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MEDICAL NEGLIGENCE: A PATH TOWARDS FRIVOLOUS LAWSUITS?

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Abstract

The foundation for establishing a breach of duty is the expectation of a fair level of care. Furthermore, the consumerist age has penetrated the medical profession, making consumers aware of their legal needs and rights, allowing them to use it as a weapon in civil or criminal proceedings for tortuous or criminal disregard due to a lack of service in consumer courts

The Medical malpractice has become a heated topic of controversy in recent years. Doctors have become more susceptible to being sued by a lawsuit suit of any type, civil or criminal, as a result of rising awareness of a patient's rights in modern society. The concept, nature, types, civil and criminal liability, and some solutions for resolving the problem of wrongful lawsuits against doctors are all covered in the article.

Introduction

Negligence in law could be a form of tort or misconduct however it may also be a wrong in criminal and consumer law. It means that an act of conduct that's blameful as it misses the legal criteria required of a prudent person in protecting people against the foreseen risky and might cause damage, due to such omission. Negligent behaviour towards others offers them a right to be remunerated for harm of their physical and mental health, property, money status, or relationships.

Hence, negligence in law is essentially an unintentional breach of duty that proximately causes damages to a different person. The law considers those injurious acts to be culpable, in general, which a fairly prudent man would foresee as being capable of productive of injury and which he would rigorously abstain from doing.

'Medical Negligence' is defined as deprivation of reasonable care, skill willful negligence by

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the doctor in reference to decision of acceptance of the patient, patient history of medical records, examination, diagnosis, investigation, treatment in any form, etc., which results to any injury or damage to the patient. The nature of damage might be physical, mental or a financial injury to the patient.[2]

The professional can be held accountable for negligence when he did not have a skill which he claimed to have as well as when he did not perform it with reasonable care and caution like any other professional would do.[3]

The definition involves 3 components of negligence as given as in the *Jacob Mathew Case* [4]*:*

- A legal duty of due care within the defendant's conduct and scope of duty towards plaintiff.
- Breach of the legal duty of due care.
- Consequential damage suffered to the plaintiff.

As per present lawful position, a clinical expert isn't at risk to be held careless essentially in light of the fact that things turned out badly from incident or misfortune or through a mistake of decision in picking one sensible course of treatment with respect to another. He would be obligated just where his decision directly falls beneath that of the norms of a sensibly skilful specialist in his field. For example, he would be at risk, on the off chance that he leaves careful dressing inside the patient after an activity. There might be not many situations where an uncommonly splendid doctor plays out an activity or endorses a treatment which has never been attempted, to save the existence of a patient when no known strategy for treatment is accessible. In the event that the patient suffers some damage or death, should the doctor be held negligent?

Concept of Medical Negligence

Negligence as a State of Mind: Mens rea can have two different forms: negligence and malicious intent. One of the two alternative forms is fundamentally required by law as a necessary condition for establishing wrongdoer culpability. A deliberate wrongdoer, sometimes known as an intentional wrongdoer, is someone who does something with the aim of causing harm to others.[5] As a result, negligence in this type does not imply that an act was committed in order to cause them. But it means indifference or carelessness in guarding whether the act

[2] S. K. Palo, Consumer Rights relating to Medical Negligence, 2006, JMC at page xiii
[3] Martin F. D'souza v. Mohd. Ishfaq, (2009) 3 SCC 6
[4] Jacob Mathew v. State of Punjab and Another (2005) 6 SCC 1
[5] John Salmond, Charlesworth on negligence, 21 (6th Edn.)

occurs or not.

Negligence as a Careless Conduct: A careless man is one who is unconcerned or unconcerned enough that his actions will result in the loss of others. It does not suggest a breach of a responsibility to exercise caution, but rather casual behaviour on the side of the perpetrator. Negligence is the polar opposite of diligence since it involves sloppy behaviour.[6]

Negligence as the Breach of Duty to take due care: Negligence as a violation of obligation to take care is simply a failure to exercise some care that we are legally obligated to do towards someone. Professionals such as lawyers, doctors, architects, and others who possess some unique talent are covered by the law of negligence. Any work that these specialists are expected to complete necessitates a unique skill set. The blame for a medical error or failure may or may not lay with the medical practitioner.[7]

Essentials

The **duty to exercise skill** and care exists when a doctor-patient relationship is established. This relationship is formed extremely easily. It is formed by any formal acceptance of a patient by a doctor, or the payment of a fee. In case of an emergency this doctor-patient relationship is formed as soon as Doctor approaches a patient with the object of treating him.

The skill of each doctor varies. A highly experienced doctor may be negligent if he fails to apply his greater knowledge with a sufficient degree of care. Conversely, an inexperienced doctor may be negligent, if he attempts to do some procedure which is clearly beyond his capabilities. The degree of competence is not a fixed quality, but varies according to the status of the doctor on the ladder of medical profession. The very basic principle of the profession is such that there might be more than one course of treatment which might be advisable for treatment. Various doctors' opinions on the course of action to be taken by a doctor treating their patient may differ. However, as long as a doctor performs in a way that is acceptable to other specialists, the patient will be treated with due care, skill, and attention.[8]

The second essential required to be fulfilled for establishing the liability for medical negligence is that there is a **breach of the duty to take due care** on the plaintiff by the defendant. A breach of duty can occur by either not doing something or doing another act that a reasonable

[6] *Ibid*
[7] *Supra Note 3*
[8] Achutraq H. Khodwa v. State of Maharashtra AIR 1996 SC 2383 at para 15.

and prudent and logical person would do in the same situation.[9] The breach of duty must have resulted in consequential damages to the plaintiff. The onus of providing the negligence is on the plaintiff. He must not only show the defendant's negligence and his personal harm, but also that the harm was caused by the defendant's negligence.[10]

In case of negligence the plaintiff should prove not merely that the defendant was negligent but also that there was **actual damage.** This damage must be resulted to the defendant in consequence of negligent act which was the direct and near cause of damage. Damages are awarded to recompense the plaintiff for the harm he has suffered and to put him in a position if the injury had not occurred in the first place. In actions of tort, compensation is the principle of Redressal and the measure of damages is the exact amount of the injury which the plaintiff had suffered in his person, earnings, life expectancy, etc. [11]

Case Laws

In medical negligence, the judges find it very difficult to decide the case as they are not specialists in this field and they have to wait for the reports of the experts. Despite the efforts of the legislature to take certain laws which in one way or another can provide a framework for taking a leap, and also be interpreted by the judiciary for as many decades, has not been finally settled what should be the method used for making decision in the case of medical negligence.

1. Jacob Mathew Case [12]

Negligence by act or omission is a breach of an obligation to do or not do anything that a sensible and reasonable person, influenced by these criteria, would do or not do. In the medical field, negligence needs a one-of-a-kind treatment. Additional considerations apply when determining whether a professional, particularly a doctor, acted recklessly or negligently. A case of professional negligence is not as a case of negligence. Simply put, a lack of care, a lapse in judgement, or an accident is not proof of a medical professional's carelessness. When it comes to failing to take precautions, men's common experience has proven to be sufficient; a failure to take specific or unusual precautions, which may prohibit the special from being done, the standard cannot be assessed for the alleged negligence. When evaluating the practice as

[9] Poonam Verma v Ashwin Patel (1996) 4 SCC 332; AIR 1996 SC 2111 at para 16.
[10] *Supra Note 3*
[11] W. Wyatt-Paine, The Law of Torts, 140 (7th Edn., 1921)
[12] *Supra Note 3*

implemented, the standard of care is appraised based on the existing knowledge at the time of the incident, not on the date of the test. Similarly, if the negligence charge is based on a failure to use specialised equipment, the case would crumble if the equipment was not available to the general public at the time (that is, at the time of the incident) when it was supposed to be used.

2. V. P. Shantha Case [13]

Section 2 (1) (o) of the Consumer Protection Act of 1986 explains that, the services provided by doctors and hospitals are defined as "Service." All kinds of doctor services, except when they are offered free of charge to all of the personal service and under contract, fall under the concept of service in law. A contract of personal service cannot be established in the absence of a master-servant relationship and the service of hospitals and doctors, and services supplied free of charge to all are outside the jurisdiction. The payment of the fees token will have no effect on the nature of such hospitals' benefits, non-governmental hospitals' services, or the costs charged to use services under the Act. People who are in a position to pay for a level of treatment that is within the scope of the law, notwithstanding free services to those who are not in a position to pay, fall within the Act in hospitals where charges are made. The law does not apply to public hospitals, which provide services at no expense to everyone. However, at public hospitals, services are provided free of charge and in exchange for payment of a fee, as required by law. When the cost of medical insurance benefits is paid on behalf of insured patients, the type of service used by people does not shift from free to paid. Also, the usage of relatives of such services, as well as the payments for this service that the employer pays as part of the service's terms and conditions, is not a free service.

Consumer Aspect of Medical Negligence

All medical services are covered by the Consumer Protection Act of 1986. In the case of a service failure, the interests of customers are protected. Any flaw or imperfection or shortcoming or inadequacy in the quality, nature, or manner of performance that is to be maintained by or under any law in force presently or has been undertaken to be performed by a person in pursuance of a contract or otherwise about any service is defined by Section 2 (1) of the Consumer Protect Act 1986.The patient's ECG was abnormal in *Indrani Bhattacharjee Case*

[13] Indian Medical Association vs V. P. Shantha and Others (1995) 6 SCC 651

[14] and the doctor failed to advise him to see a cardiologist and quit smoking and drinking, instead providing him drugs for a gastrointestinal condition, resulting in a service defect.

A doctor cannot be held liable if they perform a treatment or service without charging their patients, whether individually or vicariously and under Section 2(1)(o) of the Consumer Protection Act of 1986, free treatment in a government or non-government hospital, health care facility, dispensary, or nursing home does not qualify as a service. Furthermore, the contract of service is exempt from the Consumer Protection Act's coverage. Patients who received free services or only paid a small registration fee will not be able to take advantage of the Act, but patients who had their charges waived owing to their inability to pay are deemed consumers and have the right to sue under the Consumer Protection Act.

V. P. Shantha Case [15] stated that even though the services supplied by the doctor or medical practitioner are personal in nature, the patients cannot be classified as personal service contracts. They are service contracts that allow a doctor to be sued in the Consumer Protection Courts.

Criminal Aspect Of Medical Negligence

The subjective state of mind of a guilty mind is the crucial criteria in charging a doctor with criminal negligence. P.B. was an example of this. "The only state of mind deserving of punishment is one that demonstrates an intention to damage others or a conscious willingness to put others in danger," the Supreme Court properly stated in *P.B Desai case*[16] Thus, negligent behaviour does not imply a purpose to hurt, but rather a deliberate act that exposes someone to the danger of injury, even if the actor is aware of the risk and chooses to persist despite it."

"For prosecution of a medical practitioner for negligence in criminal law, it must be established that he/she did or did not to do something that no medical professional in his right mind would have done or failed to do, given the facts and circumstances," the court ruled in another case. The doctor's risk should have been sufficient that the resultant damage was almost certain to happen [17]."

Cases of medical negligence are frequently filed under **section 304-A of the Indian Penal Code,** which makes a hasty and negligent act punishable by two years in prison, a fine, or both,

[14] Indrani Bhattacharjee v. Chief Medical Officer and Ors II CPJ 342 UP S.C.D.R.C., 1998.
[15] *Supra Note 12*
[16] P.B Desai v. State of Maharashtra and Others (2013) 15 SCC
[17] Johari V. Professional misconduct or criminal negligence: when does the balance tilt? Indian journal of medical ethics. 2014 Apr 1;11(2

even if it was not intended to cause death or there was any likelihood that it wouldIn the well-known case of *Suresh Gupta (Dr) v. Govt. of NCT of Delhi* [18] the degree of carelessness required to be shown against a doctor under section 304A was placed at such a high level that it might be described as "gross negligence" or "recklessness," rather than just a lack of sufficient care.

To protect practitioners from responsibility for actions taken in utmost good faith, some inherent immunity provisions have been carefully created. Section 88 of the Code talks about that exemption for behaviour not intended to cause death but done by consent in good faith for the benefit of a person. If the patient is unconscious, mentally ill, or gravely ill, Section 92 allows treatment without the patient's permission. Full disclosure requirements may not apply if the time required for disclosure would pose a significant risk of harm to the patient or third parties. It is assumed that the operation and operation are performed to save the patient's life or limb. Surrogate and proxy consent should be obtained if at all possible."

The court went on [19] to say that "although the doctor is usually criticized to adopt a procedure that contains a high risk, but which he honestly believes would provide more odds of success for the patient than a treatment involving lower risk but greater chances of failing, also just because a professional took a higher level of risk in view of the severity of the illness to save the patient's life but did not accomplish the desired result does not mean he or she was negligent."

Conclusion

Despite the fact that doctors are revered as gods, patients believe that they will improve and be healed as a result of the treatment they receive. However, it is not uncommon for doctors to make mistakes that cost patients a great deal in a variety of ways. Furthermore, in other cases, their errors are so harmful that the patient is forced to deal with problems and endure a great deal of suffering.

People are losing faith in the medical profession as a result of several serious medical malpractice incidents in which patients have been rendered incapacitated for the rest of their life. For the medical profession, some serious introspection and analysis is essential. It has completely failed to govern itself. Medical ethics must be modified and developed in order to serve in a completely ethical manner.

[18] Dr. Suresh Gupta vs. Govt of NCT Delhi, AIR 2004, SC 4091: (2004) 6 SCC 42
[19] Sharma K. Ors. vs. Batra Hospital and Medical Research Centre and Ors (2010) 3 SCC 480

The doctor's abilities vary from one individual to the next. As a result, a doctor's "negligence cannot be imputed to him as long as he performs his skills to the best of his ability and with necessary care and caution." The doctor would not be accountable simply because he chose one method of action over the others available provided the course of action he chose was accepted to the medical profession.

Suggestions

The existing system has a number of major flaws, but they are not the same as those commonly reported in the media. There is little evidence for experience or autonomous learning, and none warns medical negligence lawsuits to prevent injuries, in contrast to other areas of personal damage covered by tort law. This is a severe flaw, especially since injury prevention is frequently described as an objective, and not the first concern of tortious liability.

Below are some Suggestions:

a) To make a New Legislation
b) Need to Establish Medical Negligence Tribunal System
c) To adopt 'No-Fault' Compensation Programme
d) Fixing the Cost of Treatment within Affordable Limit
e) Patient-Centred Approach
f) To Improve Quality of Service
g) Moral Education of Health Care Provider
h) To Provide Adequate Compensation in Cases of Gross Medical Negligence
i) Establishment of in House Committee for Redressal of Complaint of Medical Negligence.

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