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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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ANALYSIS OF THE ROLE OF THE JUDICIARY IN RISING MEDICAL NEGLIGENCE LAWSUITS IN RECENT YEARS

Authored by- R Aksietha

ABSTRACT

The medical profession is one of the most respected professions in the world, and in the past few years, it has made a considerable impact on improvement in the quality of life among people. However, due to the increasing cases and reports of medical negligence or malpractices and unconstitutional remedies in recent years, it has been seen as a benefits enterprise rather than a service sector. The sharp rise of Covid 19 cases signalled a worldwide health emergency. All countries made necessary precautions to prevent spreading and spread awareness among the people by increasing medical facilities. Despite all the measures taken, one cannot deny that the process of curbing the disease has put forth the medical weakness and illegal operations in the health care sector. Medical negligence is an act where a doctor or anyone who constitutes under medical profession fails or deviates from performing a duty of care to the patients under circumstances where a competent and skilled medical professional would have exercised the treatment and owed a standard medical duty of care. With the commencement of the Consumer Protection Act 1986, and proper awareness by the government, people have become more aware of their rights as a patient and seek remedies against medical negligence. The objective of the research is to explore the diverse approaches and broader involvement of the courts and other redressal agencies in medical negligence and to exhibit the grey area in medical negligence and law. This study aims to determine the Court manages the unexpected and complex events, which further aids the research in discussing whether the judiciary administers uniform justice. This research paper revolves around medical negligence before and amidst the pandemic and the judiciary's role in medical negligence.

INTRODUCTION

Medical negligence, often known as medical malpractice, refers to a physician's, dentist's, nurse's, pharmacists, or other healthcare professional's incorrect, inept, or negligent treatment of a patient.¹ Medical malpractice happens when a healthcare professional fails to² follow the accepted "standard of care" when treating a patient. The term "standard of care" refers to what a reasonably sensible medical physician would or would not do in the same or comparable circumstances. It is characterized as unreasonably threatening conduct because, first, the doctor foresaw or should have known it would endanger another. Second, the amount of the perceivable risk was such that the doctor should have behaved safely. Mistakes or negligence in the medical field can result in minor or significant injuries, and these kinds of errors can even result in death. Because no one is flawless in our world, it is understandable that someone skillful and knowledgeable about a subject might make mistakes during practice. It is normal to make mistakes, but it is negligence to repeat the same error due to carelessness. The primary cause of the medical error or failure is the physician's or medical professionals' neglect. It may be seen in various situations when reasonable care is not exercised during diagnosis, procedures, or administering anesthetic.

With the fast advancement of civilization, the perception of medical negligence has moved from a criminal to a tort approach. It was classified as a tort so that the victims may receive compensation from the courts. The legislation on medical negligence has evolved throughout time due to a succession of court decisions. The idea of negligence is similar to professional negligence; however, for professionals such as medical practitioners, a different viewpoint was introduced through the Bolam test,³ which is also the accepted test in India. "A doctor is not guilty of negligence if he acts in line with a practice acknowledged by a responsible body of medical professionals competent in that specific art," Mc Nair famously said.

In India, the standard for examining medical negligence is Bolam v. Friern Hospital.⁴ It has helped the judiciary handle medical negligence lawsuits effectively in initial times. After an in-depth review and analysis of English and Indian rulings, this method was approved in India in the case of Jacob Mathew v. The State of Punjab.⁵

¹Camann, W., & Warner, D. (2021). *Complications—A Surgeon's Notes on an Imperfect Science*. Retrieved 22 November 2021, from <https://doi.org/10.1097/00000542-200306000-00052>

²Unsafehospitalpractice, UNSAFE HOSPITAL PRACTICES UNSAFE HOSPITAL PRACTICES (2012), <https://unsafehospitalpractice.wordpress.com>

³Bolam v. Friern Hospital Management Committee, [1957] 1 WLR

⁴Lc2.du.ac.in. Retrieved 22 November 2021, from <http://www.lc2.du.ac.in/DATA/Bolams%20Brethren%20and%20the%20BeanCounting.pdf>.

⁵Jacob Mathew vs. State of Punjab & Anr. (2005) 6 SCC 1

Medical Negligence Laws In India:

In the context of Indian law, medical negligence is divided into three categories:

- Criminal Negligence
- Civil Negligence
- Negligence under Consumer Protection Act

These three statutes encompass a variety of regulations relating to redress in the form of punishment and compensation.

Medical Negligence And Criminal Law:

The Indian Penal Code places medical professionals in a distinct legal standing than regular people. "Whoever causes the death of a person by a reckless or careless conduct not amounting to culpable murder will be punished with imprisonment for two years, or with a fine, or with both," according to Section 304A of the IPC 1860.

Thus, a doctor may be held criminally liable in certain circumstances, such as when a patient dies while the doctor is administering an anesthetic during surgery. The death must also be the result of malicious intent or gross negligence.⁶ Despite the rights granted to patients, there are a few exceptions in sections 80 and 88 of the Indian Penal Code, allowing doctors' defenses. 'Nothing constitutes an offense that is done by accident or misfortune, without any criminal purpose or knowledge, in the performance of an authorized act in a legitimate way by lawful means and with sufficient care and caution,' according to section 80.⁷ 'A person cannot be charged with a crime if she or he acts in good faith for the benefit, does not intend to cause damage even if there is a risk, and the patient has provided verbal or implicit agreement,'⁸ according to Sec 88.

Civil Or Tort Negligence:

Civil law dealing with negligence is crucial since it encompasses many factors. Even if medical practitioners give free services, this concept applies under tort or civil law.⁹ It is possible to say that tort law begins where the Consumer Protection Act stops. Patients can use tort law to seek reimbursement if the services provided by doctors and hospitals do not fall within the scope of the

⁶Lawcommissionofindia.nic.in. (2021). Retrieved 22 November 2021, from <https://lawcommissionofindia.nic.in/reports/rep196>

⁷Accident as a General Exception - Section 80 IPC, Explained. WritingLaw. Retrieved 22 November 2021, from <https://www.writinglaw.com/accident-as-exception-ipc/>.

⁸Retrieved 22 November 2021, from <https://devgan.in/ipc/section/88/>.

⁹Medical Negligence And Law In India - An Analysis - iPleaders. iPleaders. Retrieved 22 November 2021, from <https://blog.iplayers.in/medical-negligence-law-india-analysis/>.

CPA. The burden of proof is on the patient to show that the injury was caused by the doctor's or hospital's carelessness.

The Supreme Court ruled in the State of Haryana & Ors. v. Smt. Santra¹⁰ that every doctor "should behave with reasonable care and skill." However, because no human being is perfect, even the most renowned specialist can make a mistake in diagnosing a disease. A doctor can only be held liable for negligence if it can be evidenced that they committed a failure that no doctor with ordinary skills would engage in if acting with reasonable care.

Negligence Under Consumer Protection:

The preamble of the Consumer Protection Act and several Supreme Court judgments clarify that the Consumer Protection Act is one of the social welfare laws meant to safeguard the common people. When it comes to medical malpractice, a landmark decision was made. In Indian Medical Association vs. V.P. Santha (1995),¹¹ practically every doctor's service was covered by this act. In 'procedure free,' consumer protection established the relationship between consumers and medical professionals by allowing contractual patients to sue physicians if they were injured during treatment. Medical providers' responsibility under Indian Consumer Law is relatively new. The focus of consumer attention has shifted to the quality of medical services. Patients, or consumers, have the right to receive health care and receive quality treatment. The Consumer Protection Act was created to safeguard a broad group of people from being exploited. It offers a summary trial procedure as an alternative to traditional consumer justice.

Leading Cases In Medical Negligence:

Indian Medical Association v. VP Shanta, 1996:

Numerous complaints have been made in consumer courts demanding compensation under the Consumer Protection Act of 1986 due to the rising number of medical negligence cases. The issue of whether doctors, hospitals, and medical practitioners fit under the definition of "service" as stated in Section 2(1)(o) of the Act was unclear. The initial argument from the respondent was that COPRA only applies to occupational services, and therefore the medical profession should not be included as a professional service. Section (1)(g) lays out criteria for determining whether or not services are insufficient. However, because the base is restricted, these are less useful in medical services.¹² However, the Supreme Court rejected all the arguments with respective reasoning. The

¹⁰AIR 2000 SC 1888

¹¹1996 AIR 550, 1995 SCC (6) 651

¹²1996 AIR 550, 1995 SCC (6) 651

medical practitioner should be held liable for his negligence and find out that the standard element Bolam Test cannot be considered sufficient. In 1995, the Supreme Court ruled that the medical profession falls under the definition of a "service" under the Consumer Protection Act of 1986. This judgment established a contractual link between patients and medical personnel. Patients injured during treatment might now sue doctors for compensation in "procedure-free" consumer protection courts.

Kunal Saha Vs. AMRI (Advanced Medical Research Institute), 2013:

In 1988, Anuradha Saha, the wife of Dr. Kunal Saha, a resident of the United States, was diagnosed with Toxic Epidermal Necrolysis while visiting India. She was initially treated on Dr. Mukherjee's advice and later admitted to the AMRI hospital in Kolkata, where she died on May 28, 1998, when her condition deteriorated. The doctors and the hospital were deemed negligent by the Supreme Court in 2013 and were ordered to pay 60.8 million rupees in compensation. However, their licenses were not revoked. Dr. Mukherjee became chief advisor of the Health Ministry of West Bengal, prompting Kunal to file a petition under Article 266¹³ of the constitution. The appellant argued that the Court should regulate the appointment and removal of members because the statute leaves a gap in removing the person who would be appointed as a member of the commission. The respondent's petition is frivolous and based on a private vendetta. They argued that the Court should dismiss it because it is made for personal advantage rather than the public good. Because the foreigner petitioner is not generally a country inhabitant, the petition was brought under Article 266 of the Indian Constitution, which cannot be entertained. The Court did not dismiss the foreigner petitioner's PIL in this case. 'Without knowing the theme or relevance of the PIL, the court will not throw it out,' it said, broadening the scope of the PIL. The Court further recognized that, while the petitioner is a permanent resident of the United States, he is an Indian citizen who has represented India internationally and is subject to the Citizenship Act of 1955. The Court also agreed to intervene in state laws or executive decisions, but only when the discretion is arbitrary, whimsical, or capricious. It encouraged the Medical Council of India to improve regulatory and supervisory ties, which maintains the check and balance in society and is required to avoid arbitrariness in the community and for the country's development.

¹³*Medical Negligence - Legal Aspect In India - Litigation, Mediation & Arbitration - India*. Mondaq.com. (2019). Retrieved 22 November 2021, from <https://www.mondaq.com/india/civil-law/320666/medical-negligence--legal-aspect-in-india>.

Reasons For The Increase In Medical Negligence Lawsuits In Recent Years (Amidst Covid-19):

Medical malpractice lawsuits are on the rise due to the rapidly rising number of healthcare providers with insufficient infrastructure and in part due to the lack of skills and outdated knowledge among healthcare personnel.¹⁴ Hospitals ran short of beds, wards, and oxygen cylinders even in states with few covid 19 cases. As the population grew, it became more difficult to get medical help, especially in smaller towns. The same was true at hospitals, where a lack of medical health experts exacerbated a low doctor-to-patient ratio.

However, contrary to narrow views, doctors and health sectors are under immense pressure to render the best possible solution to the pandemic. Nevertheless, negligence lawsuits rise because doctors are confronted with two major issues that restrict their ability to provide medical care:

Because Covid-19 is a novel viral strain, physicians find it challenging to comprehend the repercussions and gain expertise. The patient's medical history (hereditary, Diabetics)¹⁵ Covid testing entails various procedures with many clinical and health organizations, making it difficult to determine the source of a person's problem. Furthermore, doctors struggle to find the right equipment to deal with the continuous war-like scenario; these issues must be considered before holding them accountable. The hospital and the state cannot handle the essential equipment from the outlets due to a lack of appropriate stock. Many physicians sacrificed their lives during this time, while a few doctors engaged in forgeries and misconduct: Two Kanpur associates were found guilty of causing the death of a patient by negligence on June 25, 2021. Under 304(A), the police filed an FIR and banned the two (causing death by negligence which does not amount to culpable homicide).¹⁶ The doctor and his friend ransacked the accused, charging nineteen lakh prompting an investigation.

Furthermore, because the cost was too high, the deceased's son went to the doctor and requested a refund. The doctor and his staff, on the other hand, rejected any such allegations and threatened

¹⁴*medical negligence during covid*. Makeupbymicah.com. (2020). Retrieved 22 November 2021, from <http://makeupbymicah.com/qvlepp/medical-negligence-during-covid>.

¹⁵*MEDICAL NEGLIGENCE AMID COVID 19: WHOM TO BLAME? - Legal Articles in India*. Legal Articles in India. (2021). Retrieved 22 November 2021, from http://www.legalservicesindia.com/law/article/2023/27/MEDICAL-NEGLIGENCE-AMID-COVID-19-WHOM-TO-BLAME-#_ftnref2.

¹⁶Chattopadhyay, S. (2021, June 25). *Doctor booked under IPC 304 after Covid Patient Death in UP*. Medical Dialogues. Retrieved from <https://medicaldialogues.in/news/health/doctors/up-doctor-booked-under-ipc-304a-after-covid-patient-death-79043>.

terrible repercussions. The family was outraged, so they went to the police. Finally, under sections 304A, 506, 504, and 352 of the Indian Penal Code and section 56 of the Disaster Management Act, the police filed an FIR. Later, it was determined that the doctor had given the woman the incorrect injection, resulting in her death.

The Medical Council of India's laxity in implementing stringent diagnosis and treatment criteria has exacerbated the situation. The regulator is frequently circling its wagons and shielding healthcare practitioners from liability. As a result, patients and their families are increasingly turning to the legal system for help. However, due to a lack of subject area competence and explicit norms, even the courts cannot administer uniform justice. As a result, various inconsistent and conflicting judgments are given by various courts, including the Supreme Court.

Analysis Of The Role Of The Judiciary In Deciding Medical

Negligence Lawsuits:

A recent Supreme Court judgment dramatically lowered the standards for determining liability in medical negligence cases, stating that even if a healthcare provider makes a mistake in diagnosis, it does not constitute medical negligence.¹⁷

Vinod Jain v. Santokba Durlabhji Memorial Hospital & Anr: -¹⁸

FACTS OF THE CASE:

On October 15, 2011, a cancer patient immunosuppressed due to previous chemotherapies was hospitalized at a multi-specialty hospital with chills and fever. An early diagnostic revealed a WBC level of 15,030, which indicated infection. The blood culture report received on October 18 revealed the existence of an infection-causing bacterium, "Methicillin Sensitive Coagulase Negative Staphylococcus Aureus" (CONS). According to the medical literature provided by the respondents, the mentioned organism is recognized as an infection-causing agent (pathogen) that can be fatal if not treated appropriately. Immunocompromised individuals and patients with prosthetic device implants should be addressed as a pathogen rather than a contaminant.

Furthermore, the mainstay of therapy for a CONS infection is intravenous Vancomycin. However, the treating doctor misdiagnosed the bacterium by treating it as a contaminant. As a result,

¹⁷medical negligence during covid. Makeupbymicah.com. (2020). Retrieved 22 November 2021, from <http://makeupbymicah.com/qvlepp/medical-negligence-during-covid>.

¹⁸CIVIL APPEAL NO.2024 of 2019 {Arising out of SLP(C) No.32721/2017}

intravenous Vancomycin was foregone, favoring an oral tablet called Polypod, which was supplied through the nasal feed tube after being dissolved in water. Therefore, the patient was prematurely discharged, even though her WBC count (16,050) was on the rise, and she slipped into a coma at home on October 23, as the infection¹⁹ had reached uncontrolled proportions. Despite strenuous attempts by numerous hospitals to reduce her WBC count, she died on October 31 from septicemia that resulted in multi-organ failure. As a result, the patient died of incorrect diagnosis and treatment.

Judgment:

The petitioner took his grievances to the State Consumer Dispute Redressal Commission, which ordered the hospital to pay him Rs 15 lakh. The National Consumer Dispute Redressal Commission, however, overturned the ruling. The petitioner took his grievance to the Apex Court, which dismissed the petitioner's SLP. While doing so, the Court noted that while a misdiagnosis was possible, it did not constitute medical negligence. The Court observed that the respondent Hospital swiftly attended to the appellant's wife and performed medical operations based on professional and medical evaluation by the respondent Doctor depending on the patient's medical condition. The act of the doctors cannot be considered medical negligence. In light of the preceding, the Supreme Court stated, "While we sympathize with the appellant, compassion cannot be converted into a legal remedy." It was said that the situation at hand might be classified as an instance of incorrect diagnosis rather than medical malpractice.

Analysis:

Despite a previous ruling by the Court in *Malay Kumar Ganguly v. Sukumar Mukherjee*, the misadministration of the steroid "Depomedrol" due to a misdiagnosis was found to constitute medical negligence, the same was upheld. When discussing medical negligence, the Supreme Court stated: "It would not be considered negligence if you did not act according to the standard, reasonable, and competent medical measures available. On the other hand, a medical practitioner must use reasonable care, skill, and knowledge. Medical negligence would be the failure to diagnose with proper care, resulting in the wrong therapy being delivered." It was also said that "Medical negligence legislation must keep pace with improvements in medical research, both in terms of treatment and diagnostic. The doctor's job is to keep the virus from spreading further. Blood tests and cultures should be done regularly to assess if the infection is getting better."

¹⁹medical negligence during covid. Swimmingly Mob.org. (2020). Retrieved 22 November 2021, from <https://swimminglymb.org/zdqpyv/medical-negligence-during-covid>.

The above decision was significant because it improved medical negligence jurisprudence and recognized the repercussions of a faulty diagnosis, such as incorrect prescription and the resulting harm to the patient's health.

However, in Vinod Jain, the Court said that. "There was no evidence to suggest any inexplicable deviation from usual practice or that the deceased's health was jeopardized due to her post-mortem ailments."

Despite its previous rulings, the Court concluded no inexplicable deviations from practice and endorsed a departure from such protocols. Apart from defeating medical law, it also goes against the Supreme Court's definition of judicial procedural appropriateness and decorum in Central Board of Dawoodi Bohra Community v. State of Maharashtra. It was stated in the case: "It will be open only for a bench of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier bench of co-equal strength. After which the matter be placed for hearing by a bench consisting of a quorum larger than the one which pronounced the decision laying down the law of correctness of which is doubted."

To avoid a miscarriage of justice in the matter of Vinod Jain (supra), the best course of action would have been to refer the case to the Chief Justice of India, who would appoint a larger bench, or to adopt the Supreme Court's practice in the Dawoodi Bohra Community case. The core of Western medical research is proper diagnosis followed by correct treatment according to established protocols. Without an accurate diagnosis, therapy would be blind and likely kill the patient.

The Supreme Court's legal standards examine the medical professional's ability to fulfill tasks with practical expertise. The criterion for assessing acceptable skill appears to be vague, as there is no size-fits-all formula for excluding any medical professional's negligence. Because a Court cannot ascertain the exact diagnosis or therapy that a qualified expert would select to administer to its patient based on the condition of the disease/patient, the Courts use open-ended principles to arrive at the best possible decision. Because there is no evidence to show medical negligence perpetrated by experienced medical professionals, a situation of incorrect diagnosis would still prevent a medical expert from being prosecuted for carelessness. It indicates an ambiguous vision and a vague idea that any court may use to rule out medical malpractice. Even a victim of medical negligence would find it difficult to gather evidence against a medical practitioner from the institute where he habitually conducts his profession until the case is clear. As a result, conventional principles may occasionally assist the Courts in ruling out real situations. Still, they may also sometimes perplex the Courts and shift the balance of convenience towards the medical practitioner.

CONCLUSION:

Decisions like Vinod Jain undermine people's trust in the healthcare industry and the courts when the country's healthcare experts are being praised for their successful response to the COVID-19 outbreak. The healthcare industry will undoubtedly continue to take center stage in our lives for years to come. Medical malpractice cannot be ruled out due to the growing burden on the medical system. In the COVID-19 pandemic's uncertainty, the judiciary remains the only source of hope for individuals concerned about a lack of proper medical infrastructure and escalating medical malpractice incidents. There is optimism that the Supreme Court will take the necessary steps to protect the people's faith and hope.

Law and order should be subjected to periodic checks and balances to ensure that everyone's rights are protected. Given physicians' predicament and how they continue to treat patients, some form of immunity should be offered. Terms will be utilized more than civil responsibilities to resolve any financial issues. On the other hand, others argue that doctors should be exempt from criminal liability during the epidemic. However, the concern remains: would it infringe on the patient's right to law and order? The ambiguous regions of medical litigation make it impossible to reach any conclusions, yet criminal culpability can be reduced to keep everything in check. The time has come for regulatory bodies to put strict protocols for treating patients, develop infrastructure, and organize workshops for doctors to sharpen their skills and expertise to keep up with medical science's evolution. It is also essential to devise a comprehensive mechanism for dealing sternly with medical professionals for their wrongdoings. Fast Track Courts can also be established to expedite the resolution of medical malpractice claims. The National Medical Commission must be established to grow and govern the medical profession. Healthcare professionals are doing an excellent job, but they must also guarantee that their efforts are not tainted by negligence.