

Law on Medical Negligence in India

By: Gargi

Medical Negligence is a part of Medical Law as well as the Health Law. In the case of **Btyth v. Birmingham Water Works Company**, Baron Anderson defines Negligence as breach of duty by a person which results in damage to the complainant. Breach of duty means doing, or not doing something which a reasonable man would do, or not do given a set of circumstances.

For every breach of a legal right, there is a corresponding remedy. This is derived from the maxim, “ubi jus ibi remedium”.

According to Kiran Gupta, “Medical Negligence is the failure of a medical practitioner to provide proper care and attention and exercise those skills which a prudent, qualified person would do under similar circumstances. It is a commission or omission of an act by a medical professional which deviates from the accepted standards of practice of the medical community, leading to an injury to the patient. It may be defined as a lack of reasonable care and skill on the part of a medical professional with respect to the patient, be it his history taking, clinical examination, investigation, diagnosis, and treatment that has resulted in injury, death, or an unfavorable outcome. Failure to act in accordance to the medical standards in vogue and failure to exercise due care and diligence are generally deemed to constitute medical negligence.”¹

The components of Medical Negligence as stated by Winfield are-

- 1) Existence of a legal duty
- 2) Breach of that legal duty
- 3) Damage caused by that breach

EXISTANCE OF LEGAL DUTY

A person approaches some other person trusting his skills and specialized knowledge. So it is the legal duty of that person to exercise diligence as much as expected from his contemporaries.

¹ Gupta, Kiran. “The Standard of care and proof in medical profession, A shift from Bolam to Bolitho.” XIV-XV National Capital Law Journal (2011-2012)

In the case of Parmanand Kataria vs. Union of India, Supreme Court held that, “every doctor, at the governmental hospital or elsewhere, has a professional obligation to extend his services with due expertise for protecting life”²

BREACH OF THAT LEGAL DUTY

It is said to be a breach of legal duty if a person does not perform his legal duties as his contemporaries would have performed in the given situations and circumstances.

In the case of Laxman vs. Trimback, Supreme Court interpreted the duty of Doctor towards patients by saying, “bring to his task a reasonable degree of skill and knowledge” and to exercise “a reasonable degree of care”³

DAMAGES CAUSED BY THAT BREACH

The damages and injuries incurred are liable to be compensated. The compensation awarded must be just, fair and reasonable and in accordance with the facts and circumstances of the case.

CONSEQUENCES OF MEDICAL NEGLIGENCE

The consequences of medical negligence can be classified into three categories-

- 1) Criminal Liability
- 2) Monetary Liability
- 3) Disciplinary Action

CRIMINAL LIABILITY

Section 304A 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.”

This means that if a person causes death of another person due to his negligent or rash behavior, he will be liable for punishment.

² AIR 1989 SC 2039.

³ AIR 1969 SC 128.

If a patient dies due to gross negligence or malicious intent of the doctor, the doctor would be criminally liable. A Doctor will also be vicariously liable for the negligence of his employees or servants.

Exceptions to Criminal Liability

Sections 80 and 88 of the Indian Penal Code contains defenses for doctors accused of criminal liability.

Under Section 80 (Accident in doing a lawful act), “nothing is an offense 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, “a person cannot be accused of an offense 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.”

MONETARY LIABILITY

In the case of the **State of Haryana v. Smt Santra**,⁴ the Supreme Court held that every doctor “has a duty to act with a reasonable degree of care and skill.” However, “since no human is perfect and even the most renowned specialist can commit a mistake in diagnosing a disease, a doctor can be held liable for negligence only if one can prove that she/ he is guilty of a failure that no doctor with ordinary skills would be guilty of if acting with reasonable care.”⁵ “An error of judgment constitutes negligence only if a reasonably competent professional with the standard skills that the defendant professes to have, and acting with ordinary care, would not have made the same error.”⁶

To distinguish civil liability from a criminal one, the Supreme Court in the case of **Kurban Hussein v. the State of Maharashtra**⁷ 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.”

⁴ AIR 2000 SC 3335

⁵Hunter v. Hanley (1955) SLT 213

⁶ Whitehouse v. Jordan, (1981) 1 ALL ER 267 the House of Lords

⁷ (1965) 2 SCR 622

DISCIPLINARY ACTION

Another consequence of medical negligence could be in the form of imposition of penalties pursuant to disciplinary action. Indian Medical Council (IMC) (Professional Conduct, Etiquette, and Ethics) Regulations, 2002, made under IMC Act, 1956 governs the professional misconduct of medical practitioners. Medical Council of India (MCI) and the appropriate State Medical Councils can take disciplinary action by removing the name of the practitioner or suspending him.⁸

LANDMARK CASES ON MEDICAL NEGLIGENCE IN INDIA

There are many important cases on Medical Negligence in India. Some of them are the landmark ones which have been the turning points in the jurisprudence of the same.

In the case of **Jacob Mathew v. State of Punjab & anr.**⁹, the Supreme Court while dealing with the case of negligence by professionals gave illustration of medical and legal profession and observed as under:

“In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skill or skilled persons generally. 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 which requires a particular level of learning to be called a professional of that branch, impliedly assures the person dealing with him that the skill which he professes to possess shall be exercised and exercised with reasonable degree of care and caution. He does not assure his client of the result. A lawyer does not tell his client that the client shall win the case in all circumstances. A physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. This is

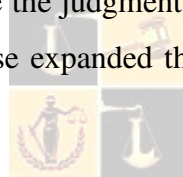
⁸ Agarwal, Amit. “Medical negligence: Indian legal perspective”. Annals of Indian Academy of Neurology, vol. 19, no.5, 2016, pp. 9-14, <http://www.annalsofian.org/article.asp?issn=0972-2327;year=2016;volume=19;issue=5;spage=9;epage=14;aualast=Agrawal;type=3>

⁹ (2005) 6 SCC 1

all what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practises.”

The case of **Kunal Saha v. AMRI** (Advanced Medical Research Institute)¹⁰ is popularly known as the Anuradha Saha case. It was filed in 1998 due to the medical negligence by 3 doctors of AMRI hospital; Dr. Sukumar Mukherjee, Dr. Baidyanath Haldar, and Dr. Balram Prasad and the hospital itself.

The facts are that Mrs. Saha was suffering from a drug allergy. When she went to this hospital, these three doctors prescribed a medicine which further aggravated her condition and she died. The Supreme Court gave the judgment in 2013 and ordered a compensation of 6.08 crore to the victim. This very case expanded the scope of medical negligence in India and gave it a new dimension.



In the case of **V. Krishna Rao v. Nikhil Super Specialty Hospital**¹¹, Krishna Rao was an officer in malaria department. His wife was treated negligently by the hospital. He filed a case against this negligence of the hospital. His wife was suffering from malaria but was wrongly treated with Typhoid and thus wrong medication was given to her. Finally, the case was decided and Krishna Rao was awarded a compensation amounting to Rs 2 lakhs. In this case, the principle of res ipsa loquitur (legal principle for a ‘thing speak for itself’) was applied, and the compensation was given to the plaintiff.¹²

Kusum Sharma & Ors vs Batra Hospital & Medical Research¹³– In this case, the Supreme Court enumerated the following principles to be followed while deciding whether medical professional is guilty of medical negligence:

¹⁰ (2006) CPJ 142 NC.

¹¹ (2010) 5 SCC 513.

¹² Pareek, Disha. “Medical Negligence And Law In India – An Analysis.” iPleaders, https://blog.ipleaders.in/medical-negligence-law-india-analysis/#_ftn27, 2016. Accessed 23 June 2018.

¹³ II (2010) SLT 73

I.	Negligence is the breach of a duty exercised 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.
II.	Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.
III.	The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.
IV.	A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.
V.	In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.
VI.	The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.
VII.	Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.
VIII.	It would not be conducive to the efficiency of the medical profession if no Doctor

	could administer medicine without a halter round his neck.
IX.	It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessary harassed or humiliated so that they can perform their professional duties without fear and apprehension.
X.	The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.
XI.	The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.



In the case of **V.N.Shrikhande vs Anita Sena Fernandes**¹⁴, the Supreme Court had held that “in cases of medical negligence, no straitjacket formula can be applied for determining as to when the cause of action has accrued to the consumer. Each case is to be decided on its own facts. If the effect of negligence on the doctor’s part or any person associated with him is patent, the cause of action will be deemed to have arisen on the date when the act of negligence was done. If, on the other hand, the effect of negligence is latent, then the cause of action will arise on the date when the patient or his representative- complainant discovers the harm/injury caused due to such act or the date when the patient or his representative-complainant could have, by exercise of reasonable diligence discovered the act constituting negligence.”

In the case of **Dr. M. Kochar vs Ispita Seal**¹⁵, the National Consumer Dispute Redressal Commission (NCDRC) had the issue of failure in the procedure of IVF. The complainant demanded compensation due to doctors’ negligence. The National Commission held that “No

¹⁴ (2011) 1 SCC 53

¹⁵ FIRST APPEAL NO. 368 OF 2011, decided on December 12, 2017

cure/ no success is not negligence, thus fastening the liability upon the treating doctor is unjustified.”

CONCLUSION

Mahatma Gandhi once said, “It is health that is a person’s real wealth and not pieces of gold and silver”. Patients see God in doctors. Kevin Alan Lee said “Being in such a profession where sick, ill and sufferers are your customers who look upon you as the almighty, an absolute amount of care is expected.”

Justices Chandramauli K.R. Prasad and V. Gopala Gowda in their decision in the Anuradha Saha case observed that, "The patients, irrespective of their social, cultural and economic background, are entitled to be treated with dignity, which not only forms their fundamental right but also their human right,”

Hence, it is the duty of doctors to treat their patients with due care and diligence without any malpractices.

