



Medical negligence laws & remedies in India

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Abstract

Medical negligence is considered to be a most crucial offence throughout the world. Numerous cases have been filed in recent years where an under qualified medical professionals were filed against for not taking reasonable care during times of diagnosis, operation etc. that causes death and also adverse effect in patient's health. This article explains the laws relating to medical negligence and the remedies put forward in India. Some important case laws regarding medical negligence have also been discussed. This article has covered the legal aspects and the consequences of medical negligence. "Medical profession is a feat that requires self-sacrifice, purity of soul and purity of thoughts."

-Anonymous

Keywords: duty to care, Indian legal perspective, complaint, judgment, medical negligence, burden of proof

Introduction

Medical profession is considered to be a noble profession as it deals with the most noblest thing 'life of a person' no less than any other thing. The medical council has the right to cancel the licence of doctors for their negligence but has no power to provide compensation to the victims.

However, as of "To Err Is Human", it is natural human beings make mistakes and so do doctors. But Even the slightest mistake by a doctor can save a patient's life. So, it is the duty of a doctor to take proper care to avoid these kinds of happenings.

In Poonam Verma v. Ashwin Patil & Ors, it was termed that "Negligence has many manifestations." It is a multi-categorized concept as it can be covered under Consumer Protection Act, Tort, Crime. It is presumed that a doctor always acts in good faith for the well-being of their patients. The term "Good Faith" is explained in Section 52 of the IPC as "Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention". This article provides the laws relating and remedies available for Medical Negligence in our country.

Background

This article focuses on explaining medical negligence under various laws, and landmark cases as well as recent cases in India. This provides information on liability that can be incurred by the victim and also aims at providing information about the topic to create as much awareness as possible.

Medical Negligence

Medical negligence is the failure of medical practitioner to provide proper care resulting in breach of their duties and harming the patient's health. Sometimes the mistakes of doctor are so dangerous that a patient has to suffer immensely. The healthcare system is failed when a doctor fails to treat an illness that is treatable. Medical negligence happens when a health care provider strays from recognized "standard of care" in the treatment of a patient. The standard of care is defined as what a reasonably prudent medical provider would or would not have under similar conditions.

In case of Dr.Laxman Balkrishna Joshi v. Dr.Trimbark Babu Godbole and Anr ^[1] and A.S Mittal v. State of U.P ^[2], it was laid down that a doctor owes certain duties to his patients which are as follows

- Duty of care in deciding whether to undertake the case.
- Duty of care in deciding what treatment to give.
- Duty of care in administering the treatment.

A breach of any of the above said duties may give a cause of action for negligence and a patient may recover damages from the doctor on that basis.

Essentials of Medical Negligence

The essentials of negligence are the four D's

- There is duty toward patients
- There is deficiency in duty towards patients
- This directly results in
- Damage which may be physical, mental or financial loss to patient or relatives.

In case of Medical negligence, the doctor is the defendant. For medical negligence to take place, the following essentials are required.

- The defendant owed a duty to care the plaintiff.
- A breach has been made by the defendant of that duty.
- Plaintiff has suffered damage as a result of that breach.

In Jasbir Kaur v. State of Punjab ^[3], a newly born child was found missing in the hospital bed.

Then he was found bleeding near the wash basin of the bathroom. The hospital authorities said that it was an act of a cat that caused damage to him.

The court held that the hospital authorities were negligent as they had not taken due care and precaution. Thus awarded compensation amounting to Rs.1 lakh.

Types of Medical Negligence

A deviation from the standard care by a medical professional causes medical negligence. Any form of deviation may occur as this is a vast field where due care has to be taken at every point.

Here are a few types of medical negligence.

1. Medical Misdiagnosis

Failing to diagnose a condition correctly can lead to unnecessary suffering. Medical misdiagnosis falls into two types, where a condition is missed ends up going undiagnosed and a condition where an incorrect diagnosis is made.

2. Surgical Negligence

The wrong operation being performed, the wrong body part being operated, foreign objects left in the body, organs being perforated, cosmetic surgeries causing scars, infections caused by poor hygiene all these fall under surgical negligence.

3. Pregnancy and Birth injuries

Birth injuries include any injuries suffered by mother or baby during pregnancy, during labor, after childbirth.

Duty of Care

The relationship between a doctor and a patient is a special one. When a patient is admitted to hospital, a duty of care relationship is created, which can be applied to any doctor coming into contact with the patient. A medical practitioner owes a duty of care to their patient. There must be a proper care given in taking a proper history, investigating patient's symptoms and complaints properly, making proper diagnoses, making referrals to specialists, initiating action in order to take all reasonable steps, providing a reasonable treatment etc. A doctor is held liable for a negligent omission to act.

In Chandigarh Clinical Laboratory v. Jagjeet Kaur, the appellant was directed to pay complainant a compensation of Rs.25,000 along with cost of Rs.2000, for which the appellant's laboratory had issued wrong reports. The Hon'ble commission held that the appellant had made 'duty of care'.

Burden of Proof

The burden of proof generally lies with the complainant. The law requires higher standard of evidence to support the allegation against any doctor. In cases of medical negligence, the patient must establish a claim against the doctor in order to succeed.

Filing A Complaint

If you are a victim of medical negligence, then the first necessary step is to file a complaint in the state medical council. The complaint can be filed in the state consumer court and a criminal suit can also be brought against the doctor or hospital authorities.

Remedies of Medical Negligence

▪ Medical Council of India

An aggrieved party can file a complaint of negligence against a medical practitioner to the concerned state medical council as they have power to take action against that particular doctor by suspending or cancelling his registration.

But The Medical Council Act, 1956 doesn't give them the power to compensate the aggrieved party. The accused is required to file a complaint specifying all the facts and details. Then the council shall allow the accused a time of 30 days to submit his reply. If the council is not satisfied

with the reply, then they shall call upon the parties to present evidence in support of their claims.

▪ Fundamental Rights

Article 21- Protection of life and personal liberty.

Article 32- Right to move to the Supreme Court by appropriate proceedings.

▪ Directive Principles of State Policy

Article 41-The state shall within its limits, make provisions for right to work, to education, and to public assistance in cases of unemployment, old age, sickness.

Article 42-The state shall make provision for securing just and humane conditions of work and for maternity relief.

Article 47-The state shall regard the raising of the level of nutrition and standard of living of its people and ensure public health.

▪ Indian Penal Code

Section 52-Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention.

Section 80-Nothing is an offence which is done by accident or misfortune and without any criminal intention.

Section 81-Nothing is an offence merely by reason of its being done with knowledge that is likely to cause harm.

Section 88-Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause to any person for whose benefit it is done in good faith and who has given consent.

Section 90-A consent is not a consent if it is given by a person under fear of injury, under a misconception of a fact and the person doing the act knows that the consent was given in consequence of such fear.

Section 92-Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith even without the person's consent if that person is incapable of giving consent.

Section 304 A- Whoever causes death of a person by doing any rash or negligent act amounting to culpable homicide shall be punished with imprisonment of either for a term of two years or fine or both.

Section 312 to 316-Causing miscarriage.

Section 319 to 322-Causing grievous hurt.

Section 337-Whoever causes hurt to any person by doing any act rashly or negligently as to endanger human life, or personal safety of others shall be punished with imprisonment for a term of six months or with fine of rupees five hundred or with both.

Section 345-Wrongful confinement.

▪ Criminal Procedure Code Amendment-1973

When it is proved that the negligent act is performed with Mens Rea(guilty mind) he shall be punished under C.C.P amendment 1973 and shall be proved a doctor guilty under criminal law.

Important Case Laws

V. Kishan Rao v. Nikhil Super Specialty hospital ^[4]

In this case the complainant's wife was wrongly treated for typhoid rather than malaria, because of some incorrect prescription by a medical clinic. At last, the decision was given and Rao was granted a pay of Rs.2 lakhs. The rule of res ipsa loquitur is applied in this case.

Achutrao Haribhau Khodwa and Ors v. the State of Maharashtra ^[5]

The Supreme Court observed that in the medical profession the skills differ from doctor to doctor. Therefore, negligence cannot be attributed to a doctor as long as he is performing his duty with care, caution and attention.

Dr. Kunal Saha represented by Sri v. Dr. Sukumar Mukherjee And Ors ^[6]

The wife was suffering from drug allergy and the doctors negligently prescribed inappropriate medicine that eventually leads to the death of a patient. The court held the doctor liable for medical negligence and awarded compensation amounting to Rs.6.08 crore.

Juggan Khan v. State of Madhya Pradesh ^[7]

The appellant was a registered Homoeopathic practitioner. A woman went to him for treatment of guinea worms. On the wrong prescription of medicines, the woman died. The appellant was convicted for murder under Section 302 of IPC.

Mr. M. Ramesh Reddy v. State of Andhra Pradesh ^[8]

The hospital authorities were held negligent on the principle of inter alia for not keeping the bathroom clean which resulted in the fall of an obstetrics patient in the bathroom leading to death.

Conclusion

People are losing faith in the medical profession due to some serious negligence cases, though the doctors are seen as god. Due care has to be taken while a medical practitioner is undertaking a treatment as this deals with the precious life of a person. Finally, the most important concern is that patients who are rendered free treatment are excluded from the scope of Consumer Protection Act, 1986. So these patients are suffering from the damages that occur. This must be considered and they should also be given due compensation. Nowadays doctor-patient relationships are under constant strain. Doctors must be aware of the pros and cons of medical practice. The communication of doctors to the patients and their relatives should be in a proper way explaining the consequences of the treatment to be done even if the result becomes positive or negative. A good compassionate behaviour, a proper record maintenance and a valid consent will be a great help whenever there is a case of negligence. The Medical ethics should be reformed and served with righteousness.

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