

MEDICAL NEGLIGENCE W.R.T INDIAN MEDICAL ASSOCIATION VS V.P. SHA-THA (1995)

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ABSTRACT

Medical malpractice is defined as a medical professional's failure to satisfy the standards of his or her profession, resulting in the death of a patient who was counting on the medical professional to save her or his life. Medical negligence is the most heinous act a medical professional can commit, because it almost always leads in the patient's death.

Negligence, according to Black's Law Dictionary, is the failure to do something that a reasonable man, guided by the usual considerations that ordinarily rule human affairs, would do, or the doing of something that a reasonable and sensible man would not do. In legal terms, medical negligence is defined as a breach of a duty of care that causes harm. The damages could be monetary, health-related, degrading the patient's condition, causing trauma to the patient, leaving the patient in an irreversible state for the remainder of his or her life, and so on.

India has inherited the ideas of English law, and the majority of the current laws in India are a direct result of the laws being inherited from English law. Bolam v. Friern Hospital Management Committee is an example of such a principle (1957).

However, the position was amended in the year 2001 when such a test was abandoned by English courts which made the requirements of medical negligence stricter; however, the Indian courts continued to follow the principles laid down in Bolam's case. Medical negligence occurs when medical practitioners or doctors fail to provide adequate care and fail to take

appropriate safeguards or measures, resulting in a breach of their duty that harms patients. It arises as a result of patients receiving ineffective, inept, or negligent care.

Every medical professional or doctor owes a duty of care to their patients, and when they fail to do so, the patients suffer harm, giving them the right to sue for negligence. Medical malpractice carries civil liability, criminal culpability, and disciplinary consequences.

Keywords: Medical Negligence, Case Laws, Consumer Protection Act, Criminal Liability, Civil Liability, V.P. Shanta.

A hospital patient can expect one medical error every single day of any hospital stay. Malpractice suits are numerous enough that one may reasonably conclude that there is certainly no guarantee of proper health care by contracting it out.

- Andrew Saul

INTRODUCTION

Negligence can be referred to as the failure to take due care, which causes injury. It excluded "wrongful intention" as they are mutually exclusive.

Components of Negligence:

1. Duty to take care towards plaintiff (owed by the physician to the patient)
2. Breach of such duty
3. Consequential Damage

Concerning the medical profession, this "duty of care" has to be considered in the strictest sense, and just mere acting in good faith or to the best of one's judgment/belief is not sufficient. But the medical professional must have the requisite degree of skill and knowledge. In such cases, whether the degree of due issue established by law was carried out.

A. Moni v. State of Kerala (2000)

In the case of a medical man, negligence means failure to act by the standards of reasonably competent medical men at the time. There may be more than one proper standard, and if he adheres to even one, he's not negligent

Therefore, it involves three constituents of negligence:

(1) A legal duty on the part of the physician, who is expected to exercise the due amount of care towards the party complaining the doctor's conduct within the scope of his duty;

1. A duty of care in deciding if to take up the case or not.
2. A duty of care in deciding which treatment would be apt of the case at hand.
3. A duty of care in managing that treatment and the patient.

(2) Breach of the said duty; and

(3) Consequential damage that follows.

B. Standard of care

- The medical practitioner has a standard of care and exercises reasonable care (Standard of care). Neither the very highest nor the very slightest degree of care and competence judged in the light of situation and components in each case is what the law requires.
- A reasonable degree of care and ability means the degree of care and competence that an "ordinary able member of that profession who is known to have those skills would exercise in the situation in question."
- The standard of care is constant and remains the same in all cases, but the degree of care varies from case to subject and person to person.

NEGLIGENCE BY PROFESSIONALS

Jacob Mathew vs State of Punjab (2005)

Facts: Jiwan Lal, a patient at C.M.C. Hospital in Ludhiana, was admitted to a private ward. The patient's breathing became difficult all of a sudden. Vijay Sharma, his oldest son, summoned a nurse and a doctor after observing his father's condition. For around 20-25 minutes, no doctor showed up. Dr Jacob Mathew and Dr Allen Joseph were then summoned to the patient's room. The patient was given an oxygen cylinder to put in his mouth right away, but the condition persisted. The oxygen cylinder was empty, and no alternative oxygen cylinder was accessible. Vijay Sharma returned from the adjacent room with a new gas cylinder. Around 5-7 minutes were spent in the process. During this, the doctor confirmed that the patient had died. The younger son, Ashok Kumar Sharma, filed a First Information Report (F.I.R.) under Section 304A, read with Section 34 of the I.P.C.

Judgment: The facts of the case do not support a finding of criminal rashness or recklessness by the accused-appellant. The complainant's position isn't that the accused-appellant wasn't a doctor qualified to treat the patient he agreed to treat. It is a cause of oxygen cylinder non-availability, either because the hospital neglected to have a gas cylinder on hand or because the gas cylinder was discovered empty. The hospital may be liable in civil law, but the accused-appellant cannot be prosecuted under Section 304-A of the I.P.C. based on Bolam's test standards. When evaluating a practice, the standard of care is determined based on the knowledge known at the time (of the occurrence), not the trial. A simple lack of maintenance, a lapse in judgment, or accidents is not evidence of professional medical negligence. A doctor cannot be held accountable for failure simply because a better alternative course or treatment technique was also available or because a more skilled doctor would not have decided to follow or resort to the accused's practice or procedure. It is not possible for every professional to possess the highest level of skills in that subject matter he practices in. The Supreme Court of India in *Jacob Mathew vs the State of Punjab, 2005*, said that "Any task which is required to be performed with a special skill would generally be admitted or undertaken to be performed only if the person possesses the requisite skill for performing that task. Any reasonable man entering into a profession that requires a particular level of learning to be called a professional

of that branch impliedly assures the person dealing with him that the skill he professes to possess shall be exercised and exercised with a reasonable degree of care and caution".ⁱ

Jacob Mathew's Case: S.C.'s Guidelines

1. A court of law should not entertain a private criminal complaint unless the complainant has produced prima facie evidence in the court not to harass the professional. Reiterated by the Bombay high court in the judgment of Dr Anand R. Nerkar vs Smt Rahimbi Shaikh Madar ⁱⁱ, it mentioned that Gross negligence and a prima facie case must be established.
2. The accused doctor should not be arrested furiously unless his arrest is necessary and authorized by a competent court of law.
3. Before proceeding against a doctor, the investigating officer should obtain a non-biased independent medical opinion.

BOLAM TEST

The Bolam test establishes whether a medical professional has breached their duty of care, leading to a clinical negligence claim. By law, any doctor, nurse, anaesthetist, or another medical professional must provide a reasonable standard of care while going about their duties. This is known as a duty of care. Where a health care professional breaches their duty of care, liability for negligence may arise. The primary test for breach of professional responsibility is known as the Bolam test. It was established through the case of *Bolam v Friern Hospital Management Committee (1957)*, where Bolam, the patient, had been seeking service from the defendant hospital for his issue with depression.

As a part of the treatment, the Claimant was submitted to electroconvulsive therapy, which led to a fracture because of the non-administration of anaesthesia. Mr Bolam's claim failed. At the time, it was not the usual practice to give patients muscle relaxation. Indeed, some doctors thought that administering a muscle relaxant or restraining the patient might increase fracture risk. According to that particular time, it was seen as a proper procedure, and the body of

professionals considered it a non-negligent act. Thus, the Bolam test was instituted, which says that the medical professional must have acted so that a reasonable, competent medical professional or body of professionals in the same field would have been regarded as good and acceptable. It is basically like a peer review.

TEST: A doctor is not guilty of negligence if he has acted following a procedure accepted as proper by a responsible body of medical men skilled in that particular subject matter.

Limitations of Bolam Test and Way to ahead for Bolam Test

- It was no longer enough for the standard of care proclaimed by a defendant doctor to be endorsed by a responsible body of peers because of the inherent bias persisting in this type of case.
- The scrutiny of "logical analysis" from a judicial perspective on every medical negligence case.

This has expanded the scope of Medical negligence In India

CRIMINAL LAW AND MEDICAL NEGLIGENCE

Section 304Aⁱⁱⁱ of the Indian Penal Code of 1860 states that "whoever causes the death of a person by a rash or negligent act not amounting to culpable homicide shall be punished with imprisonment for a term of two years, or with a fine or with both."

Similarly, S.336^{iv} of the Penal Code says that it is an offence to endanger human life or personal safety through a rash or negligent Act. The punishment is three months imprisonment or a fine of Rs. 250 or both.

S. 337 and 338 of the Indian Penal Code: make it a crime to cause simple or grievous hurt through a rash or negligent Act.

- The punishment can be up to six months of jail or a fine up to Rs.500 or both for simple hurt.

- Punishment up to 2 years jail or fine up to Rs. 1000 or both for causing grievous hurt during a negligent act.

Exceptions

Sections 80 and 88 of the Indian Penal Code:

Under Section 80^v (Accident in doing a lawful act), "nothing is an offence that is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution."

According to Section 88^{vi}, "a person cannot be accused of an offence if she/ he performs an act in good faith for the other's benefit, does not intend to cause harm even if there is a risk, and the patient has explicitly or implicitly given consent."

In Dr Suresh Gupta vs Govt. of Delhi (2004) ^{vii}

In its landmark judgment, S.C. ruled that a doctor cannot be held liable for every incident or fatality during medical treatment. No criminal guilt should be associated when a patient dies due to a mistake or an accident. Even if inadvertence or a lack of proper care and caution resulted in civil liability, it would not be enough to hold him criminally accountable.

CIVIL LAW AND MEDICAL NEGLIGENCE

The Indian civil law on negligence essentially is the judge-made common law followed in England for centuries.

Therefore, it involves three constituents of negligence:

(1) A legal duty on the part of the physician, who is expected to exercise due care towards the party complaining the former's conduct within the scope of his duty;

1. A duty of care in deciding whether to undertake the case.

2. A duty of care in deciding what treatment to give.
3. A duty of care in the administration of that treatment.
4. A duty of care in answering a question put to him by a patient in circumstances in which he knows that the patient intends to rely on his answer.

(2) Breach of the said duty; and

(3) Consequential damage that follows

In the case of *Dr Laxman Balkrishna Joshi vs Dr Trimbak Babu Godbole and Anr. (1968)*, the Supreme Court declared that the degree of hurt has always been relevant for distinguishing negligence under civil and criminal law. A doctor has a duty of care to decide whether to take on a particular case, decide what treatment to give, and administer that treatment. A breach of these responsibilities provides the patient with the right to sue for negligence. The law requires a doctor to exercise a reasonable degree of care and competence, not the very highest or shallow degree of care and competence determined in light of the individual circumstances of each instance.

In *Kurban Hussein v. the State of Maharashtra*, in the case concerning Section 304 (A) of I.P.C., 1860, it was stated that- "To impose criminal liability under Section 304-A, it is necessary that the death should have been the direct result of rash and negligent act of the accused, without other person's intervention, otherwise it would simply fall under civil liability."^{viii} In case of civil liability, matters can be taken up by the district/civil court, and compensation can be claimed.

CONSUMER PROTECTION ACT AND MEDICAL NEGLIGENCE

Whether medical services are specifically or categorically included in the term "Services" entrenched in Section 2(1)(o) of the Consumer Protection Act (C.P.A.) of 1986: It is included

in its scope. There was a change in the definition of service in the 2018 bill. "Healthcare" was included in section 42 of the purpose of service.

Section 2 (42) of the Consumer Protection Act of 2019 defines "service" as "any description of service made available to potential users and includes, but is not limited to, the provision of facilities in connection with banking, financing, insurance, transportation, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement, or the furnishing of news or other information, but does not include the provision of facilities in connection with banking, financing, insurance, transportation, processing, supply of electrical equipment. The term "Healthcare" was **deleted** from section 42 in 2019

However, section 42 also included a phrase that said "**not limited to**," and hence "healthcare" can also be considered to come under the ambit of services.

Exceptions: any service **free of charge** or under a contract of personal service (but S.C. has included free camps within this ambit)

Jurisdiction of Consumer Courts

1. The District Forum if the value of services and compensation claimed is up to INR 1 crore (Sec. 34)
2. Before the State Commission, if the value of the goods or services and the compensation claimed is above one crore and up to INR 10 crores (Sec 47)
3. In the National Commission, if the value of the goods or services and the compensation exceeds INR 10 crores (Sec. 58)

The good positive aspect about this is that there is a minimal fee for filing a complaint before the District Consumer Redressal Forums.

Indian Medical Association vs V.P. Shantha (1995)^{ix}

The question was whether patients are customers under the Consumer Protection Act, and if so, could they sue for damages caused by the doctor's, hospitals, or nursing home's carelessness.

Facts:

In 1986, the Consumer Protection Act was passed to safeguard customers. The Consumer Protection Bill of 1986 aims to better protect consumers' interests by establishing consumer councils and other agencies to resolve consumer disputes.

Because there were increasing cases involving Doctor (Medical) Negligence, it was unclear if medical services were covered by COPRA, 1986 or not, and whether COPRA, 1986 covered a hospital, doctor, or medical practitioner. Moreover, many High Courts and other lower courts issued differing verdicts and rationales on this topic. Many Special Leave Petitions were filed before the Supreme Court challenging subordinate court decisions and judgments. The Supreme Court received a large number of S.L.P.s. As a result, a petition was filed in the Supreme Court under Article 32 of the Indian Constitution in this P.I.L. to decide upon jurisdiction and scope of the Consumer Protection Act, 1986.

Issues:

The question was whether patients are customers under the Consumer Protection Act, and if so, could they sue for damages caused by the doctors, hospitals, or nursing home's carelessness.

Law:

The term 'service' in the Bill of 2018 was earlier defined as hereunder:

(42) "service" refers to any service made available to potential customers, including but not limited to banking, financing, insurance, transportation, processing, electrical or other energy supply, telecommunications, healthcare, boarding or lodging or both, housing construction, entertainment, amusement, or the dissemination of news or additional information, but does not include the provision of any service for free or without charge.

However, the C.P.A. 2019 has changed this by removing "healthcare."

Analysis:

Except for those given for free or on a service contract, all services are included. Medical practitioners are members of the medical profession. They are subject to the disciplinary oversight of the Medical Council of India, and State Medical Councils do not exempt their services from the Act's scope.

Deficiency: Under the same conditions, a reasonable man with the same skills and competence would use the same standard of medical treatment. A doctor does not have to be a master of their craft. As a result, it cannot be stated that the Consumer Dispute Resolution Agencies members lack knowledge and experience in medicine

1. This case affected customers who were victims of medical malpractice. Bringing medical services within the scope of the Consumer Protection Act of 1986 allowed consumers to obtain justice more quickly and at a lower cost because this is the Act's primary goal.
2. This case also differentiated contract for service and warranty of service regarding medical practice and profession.
3. Its established culpability system is ineffective when patients are not viewed as consumers, even in government hospitals that provide free services. Because the individuals who use government hospitals are not financially stable, it is a matter of common sense and equality. That is why they seek treatment in government hospitals. It's an excellent time to think about it.
4. The Consumer Protection Act of 1986 exempts hospitals from providing free medical care. Because some charitable trusts have no economic motivation, they can be prosecuted in either civil or criminal court, but not in the Consumer Court.

CONCLUSION

As a result, Medical Services are considered "services" under Section 2(1)(o) of the Act. Because there is no master-servant connection, it is not a personal service contract. The term

"contract of service" as defined in Section 2(1)(o) cannot be limited to solely contracts for the employment of domestic staff. The Act does not apply to services provided to employers. Medical services provided free of charge by a hospital or nursing home are not covered under Section 2(1)(o) of the Act. Section 2(1) (o) of the Act's jurisdiction covers free medical services provided by independent doctors. The Act covers medical services that are provided in exchange for payment. A medical service that a third party pays for is considered within the Act's scope. Hospitals shall be recognized as consumers under Section 2(1) (d) of the Act if certain persons are charged and others are not due to their inability to pay for such services.

ENDNOTES

ⁱ AIR2005SC3180; (2005)6SCC1; 2005CriLJ3710

ⁱⁱ 1991 (1) BomCR 629, 1991 CriLJ 557, 1991 (1) MhLj 644

ⁱⁱⁱ Indian Penal code, 1860

^{iv} Indian Penal code, 1860

^v Indian Penal code, 1860

^{vi} Indian Penal code, 1860

^{viii} 1965 AIR 1616, 1965 SCR (2) 622

^{ix} 1996 AIR 550, 1995 SCC (6) 651