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# Medical Negligence, Law and Remedies in India

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## ABSTRACT

*The idea that ignorance of the law is no excuse for breaking it is acknowledged by both our and other legal systems. The norm can also be represented as a legal presumption that everyone is aware of the law. Every individual owes it to himself to understand the parts of it that concern him. A doctor, in particular, is definitely considered to know the law and is treated as if he does, because he can and should know it in general. The doctor-patient relationship is built on faith and trust. With the growth of medical research and technological advancements, no sickness appears to be untreatable or unchallengeable. But sometimes a situation may arise where a condition or illness may be outside the reach of the doctor or the medical practitioner may not be able to identify the issue. Negligence or error might be conducted by him and he may be sued for damages or punishment. So, cases of litigations and allegations against doctors are increasing day by day, and a medical man has become increasingly vulnerable to being sued by a lawsuit suit of any sort, civil or criminal, and the increased awareness of a patient's right in today's society is one of the causes. The purpose of this article is to explore many aspects of negligence, such as the definition and types of negligence, as well as the concepts of duty of care and the remedies available to the complainant.*

**Keywords:** *Duty of care, reasonable skill, patient.*

## I. INTRODUCTION

The evolution of common law on the topic of professional negligence can be traced back to the landmark case of *Donoghue v. Stevenson*. Medical Negligence can be termed as a subset or part of professional Negligence, which got broadened through the *Bolam's test*<sup>2</sup> which was introduced in the landmark judgement of *Jacob Mathew v. State of Punjab & Anr*<sup>3</sup> and put by Bingham L.J. that a professional should be able to command the body of information that is part of the professional equipment of the average member of his field. In terms of understanding of new breakthroughs, discoveries, and breakthroughs in his field, he should not trail behind

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<sup>2</sup> *Bolam v Friern Hospital Management Committee*, 1957 1 WLR 583

<sup>3</sup> *Jacob Mathew v. State of Punjab & Anr*, AIR 2005 Sc 3180

other ordinary assiduous and intellectual members of his profession.

Medical Negligence can be described as the failure of using necessary skills by any ordinary doctor. This involves negligence committed by a nurse, physician or any other medical intermediary. It is not specifically defined in any of enacted Indian Laws but in a judgement relating to medical malpractices, the Supreme Court of India stated that a proper amount of competence and expertise, as well as a sufficient amount of care, must be brought to the task by the medical practitioner. The law does not require the highest level of care and competence, nor does it accept the lowest degree of care and competency, as established by the facts of each case. When a scenario arises that necessitates the application of a special skill or competence, the test is the ordinary skill that a man exercising and purporting to have that particular skill possesses. It is well known law that a guy does not need to have the utmost expert talent; it is adequate if he exercises the ordinary skill of an ordinary competent man practising that particular craft.<sup>4</sup>

However, if a medicinal professional fall below the standards which are expected from any reasonable prudent medical man, and the patients suffers any kind of damage, then he becomes liable. In the last few years there has been an increase in the number of cases against doctors of malpractices. Therefore, Supreme Court of India held that doctors will be held liable only when there is gross negligence or if he did not possess the required skills, which every medical professional ought to possess<sup>5</sup>

## **II. MEDICAL NEGLIGENCE**

The phrases "culpa" and "negligentia" are used in Roman law to describe negligence. Negligence is defined as intentional or reckless behavior that causes an unreasonable amount of harm to another person. It is the absence of care which a reasonable man is expected to apply. It excludes wrongful intention in the sense that an action due to carelessness can't be intentional and nothing which was intended can be referred to as carelessness.

Similarly doctors and other medical professionals also owe a duty of care to their patients, while providing treatment which is at par with the medical standard of care i.e., the level and type of care that a reasonable, competent and skilled health care professional would be expected to provide under the circumstances which led to the offence/negligence. In the case of Dr. Laxman Balkrishna Joshi Vs. Dr. Trimbak Babu Godbole and Anr.,<sup>6</sup> a doctor has several stated

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<sup>4</sup> Patten B et al., Professional negligence in construction, (2018 Apr 17)

<sup>5</sup> Mudur G., Indian Supreme Court ruling makes arrest of doctors harder, (2005 Aug 20), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1188139/>

<sup>6</sup> Dr. Laxman Balkrishna Joshi Vs. Dr. Trimbak Babu Godbole and Anr, AIR 1969 SC 128

duties, according to the Supreme Court, and a breach of any of those obligations might make him accountable for medical negligence. A doctor is obligated to exert a level of care that is appropriate for his or her profession.)

The essentials of negligence can be categorized into four D's: (a) there is duty towards the patients (b) there is deficiency in the duty provided to the patients (c) this deficiency directly results in (d) damages which may be physical, mental or financial loss to the patient.<sup>7</sup>

### **(A) Duty of care**

The doctor-patient is a relationship of trust and confidence with an underlying understanding that every step taken by the doctor will be for the benefit of the patient only. A doctor's duty of care emerges when he or she is responsible for preventing harm to the patient. To establish a duty of care, various conditions must be met:

- The doctor shouldn't glorify or reduce the gravity of a patient's condition. Proper treatment is to be given by the doctor on the basis of ailment the person is suffering from.
- Patients' details must be kept secret. However, if for public good, he can reveal the details if he feels that it is his duty to do so.<sup>8</sup>
- Doctor should not deny his services to the patient during the period of emergency

It depends on the plaintiff to prove that negligence has been committed by the medicinal personnel. High standard of evidence is needed to establish a claim of negligence against the doctor. In *Calcutta Medical Research Institute vs Bimalesh Chatterjee*,<sup>9</sup> The burden of proof against negligence and defect in service was plainly on the complainant, it was held.

### **(B) Types of medical negligence**

Basically, any form of deviation from the accepted standard of medication and care can be termed as medical negligence and if it causes injury or harm to the patient then the doctor, his staff or the hospital can be held liable. Medical Negligence can be committed in many ways. Some of the common ones are:

- Wrong diagnosis – It is crucial to appropriately diagnose symptoms in order to provide medical assistance to any patient. However, if a patient is not adequately treated as a

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<sup>7</sup> Satish Kamtaprasad Tiwari *et al.*, Medical Negligence, Indian Pediatrics, 2001, <https://www.indianpediatrics.net/may2001/may-488-495.htm>

<sup>8</sup> Mr. X vs. Hospital Z, 1998, 8 SCC 296

<sup>9</sup> *Calcutta Medical Research Institute vs Bimalesh Chatterjee*, 1998

consequence of a diagnosis error, the doctor is frequently held liable for any subsequent injury or damages as a result of the inaccurate diagnosis.

- Delay in diagnosis - If another doctor could have reasonably diagnosed the same problem in a timely manner, the delayed diagnosis is viewed as medical negligence. If the sickness or injury is allowed to worsen over time instead of being treated, a delay in diagnosis can cause unnecessary harm to the patient.

- Error in surgery - Surgical procedures necessitate a high level of skill and should be performed with caution and attention because even minor errors can have serious consequences for the patient. Wrong-site surgery, lacerations of any internal organ, major blood loss, or the presence of a foreign item in the patient's body are all examples of surgical error.

- Unnecessary surgery - Unnecessary surgery is often linked to a misdiagnosis of a patient's symptoms or a medical decision made without enough evaluation of other options or dangers. Alternatively, when compared to other options, surgery is sometimes preferred over traditional treatments due to its expediency and convenience.

- Errors in the administration of anesthesia - Anesthesia is a dangerous element of every major medical procedure, and it must be administered and monitored by an expert (anesthesiologist). Prior to any medical operation involving anesthesia, the anesthesiologist must assess the patient's condition, medical history, medications, and other factors to determine the best course of action. A youngster with a shattered limb died in Pune in 1953 when a doctor operated on him without proper anesthesia.<sup>10</sup>

- Childbirth and labor malpractice - Childbirth is a stressful experience for a woman, and it is made considerably more painful if the physicians and nurses do not handle it appropriately. Medical malpractice during childbirth can take numerous forms, including mishandling a difficult birth, difficulties with induced labor, misdiagnosis of a newborn medical issue, and so on.

- Long term negligent treatment - Over the course of a long treatment period, medical carelessness might manifest itself in subtle ways. Typically, the carelessness takes the form of a failure to follow up on therapy or a doctor's inability to properly monitor the treatment's effects.

### **III. LIABILITY UNDER MEDICAL NEGLIGENCE**

#### **(A) Civil Liability**

The Consumer Protection Act of 1986 ushered in a sea change in consumer rights, ranging

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<sup>10</sup> *Supra no. 5*

from the right to be informed about quality to the right to be treated fairly. Consumer awareness, service quality, and redress for any exploitation of consumers' interests. As a result, questions about a patient's status as a "consumer of services," a medical practitioner's status as a "service provider" under section 2(1)(o), and circumstances where it can be judged to be a service have arisen frequently.

The decision in *Indian Medical Association v. VP Shantha*,<sup>11</sup> All of the objections were resolved by including the medical profession in the definition of 'service,' omitting consultation, diagnosis, and treatment (including medical and surgical) that is delivered free of charge or under a personal service contract. However, service provided at a non-government hospital or nursing home where those who could afford to pay were charged and those who couldn't afford to pay were given free care would fall under the term of "service" as defined in section 2(1)(o).

### **(B) Medical Council of India**

A person who has been harmed by a medical practitioner can file a complaint of carelessness with the State Medical Council, which has the authority to take action against the doctor by suspending or cancelling his registration. The Indian Medical Council Act of 1956, on the other hand, does not grant them the authority to compensate the injured party.

The injured must file a complaint with the council, including all of the facts and pertinent data in the case at hand. After that, the council will give the accused 30 days to respond. If the council is not pleased with the response, both parties will be required to submit evidence to back up their assertions.

### **(C) Criminal Liability**

Any person who acts negligently or rashly, resulting in a threat to human life or personal safety, or results in the death of a person, is subject to imprisonment and/or a fine under different provisions of the Indian Penal Code, 1860.

It establishes four particular offences that are directly related to medical practitioners' acts of negligence. Sections 336, 337, 338, and 304A are the ones in question. According to Section 336, it is an infraction for a medical professional to act rashly or recklessly in such a way that the patient's life or personal safety is jeopardized. A medical professional who violates the law is subject to imprisonment for up to three months or a fine of up to 200 rupees, or both.

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<sup>11</sup> *Indian Medical Association v. VP Shantha*, 1995, 6 SCC 651

In the case of *Juggan Khan v. State of Madhya Pradesh*<sup>12</sup> the appellant, who was a licensed Homoeopathic physician. A woman came to him after seeing an advertisement for guinea worm treatment. She became restless after taking the drug he prescribed, and she died in the evening despite the provision of antidotes. The appellant was sentenced to death under Section 302 of the Indian Penal Code. Prescription of hazardous drugs without sufficient checking and awareness was deemed careless by the court.

When a medical professional injures a patient by acting rashly or negligently in such a way as to jeopardize the patient's life or personal safety, he commits an offence under Section 337 and faces a penalty of up to 6 months in prison or a fine of up to Rs 500, or both.

If a medical professional's negligence causes serious harm to a patient, it will be regarded a crime under Section 338 of the IPC, and he will be punished with up to two years in prison, a fine of up to Rs 1000, or both. If a patient dies as a result of a medical professional's negligence, it is a crime under Section 304A and he will be penalized with up to two years in prison, a fine, or both.

#### **(D) Defenses under IPC**

1. According to Section 80 of the Indian Penal Code, 1860, anything that occurs as a result of an accident or misfortune while carrying out a legitimate conduct in a legitimate manner using legally means and with sufficient care and caution is not an offence.

2. According to Section 81 of the Indian Penal Code, 1860, if anything is done only for the purpose of causing harm, but it is done without any desire to inflict harm and in good faith to avoid further damages to a person or his property, it is not an infraction.

3. According to Section 88 of the Indian Penal Code, 1860, no one can be charged with a crime if he acts in good faith for the benefit of others and does not aim to injure others, even if there is a risk involved and the patient has provided verbal or tacit agreement.

#### **(E) Professional Misconduct**

According to the Medical Code of Ethics, 2002, established by the Medical Council of India, the commission of neglect by medical professionals is considered professional misconduct. If a doctor's carelessness is successfully demonstrated, the disciplinary committee can issue a warning, suspend the doctor from the registered list, or dismiss the doctor.

In the case of *Pravat Kumar Mukherjee Vs. Ruby General Hospital and ors*<sup>13</sup> compensation was provided to the complainants on ethical grounds. A Calcutta transit bus hit the youngster, and

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<sup>12</sup> *Juggan Khan v. State of Madhya Pradesh*, 1965 SCR (1) 14

<sup>13</sup> *Pravat Kumar Mukherjee Vs. Ruby General Hospital and ors*, 2005 CPJ 35 (NC)

he was transported to the hospital, which was 1 kilometer away from the accident site. The boy was conscious when he was taken to the hospital, and he showed his medical insurance card, which stated that the boy would be paid Rs.65,000 by the insurance company in the event of an accident. Based on this, the hospital began treating the boy, but after some initial treatment, the hospital discontinued treatment and requested Rs15,000, and when the money was not paid, the hospital stopped treating the boy and he was transported to another hospital, where he died. This was the case, and the National Commission found Ruby Hospital guilty and awarded the parents Rs. 10 lakhs in compensation to the parents,

#### **IV. SUGGESTION AND CONCLUSION**

To sum up, every mishap, untoward incident, or death during medical treatment does not necessarily point to the doctor's reckless conduct, and thus criminal prosecutions without sufficient and satisfactory medical evidence pointing to their guilt may result in patient mistrust and a great disservice to the community as a whole.

Negligence in the medical field necessitates a unique treatment. Additional concerns apply when inferring rashness or carelessness on the part of a professional, particularly a doctor. A case of workplace carelessness differs from a case of professional negligence. A doctor is supposed to practice with proper care, dedication, and adoption of acknowledged standards of practice while respecting the autonomy of the patient. He must also follow the copy of the Code of Medical Ethics statement issued by the Indian Medical Council at the time of registration.

It must be understood that even if a patient survives a medical negligence, then the cost of court fees, litigation becomes a huge burden for him to continue the fight for justice. A proper law must be enacted which takes into account evidences of each stratum, conditions etc. in order to ascertain whether the standards of care were met or not.

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