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**A study on medical negligence and the laws**

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**Abstract**

A basic understanding of how judicial forums handle instances involving medical negligence is essential for doctors. The demand for such knowledge is greater than ever before, given the Indian forums' increased emphasis on the value of human life and suffering, which is perhaps justified. While judicial forums try to identify delinquents and delinquency in cases of medical negligence, they also try to strike a careful balance between a doctor's liberty to make decisions and a patient's right to be treated fairly. In the adjudication process, court venues tend to offer doctors enough latitude and specifically recognize the complexity of the human body, the inexactness of medical science, the inherent subjectivity of the process, actual scope for judgement mistake, and the importance of doctors' autonomy. The law does not set a limit on how high of a standard can be applied, but it does set a minimum threshold below which patients cannot be treated. Judicial forums have also indicated a greater need for doctors to communicate with patients during treatment, particularly when the treatment line is challenged, has substantial adverse effects, and other treatments are available. In this article the researchers had discuss the negligence briefly. This article not only covers the criminal laws but also civil process. Further this paper analyses a number of recent Supreme Court judgments.

**Keywords:** error of judgment, medical negligence, prior informed consent, laws

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**Introduction**

The term "medical negligence" is a catch-all word that has come into fashion to describe improper actions or omissions by experts in the field of medicine while interacting with patients in the course of their profession. It is not defined or mentioned in any of the Indian laws that have been passed.

Negligence is that the breach of a legal obligation. It suggested that carelessness may be a matter during which the law mandates carefulness. A violation of this duty provides the patient, right to initiate action against negligence.

The medical profession is seen as honorable since it aids in the preservation of life. We believe that life is a gift from God. As a result, a doctor plays a role in God's plan because he is responsible for carrying out His mandate. A patient usually seeks out a doctor or facility based on his or her reputation. A patient's expectations are twofold: doctors and hospitals are expected to give medical treatment using all of their knowledge and ability, and they are also required not to hurt the patient in any way due to negligence, carelessness, or reckless behavior on the part of their staff. Though a doctor may not always be able to preserve his patient's life, he is expected to apply his specific knowledge and ability in the most appropriate way possible while keeping the patient's best interests in mind. As a result, a doctor is expected to conduct essential investigations or request a report from the patient. Furthermore, he asks informed consent from the patient before beginning any significant treatment, surgical surgery, or even invasive inquiry, unless there is an emergency. A doctor's and a hospital's failure to fulfil this commitment is essentially a tortious liability. A tort is a civil wrong (right in rem) as opposed to a contractual obligation (right in personam) - a breach that requires court intervention in the form of monetary

compensation. The right of a patient to get medical care from doctors and hospitals is thus essentially a civil right. Because of informed permission, payment of a fee, and performance of surgery/providing treatment, among other things, the relationship takes on the shape of a contract to some extent, though key tort features remain.

Persons who offer medical recommendations and treatment implicitly state that they have the power and knowledge. They need the skill to decide whether to require a case, determine and administer that treatment. This will be mentioned as an "implied undertaking" on the part of a medical professional. within the case of the State of Haryana vs. Smt Santra, the Supreme Court held that each doctor "has an obligation to act with a cheap degree of care and skill."

In the cases of Dr. Laxman Balkrishna Joshi vs. Dr. Trimbarik Babu Godbole and Anr., AIR 1969 SC 128 and A.S.Mittal v. State of U.P., AIR 1989 SC 1570, it was held that when a patient consults a doctor, the doctor owes certain duties to his patient, including: (a) A responsibility of care when considering whether or not to pursue the matter (b) a duty of care in determining which treatment to administer, and (c) a duty of care in administering that therapy.

**Negligence Per Se**

In Poonam Verma vs. Ashwin Patel and Ors. (1996) 4 SCC 322, the Supreme Court decided that a person who does not know a system of medicine yet practices it is a quack. When a person is

found to be negligent in the first place, no further evidence is required.

### **Civil Law and Negligence**

Doctors in India could also be held liable for their services either individually or vicariously unless available within the exceptions laid out in Indian Medical Association vs. V P Santha. Doctors aren't in charge of their services separately or vicariously doing not charge fees. Therefore, free treatment at a non-government hospital, governmental hospital, clinic, clinic, or home wouldn't be treated sort of a "service" as defined under Section 2 (1) (0) of the buyer Protection Act, 1986.

However, nobody is right, and even the best-known specialist can create a glitch in detecting or diagnosing truth nature of a disease. A doctor is often held liable for negligence; only one can prove that he/she is guilty of failure; if a doctor with ordinary skills won't be guilty, he/she will act with routine care. An error of judgment only causes negligence if the talented professors have a competent professional with ordinary skills in joint and cannot make an equivalent error.

In a critical decision on this matter within the case of Dr. Laxman Balkrishna Joshi vs. Dr. Trimbak Bapu Godbole, the Supreme Court stated that if a doctor has adopted an observation that's considered "proper" by an inexpensive body of medical professionals who are skilled within the specific field, he or she is going not to be held negligent only because something went wrong.

Doctors must exercise a typical degree of skill. However, they cannot guarantee the perfection of their ability or a guarantee of cure. If the doctor has adopted the right course of treatment, if she/ he's skilled and has worked in a way and manner best suited to the patient, she/ he can't be responsible for negligence if the patient isn't cured.

Certain conditions must be met before liability is often considered. The person accused has committed an act of omission or commission; The show must have violated the person's duty; this can have caused damage to the injured person. The litigant must prove the charge against the doctor by citing the most unambiguous evidence available in life science and presenting the expert's expert opinion.

In some circumstances, the complainant can invoke the principle of *res ipsa loquitur*, i.e., "the thing speaks for itself." Under certain circumstances, proof of negligence beyond accident isn't required. In Dr. Janak Kantimathi Nathan vs. Murlidhar Eknath Masane, the National Consumer Dispute Redressal Commission had applied the above principle.

The principle of *res ipsa loquitur* comes into operation as long as there's proof that the prevalence was sudden, that the accident couldn't have happened while not negligent, and lapses on the part of the doctor, which the circumstances once and for all show that the doctor and not the opposite person was negligent.

### **Criminal Law and Negligence**

Under Section 304A of the Indian legal code of 1860, it's stated that whoever causes the death of an individual by a rash or negligent act not amounting to culpable homicide shall be punished with imprisonment for two years, or fine, or with both. In the Santra case, the Supreme Court has held that liability in civil law is predicated on the number of damages; In legal code, the quantity and degree of negligence may be a factor

determining liability. However, certain elements must be established to work out the criminal liability, motive of the crime, the quantity of the crime, and the offender's character during a particular case.

In Poonam Verma vs. Ashwin Patel, the Supreme Court made a difference between negligence, rashness, and recklessness. A careless person is one who unwittingly commits an act of omission and violates a positive duty. The traitor knows the results but thinks foolishly that they're going not to be the results of his/her action. A careless person knows the consequences but doesn't care whether or not they result from his / her act. Any conduct but negligent and willful misconduct shouldn't be the topic of criminal liability.

So, a doctor can't be held liable for the death of a patient unless and until it's shown that she/ he was negligent or incompetent, with such disregard for the life and safety of his patient that it may amount to a criminal offense against the State.

Sections 80 and 88 of the Indian code provide defenses for doctors accused of criminal liability. Under Section 80 (accident in doing a lawful act), nothing is claimed to be an offense if done accidentally or misfortune with no criminal intention or knowledge to try to an action lawfully by legal means and lawful means proper care and caution. Consistent with section 88, an individual can't be accused of a criminal offense if he acts in straightness for the advantage, doesn't shall cause harm even when there's a risk, and therefore the patient expressly has agreed or with consent.

### **Burden of Proof and Chances of Error**

The burden of proof of negligence, insufficiency, or carelessness usually lies with the complainant. The law needs a certain higher standard of evidence than otherwise to support an allegation of negligence against a doctor. In cases of medical negligence, the patient should establish her/ his claim against the doctor.

In Calcutta Medical Research Institute vs. Bimallesh Chatterjee, it was held that the onus of proof that it is a case of negligence lies on the complainant. In Kanhaiya Kumar Singh vs. Park Medicare & Research Centre, the court held that failure could not be presumed; instead, it has to be established.

Even when adopting all medical procedures as prescribed, a certified doctor might commit an error. The National Consumer Disputes Redressal Commission, also because the Supreme Court, had said in several judgments that a doctor isn't responsible for negligence or medical deficiency if some wrong is caused in her/ his treatment or her/ his diagnosis if she/ he has acted following the practice accepted as proper by an inexpensive body of medical professionals skilled therein particular art, though the result could even be wrong. Among the various types of medical and surgical treatments, the possibility of accidental death cannot be ruled out. It's implied that a patient willingly takes such a risk as a neighborhood of the doctor-patient relationship and the attendant mutual trust.

### **Recent Supreme Court Judgments**

Before Jacob Mathew vs. Before Jacob Mathew vs. the State of Punjab, the Supreme Court of India has delivered two different opinions on doctors' liabilities. In Mohanan vs. Prabha G Nair and another, it dominated that a doctor's negligence might be discovered solely by scanning the material and expert evidence which may be bestowed during a trial. In Suresh Gupta's case, the

court had observed that the standard of negligence that had to be proved to fix a doctor's or surgeon's criminal liabilities, which were set as "gross negligence" or "recklessness."

In Suresh Gupta's case, the Supreme Court had stated the distinction between the error of judgment and negligence. It is believed that criminal prosecution of doctors without adequate medical opinion informing their guilt would work very well for the community. A physician may not be liable and may be tried for culpable or criminal negligence in all medical accidents or misfortune cases.

A doctor is also liable in a civil case for negligence; however, mere carelessness or need of due attention and skill cannot be described as reckless or grossly negligent as to make her/ him criminally liable. The courts held that it was necessary to create a difference so that the hazards of medical professionals being exposed to civil liability might not immoderately be a criminal liability and tell them the danger of imprisonment for alleged criminal negligence.

Therefore, the complaint against the doctor should show negligence or a degree of rigor to such a degree that a situation is indicated, which may be portrayed as a complete indifference towards the patient. Such gross negligence alone is punishable.

On 9th September 2004, Justices Arijit Pasayat and CK Thakker referred the question of medical negligence to be a better Bench of the Supreme Court. They observed that words like "gross," "reckless," "competence," and "indifference" didn't occur anywhere as defined "negligence" under Section 304A of the Indian legal code. Therefore, they may not accept as accurate with the judgment delivered in the case of Dr. Suresh Gupta.

The Supreme Court sent the issue in the case of Jacob Mathew v. State of Punjab, where the court directed the central government to formulate guidelines to protect doctors from unnecessary harassment and undue pressure in the performance of their duties. It was ruled that until the government developed such procedures, the subsequent guidelines would prevail:

A private complaint of rashness or negligence against a doctor might not be pleased without prima facie evidence in the form of a credible opinion of another competent doctor supporting the charge. Additionally, the investigating officer should give an independent idea, preferably of a government doctor. Finally, a doctor is also in remission on the condition that the investigating officer believes that she/ he would not be obtainable for prosecution unless in remission.

### Conclusion

Few would argue that delinquency in the medical sector, like in any other profession, must be dealt with harshly. It's not difficult to figure out why. It's simply a matter of establishing the parameters of "delinquency" that could result in legal ramifications. Because there are so many unknowns in medicine, the outcome of treatment is of minor importance. In the process of determining the parameters of liability, two competing interests must be balanced: one relates to a professional's freedom in arriving at a judgement, and the other relates to the victims, in which the existence of a medical professional's discretion is not sought to be foreclosed, but only its abuse and recklessness with which it may be mad. Indian courts, in attempting to strike a balance, lean heavily in favour of doctors, perhaps not unjustifiably.

Judges do not aim to impose their own expertise on medical practitioners, and the law does not aim to make any needless entrance into territory that belongs solely to them. The legal system, too, does not take a hands-off approach, scrutinizing the actions of medical professionals and seeking to punish those who fall below the minimum standard. The test for judging the minimum standard is heavily influenced by prevalent medical practices and opinions, as well as the body of knowledge available at the time. The standards are not overly high, and responsibility is strengthened by securing responsibility in some circumstances, so no one is immune to inspection. In this regard, the law zealously protects medical professionals' autonomy and fully recognizes that prescribing unduly high standards may have a chilling effect, which is undesirable; yet, the legislation also strives to defend and safeguard a patient's right to expect a minimal degree of treatment.

### Personal Opinion

The standard in this case was to examine emergency patients. I would cite Tindall C.J.'s famous judgement from 1838 to answer the question of what the standard is over the entire spectrum of medical care. "Everyone who enters a learned profession commits to exercising it with a reasonable level of care and skill. If he is an attorney, he does not guarantee that you will win your case; a surgeon does not guarantee that he will execute a cure; and a surgeon does not guarantee that he will utilize the best level of skill".

The question that most people have is why a doctor be penalized when he did not treat the patient and instead led him to another location. The answer to this question is that under English law, a hospital that claims to provide emergency services cannot refuse to perform their usual acts of treating the patient, because the law assumes that a hospital claiming to provide emergency services will respond to the public need, no matter how unpleasant it may be. This rule does not apply everywhere, as it is probably appropriate for a hospital to refuse to offer medical care, but it cannot back out if it assumes responsibility for emergency care.

### References

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