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An Anecdote of Remedies for Medical Negligence

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ABSTRACT

Medical Practitioners in India are treated as second life savers after God. The standard of care from doctors and hospital authority thus is expected to be more in juxtaposition with other cases of negligence. So proper care must be taken by the authorities and the doctor's side to avoid medical negligence. Medical Negligence has been a hot topic of debate especially in recent years. Due to the increasing cognizance of the rights of a patient in modern society, doctors have become more susceptible to being sued by a litigation suit of any kind, civil or criminal. The doctor-patient correspondence rests up on trust and faith. With the life expectancy being amplified by technological revolution and advancement in the medical science, no ailment seems to be inoperable. Nevertheless, apprehensions are their professional competence, acquiescence to therapeutic and laboratory paradigms of MCI on apparatus and facilities, Wrong prescriptions, overdoses and unqualified medical practitioners, improperly equipped and instantized hospitals nevertheless continue to raise distresses amongst the patients and relatives. Given all the justified reasons, often it becomes very difficult to support a claim for all the monetary and non-monetary damages. This article lays out the various aspects of negligence, and the concept of duty of care, degree of care, and standard of care, as considered by the law, and the multicategories of remedies accessible for the aggrieved party.

Keywords: Medical, Negligence, Remedies, Criminal, consumer, Forum.

I. INTRODUCTION

Medical Profession has been put up on a pedestal as being a very noble and humanitarian profession, and doctors especially in India are revered. In India, there is one doctor for every 1,457 people which is tantamount to huge pressure workload for doctors. But, time and time again this profession has been placed under scrutiny, not only in India but around the world which is a cause of grave concern. To “err is human” and doctors aren’t an exception to it but it must be noted that in medical profession the life of people are at stake and its important for

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medical practitioners to perform their duty with expertise skill and caution; ensuring their patients safety.

Medical Negligence has been expounded by the Apex Court in case ***Kusum Sharma & Ors. v. Batra Hospital & Medical Research Centre and Ors.***² 2010 by referencing Halsbury's Laws of England Ed.4 Vol.26 pages 17-18, where the elucidation of Negligence is as under: -"22. Negligence: Duties owed to patient. A person who holds himself out as ready to give medical³:

(a) advice or treatment implicitly undertakes that he is acquired of skill and knowledge for the purpose. Such an individual, whether he is a registered doctor or not, who is consulted by a patient, incur him certain duties, namely, a duty of care in deciding whether to undertake the case: a duty of care in determining what treatment to give; and a duty of care in his conduct of that treatment

(b) A breach of any of these duties will support an action for negligence by the patient."

The exposition of negligence as specified in Law of Torts, Ratanlal & Dhirajlal has been held to be good by Apex Court is that negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The 3 essential components of negligence are as follows-

- a) Incidence of Legal Duty (of a medical practitioner to perform his duties with due care and expertise)
- b) Breach of the Legal Duty
- c) Resulting Damage by breach of such Legal Duty

The term "Standard of Care" has been mentioned in the case ***Dr. Laxman Balkrishna Joshi Vs. Dr. Trimbak Babu Godbole***,1968⁴ stating that **medical practitioners must exercise reasonable standard of care and any breach of any such duties set out in the profession will tantamount to medical negligence.**

In a substantial judgment by the Supreme Court of *Indian Medical Association v. V.P. Shantha & Others* (1995) 6 SCC 651, a three-Judge Bench sustained that service provided to a patient by a doctor (except where the medical practitioner provides the service free of charge to a patient or under a contract of personal service), by way of consultation, diagnosis and treatment, either surgical or medicinal, would fall within the domain of 'service' as defined

² *Kusum Sharma and Ors. v. Batra Hospital & Medical Research Centre and Ors.*(2010) 3 SCC 480

³ *Ibid.*

⁴ *Dr. Laxman Balkrishna Joshi v Dr. Trimbak Babu Godbole and Another* I 1969 1 SCR 206

in Section 2(1)(o) of the Consumer Protection Act, 1986. The Court also mentioned that any deficiency in service has to be arbitrated by applying the test of reasonable skill and care which is applicable in action for damages for negligence.

In the case of *Jacob Mathew v. State of Punjab*,⁵ the Honourable Supreme court said that in some cases of medical profession the doctors find themselves in certain situations where they have to make choices between a devil and the deep sea. Taking into account certain scenarios such as there must be greater risk in the operation but higher chances of success and in another move, there would be lesser risk but higher chances of failure honourable SC held that which course would be follow will depend on facts and circumstances of case.

II. MULTICATEGORIES OF REMEDIES FOR MEDICAL NEGLIGENCE

(A) Medical Council of India

The aggrieved patient can file a complaint about medical negligence of a practitioner to the associated State Medical Council. The council has the power to reprimand the accused medical practitioner by suspending or cancelling his registration. Every patient must receive a copy of their medical records within 72 hours of requesting them, according to MCI standards. The offended party must file a complaint that includes all pertinent information regarding the case. The Council offers the accused doctor a thirty-day chance to respond to the claims. If the State Medical Council is not satisfied with the reply, both parties are summoned to the State Medical Council to state their case.

Nevertheless, under the Medical Council Act, 1951 they have no powers relating to compensate the victim of medical negligence.

(B) Criminal Liability

The courts have time and time again taken into account the hazards associated with medical practice. Assuming that medical practitioners always act in “good faith” as defined in Section 52 of Indian Penal Code (IPC) as “Nothing is said to be done or believed in ‘good faith’ which is done or believed without due care and attention”⁶ the Indian law gives medical practitioners some leeway and protects them from criminal liability through sections 88 to 92 of IPC.

⁵ *Jacob Mathew v. State of Punjab* AIR 2005 SC 3180; (2005)6SCC1; 2005 CriLJ 3710

⁶ The Indian Penal Code, 1860. Bare Act, Allahabad: Law Publishers India Pvt. Ltd: 1998

In the case of *Malay Kumar Ganguly vs. Sukumar Mukherjee and Ors.*⁷ The Indian Criminal legal framework protects Medical Practitioners under following sections of IPC,1860 -Section 80, Section 81, 88, 90, 92, 304-A, 337.

1. Provisions⁸

- According to Section 304-A of the Indian Penal Code, 1860, a person who commits a reckless or careless conduct that amounts to culpable homicide is punishable by imprisonment for a term of up to two years, a fine, or both.

- A person is guilty of committing a reckless or careless act that endangers human life or the personal safety of others, according to Section 337 of the Indian Penal Code, 1860. The person will be punished with a period of imprisonment of up to six months or a fine of up to five hundred rupees, or both.

- A person does a reckless or careless act that endangers human life or the personal safety of others, according to Section 338 of the Indian Penal Code, 1860. The person will be sentenced to two years in prison or a fine of one thousand rupees, or both, depending on the severity of the offence.

2. Defences

- *Section 80 of the Indian Penal Code*, 1860, says that anything which happens as a result of an accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution is not an offense.

- *Section 81 of the Indian Penal Code*, 1860, states that if anything is done merely by the reason that it is likely to cause harm but if the same is done without any intention to cause harm and in good faith in order to avoid other damages to a person or his property is not an offense.

- *Section 88 of the Indian Penal Code*, 1860, says that no one can be made an accused of any offense if he performs an act in good faith for the good of other people and does not intend to cause harm even if there is a risk involved and the patient has given the consent explicitly or implicitly.

(C) Civil Liability under Consumer Protection Act

The aggrieved party can approach the consumer courts to file a case against the accused person and the hospital. In the case the of *Indian Medical Association v. V.P. Santha* the Apex Court

⁷ Malay Kumar Ganguly vs Sukumar Mukherjee & Ors AIR 2010 SC 1191

⁸ Supra 6

held that all the doctors and medical practitioners comes under the ambit of Consumer Protection Act, 1986 and the medical services provided by them should be considered as services under section 2 (1) (o) of Consumer Protection Act, 1986. *Section 2 (1) (o) of the Consumer Protection Act* explains the term 'deficiency of service' as any fault, paucity, etc. in the quality or manner of performance that is required to be sustained by or under any law or it has been undertaken to be executed by a person in fulfilment of a contract or otherwise.

Correspondingly, the medical services shall be covered under services as mentioned in section 2(42) of the New Consumer Protection Act, 2019. Any discrepancies of medical negligence on the part of the medical practitioner will be considered as deficiency under section 42(11) of the new Consumer Protection Act, 2019. Victim party can claim damages for medical negligence against any medical practitioner, Institution or hospital. Section 69(1) of the Consumer Protection Act, 2019 fixing the time limit states that any complaint regarding medical negligence have to be filed under years from the date of injury.

In the case the of *Indian Medical Association v. V.P. Santha*⁹ the honourable Supreme Court elucidated the ambiguities as follows-

- Medical services that are provided free of charge are not covered by Section 2(1)(o) of the Act.
- Medical services should be considered "services" under Section 2(1)(o) of the Consumer Protection Act of 1986. There is no master-servant relationship between them, hence it is not a personal service contract.
- Contract of service in Section 2(1) (o) cannot be limited to contracts for the employment of domestic servants only. The services extracted to the employer are not covered under the Act.
- Section 2(1)(o) of the Act applies to medical services that are extracted by independent doctors and are provided free of charge.
- Medical services obtained in exchange for payment of a fee are likewise covered by this Act.
- The payment of consideration of a medical service is paid by some third party and is treated are covered under this Act.
- Hospitals in which some persons are exempted from charging because of their inability to afford or any other financial problems will be treated as a consumer.

⁹ *Indian Medical Association v. V.P. Shantha* (1995) 6 SCC 651

III. HOW TO FILE A COMPLAINT? – A DETAILED PROCEDURE

- The First step by the aggrieved party is to file a complaint with the local police station under Criminal Procedure Act and the concerned state medical council.
- After thorough enquiry of the facts and evidence pertaining in the concerned case, they will send the required reports to the courts.
- If the concerned case is of criminal nature, the case will be handled by the State government and tried in a criminal court.
- After investigation, if the council finds that the medical practitioner is at fault and has the power to jeopardize further lives, council may suspend the doctor's/hospital's license until the further enquiry is finished.
- After a final report is finished, if the doctor or hospital is found to be at fault of gross medical negligence, a punishment will be decided after taking into account the nature and gravity of the negligence.
- In case the aggrieved party is discontented with the efforts of the Council, he or she may appeal to the MCI.
- If the aggrieved party is looking for monetary compensation, he or she may approach a consumer court, as they have the authority to hand out money.
- In case the aggrieved party is not satisfied with the decision taken by the consumer court, he or she may approach a National Consumer Redressal Forum or go to the Supreme Court to seek out a trial.

IV. LANDMARK JUDGEMENT

(A) Jacob Mathew v. State of Punjab¹⁰

A patient named Jiwan Lal was admitted to a private ward in CMC Hospital, Ludhiana reporting difficulty in breathing. No doctor turned up to treat patient for about 20-25 minutes. After that, Dr. Jacob Mathew and Dr. Allen Joseph started to treat the patient by connecting him to Oxygen life support but the tank was found to be empty and it was too late before his son could arrange for another oxygen cylinder. The younger son, Ashok Kumar Sharma filed a FIR under Section 304A read with Section 34 of the IPC. (Section 304A of IPC- Causing death by negligence and Section 34 of IPC- Common intention for criminal activity, all people included to be held liable.

Dr. Jacob Mathew, in his defence stated the patient was already suffering from the advanced

¹⁰ Supra 5

staged of cancer and advised the family to keep the patient in solace and care of home. Nevertheless, the patient was admitted to the hospital.

The two issues raised in this case were

- (1) Is there a variance between civil and criminal law in the concept of Medical Negligence?
- (2) Is there a test to determine the gravity of negligence through which it will be certain, whether the medical practitioner is held liable for the negligence or not?

Apex Court reverting back to the facts of the case held that, they were satisfied that all the averments made in the complaint, even if held to be proved, do not make out a case of criminal negligence on the part of accused-appellant. Stating that it is not the case of the complainant that the accused-appellant was not a doctor qualified to treat the patient whom he agreed to treat and it is a cause of non-availability of oxygen tank since, of the hospital having failed to keep available a gas cylinder or because of the gas cylinder being found empty. The court declared that accused-appellant cannot be ensued against under Section 304-A of IPC on the parameters of Bolam's test.

(Bolam's Test is the test carried out to govern whether a medical practitioner has breached his duty concerning the care of the patient. The Bolam Test was established from the case of *Bolam v Friern Hospital Management Committee, 1957*)

(B) Kunal Saha v. AMRI¹¹

This case is famously known as Anuradha Saha Case. The case was filed with the accusation of medical negligence on Kolkata based AMRI Hospital and three doctors viz. Dr. Sukumar Mukherjee, Dr. Baidyanath Halder and Dr. Balram Prasad. In this case the victim's wife was suffering from drug allergy and the doctors were negligent in prescribing medicine which further aggravated the condition of patient inevitably leading to death. The honourable Supreme court found the appellant guilty of medical negligence and awarded a compensation of 6.08 crore for the death of victim's wife.

V. SUGGESTION AND CONCLUSION

Regarding the cases of Medical Negligence, a proper mechanism of complaint redressal forum must be established by IMC and possess power to hand out monetary compensation if the medical practitioner is found to be guilty. The process of complaint redressal regarding

¹¹ Kunal Shah v. AMRI AIR 2018 SC 1250

negligence must be fast tracked in the courts.

Proper guidelines must be established for medical practitioners regarding the subject of negligence and the burden of proof lying of the complainant must be thus changed as it poses a difficult and strenuous task of lower income strata to get justice. We should also keep in mind the higher doctor- patient ratio in India and give doctors benefit of doubt performing such a arduous job.

Traditionally, the courts have been very lenient and considerate to medical profession while dealing with cases of medical negligence. Nevertheless, a doctor must not take undue advantage of this and must fulfil his/her due with due concern and proper care. If a medical practitioner commits or fails to do an act which a clinician of his status and competence would o would not do, he has committed, the practitioner has performed a negligence act. Medical practitioners must follow the rules and act accordingly to the code of Medical Ethics as provided to them by IMC at the time of their registration.
