

STUDY ON MEDICAL NEGLIGENCE AND IMPLICATIONS WITH SPECIAL REFERENCE TO CONSUMER PROTECTION ACT

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ABSTRACT:

Medical negligence is punishable under various laws such as torts, IPC, Indian Contracts Act, Consumer Protection Act, etc. It can be defined as misconduct by a medical practitioner or doctor, and causes many deaths and illnesses each year. This paper covers the legal aspects and consequences of medical negligence, liability of the victim, and aims to spread awareness regarding the same. Medical negligence is a combination of two words. The second word solely describes the meaning, though the meaning of negligence has not been described in a proper way but it is an act recklessly done by a person resulting in foreseeable damages to the other. Negligence is an offense under Tort, IPC, Indian Contracts Act, Consumer Protection Act etc. Medical Negligence basically is the misconduct by a medical practitioner or doctor by not providing enough care resulting in breach of their duties and harming the patients which are their consumers. A professional is deemed to be an expert in that field at least; a patient getting treated under any doctor surely expects to get healed and at least expects the doctor to be careful while performing his duties. Medical negligence has caused many deaths as well as adverse results to the patient's health. This article focuses on explaining negligence under various laws,

professional negligence, medical negligence and landmark as well as recent cases in India. This provides information on liability that can be incurred by the victim of the medical malpractice. It aims at providing information about the topic to create as much awareness as possible. It is important to know what constitutes medical negligence. . A basic knowledge of how medical negligence is adjudicated in the various judicial courts of India will help a doctor to practice his profession without undue worry about facing litigation for alleged medical negligence. The main aim is to critically examine and document various aspects of Medical Negligence liability under Consumer Protection Act, 1986 (CPA) amongst medical professionals.

Keywords: *Consumer protection act, negligence, reasonable care, litigation, malpractice*

INTRODUCTION:

Tortious liability which is considered as a civil wrong, which arises from a breach of duty of a person, or arises when a person's legal right is violated or infringed. Salmond's definition for tort is "It is a civil wrong for which the remedy is a common law action for unliquidated damages and which is not exclusively the breach of a contract or a breach of trust or other merely equitable obligation." This concept was originated and practiced by all the Common law countries, which is analytically a law of obligations. Historically there was no general principles or enactments for tortious liability by King's court gave remedies for trespass, negligence and damage, negligence being a part of tortious liability arises due to reckless or careless act of commission or omission or due to breach in duty which amounted to injury or damage suffered to a person which is compensated with damages according to civil wrong. Medical negligence is punishable under various laws such as torts, IPC, Indian Contracts Act, Consumer Protection Act, etc. It can be defined as misconduct by a medical practitioner or doctor, and causes (Tan 2006) many deaths and illnesses each year. This paper covers the legal aspects and consequences of medical negligence, liability of the victim, and aims to spread awareness regarding the same. Medical negligence is a combination of two words. The second word solely describes the meaning, though the meaning of negligence has not been described in a proper way but it is an act recklessly done by a person resulting in foreseeable damages to the other. Negligence is an offense under tort, IPC, Indian Contracts Act, Consumer Protection Act and many more. Medical Negligence basically is the misconduct by a medical practitioner or doctor by not providing

enough care resulting in breach of their duties and harming the patients which are their consumers. (Ottenwess et al. 2011) A professional is deemed to be an expert in that field at least; a patient getting treated under any doctor surely expects to get healed and at least expects the doctor to be careful while performing his duties. Medical negligence has caused many deaths as well as adverse results to the patient's health. This article focuses on explaining negligence under various laws, professional negligence, medical negligence and landmark as well as recent cases in India. This provides information on liability that can be incurred by the victim of the medical malpractice. It aims at providing information about the topic to create as much awareness as possible. (Hossaini 2017)

It is important to know what constitutes medical negligence. A basic knowledge of how medical negligence is adjudicated in the various judicial courts of India will help a doctor to practice his profession without undue worry about facing litigation for alleged medical negligence. The main aim is to critically examine and document various aspects of Medical Negligence liability under Consumer Protection Act, 1986 (CPA) amongst medical professionals.

Aim of the Study:

This paper deals about the concept of negligence as a delict, by narrowing the topic to professional negligence with a focal point on medical negligence otherwise called as medical malpractice and has dealt in a manner of reviewing various case laws and doctrines.

HYPOTHESIS:

NULL HYPOTHESIS: The Medical Negligence is not properly implemented in the Consumer protection act.

ALTERNATE HYPOTHESIS: The Medical Negligence is properly implemented in the Consumer protection act.

RESEARCH METHODOLOGY:

The research methodology used by the researcher here is doctrinal form of study. The researcher has used the secondary sources like books and articles written by famous authors and eminent Jurists.

NATURE OF MEDICAL NEGLIGENCE:

In the law of carelessness, experts, for example, attorneys, specialists, planners and others are incorporated into the class of people purporting some exceptional aptitude or gifted people for the most part. Any errand which is required to be performed with an exceptional expertise would for the most part be conceded or attempted to be performed just if the individual has the imperative ability for playing out that assignment.

Any sensible man going into a calling which requires a specific level of figuring out how to be known as an expert of that branch, impliedly guarantees the individual managing him that the aptitude which he pronounces might be practiced with sensible level of care and alert. On a similar relationship, this guarantees the patients that a specialist has the imperative aptitude in the therapeutic calling which he is rehearsing and keeping in mind that endeavour the execution of the assignment endowed to him he would practice his expertise with sensible ability. Judged by this standard, an expert including medicinal expert might be held at risk for carelessness on one of two discoveries: it is possible that he was not had of the essential expertise which he claimed to have had, or, he didn't work out, with sensible ability in the given case, the aptitude which he possessed. (Decker 2002)

The standard to be connected for judging, regardless of whether the individual charged has been careless or not, would be that of a conventional equipped individual practicing normal expertise in that calling. It is a bit much for each expert to have the most elevated amount of skill in that branch which he rehearses. Where a calling grasps a scope of perspectives concerning what is a worthy standard of direct, the ability of the expert is to be judged by the most reduced standard that would be viewed as adequate. The test is the standard of the conventional gifted man practicing and purporting to have that exceptional aptitude (Tiwari 2013). A man require not have the most noteworthy master aptitude; it is settled law that it is adequate on the off chance that he practices the conventional expertise of a customary able man practicing that specific craftsmanship.

In this manner, an expert man should charge the corpus of learning which frames some portion of the expert gear of the customary individual from his calling. He ought not fall behind other

conventional persevering and canny individuals from his calling in learning of new advances, disclosures and improvements in his field(Thakur & Jaswal 2013).

He ought to have such mindfulness as a normally equipped expert would have of the lacks in his insight and the confinements on his expertise. He ought to be aware of the dangers and dangers in any expert assignment he embraces to the degree that other commonly equipped individuals from the calling would be ready. He should convey to any expert assignment he embraces no less mastery, aptitude and care than other customarily capable individuals from his calling would bring, yet require bring no more.

To build up obligation on that premise it must be appeared

- (1) That there is a typical and ordinary practice;
- (2) that the respondent has not embraced it; and
- (3) that the course in reality embraced is one no expert man of conventional aptitude would have taken had he been acting with common care. (Franchuk et al. 2018)

A medicinal expert can't be held subject just in light of the fact that things turned out badly from accident or misfortune or through a mistake of judgment in picking one sensible course of treatment in inclination of another. A therapeutic professional would be obligated just where his direct fell underneath that of the models of a sensibly skilful specialist in his field. No less than three profound contemplations can be called attention to which any gathering attempting the issue of restorative carelessness in any purview must remember. These are: (I) that lawful and disciplinary systems ought to be legitimately established on firm, moral and logical grounds; (ii) that patients will be better off if the genuine reasons for hurt are appropriately recognised and suitably followed up on; and (iii) that numerous occurrences include a commitment from more than one individual, and the inclination is at fault the last identifiable component in the chain of causation the individual holding the 'conclusive evidence'(Stauch 2008). In this manner, to set up a medicinal carelessness, the previously mentioned position must be remembered

CRIMINAL LAW: WHERE NEGLIGENCE AMOUNTS TO CRIME:

The criminal law has constantly put the restorative experts on a platform not the same as customary mortals. The Indian Penal Code, 1860 sets out a couple of vocal illustrations. Sec. 88 in the Chapter on General Exceptions gives exclusion to acts not planned to cause demise, done by assent in accordance with some basic honesty for individual's advantage. Sec. 92 accommodates exception for acts done in compliance with common decency for the advantage of a man without his assent however the demonstrations make hurt a man and that individual has not agreed to endure such damage. Sec. 93 spares from culpability certain correspondences made in compliance with common decency. The method of reasoning behind these arrangements is that no man would so be able to act as to make it sure beyond a shadow of a doubt that he should not be so shocking as to cause the demise of a kindred animal (Biswas 2012). The most extreme that he can do is to keep away from everything which is at all liable to cause passing.

No dread of discipline can influence him to accomplish more than this; and hence, to rebuff a man who has done this can add nothing to the security of human life. In this way, when a man occupied with the commission of an offence inside the importance of IPC causes demise by carelessness or carelessness, yet without either expecting to cause passing, or supposing it likely that he might cause demise, he ought to be obligated for the discipline of the offence which he was occupied with submitting, superadded to the common discipline of automatic at fault murder. The automatic causing of death, without either thoughtlessness or carelessness, ought to by no means be rebuffed as murder. The accompanying proclamation of law on criminal carelessness by reference to specialists, specialists and so forth and unskillful treatment contained in Roscoe's Law of Evidence is exemplary in such manner:

"Where a man, going about as a restorative man, regardless of whether authorised or unlicensed, is so careless in his treatment of a patient that demise comes about, it is murder if the carelessness was so incredible as to add up to a wrongdoing, and regardless of whether there was such an extent of carelessness is an inquiry for each situation for the jury. In disclosing to juries the test which they should apply to decide if the carelessness in the specific case measured or did

not add up to a wrongdoing, judges have utilised numerous appellations, for example, 'blamable,' 'criminal', 'net', 'devilish', 'clear', 'total.'

But whatever sobriquet be utilised and whether a designation be utilised or not, keeping in mind the end goal to set up criminal risk the realities must be with the end goal that, in the conclusion of the jury, the carelessness of the blamed went past an insignificant issue for remuneration amongst subjects and indicated such dismissal for the life and wellbeing of others as to add up to a wrongdoing against the State and direct meriting discipline." (Koley 2010)

LIABILITY:

The liability of the person committing the wrong can be of three types depending on the harm or the injury suffered by the injured person they are Civil Liability. Civil liability usually includes the claim for damages suffered in the form of compensation. If there is any breach of duty of care while operating or while the patient is under the supervision of the hospital or the medical professional they are held to be vicariously liable for such wrong committed. And are liable to pay damages in the form of compensation. At times the senior doctors are even held vicariously liable for the wrongs committed by the junior doctors. If someone is an employee of a hospital, the hospital is responsible if that employee hurts a patient by acting incompetently. In other words, if the employee is negligent (is not reasonably cautious when treating or dealing with a patient), (Biswas 2012) the hospital is on the hook for any resulting injuries to the patient. In *Mr. M Ramesh Reddy v. State of Andhra Pradesh*, (Singh n.d.) 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 against the hospital. Criminal Liability- There may be an occasion when the patient has died after the treatment and criminal case is filed under Section 304A of the Indian Penal Code for allegedly causing death by rash or negligent act. According to S. 304A of the IPC, whoever causes the death of any person by a rash or negligent act not amounting to culpable homicide shall be punished by imprisonment for up to two years, or by fine, or both. Hospitals can be charged with negligence for transmission of infection including HIV, HBsAg, etc. if any patient develops such infection during the course of treatment in the hospital and it is proved that the same has occurred on account of lapse on part of the hospital then the hospital can be held liable for lack of reasonable duty to care. My very own grandmother passed away due to the

negligence of the doctors. Due to the carelessness of the doctor that he was in so hurry to rush for his next operation that he forgot to sterilise the equipments and as a result there was this transmission of some infection into her blood which infected her entire system and ultimately resulted in her death. Further In Dr. Suresh Gupta's Case (Srivastava n.d.) – Supreme Court of India, 2004 – the court 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 offence under section 304A of Indian Penal Code, 1860 will apply. Indian Penal Code 1860 sections 52, 80, 81, 83, 88, 90, 91, 92 304-A, 337 and 338 contain the law of medical malpractice in India. The conduct of medical malpractice was brought under the Consumer Protection Act, 1986, due to the landmark case of the Indian Medical Association vs. V. P. Shantha & others. The judgment in this case defined medical care as a “service” that was covered under the Act, and also clarified that a person seeking medical attention may be considered a consumer if certain criteria were met. The service provided was not free of charge or for a nominal registration fee; If free, the charges were waived because of the patient's inability to pay; The service was at a private hospital that charges all patients; or Any service rendered which was paid for by an insurance firm. This meant that certain categories of patients could now sue errant health care providers for compensation under the Consumer Protection Act, 1986, as a breach of contract. Only facilities and doctors that provided all services free of cost to all clients were not liable under the CPA. However, even patients that do not fall under the category of consumers under the Act can sue for negligence under the law of Torts. The burden to prove negligence, however, is on the patient.

PLAN OF ACTION TO CLAIM COMPENSATION:

Under common laws, at a point where the Consumer Protection Act closes, the law of torts assumes control and secures the interests of patients. This applies regardless of the possibility that restorative experts give free administrations. In situations where the administrations offered by the specialist or healing centre don't fall in the ambit of 'benefit' as characterised in the Consumer Protection Act, (Sarda 2016) patients can take plan of action to the law identifying with carelessness under the law of torts and effectively assert remuneration. Most victims of medical negligence in Ireland will not have sufficient knowledge of medicine to be

able to prove that medical negligence has caused an injury, a deterioration of a condition, or for harm to otherwise be caused. It is therefore necessary when claiming medical negligence compensation in Ireland to seek the professional medical opinion of specialist doctors and medical experts. They will be able to assess how a doctor or medical professional has acted, and whether the course of action undertaken by a doctor fell below an acceptable standard of care.

CONCLUSION AND SUGGESTIONS:

An unpredictable arraignment of restorative experts for criminal carelessness is counter-beneficial and does no administration or great to the general public. There must be a connection between blame, fault and equity necessities. The scholarly creators of *Errors, Medicine and the Law* feature the connection between moral blame, fault and equity in reference to therapeutic calling and carelessness. While desires from the experts must be practical and the normal models achievable, this suggests acknowledgment of the idea of customary human blunder and human confinements in the execution of complex errands. It is suggested that serious liability must be given for medical negligence. Damages must be made severe for the act of negligence.

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