

THE VERACITY OF MEDICAL NEGLIGENCE WITH RELEVANCE TO CRIMINAL LAW

Written by N. Seeba Ramzani

3rd Year BBA LLB Hons, School of Excellence in Law, Chennai

INTRODUCTION

Medical Jurisprudence is commonly denoted to the Branch of Application to the Medicine which in-depth deals with law in both Civil, Criminal purpose and they bear a different meaning. Medical Jurisprudence connects all the base which affects the Civil, Social Rights of an individual Human as well as cases of injuries to person and bring the Medical Practitioner in accordance with the law, Rule of Law. It deals with the legal aspect of the practitioner, whereas Forensic Medicine deals with the application of medical knowledge to monitor the administration of law. The Doctors knowledge is not gauged by the experience or reputation in their treatment but through the test of standards of Medical, they provide to the Society as a whole Nation. In case of any mislead in there action would make the Doctor responsible and inculcated for the cause of his Negligence under the preview of, Doctor is a servant not a master for the patients and community. In any case, he is liable for the mask of loss. The law will ensure a congenial circumstance in bringing the technological advances on Medical Protection to the Community.

EVOLUTION OF MEDICO-LEGAL WORK IN BRITISH INDIA

The first Death Certificate was issued by the Medical Practitioner were reported at Madras in 1678, when a Soldier Thomas savage, while been intoxicated and abused his Superior officer, he was tied with his cot on his neck and heels with hands behind were bound because of this he died. Governor Sir William Langhorne asked to inspect his body by Surgeon. They found and issued the First Death Certificate in India as following "we underwritten being immediate to assist there about said Thomas Savage found him dead and apparent marks of his binding about his neck, which we Judge to because of his death".^[i]

In the early day, Medical Negligence is considered as crime than torts. Whereas, crime is against the state as whole and state are responsible for the prevention and protection from such by punishing the perpetrated. It is also mentioned in the code of Hammurabi, where the drawn was found by Babylon's King, 20 Centuries before the Christian era. It fixed fees for treatment, penalties and punishments for improper treatment. If a Physician had operated a man for a severe wound with a lancet and caused death then the Physicians hands should be cut off. [\[ii\]](#) However, the penalty may vary depending upon the severity of injuries or loss of life. But today medical negligence is treated as tort by the judiciary with the view to provide compensations for damages.

As Common law was prevailing in England, when a surgeon Mort was brought before the king's bench concerning his treatment of an injured hand, he was held not liable but the court said, if any such patient can prove the negligence then remedies will be given and also held "If the surgeon does so well as he can and employs all his diligence to the cure, it is not right that he should be held culpable " [\[iii\]](#).

Modern torts bring the difference between injuries which is the intentional cause and those resulting out of negligence. In case of a civil action, the victim needs to prove that,

1. There is Duty on the part of the defendant to show a reasonable degree of care.
2. Such Duty has to be infringed, further which has to be caused injuries to him, from such injuries, the victim must have, loss of income, mental pressure, pain which could have equated in terms of money as compensation.

INTRODUCTION TO BOLAM'S TEST:

Bolam test was a benchmark by which the Negligence of Professionals has been assessed. It is based on the Direction of Jury of High Court Judge, Mc Nair .J in Bolam Vs Friern Hospital Management Committee. The Plaintiff was undergoing electroconvulsive therapy treatment for his medical illness. The doctor did not give any relaxant drugs and the claimant suffered a serious fracture due to this. There was a varied opinion from a different medical consultant that whether a relaxant drugs should be given, if it is given a small risk of death or if it is not given a small risk of fracture will exist. The claimant argued that the doctor was in breach of his duty

by not using the relaxant drugs. The court held that the doctor is not guilty for the negligence stated

"Not negligent if he is acting in accordance with such a practice, merely because there is a body of opinion that takes a contrary view" [\[iv\]](#)

MEDICAL NEGLIGENCE:

Prior to the Constitution of India 1950, English principles were followed in the law of torts in Indian courts. During the British period, English laws were introduced in India. Mr Wheeler, member of the council and chief justice F. Chowdry in Chennai died due to administration of wrong Medicine and out of Negligence. Dr Samel Broune was tried and acquitted by a grand jury when the bill of ignoramus was brought in. [\[v\]](#) By the virtue of Article 372 in Constitution of India, English common law continue to reside in force in Indian Court.

GENESIS OF CONSUMER RIGHTS :

In 1960, Consumer Rights gained prominence in the USA. While John F Kennedy was the former President of the USA. On March 15, 1962, he declared Four Consumer Rights in America. [\[vi\]](#) Subsequently, an International organisation of consumers union With its headquarter in Paris included three more rights to this list. Consumer Rights have been incorporated in United Nations Charter of Human Rights those Consumer Rights are Right to Safety, Right to be Informed, Right to choose, Right to be Heard, Right to Redressal, Right to Consumer Education, Right to Healthy Environment, Right to Basic needs. Later the General Assembly of United Nation Adopted guidelines for the Consumers Protection by Consensus on April 1985. Subsequently, The parliament of India enacted a law The Consumer Protection Act in 1986. It came into force on 1st July of 1987 and a quasi Judicial Machinery known as Consumer Dispute Redressal Agencies were initiated at District, State level to ensure speedy judicial remedies to the Consumers and to provide better Protection to the Consumers.

Their prevails the difference of orders by various State Consumer Disputes Redressal Commission on the issue relating to Medical Profession under section 2(1)(o) of Consumer Protection Act 1986 which includes the list of service included and excluded under the act. In 1992 an appeal from Kerala State Commission [\[vii\]](#). The National Consumer Disputes

Redressal Commission included the Medical Profession under Section 2 (1) (0) of CPA. When this was brought into the view, The Indian Medical Association was confused that how well Consumer Dispute Redressal agencies could manage the Medical Negligence purposefully. IM Association by itself in special leave petition filed in Supreme Court of India.

In 1995, the Supreme Court in Indian Medical Association Vs Vp. Shantha,[\[viii\]](#) held to include The Medical Profession under the Consumer Protection Act. Consumer Protection act includes all the medical services provided by the Government and Private hospital. It exempts only those Hospitals which provide free services to all patients at all times.

In Indian Medical Ass vs Vp Shantha, the Supreme Court clarified the facts relating to consumer law and medical negligence:

1. Consumer Disputes Redressal Agencies are provided with the same power of the civil court under civil procedure while trying for the suit.
2. Services rendered by the Doctors can be charged, required to be paid by the person benefiting such service but the certain person who cannot afford to pay are rendered free of services will fall under section2(1)(0) of the Act.[\[ix\]](#)

CPA exempts only those services provided by the hospital for free of cost but the primary health centres will come under CPA thou rendered by free of cost.

DOCTRINE OF RES IPAS LOQUITUR:

The plaintiff cannot make out breach to the defendant as Negligence of Duty to care, The Res Ipas loquitur (The things speaks of itself)for the injuries like burns and fractures. This doctrine cannot be applied in Criminal Medical Negligence. In Syed Akbar Vs State of Karnataka, the application of this doctrine was brought up before to Supreme Court, the conviction of the appellant was upheld in appeal. However, the Supreme Court held that this Doctrine is inapplicable in Criminal Proceedings.[\[x\]](#)

In a criminal trial, the burden of proof is on the prosecution and the Negligence is an essential ingredient of the offence under Criminal proceeding.

CRIMINAL NEGLIGENCE:

A Doctor can be charged with Culpable Homicide or acting Negligence when a patient dies from the effect of action or proceedings from any kind of treatment. He has to prove that he had reasonable care in the treatment and provided to the best of his knowledge. The Negligence must be established beyond reasonable doubts in criminal cases. Indian courts have been very careful to hold a qualified Physician for Criminals Negligence.

CURRENT SCENARIO IN INDIA:

In India, everyone has the right to register a Complaint against the Medical practitioner under section 304-A of Indian Penal Code for Criminal Negligence where the failure to care or resulted in death or if the patient survives and suffered injuries from such treatment, then the Physician can be charge-sheeted for the offence under section 337 or 338 in IPC. In the USA and UK, Professional Negligence is considered as involuntary manslaughter. It is stated by the court in India, the doctor to be held guilty for the criminal negligence only when it has resulted in the gross nature of injuries.

In 2001, Government of Tamil Nadu constituted The Justice Maruthamuthu Committee [\[xi\]](#) to reshape the occurring of negligence of Professional Duties of Doctors working in Private and Government Hospitals and to submit a report suggesting the guidelines adopted by Government for preventing such negligence, this committee also looked into the possibility of registering the complaints of such Medical Negligence under section 174 of CRPC [\[xii\]](#).

In Jacob Mathew Vs State Of Punjab,

The Respondent filed an FIR alleging carelessness on the part of the doctor. The appellant contended that the patient was terminally ill and was admitted at the behest of the complainant and his relations were misguided by the facts, lodged a police complaint against the accused which was unwarranted and uncalled for. The revision filed by the petitioner for quashing of charges was dismissed by sessions judge. On appeal, High Court dismissed on the grounds that the plea raised by the appellant was available to be urged in the defence at the trial and held that for an action which results in criminal negligence [\[xiii\]](#), The degree of Negligence must be of higher gross in nature.

NO CURE; NO SUCCESS IS NOT A NEGLIGENCE

In Dr M.Kochar Vs Ispita Sea,[\[xiv\]](#)

A national commission was confronted on the deficiencies of services in IVF procedures followed by the Doctor. The Commission has stated that on the expert opinion in this case for the success rate is 13.4% in Women less than 35 years old and 3.6% for above 35 years, overall women age is an important factor that influences the success rate of IVF procedure. The Court held that no cure or no success in IVF is not a Negligence.

ABUSE OF CONSUMER PROTECTION ACT:

The CPA was promulgated mainly to safeguard and prevent the interest of Consumer and misuse of the Medical Profession in another view. Today patients started using this act to blackmail the medical professionals. Doctors need to know that the rights of them also been safeguarded. As per section 26 of CPA, if a complaint is found false then the Consumer Forum will dismiss and make an order that complainant shall pay the opposite party not exceeding ten thousand rupees. To prevent and to be a check on frivolous complaints.

There is other legal Protection to the Medical Practitioner under Indian penal code under section 88, act not intended to cause death which is done by consent in good faith. Section 89, acts done in good faith or the benefit of a child or insane person with the consent of the guardian. Ordinarily a physician's responsibility under section 202 of IPC that he should communicate to the police of any information about the criminal activity that might have come to his knowledge while in his profession.[\[xv\]](#)

GUIDELINES FOR PROSPECTING MEDICAL PROFESSIONAL:

Criminal Actions are taken by Public against the Physician through Private complaints and sometime Fir is been filed but that does not have knowledge as of Medical Science is determine whether the action originally resulted in by negligence under 304 A, but at the end, he may be acquittal or discharge but the loss in his reputation cannot be compensated.

In Martin F.D. Souza Vs Mohd,[\[xvi\]](#)a case under the Consumer Protection Act, Supreme Court said, whenever a complaint is received against a doctor or hospital. Before sending a notice to the doctor, the consumer forum or criminal court should refer to a medical committee of doctors

to submit a report whether he is actually negligent or not. Only after that, a notice has to be sent, this is necessary to avoid the harassment to the Doctors who may not found Negligent.

CONCLUSION:

The criminal law invariably placed the Medical Profession on a pedestal, different from another profession, as there is an exceptional situation provided above for them. If a patient dies due to the negligent in Medical treatment, he can be made liable and compensated for the gross nature i.e.." it must because causa's; it is not enough that it may be causa sine qua non" and his action has to be reckless as to endanger the life of the patient. Throughout history, every civilized society has and had medical healers in some name or the other. Evolution of Negligence in Medical Profession was considered as a crime in olden days to sue and ensure punishment, but today treated, as tort to equate the damages with compensations. The presence of well-established Committees and Commissions, The Consumer Law is sometimes misshaped and misused for blackmailing the professions. As 80% of Indian health care is being provided by the private sector. It clarifies that unless there is a prima facie evidence indicating the presence of medical negligence, they cant be made culpable. In a matter of professional liability, the situation of Medical Professionals is different from another sphere as success or failure depends upon the factor of Medical man's control. There is the relevancy of the Medical Profession with Criminal Law in Negligence Cases.

REFERENCES

[i] wheeler , Tallboy's J .Madras in the olden times ,new Delhi ,AES(Republished),1993,p55-56.

[ii] If a physician makes a large incision with the operating knife, kill him or open a tumour with the operating knife, out the eye, his hands will be cut off.

[iii] 'swing The doctor -an inexorable spiral /, editorial, the medico-legal journal, vol 55 part two

[iv]<https://en.m.wikipedia.org>>wiki

[v] "we are ignorant "this word used by the grand jury to discuss a bill of indictments and was used in the sense of 'not a bill 'or 'not found'

[vi] This day is observed has" The world consumer rights day"

[vii] Vasantha P Nair vs Cosmopolitan Hospital,(1991)1 CPR 155:1991 II CPJ 444 (Kerala SCDRC)

[viii] (1995) 3 CPR 412 :AIR 1996 SC 550 :(1995) III CPJ: (1995) 6 SCC 651 : 1995 JT 8 (SC)

[ix] Ibid.

[x] <https://www.lexology.com>details>

[xi] Government of Tamil Nadu, health and family welfare department, GO (Ms) No 407 dated 19 Dec 2000

[xii] GO (Ms) No 133 dated 9 July 2002.

[xiii] 2005 ACJ 1840.

[xiv] First appeal NO: 368 OF 2011, JUDGEMENT ON DEC 12,2017.

[xv]

[xvi] (2009) 3 SCC 1.