some exceptions as well in the form of section 80 and 88 of IPC and provide a defense to the doctor.Under section 80, "nothing is an offense that is finished coincidentally or mishap and with no criminal intention or knowledge in the doing of a legitimate act in a legal way by lawful methods and with appropriate consideration and attentiveness". Under section 88, "a person cannot be accused of an offense if he/she performs an act in good faith for the other person's benefit, does not deliberately cause harm even if there is a risk, and the patient has specifically or absolutely given consent."

In **Kurban Hussein Mohammedali v. State of Maharashtra[9]**, in the case involving section 304A of IPC, 1860 it was expressed that "to enforce criminal liability under Section 304 A, it is necessary that the death should have occurred as the straight result of the careless and negligent act of the accused, without the other person's intercession."

(B) Civil Law and Medical Negligence:

"The spot concerning neglect under civil law is significant as it includes many elements within itself. Under the tort law or civil law, this principle is relevant even if clinical professionals furnish free services[10]. It tends to be said that where the consumer protection act ends, tort law begins. In cases where the services provided by the doctors and the hospital does not come under the extent of the CPA, patients can claim compensation by assisting tort law. Here, to prove that the damage has occurred due to negligence of the doctor or the hospital, the burden lies on the patient."

[8] Law Commission of India 196th Report on Medical treatment to terminally ill patients (protection of patients and medical practitioner, March 2006 ,available at: http://lawcommissionofindia.nic.in/reports/rep196.pdf
[9] 1965 AIR 1616, 1965 SCR (2) 622
[10] Smreeti Prakash, 'A Comparative Analysis of various Indian legal system regarding medical negligence.'

In **State of Haryana and Ors. V. Smt. Santra**[11] the Supreme Court said that "each doctor has an obligation to act with a reasonable degree of care and expertise. Nevertheless, since no human is perfect and even the most acclaimed specialist can commit a slip-up in diagnosing a disease, a doctor can be held liable for negligence just on the off chance that one can prove that he/she is guilty of failure that no doctor with ordinary skills would be guilty of acting with reasonable care." **In Kanhaiya Kumar v. Park Medicare and Research Centre**[12] it was stated that negligence must be constituted, and it cannot be assumed.

(C) Consumer Protection Act and Medical Negligence:

"Since 1990, there is enormous supposition and discussion on whether clinical services are expressly or completely remembered in the meaning of Services as under section 2(1) of the Consumer Protection Act. Absence of organization infers any deficiency, imperfection, or inadequacy in the quality, nature, or way that is required to be kept up by or under any law until further notice in power or has been attempted to be performed by an individual in execution of an agreement or in any case about any service."

The query that arises is that where can a complaint be recorded; the appropriate answer is that a complaint can be recorded in:

1. The District Forum if the estimation of services and remedies claimed below rupees 20 lakh,

2. Before the State Commission, if the estimation of the goods or services and the remedies claimed does not outgo beyond rupees 1 crore, or

3. In the National Commission, if the estimation of the goods or services and the remedies outgo beyond rupees 1 crore.

The great positive thing is, there is a minimum fee for filing an objection before the District consumer redressal forums. In 1995, the medical services within the scope of the service defined in the Consumer Protection Act, 1986 was brought by the Supreme Court judgement in the case of the **Indian Medical Association v. V.P. Shanta and Ors.**[13]

"This defined human relationship between the patients and medical professionals by sanctioning contractual binding patients to persecute doctors if they get injured in the course of treatment in 'procedure free' consumer protection."

[11] AIR 2000 SC 1888
[12] III (1999) CPJ 9 (NC)
[13] 1996 AIR 550, 1995 SCC (6) 651

III. IMPORTANT CASE LAWS AND ANALYSIS

"At the point when we talk about the milestone judgment in medical negligence cases, the very first case that strikes in our brain is one of the most debated cases with the highest sum of compensation ever allowed to date. In **Kunal Saha v. AMRI Hospital**[14] broadly known as the Anuradha Shaha case, a case was filed in the year 1998 with the claim of medical negligence on a Kolkata based AMRI hospital alongside its three specialists, in particular, Dr. Sukumar Mukherjee, Dr. Baidyanath Halder, and Dr. Balram Prasad."

The facts of the case are that the spouse of the offended party was experiencing drug hypersensitivity and the specialists were negligent in endorsing medication which bothered the condition of the patient and finally the patient died. In a nutshell, the final judgement was given by the Supreme court on 24th October 2013 and pay of around Rs 6.08 crore for the demise of his spouse.

In any case, is that amount is adequate to fulfill the insufficiency that has been made by her death? No amount of money whatever is given can't bring her back and what drove her to death, the negligence of the specialists. A little negligent act can prompt perilous closures. It is there obligation to serve their patient appropriately because of their negligence now and again huge numbers of the patient lost their lives.

Another case of **V. Krishan Rao v Nikhil Super Specialty Hospital 2010**[15]," Krishna Rao, an official in the malaria division recorded a complaint against the hospital for negligent treatment in treating his better half. His wife was wrongfully treated for typhoid instead malaria, because of an inappropriate drug given by the hospital."

At long last, the verdict was given and Rao was granted pay of Rs 2 lakhs. For this situation, the rule of *Res Ipsa Loquitor* which signifies 'the thing speaks for itself' was applied and the remuneration was given to the offended party.

A simple amount of 2 lakh rupees won't diminish the disturbance and pain which has been caused to the patient both psychologically and physically. If the treatment has been given of typhoid, at that point clearly the medicines would have been given for a similar reason and medication have their reaction too. And how they can be so negligent while releasing their sole obligation towards their patient. All these are the sole questions that are to be solved.

Sometimes in medical negligence cases, the remuneration to the victim has given a look at the moral ethics identified with a philanthropic premise as we can infer with the case **of**

[14] Criminal Appeal Nos. 1191-1194 of 2005
[15] Civil Appeal No. 2641 OF 2010 (Arising out of SLP (C) No. 15084/2009)

Pravat Kumar Mukherjee vs. Ruby General Hospital and ors[16], for this case, the National Commission of India conveyed a landmark judgment for treating accident casualty. In this case, "the plaintiff was the parents of the dead kid named Samanate Mukherjee a second-year B.tech student of NSCB Engineering College, the complaint was registered in National Commission of India. The kid was hit by a public transport bus and was immediately taken to the nearest hospital. The child was not in his sense when he was taken to the hospital. He should his medical insurance card which stated that the insurance company will provide Rs.65,000 if there should be an occurance of an accident, depending on the insurance, the hospital began treating the child but subsequent to giving some underlying treatment, the hospital demanded Rs15,000 and due to the non-payment of the demand by the hospital, the hospital stopped the treatment of the child and asked his parents to take him to another hospital and on the way to the other hospital, the boy passed away. For this case, the National Commission proclaimed Ruby Hospital responsible and gave Rs.10 lakh as compensation to the guardians." Along these lines, for this situation, the court looked on humanitarian premises, and pay was granted to the complainant.

Here the court is discussing humanity, well where was the humanity when the patient's condition was critical and the hospital specialists denied treating him only because he denied to pay the demanded sum since he was having the insurance. Whatever the circumstance was, they should have treated him and now merely repaying them with Rs 10 lakh, what wonders is that going to do, Is he going to come back? The answer is a clear No.

IV. CONCLUSION

It isn't declared that medical practitioners are negligent or not responsible, nonetheless, while performing the duty which requires a lot of consistency and care, frequently many professionals come up short or break their obligation towards the patient. Medication which is believably the purest profession requires setting a environment that can profit the survivors of various illnesses. "Many specialists even the expert now and again neglect little things to be dealt with a while practicing which may bring about damages to the patients that could have been prevented and many times the demise of the patients. This sort of medical negligence needs more concentration than to incorporate it for different laws or resolutions. A free and extraordinary legislative body should be set up to administer negligence. Numerous activists and the survivors of medical negligence have been claiming to get redressal against malafied demonstrations of medical practitioners and specialists."

[16] Original Petition No. 90 OF 2002

The patient can't prove doctor's deficiency past a sensible uncertainty, since, the field of medication is unpredicted and unforeseeable and anything can occur anytime in a manlike body thus, it returns to the offended party. Therefore, it is high time that "the laws directing upon the medical negligence get changed to suit patients first. Also, the patients ought to be sharpened with respect to their rights against medical acts of neglect by civil societies through an appropriate education transmission."

Not only for medication, but the law be also made pertinent to all the experts practicing in various regions which require an imperative measure of expertise and an obligation of care. Individuals in our nation are now victims of numerous diseases and are dying because of the same. Let's put forth attempts to diminish these deaths and amend the profession so that individuals don't die on where they come to get healed.

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