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COMPREHENSIVE ANALYSIS OF MEDICAL NEGLIGENCE AS A TORT IN INDIA

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1. ABSTRACT

Medical negligence is the failure of a health professional to adhere to the required standard of care, leading to patient harm. This research paper explores why medical negligence is considered a tort in India, delving into the legal framework that governs this issue. It examines the relevant statutes, case laws, articles and international best practices, to provide a comprehensive understanding. The paper outlines the legal implications of medical negligence primarily under civil law. Additionally, paper also highlight the impact of new criminal laws on issues of medical negligence and the role of State Medical Council in disciplinary actions like license revocation, additional training, fine, probation etc. Through an analysis of key case laws and legal perspectives, the research aims to shed light on the rationale behind treating medical negligence as a tort and the offers to suggest a balance between holding medical professionals accountable and protecting them from unjust prosecutions.

Keywords: *Medical Professionals, Tort, Negligence, Accountability*

2. INTRODUCTION

"Whenever a doctor cannot do good, he must be kept from doing harm."

-Hippocrates

Negligence is defined as a breach of duty caused 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.² Negligence in the context of the medical profession necessarily calls for a different definition. Being a professional, a doctor may be held liable for negligence on one of the two findings:

¹2471100, BBA LLB Hons. (2024-29)

² The Association of Surgeons of India, Medical Negligence – The Judicial Approach by Indian Courts, ASI India (available at <https://asiindia.org/medical-negligence-the-judicial-approach-by-indian-courts/>) (last visited Mar. 17, 2025).

either he was not possessed of the requisite skill which he professed to have or he did not exercise, with reasonable competence in a given case, the skill which he did possess.

3. LAW OF TORT

Tort is derived from a latin word “tortum,” meaning “twisted” or “wrong”. It is a civil wrong which is not exclusively the breach of a contract or the breach of a trust.³ According to Sir John Salmond, Tort is a branch of civil law, found in Common Law for unliquidated damages. It is not exclusively a breach of contract or trust.⁴

Essentials of Tort

1. *Act/Wrongful Omission*: Act means any positive action in order to commit a civil wrong. Wrongful omission is when a person breaches a legal duty imposed upon him/her. However, it doesn't take into account any moral obligation. Medical professionals have a legal obligation to take reasonable care for their patients. In medical negligence, they wrongfully omit this duty
2. *Infringement of Legal Right (Injuria)*: Law of tort is based on legal maxim “Ubi Jus Ibi Remedium” which translates to Where there is a right, there is a remedy. It means that the main essential to attract a suit or a civil case of tort is infringement of a legal right. In Medical Negligence, Article 21, Right to life and personal liberty of patients is infringed
3. *Reasonable Foresight*: Reasonable foresight is the capacity to anticipate potential harm based on a reasonable standard of judgment. It's not about perfect prediction or hindsight but about what a typical, careful person or in medical cases, a competent professional would expect in a given situation. It's an objective standard, so it doesn't depend on what the individual actually thought, but on what they should have thought.
4. *Damages*: Any physical losses or damages incurred by the plaintiff. In medical negligence, there is tangible loss or damage to the patient.
5. *Intention*: It refers to malicious or wrong intention of a person. It is not applicable in every kind of tort, but for some torts, it's an essential, Like in Malicious Prosecution. In medical negligence, It is not an essential.

³ The Limitation Act, 1963.

⁴ The University of Toronto Law Journal, Vol. 1, No. 2, pp. 395-397 (1936), doi:10.2307/824727.

As we can infer from the above data, in Medical Negligence, Wrongful omission, Infringement of Legal Right, Reasonable Foresight and Damages are essential and they need to be proven in the court of law by the plaintiff to claim damages for the tort of Medical Negligence.

4. MEDICAL NEGLIGENCE

Definition

Medical negligence is an act or omission by a health care provider which deviates from accepted standards of practice in the medical community and which causes injury to the patient. It is divided into two broad categories:

1. *Civil Negligence*: Civil medical negligence occurs when a doctor, nurse, or other medical practitioner fails to fulfill their duty of care, resulting in harm. In India, this kind of negligence is actionable at law under tort law, which addresses civil wrongs and not criminal acts. Unlike contract law, where obligations can be defined in terms of payment or agreement, tort law focuses on the fundamental duty of care that medical practitioners owe every patient. Within the scope of tort law in India, patients are able to claim compensation for the harm incurred due to medical negligence, irrespective of whether medical service was paid or given free of charge. This distinction is of immense significance due to the following reasons:

- **Paid Services**: Services where payment is made (e.g., private hospitals), patients will generally have recourse under the Consumer Protection Act, 1986, where medical services are a consumer transaction. This is a relatively faster and less expensive remedy.
- **Free Services**: Free services, like those offered in public hospitals or charitable clinics, the Consumer Protection Act does not generally apply. Patients in these cases must turn to tort law to bring a civil action for damages. The rationale in this case is that the duty of care pervades everywhere.

A physician treating a patient pro bono (e.g., in a public hospital) is nevertheless legally bound to the same high standard of care as a physician treating a paying patient. When this duty is violated and injury occurs, the patient is entitled to recover damages under tort law.⁵

2. *Criminal Negligence*: Whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if such act is done by a registered medical practitioner while performing medical procedure,

⁵ H. E. Y. & F. H. Lawson, Negligence in the Civil Law, 1(3) Am. J. Comp. L. 294 (1952), doi:10.2307/837786.

he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.⁶

Historical Analysis

The Egyptians provision of the Holy Bible is notable, in which they addressed the issue of medical negligence with a very contemporary perspective for that era, since the physician was penalized with the death penalty if he failed to abide by the principles of his science, be it with or without outcome, surgery, or treatment.

In the Roman state, doctors, a large number of whom were Greek living in slavery conditions, aside from medical diagnosis and therapy, were also aware of how to prepare suicide potions, something which frequently occurred back then, thus dragging the utilization of the Lex Romana. Additionally, doctors were often implicated in hereditary murders, being, in the eyes of Pandects, the most typical suspects and/or accessories. Besides, in case of an unintentional medical error, the applicable Roman law did not punish negligent damage from the physician's side, even if there was death, but it was liable to compensation for damages "a sich".

In Byzantium, Byzantine law governed the criminal responsibility of physicians, the punishment for whom depended upon the presence of deceit, the severity of negligence, and even the social status of physicians and patients. The presence of a medical mistake had only been established when professional research was conducted, and a number of penalties highlighted for the physicians, including a fine, seizure of his assets, deportation, and, in extreme instances, even death by sword.

The renowned ancient philosophers Plato and Aristotle had given completely contrary opinions regarding the question of medical responsibility. Plato argued that if the physician works his best to deal with the disease and avoid a patient's death, that in itself vindicates him and releases him from all possible charges. Aristotle, however, concluded that for a physician the sufficiency of the medical knowledge and the efficacy of the curative treatment applied can be both evaluated exclusively by another physician. The latter rendered Aristotle to be thought of as the founder of today's Western system of judging medical liability.

⁶ The Bharatiya Nyaya Sanhita, 2023.

Additionally, based on Aristotle, when treating a patient, the peculiarity of every case must be considered to choose the correct medical treatment by not following the general use of the rules written in medical books, the Egyptian method of action. But it should be noted that Aristotle discussed the problem of medical liability from a philosophical perspective as opposed to legal approach.

Reasons for Medical Negligence

To understand medical negligence, it is vital to understand various reason due to which this happens. The reasons are divided into three broad categories:

Professional Factors

1. *Lack of Training:* Gaps in skill or improper education among doctors can lead to mistakes. For Example, underqualified doctors may misdiagnose conditions.⁷
2. *Fatigue and Overwork:* Long working hours and few rest hours, especially in government hospitals, where they have to see hundreds of people everyday, can lead to burnouts, which increases error rates. According to a Harvard Study cited by Dr. Giridhar J. Gyani mentions 5.2 million error annually, partly due to overwork and burnouts.⁸
3. *Poor Communication:* Lack of communication among healthcare teams, especially during emergency situations, is a prominent cause of medical negligence, with reports suggesting that 70% of deaths are caused due to mismanagement.⁹

Systemic Factors

1. *Underfunding and Resource Scarcity:* Government underfunding, with only 1% of GDP allocated from public sources compared to 4% from private sources, strains healthcare systems, resulting in negligence. This issue is evident in discussions about healthcare priorities.¹⁰

⁷A View on Medical Negligence and Medical Errors in India, Legal Service India, available at www.legalserviceindia.com/legal/article-690-a-view-on-medical-negligence-and-medical-errors-in-india.html (last visited Mar. 17, 2025).

⁸ Shahid Akhter, 5.2 Million Medical Errors Are Happening in India Annually: Dr. Giridhar J. Gyani, ETHealthworld.com, Aug. 2, 2016, available at health.economictimes.indiatimes.com/news/industry/5-2-million-medical-errors-are-happening-in-india-annually-dr-girdhar-j-gyani/53497049 (last visited Mar. 17, 2025).

⁹ Sunil Khattri, Stats on Medical Negligence Cases in India in Comparison to Other Countries, medicalnegligence, May 29, 2023, available at www.delhimedicalnegligence.com/post/stats-on-medical-negligence-cases-in-india-in-comparison-to-other-countries (last visited Mar. 17, 2025).

¹⁰ Underfunding and Resource Scarcity:

A View on Medical Negligence and Medical Errors in India, Legal Service India, available at <https://www.legalserviceindia.com/legal/article-690-a-view-on-medical-negligence-and-medical-errors-in-india.html> (last visited Mar. 17, 2025).

2. **Poor Infrastructure:** Inadequate infrastructure, particularly the lack of diagnostic tools, forces doctors to make decisions without complete information, leading to increased error risks. This is a well-documented challenge, as highlighted in consumer forums.¹¹

Institutional Factors

1. *Failure to Follow Protocols:* Adhering to standard treatment guidelines outlined by the Indian Medical Council is crucial to avoid negligence. The Code of Medical Ethics, 2002, provides these guidelines, but their enforcement varies.¹²
2. *Regulatory Gaps:* Weak oversight by state medical councils can enable negligent practices to persist, as evident in instances where doctors encounter delayed disciplinary action.¹³

Relevant Case Laws

1. *Kusum Sharma v. Batra Hospital*¹⁴

Facts:

Shri R.K. Sharma was admitted in March 1990 with swelling and hypertension. He was operated for excision of a tumor, but it was found to be cancerous and pancreatic and he was operated again. Complications arose, and he died. The family, under the Consumer Protection Act, 1986, sought compensation, attributing negligence in duty to the hospital.

Decision:

The Supreme Court on Feb 10, 2010, rejected the appeal, concurring with lower courts that there was no negligence. It held doctors are not guarantors of life complications can happen even with care. The court held doctors are not negligent if they employ methods accepted by medical peers, even if medical peers differ. Negligence can be established only through expert opinion, and the family did not do it.

Impact:

This case established guidelines for medical negligence claims in India, safeguarding physicians from unjust lawsuits while allowing patients to pursue justice with substantial

¹¹ Inadequate Infrastructure: Medical Negligence, West Bengal Consumer Affairs Department, available at https://wbconsumers.gov.in/HtmlPages/Medical_Negligence.html (last visited Mar. 17, 2025).

¹² Failure to Follow Protocols:

Code of Medical Ethics Regulations, 2002, National Medical Commission, available at <https://www.nmc.org.in/rules-regulations/code-of-medical-ethics-regulations-2002/> (last visited Mar. 17, 2025).

¹³ Article Title, National Center for Biotechnology Information, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5109761/> (last visited Mar. 17, 2025)

¹⁴ (2010) 3 SCC 480.

evidence. It is indeed surprising that complications alone do not constitute proof of negligence, which may lead some to believe that doctors experience a diminished level of accountability.

2. *Balram Prasad v. Kunal Saha*¹⁵

Facts:

"Balram Prasad v. Kunal Saha¹⁵" is an essential Supreme Court of India case dealing with medical negligence. It started when a doctor based in the USA, Dr. Kunal Saha, blamed doctors and AMRI Hospital of negligence in treating his wife, Anuradha Saha, in 1998, and that she passed away due to resultant medical complications.

Decision:

The National Consumer Disputes Redressal Commission (NCDRC) initially held Dr. Sukumar Mukherjee and Dr. Baidyanath Haldar negligent and awarded Rs. 5,96,00,550. On appeal, the Supreme Court, in its October 24, 2013, verdict, upheld the verdict of negligence but reduced compensation to Rs. 30,50,000, on the basis of loss of dependency (Rs. 15,00,000), estate (Rs. 2,00,000), consortium (Rs. 5,00,000), mental agony (Rs. 5,00,000), cost of funeral (Rs. 1,00,000), and medical treatment (Rs. 2,50,000). It also shared liability: Dr. Sukumar Mukherjee and Dr. Baidyanath Haldar both contributed 30% (Rs. 9,15,000), and AMRI Hospital and Dr. Balram Prasad both contributed 20% (Rs. 6,10,000), with 9% interest annually from the filing of the complaint.

Impact:

This case illustrates how courts balance patient rights with reasonable compensation, with emphasis on evidence-based calculation and joint liability, which influences medical negligence law in India.

International Best Practices

In the United States, states regulate medical malpractice law, as opposed to most nations. To recover for medical negligence, a patient must demonstrate that substandard care resulted in harm. A claim has to be brought within a specific time period called the "statute of limitation," which differs among states. Once negligence has been found, courts determine the amount of money to be awarded in damages. Damages consist of financial losses such as lost wages and future medical expenses, and noneconomic losses such as pain and suffering. U.S. doctors

¹⁵ (2013) 1 SCC 384

generally maintain malpractice insurance for protection against negligence and accidental harm, sometimes as a requirement for hospital privileges or group employment.¹⁶

In the United Kingdom, claims of medical negligence are generally instituted under the civil justice system. In claiming for medical negligence, a person is required to prove some key points:

Duty of care: The patient was owed a duty of care by the doctor. This is on the basis of the doctor-patient professional relationship and is clearly defined, for instance, in the General Medical Council's (GMC's) Good Medical Practice guide, for instance, duties of a doctor and consent.

Breach of duty: The duty of care was breached by the health professional against the patient by failing to achieve the standard that could reasonably be expected of a competent practitioner of the same profession.

Causation: The professional obligation was breached either by causing or contributing to the patient's injury or harm. The harm incurred has to be shown to be directly caused by or resulting from the healthcare professional's actions or omission.

Damages: *The patient suffered actual harm or loss that was directly caused by the negligence. This can include physical injury, mental distress, monetary loss, or other types of damages.*

Bolam and Bolitho tests are the bases of legal tests applied in medical negligence cases in the UK in ascertaining whether medical practitioners violated their duty of care to patients. Though they share commonalities, both tests also possess certain characteristics which are crucial in ascertaining how each can be applied in varying situations.¹⁷

5. CONCLUSION AND SUGGESTIONS

Medical negligence in India is well ingrained as a tort and established on a mature legal framework concerning statutory provisions, judicial pronouncements, and creation of case law. The present research paper has shown that landmark cases have outlined the standard of care to be followed by the healthcare professionals with the scope of liability where the patient becomes harmed because of negligence in practice. The preceding discussion of the pertinent statutes, including those on civil law, along with classical judicial dicta, goes towards

¹⁶ Bal, Sonny B. "An Introduction to Medical Malpractice in the United States." *Clinical Orthopaedics and Related Research*, vol. 467, no. 2 (Dec. 2008): 339–347. doi:10.1007/s11999-008-0636-2.

¹⁷ "Understanding Medical Negligence in the UK: A Brief Overview" (2025) Eye News <https://www.eyenews.uk.com/education/top-tips/post/understanding-medical-negligence-in-the-uk-a-brief-overview> accessed [17 March 2025].

illustrating the tortious character of medical negligence so as to make the patient justified in seeking a remedy. The imposition of novel criminal statutes, furthermore, has stretched the legislative framework and enforced punishment for substantial breach of duty, and has a tendency to show greater concern with accountability. It is in this perspective, the State Medical Council has a basic role to play of using disciplinary powers to inflict penalties such as cancellation of license, retraining, fine, or suspension. These are complemented by judicial remedies so that professional malfeasance is dealt with by regulation.

Taking global experience into consideration, an all-around approach plays a vital role in addressing medical negligence, with equilibrium between civil liability, criminal penalties, and professional regulation. The underlying problem of striking a balance between holding medical professionals accountable and protecting them against unjust legal procedures pertains. The research stresses that there must be a wise, evidence-based procedure established on expert evidence and prudent examination of every case to distinguish real mistakes from gross negligence. There is a need to locate this balance so that public confidence in the health system is maintained as well as the rights of patients. Finally, the position of medical negligence as a tort is a reflection of India's commitment to healthcare quality and justice. With the blending of civil, criminal, and regulatory actions, the law works to create responsibility without creating hurdles to medical practice.

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