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Challenges in Proving Medical Negligence in India

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ABSTRACT

There is no doubt that medical work is a noble one as it deals with the lives of human beings, regarded as having the highest value among all things. Ensuring a patient's safety during treatment is the top most priority of the medical practitioner / healthcare provider. It is significant to note that human error is common and medical practitioners / healthcare providers are not immune from this rule. Not always, but there is a chance of making a mistake in situations being faced by the medical practitioners / healthcare providers. It is believed that medical practitioners / healthcare providers carry out their duties with due diligence, knowledge, skill and prudence since failing to do so constitutes medical negligence. In the current scenario, medical negligence cases are increasing day by day, whatever be the reasons, but the ultimate sufferers are the innocent persons who consult medical practitioners / healthcare providers with a firm belief of getting appropriate treatment of their health problems.

This article explains the challenges in proving medical negligence and the legal remedies available for the patients or their legal representatives against the medical facilities (government hospitals, private hospitals, dispensaries, pathological and diagnostic centres and pharmacy) and the medical practitioner / healthcare provider for committing medical negligence. There are various laws like The Consumer Protection Act, 1986 as amended by The Consumer Protection Act 2019, The Bharatiya Nyaya Sanhita, 2023 and The Bharatiya Nagarik Suraksha Sanhita, 2023 under which, the aggrieved patients or the relatives and the relatives of the deceased patient can get their grievances redressed.

Keywords: *The Consumer Protection Act, 1986 as amended by The Consumer Protection Act 2019, Medical Negligence, The Bharatiya Nyaya Sanhita, 2023 and The Bharatiya Nagarik Suraksha Sanhita, 2023, Patients' Rights, compensation in medical negligence cases, Duties and Responsibilities of hospitals and doctors.*

I. INTRODUCTION

The term 'negligence' is used to fasten the liability under civil law (the law of torts) and, at times, under the criminal law on the defendant. The negligence is negligence and it is immaterial

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to draw a distinction between the said two so far as it relates to breach of duty and resultant damages. Explaining the difference between the same, Lord Atkin in his speech in *Andrews v. Director Public Prosecution*, stated:

“... Simple lack of care such as will constitute civil liability is not enough for purposes of the criminal law there are degrees of negligence; and **a very high degree of negligence is required to be proved** before the felony is established.”³

Thus, for proving medical negligence under the provisions of The Bharatiya Nyaya Sanhita, 2023 the element of *mens rea* (guilty mind) must be there and the negligence should be gross or of very high degree.”⁴

In simple words, negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations, which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

(A) Meaning and Concept of Medical Negligence

‘Medical negligence’ is quite analogous to accountability in the law of tort. ‘Medical negligence’ means breach of duty of care by a medical practitioner or healthcare provider, which results in harm, injury or death to a patient. To put it differently, medical negligence refers to instances when a physician, doctor, or healthcare provider fails to provide medical care in accordance with medical standards causing harm or injury to the patient. ‘Medical negligence’ is defined as the negligent, improper, or unskilled treatment of a patient by a medical practitioner / health care providers. Apart from it, the medical negligence includes negligent care by a nurse, surgeon, physician, pharmacist, dentist or other health care workers. In other words, the deviation from the minimum standard of care expected of all medical practitioners / healthcare providers typically results in negligence.

The Hon’ble Supreme Court in the case of **Indian Medical Association vs. V. P. Santha**⁵ has held that the service provided by almost every doctor is covered under the Consumer Protection Act, 2019 and an aggrieved person can claim damages for medical negligence against a doctor or a hospital. The failure on the part of the medical practitioners to exercise skill and care, as is required as per standard medical norms, comes under the ambit of the Consumer Protection Act,

³³ (1937) 2 All ER 552 (HL)

⁴ See Charlesworth & Percy on *Negligence*, 10th Edn. 2001, Para 1.13; a clear distinction exists between “simple lack of care” incurring civil liability and “very high degree of negligence” which is required in criminal cases. Also there is a marked difference as to evidence, viz. the proof, in civil and criminal proceedings.

⁵ III (1995) CPJ 1(SC)

2019. The Consumer Protection Act, 2019 is provided as an alternative remedy in addition to that already available to the aggrieved person by way of a civil suit.

II. MEDICAL NEGLIGENCE

1. The responsibility of the medical practitioners / healthcare providers to look after the patient with due care: A reasonable degree of care and ability implies the level of care and skill that would be exercised in the circumstances in question by a “reasonable member of the profession who professes to have such abilities. The top most priority of the medical practitioners / healthcare providers is to treat the patient with reasonable degree of care. If they do not attend a patient who is admitted in an emergency or under their supervision and the patient dies or becomes the victim of consequences of wrongs or improper treatment, that could have averted by the medical practitioners / healthcare provider’s due care, they can be held responsible for such medical negligence.

2. An injury caused by negligence of the medical practitioners / healthcare providers: A medical practitioner / healthcare provider’s responsibility occurs not when the patient has sustained any injury, but when the injury to the patient has arisen from the doctor’s conduct, which has slipped below reasonable care. Therefore, the patient must prove that he or she has sustained injury due to negligent act of the medical practitioner / healthcare provider. However, it is important to note that every negative outcome is not wrongdoing on the part of the medical practitioner / healthcare provider. The patient has to prove that there is negligent act on the part of the doctor.⁶

3. Failure to diagnose or misdiagnose: Medical negligence is also a failure to detect and misdiagnose an illness or injury. Misdiagnosis alone is not inherently medical malpractice, but misdiagnosis or inability to detect the actual disease suffered by the patient must result in insufficient medical care. Misdiagnosis, delayed diagnosis, or no treatment, resulting in deterioration of the medical condition of the patient is actionable. A case of misdiagnosis may include an incorrect diagnosis, a missing diagnosis, a delayed diagnosis, or a failure to detect complications that alter or exacerbate an established condition. Failing to diagnose a patient correctly can prolong an ailment, cost the patient more money, and even may cause a permanent injury to the person.

4. Surgical errors or surgery at the incorrect location: Negligence during surgery is most common case of medical negligence. Surgical errors may happen due to various reasons like

⁶ What is Malpractice, <http://www.abpla.org/what-is-malpractice>

improper preparation, lack of skill, taking shortcuts during surgery to save time, mistakes such as the medical practitioner's marking the wrong side for the surgery and miscommunication about medication dosage that the patient should have after surgery, performing incorrect procedure, performing unnecessary surgery etc. Damaging other organs, nerves or tissues during surgery, leaving medical equipment and foreign objects inside the patient, providing inadequate post-operative care, are all considered to be medical negligence.

5. Wrong Medication: Prescribing incorrect medication is one of the common case of medical negligence. This may happen when a doctor writes an incorrect dosage for a patient or prescribing of wrong drug for the patient's illness.

6. Completely ignoring or not taking the necessary history of patients: The medical practitioners / healthcare providers sometimes ignore the patient's previous history; they forget to check if the patient is allergic to certain drugs, which in some case cause great injury to the patients.

III. CHALLENGES IN PROVING MEDICAL NEGLIGENCE IN INDIA

The patients / victims or their legal representatives face a large number of challenges in proving medical negligence while trying to seek justice and compensation for their injuries and these challenges include:

- **Lack of awareness:** In 2023, about 68.8% of the total population was living in the rural areas. Although the literacy rate in India is about 77.7% in India but mostly people are not aware of their legal rights in cases of medical negligence.
- **Not conversant with medical science:** Since the patients or the victims or their representatives, even highly qualified, are not conversant with the medical science, effects of medication, generally, they find it difficult to prove the medical negligence against the medical practitioners / healthcare providers. In other words, on the one side, the onus is on the patients or the victims or the representatives, who are not aware of medical science, to prove medical negligence while on the other, there are medical practitioners / healthcare providers, who are highly knowledgeable and professional, skilled persons to defend their case. Therefore, the patients or the victims or the legal representatives face great difficulties in proving medical negligence on the part of the doctors or the hospitals. There are a number of instances where due to lack of knowledge of medical science, the medical negligence is not established.

- **High cost of legal proceedings:** Legal proceedings are very expensive in India and it is not possible for the patients or the victims or the legal representatives to afford the cost of legal proceedings especially in medical negligence cases as it requires medical knowledge apart from the legal expertise. About 68.8% of the total population is living in the rural areas and their source of income is either agriculture or very limited. They do not have enough money to take legal course and in the absence of funds, the patients or the victims or the legal representative choose to keep themselves away from the litigation.
- **Lengthy legal process:** Although the proceedings under The Consumer Protection Act, 2019 are summary proceedings and the object is to provide speedy and simple redressal of consumer disputes but despite that, the legal process is lengthy and a litigation takes many years to be decided. Due to the lengthy legal process, the purpose of the Act has not been fully achieved and the patients or the victims ignore the medical negligence suffered at the hands of the medical practitioners / healthcare providers.
- **Limited Access to medical records:** The patients or the victims or the legal representatives find difficulty in obtaining medical records from the hospital authorities / nursing homes. Apart from it, since the hospital authorities are the custodian of the medical records, there is possibility of tampering with the same. If the record is tampered, it is difficult to prove the medical negligence on the part of the medical practitioners / hospitals. In cases where the medical practitioners / healthcare providers know that there is a lapse or medical negligence, they may tamper with the medical record and in such circumstances, the patients or the victims or the legal representatives find it difficult to prove medical negligence.
- **Distant location of the Adjudicatory bodies:** As stated above 68.8% of the total population of India lives in rural areas. If they want to agitate against the medical negligence case, they will have to face great difficulty in pursuing such cases as adjudicatory bodies like National Consumer Disputes Redressal Commission, State Commissions and the District Commissions are far flung from the place of residence of the patients or the victims or the legal representatives. An expensive and unavoidable travel costs force them to consider twice before entering into litigation in the cases of medical negligence.
- **Medical practitioners / Healthcare providers may have access with the members of the Medical Councils:** Sometimes, there is likelihood that medical practitioners /

healthcare providers may have influence upon the members of the councils because they belong to the same fraternity and know each other very well directly or indirectly. In such circumstances, there is a possibility that the members of the councils may be biased in deciding the complaints made by the patients or their relatives against medical practitioners / healthcare providers, who are known to them. In such a situation, the patients / victims / legal representatives may become helpless in proving the medical negligence before the councils.

IV. APPLICATION OF LEGAL MAXIM, ‘RES IPSA LOQUITUR’ IN MEDICAL NEGLIGENCE CASES

‘Res Ipsa Loquitur’ means “the thing speaks for itself”, which is often invoked in medical negligence cases to establish a presumption of negligence. In the context of medical negligence, ‘Res Ipsa Loquitur’ means that the circumstances surrounding the injury or harm suffered by the patient are such that they would not have occurred without negligence on the part of medical practitioner or healthcare providers. The principle of ‘Res Ipsa Loquitur’ is applied in cases where the injury or harm is of a kind that does not ordinarily occur in the absence of negligence on the part of the medical practitioner / healthcare provider and that such injury or harm must have been caused by an instrumentality within the exclusive control of the medical practitioner / healthcare provider and that such injury or harm must not have been caused or contributed to by any action or fault on the part of the patient. Some examples of ‘Res Ipsa Loquitur’ are like, leaving some foreign object inside the body of the patient after surgery; if a wrong patient gets operated and if wrong part of the patient gets operated.

It is also important to note that the principle of ‘Res Ipsa Loquitur’ is not applicable in all medical negligence cases, and each case must be evaluated on its own merits. Additionally, even if ‘Res Ipsa Loquitur’ is established, the plaintiff / complainant (patient or his / her legal representative) must still prove all other elements of medical negligence, including expected duty of care, breach of duty, causation, and damages. For example, if a surgical patient suffered from a foreign object being left inside his / her body after surgery, ‘Res Ipsa Loquitur’ may be applied as this type of harm would not ordinarily occur in the absence of negligence and the facts suggest that the medical practitioner / healthcare providers was responsible for leaving the foreign object inside the patient’s body and in such cases, the burden of proof shifts to the medical practitioners / healthcare providers to prove that they were not negligent.

There are number of cases where the principle of ‘Res Ipsa Loquitur’ is applied.

Dr. Laxman Balkrishna Joshi vs. Dr. Trimbak Babu Godbole⁷: The Hon'ble Supreme Court of India held that the principle of *res ipsa loquitur* could be applied in medical negligence cases when the facts and circumstances of the case suggested that negligence had occurred, and when the burden of proving negligence was on the defendant.

Spring Meadows Hospital and Anr. Vs. Harjol Ahluwalia⁸: The National Consumer Disputes Redressal Commission (NCDRC) applied the principle of *res ipsa loquitur* to a case where a surgical patient suffered from an injury to their urethra during surgery. The National Commission held that the injury was of a type that would not ordinarily occur in the absence of negligence, and that the burden of proof was on the hospital to prove that they were not negligent.

Poonam Verma v. Ashwin Patel and Ors.⁹: The Hon'ble Supreme Court of India applied the principle of *res ipsa loquitur* to a case where a surgical patient suffered from a facial nerve injury during surgery. The Commission held that the injury was of a type that would not ordinarily occur in the absence of negligence, and that the burden of proof was on the defendant to prove that they were not negligent.

Jacob Mathew v. State of Punjab¹⁰: The Hon'ble Supreme Court held that *res ipsa loquitur* could be applied in medical negligence cases where the injury was of a type that would not ordinarily occur in the absence of negligence, and where the facts surrounding the injury suggested that the healthcare professional was responsible.

These cases demonstrate that the principle of *Res Ipsa Loquitur* is well recognised and has been applied in Indian Courts in cases of medical negligence, where the facts suggest that the medical practitioner / healthcare provider was responsible for the harm or injury suffered by the patient. However, it is important to note that the application of this principle will depend on the specific facts and circumstances of the case.

V. DEFENSES FOR MEDICAL NEGLIGENCE

There are some exceptions to the plea of medical negligence where the patients or legal representatives cannot claim that the medical practitioners / healthcare providers are responsible for injury / loss suffered by the patients or their legal representatives.

1. Error of Judgment: The error of judgment does not come within the purview of medical

⁷ (1996) 1 SCR 206

⁸ III (1998) SLT 684

⁹ (1996) 4 SCC 332

¹⁰ (2005) 6 SCC 1

negligence. For example, if a medical practitioner / healthcare provider makes a reasonable and honest error in judgment while treating a patient, it may not be considered negligence.

2. Emergency Situation: If a medical practitioner / healthcare provider acted in good faith to save a patient's life in an emergency situation, he / she may not be considered negligent.

3. Contributory Negligence: If the patients contributed to their injury or death through their own negligence, the medical practitioner may not be held entirely responsible.

VI. LANDMARK JUDGMENTS IN THE CASE OF MEDICAL NEGLIGENCE

The landmark judgments have helped to shape the legal framework around medical negligence in India and have provided guidance to both patients and medical practitioners.

Bolam v. Frien Hospital Management Committee¹¹: This is an English case and has been widely accepted in India. In this case, tests have been laid down to determine medical negligence. It has been held that a medical professional is not guilty of negligence if he /she has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular field.

Martin F. D'Souza v. Mohd. Ishfaq¹²: The Hon'ble Supreme Court outlined the standard of care that medical professionals must adhere to. The court held that a medical professional must have the knowledge and skills that are expected of a reasonably competent practitioner in their field.

Malay Kumar Ganguly vs. Dr. Sukumar Mukherjee¹³: This case dealt with the issue of expert opinion in medical negligence cases. The Hon'ble Supreme Court held that expert opinion can be used as an evidence in a medical negligence case, but it should not be the sole basis for deciding whether negligence occurred.

Kusum Sharma vs. Batra Hospital & Medical Research Centre¹⁴: In this case, the Hon'ble Supreme Court established that a patient has the right to receive compensation for medical negligence, even if they did not suffer any physical harm. The Court held that mental agony and trauma suffered by a patient due to medical negligence can also be compensated.

VII. ADJUDICATION LIABILITY IN MEDICAL NEGLIGENCE IN INDIA

In India, in medical negligence cases, the adjudication of liability is usually done through the

¹¹ [1957] 1 WLR 582

¹² AIR 2009 SC 2049

¹³ III (2009) CPJ 17 (SC)

¹⁴ 2010 (3) SCC 480

legal system, with the cases being heard in civil courts, Consumer Commissions and Medical Councils. The process for adjudicating liability may vary depending on the nature and severity of the alleged negligence as well as the specific forum in which the case is being heard. In civil court, patient / victims of medical negligence can file a civil suit seeking compensation for damages caused by negligence and the burden of proof is on the patient or the legal representatives to prove that the medical practitioners / healthcare providers breached their duty of care, and that breach caused the harm to the patient. In Consumer Commissions, the patients or the legal representatives can file a complaint against the medical practitioner / healthcare provider or hospital, seeking compensation for the loss or harm suffered as a result of medical negligence. The Commission will investigate the complaint and, if it finds that medical negligence has occurred, it may order compensation to be paid to the patient / legal representatives. Medical Councils are responsible for regulating the conduct of the medical practitioners / healthcare providers. Patient can also file a complaint with Medical Councils if they believe that a medical practitioner / healthcare provider has breached his ethical obligations or standards of care. If the medical council finds that the medical practitioner / healthcare provider has acted negligently, it may take disciplinary action against him/her, including suspending or revoking the licence to practice medicine.

(A) Related Provisions for Medical Negligence in India

The medical negligence cases are governed by The Bharatiya Nyaya Sanhita, 2023, The Consumer Protection Act, 2019 and various landmark judgments by the Hon'ble Supreme Court and the High Court.

Section 106 of The Bharatiya Nyaya Sanhita, 2023: This section deals with causing death by negligence. If a medical practitioner / healthcare provider causes the death of a patient due to negligence, he can be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Section 125 of The Bharatiya Nyaya Sanhita, 2023: This section deal with causing hurt by an act endangering life or personal safety. If a medical practitoner endangers the life or safety of a patient due to negligence, they can be punished with imprisonment for upto three months or a fine, or both.

(B) The Consumer Protection Act, 2019

The Consumer Protection Act, which was introduced in the year 1986 and amended in the year 2019 aims to protect and encourage the interests of the consumers by quickly and efficiently redressing their grievances. The Act was introduced in order to protect the rights and interests

of the consumers¹⁵. The Consumer Commissions consists of a three-tier structure i.e. National Commission, State Commissions and the District Commissions.

Consumer Commissions

Any aggrieved party shall claim for damages before the Consumer Commissions:

a. District Commission:

It is established in each district of a State. Each District Commission consists of three member; District Judge is the President of the Forum with other two members. The District Commission can entertain a claim upto Rs. 1 crore. Appeal can be made to the State Commission against the order of the District Commission.

b. State Commission:

It is established in each State. The State Commission consists of three members, a High Court judge is the President of the State Commission and with other two members. The State Commission can entertain claim above Rs. 1 crore upto Rs. 2 crore. Appeal can be made to the National Commission against the Order of the State Commission.

c. National Commission:

It is established in Delhi. There are 12 members; a Supreme Court Judge or a retired chief justice of a High Court is the President of the Commission with other eleven members. The National Commission can entertain claim over and above Rs. 2 crore. Appeal can be made to the High Court if substantial question of law is involved, otherwise to the Supreme Court against the order of the National Commission.

The time limit to file an appeal is 30 days from the date of receipt of a certified copy of the order.

(C) Medical Council:

Under the provisions of the Indian Medical Council Act, 1956, an aggrieved person can file a complaint with the concerned medical council. However, the council has the power to punish the doctor by suspending or cancelling their registration for their negligent behaviour but does not have the power to provide compensation to the patient / legal representative.

VIII. CONCLUSION

In India, 'Medical negligence' is a serious issue, that can result in harm to the patients, loss of

¹⁵ The Consumer Protection Act, 2019

life, and emotional distress for their families. The legal framework for medical negligence in India is based on The Bharatiya Nyaya Sanhita, 2023, The Consumer Protection Act, 2019 and various judgments of the Hon'ble Supreme Court and the High Courts. There are many possibilities in cases of negligence, be it the negligence of the doctor, para-medical staff or the hospital. There may be contributory negligence of medical practitioners / healthcare providers, para-medical staff as well as the hospitals. Normally, it is seen that there is joint negligence of the medical practitioner and the hospital. The cumbersome exercise for proving medical negligence, like collecting documentary evidence from the hospital, including doctor's notes, and taking medical expert opinion against the hospital / medical practitioner, is not below the harassment as one medical practitioner / healthcare provider can influence another medical practitioner / healthcare provider. In addition to this, as the patient or his/her relatives do not have the knowledge of medical science, proving medical negligence on the part of the medical practitioner or hospital is a very difficult task. A large part of the population of India has been living in rural areas and they do not know about medical negligence as well as patient's rights, they solely and innocently rely on the doctors' version and in such situation, there is possibility of tampering with the medical record. In such condition, it becomes more and more difficult to prove medical negligence. Hence, transparency regarding access to the treatment record, which is lacking today is required to be ensured by the medical authorities. Moreover, the patients or their legal representative do not know the accountability of the hospital and the doctors. They should be made aware that the medical practitioner / healthcare providers are accountable to a certain degree. With the progress and development of consumer laws in our country, it is natural that all hospitals (government hospitals, private hospitals, nursing homes, clinics and dispensaries) will be covered under the ambit of this sound mechanism, so that adequate protection can be given to the patients. Consumer laws can be a great help provided the consumers should be aware of the duties and responsibilities of the hospital and the doctors as well as patients' rights.
