

**PAPER ON MEDICAL NEGLIGENCE**

**MEDICAL NEGLIGENCE: AN INDIAN PERSPECTIVE**



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**Author: Mrinal Kishor**

**LL.M (Criminal Laws)**

## ABSTRACT

The term “Medical negligence” meaning consistent with the legal dictionary is “improper, unskilled, or negligent, treatment of the patient by a physician, dentist, and pharmacist of the health care professionals, this can be also been said as medical malpractice. This is now a day been recognized as a large problem creating social issues. There has been observed a huge increase within the case of suits of medical malpractice. Negligence may be a pre-eminent theory of liability proclamation of medical malpractice, this kind of suit could be a part of tort since 1970. While the law has been designed and made easier to resolve such disputes without going the judicial trial by negotiating with countries like U.S., the suffered parties must need to prove that he's ill-treated and the physician has acted negligently while taking care of him. For this need we have to prove, four elements ;(1) a requirement of care owed to the patient by the physician. (2) Such a duty of care is breached. (3) By that negligence, injury is caused. (4) Which ends damages pecuniary damage, if given, taken into consideration both the pecuniary loss and therefore the non-pecuniary loss such suffering and hurt.

## Introduction

The person who enters into a professional duty of something like treatment and providing of the medical due care to the people are used to be seen as they are compatible and will be holding skills and due care. The history of medical negligence can be found back by 2030 BC. In the laws of Rome and England, where if any doctor has treated any person and the person dies due to his negligence then the hand of the doctor used to cut off. In India after the “Consumer protection act 1986”, come into effect, the huge number of victims filed a suit against the doctors and hospitals, and the medical professionals are facing much more complaints regarding the facilities and standard do not match as it is promised, regarding the diagnosis matter, therapy and the medicine provided. After the commencement of the consumer protection act, many hospitals, and medical staffs have been sued in the court of law, that the doctors have been negligent during their duty and claimed for the relaxation regarding it, in terms of compensation, by which a huge no of court legal decision has been made to examine the negligence and what basic elements need to prove it. “The SUPREME COURT recently stated in Dr. Jacob Mathew’s case, (1) that to create doctors answerable for the death of a patient, it must be established that there was

negligence or incompetence on the doctor's part which went beyond a mere question of compensation on the premise of civil liability.

### **Civil Law and Negligence**

Negligence means being inattentive during the time of duty where the law demands full attention during the time of your duty. And for this inattentive behavior, the law provides, the suffered person the right of taking legal action against you and make an injury related to the civil case, and the person who is found negligence will have to pay for the losses and injury occurred to the suffered party. Medical negligence is not always ended to the injury, the suffered person may lose their eyes, any part of the body, and some time to many other diseases which cannot be cured and sometime it may end the life of a patient also. This thing lies on the patient also that they should always seek advice and medical treatment by the person who is skilled implicit and have skills and knowledge. Under the consumer protection act, the case of medical negligence can also be filed if any private hospitals and institutions are not providing medical treatment free of cost.

### **Criminal negligence**

Under criminal negligence, section 304 A of IPC, 1860 states that whoever causes the death of an individual by a rash or negligent act not amounting to culpable homicide shall be punished with the imprisonment for the term of two years, or with fine or with both. In criminal law, the amount of degree of negligence is a factor in determining liability. In the case of Kusum Sharma & Ors v. Batra hospital & medical research center & Ors "deficiency in medical service is a duty owed to the patient. A person who holds himself out as ready to give medical (a) advice or treatment impliedly undertakes that he is a skilled person for that purpose, any such person must be registered as a medical practitioner, and he has some duty of care to undertake the patient or not, he is the skilled person for that case or not, duty and care of the administration of treatment. (b) A breach of any duties will support an action for negligence by the patient.

Section 80 and 88 of the IPC contain defenses for doctors accused of criminal liability.

ACTs; -

The Drugs and Cosmetics Act, 1940

The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002

The Insurance Act, 1938

The Consumer Protection Act, 1986

The Indian Penal Code

### **Case laws related to medical negligence**

#### **Poonam Verma v. Ashwin Patel & Ors.**

In this case, the Supreme Court delved into the issue of what is medical negligence. In the context, the Court held as under:

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.”

Negligence per se is defined in Black’s Law Dictionary as under:

Conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of a statute or valid municipal ordinance, or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. As a general rule, the violation of public duty, enjoined by law for the protection of person or property, so constitutes.

#### **Bhalchandra @ Babu & Another v. State of Maharashtra,**

The Supreme Court opined that while negligence is an inattentive act by the professionals, who are having skills and do not pay their required attention to the subject matter they have taken up to, which a professional man should not be negligent upon; ‘criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular’, for which the

accusation has arisen which having regard to all the circumstances out of which the charge has arisen, it is the obligatory duty of the accused person to have endorsed.

**Achutrao Haribhau Khodwa & Others v. State of Maharashtra & Others:** This Court noticed that in the very nature of the medical profession, skills differ from doctor to doctor and more than one way of treatment is available, and all the treatment process is permissible. Negligence cannot be made to a doctor as long as he is doing his duties to the best of his ability and with due care and caution. And if the doctors choose what the way he wants to take to perform his duty should be allowed as per the availability of the equipment and circumstances, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

**Kurban Hussein Mohammedali Rangawalla v. State of Maharashtra**

In this case, while dealing with Section 304A of IPC (death caused by negligence), the statement of law by Sir Lawrence Jenkins in *Emperor v. Omkar Rampratap*<sup>1</sup>, was cited with approval:

“To impose criminal liability under Section 304A, Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another’s negligence. It must be the causa causans; it is not enough that it may have been the causa sine qua non.”

**Dr. M. Kochar vs Ispita Seal**

In this recent case, the National Consumer Dispute Redressal Commission (NCDRC) was a challenge with the subject of failure in IVF policy. The complainant in the case complained of failure in IVF policy and demanded compensation from the Doctor on account of medical negligence. The National Commission in the case held that “No cure/ no success are not negligence”, so the complainant should not blame the doctors as it is not justified.

**CONCLUSION**

Medical negligence in India is now becoming a serious issue, as this is a white-collar job and very novel profession to save someone life, but now people have made it a place of making

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<sup>1</sup> (1902) 4 BLR 679

money, where they are misusing the emotion of patient and raising the price of ICU's and working as a profit-making organization, which is taking this novel profession to the money lending or laundering profession for the treatment of simple operations there is the various rate in other intuition. Some of the organizations are having under-educated doctors or incompetent by whom the innocent patient is been ill-treated and they have to suffer. This is also done in the big hospitals so that they can make more money by rate-cutting by not having a specific or senior doctor who will charge more. Nowadays there are also been observed that there are many hospitals that keep patient in ICU after their death for 2,3 days for the money, which are making this novel cause to white-collar crime and people are losing the belief and faith from the hospital institution and the doctors as seen in recent days after the pandemic. Many hospitals have made their price list which is much higher from the reach of common people which can't be justified in the time of such pandemic.

Sometimes there is a no negligence, and due to some internal organ failure or some time patient can't bear the stress of treatment or operation by which is going through and which lead to the death of a patient after which there near once use to sue the medical institution and staff and sometimes medical staffs and institution got targeted and misshaping like breakage of property or sometimes the doctors get into the fear of beaten up, for which the new law should be made and proper security should be provided. The doctors should not work in a fear of getting beaten up or any damage of property, if any patient cannot be survived.

The medical institution is also having its council like MCI which is the medical council of India which works for the right of the doctors and sets a criterion of working. And assist the medical institution for their progress work and surveillance and maintain the standard of the medical institution.

The SC also tried to maintain a balance between the victim and the medical institution by providing various defense for a medical institution.