



# INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

## CLOAKS OVER CONVICTION: AN ANALYSIS OF INDIAN LAWS ON MEDICAL NEGLIGENCE

-Sukhman Kaur\*

-Dr. Namah Datta \*

\* Research Scholar, LL.M (Chandigarh University).

\* Assistant Professor, UIILS (Chandigarh University).

### ABSTRACT

*A person in a profession is generally seen to be knowledgeable in that area; a patient seeking medical treatment from any doctor could reasonably anticipate improvement in his condition and should anticipate at the very least that the doctor would exercise reasonable care in carrying out his obligations. To put it simply, medical negligence occurs when a doctor or other medical professional fails to exercise reasonable care, which in turn causes patients to suffer injury. In recent decades, medical negligence has emerged as a major issue in the country. There have been other cases when practitioners who were either incompetent or poorly trained willfully caused harm to their patients. Tort law, the Indian Penal Code, the Indian Contracts Act, the Consumer Protection Act, and other legislation all provide for punishments for medical negligence. The legislation does not place restrictions on how high of standards may be adopted; rather, it sets out the bare minimum that must be met in order to treat patients in any way. This paper's primary objective is to evaluate the Indian legislation surrounding medical negligence in order to better understand the nature of medical negligence from a purely legal perspective in India. It also defines medical negligence and analyses important court rulings made in India. The approach used here is doctrinal, drawing inspiration from a wide range of primary and secondary resources on medical negligence legislation in India.*

**Keywords:** Medical Negligence, reasonable care, consumer protection, malpractice, negligence, torts.

\* Research Scholar, LL.M (Chandigarh University).

\* Assistant Professor, UIILS (Chandigarh University).

## INTRODUCTION

There are over 52 million medical injuries reported annually in India, with an estimated 98,000 lives lost each year as a direct result of preventable medical errors. The fact that 10 individuals every minute in the country suffer from medical negligence and more than 11 people per hour die as a result of this medical mistake is a major cause for worry for the whole country.<sup>1</sup> We are shifting our perspective on medical services and medical professionals as a result of the dramatic changes taking place in medical legislation today. There has been a gradual erosion of physicians' once-immortal, God-like stature. These days, visits to the doctor are more regulated and official affairs. There have been major conceptual shifts with important legal and ethical implications for the medical field. Therefore, unprofessional, unskilled, incorrect, or negligent treatment of patients by their doctor, dentist, nurse, or other health care providers constitutes medical negligence, often known as medical malpractice.<sup>2</sup> Medical negligence occurs when a doctor or other medical practitioner fails to exercise reasonable care in treating a patient, whether it in making a diagnosis, performing surgery, administering anaesthetic, etc.

## MEDICAL NEGLIGENCE: DEFINITION AND ESSENTIALS

To put it simply, negligence is the absence of ordinary care. When a lawsuit is brought against a doctor for medical negligence, the patient who has incurred damage is the plaintiff and the doctor who is seeking to defend themselves is the defendant. In most contexts, "medical negligence" refers to a provider's failure to meet the applicable "standard of care" that would be expected of a reasonably competent medical professional practising in the same field. Disability that arises as a consequence of a doctor's failure to use "reasonable care" and competence in treating a patient.<sup>3</sup>

There are three components of negligence<sup>4</sup>:

- **"The defendant owes a duty of care to the plaintiff."**

A physician has an obligation to use "reasonable skill and care" while treating a patient. The obligation may be contractual or based on tort law. The doctor's duty of care for the patient includes the following: not accepting a case that can't be treated successfully; giving the case careful consideration when deciding what kind of therapy to administer; and communicating with the patient during the course of treatment. Finally, the practitioner should use extreme caution and thoroughness over the course of this treatment.

- **"The defendant has breached this duty of care."**

The doctor may not be thorough in any of the previously described steps. If this occurs, and the patient suffers any kind of harm to their person or their legal rights, the doctor has broken their "duty of care" to them.

<sup>1</sup>PTI, "98,000 people lose their lives because of medical negligence?", India + Medical times, May 25, 2016, available at <http://www.indiamedicaltimes.com/2016/05/25/98000-people-lose-their-lives-because-of-medical-negligence/> (Last visited on January 7, 2023).

<sup>2</sup> Charles Worth & Percy, *Negligence*, 559 (Christopher Walton, 14th ed., 2019).

<sup>3</sup>H.M.V. Cox, *Medical Jurisprudence and Toxicology*, 77 (EBC, 6th Edn., 1990).

<sup>4</sup>*Jacob Mathew v. State of Punjab and Another* (2005) 6 SCC 1.

➤ "The plaintiff has suffered an injury due to this breach."

It is essential that the patient, who is the plaintiff in this case, has experienced some kind of injury when the breach occurs.<sup>5</sup>

## LAWS AGAINST MEDICAL NEGLIGENCE IN INDIA

Laws pertaining to medical negligence in India may be broken down into three categories: criminal remedies (as outlined by the Indian Penal Code, 1860); civil remedies (as outlined by the Consumer Protection Act, 2019) and tort law. An analysis of the above-mentioned medical negligence laws is provided below:

### *Medical Negligence Under Criminal Law: The Indian Penal Code, 1860*

According to "Section 304A of the Indian Penal Code of 1860"<sup>6</sup>, "*whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*"<sup>7</sup> The doctor may be held legally responsible for either deliberate intent or gross negligence if anaesthetic errors result in death.<sup>8</sup> The physician is often also vicariously liable for the patient's condition. The idea of "Vicarious Liability" in Tort law would hold both the doctor and his employee responsible for a patient's death that was caused by the employee's reckless actions (the doctor has the liability to keep an eye on the employee). Patients may seek redress, but physicians may also have avenues open to them to establish their innocence.

"A physician cannot be held criminally liable for a patient's death unless it can be proven that she or he was negligent or incompetent, showing such disregard for the life and safety of her or his patient that it amounted to a crime against the State", as stated in a decision<sup>9</sup> from the House of Lords.

For physicians facing criminal charges in India, sections 80 and 88 of the Penal Code provide potential legal defences. "*Nothing will be considered an offence that is done by accident or misfortune and without any criminal purpose or knowledge in the performance of a legal act in a lawful way by authorised means and with due care and caution*"<sup>10</sup>, as provided for in Section 80 (accident in doing a lawful act).

An individual is not guilty of an offence under Section 88 if "*she or he acts in good faith for the other's benefit, does not intend to cause damage even if there is a danger, and the patient has provided either express or implied consent.*"<sup>11</sup>

In the case of "*Kurban Hussein Mohammedali v. State of Maharashtra*"<sup>12</sup>, which involved section 304A, IPC, 1860, it was ruled 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.*" It

<sup>5</sup>Ibid.

<sup>6</sup> The Indian Penal Code (Act no 45 of 1860), S. 304A

<sup>7</sup> K. K. S. R. Murthy, "Medical Negligence and the Law", 4, *Indian Journal of Medical Ethics*, 116, (2007).

<sup>8</sup> *Jagdish Ram v. State of H.P* (2007) AIR (NOC) 2498.

<sup>9</sup> *R v. Adomako* (1994) 3 All ER 79 (India).

<sup>10</sup> The Indian Penal Code (Act no 45 of 1860), S. 80.

<sup>11</sup> *Id.*, s. 88.

<sup>12</sup> 1965 AIR 1616

was decided in “*Kanhaiya Kumar Singh v. Park Medicare & Research Centre*”<sup>13</sup> that “*negligence has to be established and cannot be presumed*”. It is abundantly obvious from the judgement that the burden of proof regarding negligence and resulting damage rests squarely on the patient.

### ***Medical Negligence under the Civil Law: The Consumer Protection Act, 2019***

The question of whether or not medical services are included in the definition of “Services” as under “section 2(1) of the Consumer Protection Act” has been the subject of much inquiry and debate since at least 1990. As being used here, “deficiency of service” refers to “*any flaw, imperfection, shortcoming, or inadequacy in the quality, nature, or manner of performance of any service that is mandated by or under any law currently in effect, or that has been undertaken to be performed by a person pursuant to a contract or otherwise.*”

If you're wondering where you may lodge a complaint, the answer is as follows:

1. If the value of the services and compensation requested is less than 20 lakh rupees, you can do so at the District Forum;
2. If the value is more than 20 lakh rupees, you can do so in the State Commission;
3. If the total cost of the items and the compensation is more than 1 crore rupees, the matter must be brought before the National Commission.

Bolam’s Test, articulated by McNair J. in Bolam’s case<sup>14</sup>, is used to assess whether or not a doctor has committed medical malpractice. A negligence is not negligent if his actions are in line with what other qualified medical professionals in the field have generally agreed are appropriate. To rephrase, “*just because there is a body of opinion that takes a contrary view does not make a doctor negligent if he is acting in accordance with such a practise.*” The “*Suresh Gupta v. Govt. of NCT Delhi and Anr.*”<sup>15</sup> and “*Jacob Mathew case*”<sup>16</sup> established the validity of this procedure in India.

The District consumer redressal panels have a low filing cost, which is a beneficial aspect. The Supreme medical's ruling in “*Indian Medical Association v. V.P.Shanta &Ors*”<sup>17</sup> in 1995 included healthcare services among those considered “services” under the Consumer Protection Act of 1986. As part of the ‘procedure-free’ consumer protection, this outlined interaction between consumers and medical professionals by allowing individuals to sue physicians under contract if they suffered damage during treatment.

### ***Medical Negligence under Tort Law***

It might be argued that Tort Law starts where the Consumer Protection Act terminates. Tort law under negligence allows patients to seek compensation from doctors and hospitals whose treatments do not qualify as “services” under the COPRA. The patient has the burden of proof here, and must show that his injuries

<sup>13</sup> (1999) CPJ 9 (NC) (India).

<sup>14</sup> *Bolam v Friern Hospital*. (1957) 2 AllER 118.

<sup>15</sup>[2004] 6 SCC 422.

<sup>16</sup>*Supra* note 4.

<sup>17</sup> 1996 AIR 550.

were caused by the doctor's or hospital's negligence. This concept applies even if doctors and hospitals give care for free, under tort law.<sup>18</sup>

Cases of medical negligence include, but are not limited to: the administration of the wrong medication, the removal of organs without the patient's permission<sup>19</sup>, the use of an improper surgical technique<sup>20</sup>, and the transfusion of blood from the wrong blood type<sup>21</sup>. When someone offers medical advice or treatment, they are making an implicit claim that they are competent to do so. This includes the ability to evaluate a situation, choose an appropriate course of treatment, and carry it out. There is an "implied undertaking" here on the side of the doctor.

According to the Supreme Court's decision in *"State of Haryana v. Smt Santra"*<sup>22</sup>, *"every physician has a duty to act with a reasonable degree of care and skill. However, no human is perfect, and even the most renowned specialist can make a mistake in diagnosing a disease; therefore, a doctor can only be held liable for negligence if it can be shown that he or she is guilty of a failure that no doctor with ordinary skills would be guilty of if acting with reasonable care."*

Multiple conditions must be satisfied before any consideration of blame may be granted. It is required that *"the accused have committed an act of omission or commission, and this act must have been in violation of the accused's duty, and this breach of duty must have resulted in damage to the injured party for a person to be found guilty."* The accuser of the doctor must provide proof of his or her claims, such as medical studies and the opinion of another doctor, in order to be taken seriously.<sup>23</sup>

### **Res Ipsa Loquitur: "The thing speaks for itself"**

The presumptions underlying this theory are as follows:

- (1) the character of the harm suggests that it could not have occurred in the absence of negligence;
- (2) The patient did not cause the harm to himself.
- (3) The doctor was in charge when the injury occurred.

For damages to be awarded, the injured party must show that the doctor's duty of care was breached and that he did not establish reasonable standards of care. The court acknowledges the existence of negligence by using this approach. Medical negligence may be shown if the doctor does not provide a rebuttal. The mere fact of an accident may be sufficient evidence of negligence in some situations. This rule was used by the

<sup>18</sup>Smreeti Prakash, "A Comparative Analysis of various Indian legal system regarding medical negligence." *International Journal of Law Management & Humanities*, 44, (2020).

<sup>19</sup> *C. Sivakumar v. Dr. John Mathur & another* III (1998) CPJ 436

<sup>20</sup> *AH Khodwa v. State of Maharashtra* (1996) ACJ 505 (SC)

<sup>21</sup> *RP Sharma v. State of Rajasthan* AIR 2002 Raj. 104

<sup>22</sup> (2000) AIR SC 1888

<sup>23</sup>*Dr. Lakshman Balkrishna Joshi v. Dr. TrimbakBapu Godbole*, AIR 1969 (SC) 128



NCDRC in "*Kantimathi Nathan v. Murlidhar Eknath Masane*"<sup>24</sup>. For this concept to apply, it must be shown that the event was unforeseen and could not have occurred without the doctor's negligence.

The following are some examples of instances involving res ipsa cases:

- A practise that involves leaving a foreign item within the body of a patient after they have undergone surgery.
- In the event that the incorrect patient is operated on.
- In the event that the surgeon operates on the incorrect portion of the patient.

## CONCLUSION

The study discussed before makes it very clear that India's existing method of dealing with medical negligence warrants some kind of scrutiny. In addition to the problems in the medical field that are already well-known, such as the ever-increasing cost of medications and surgical procedures, the dearth of new inventions and research, and the challenge of locating appropriately trained medical professionals in rural areas, this is another aspect of the medical field that deserves serious acknowledgement and discussion. When one takes into account the additional expenses of litigation, transportation, missed pay, and so on that a complaint is required to bear, the matter becomes even more complicated. Even if a patient who was the victim of medical negligence makes a full recovery, the expense of repairing the errors that were made may still place the victim's family in a challenging financial situation.

When it comes to matters of medical negligence, other countries have far more stringent laws on the books than India has. This raises the question: if other nations are able to accomplish this goal, why is India unable to? Why is it unable to set laws that are so rigorous that no one is ever murdered as a result of negligence? Under Indian law, the burden of proof rests fully on the shoulders of the patient who is initiating the medical negligence, in situations in which it is claimed that a healthcare provider acted negligently. However, the patient who alleges that the negligence was negligent has the burden of evidence, and the legislation demands a greater degree of proof than is often required. In this situation, it is very difficult for a normal person or a patient to evaluate the entire amount of the damage and to establish a direct relationship between the harm and the negligence of the doctor.

Because anything may happen at any time in a human body, the burden of evidence does not move to the defendant; rather, it shifts back to the patient who feels the doctor is to blame. Therefore, it is necessary for a change in the law that governs medical negligence to place the requirements of patients as the first priority. Patients need to be informed about their rights in the event of medical negligence by civic society via an established channel of communication, and this education should take place.

In a nation that has (a) a terrible investment in health, (b) the absence of human resources, (c) a huge gap between urban and rural health care, and (d) poor political will to improve the health sector, it would be

<sup>24</sup>2002 (2) CPR 138.

prudent to implement a no-fault liability system within the public health sector and have caps on the types of compensation after research and discussion. It is imperative that the government quickly take decisive action and get started supporting healthcare programmes in order to avert a disastrous catastrophe in the health care system. The existing system that India uses to deal with cases of medical negligence has to be updated by making all of the necessary adjustments, as described above.

In light of the growing number of cases of medical negligence across the country and the absence of any comprehensive policy from the federal government regarding the issue, the only factors that have a chance of helping to preserve both lives and the integrity of medicine as a profession are increased public awareness, a more equitable distribution of responsibility, and the development of more effective solutions for the general public. There is still time for the administration to take action and make improvements to the healthcare system. We need new rules that target what is now being labelled "medical terrorism" and penalise those involved rather than the present system for resolving complaints of medical negligence.<sup>25</sup>

It takes a human to make a human error. Mistakes may be made by anybody, even the most diligent of doctors. The gravest sin, however, is to commit an error and then to compound it by denying it, being indifferent to it, refusing to provide aid, or emotionally harassing the victim. Sometimes irresponsible doctors get away scot-free because there wasn't enough of an investigation done, and sometimes patients lie about what happened to them. There is a need for more stringent standards that will hold the perpetrators accountable and penalise them in order to deter doctors from irresponsibly endangering the lives and health of their patients.

<sup>25</sup>Ankuran Dutta, "Stop Medical Terrorism: If not Medical Terrorism, What is it?", available at <http://smt.armt.in/2016/05/if-not-medical-terrorismwhat-is-it.html> (Last visited on January 8, 2023).