

MEDICAL NEGLIGENCE AND CRIMINAL LAW: AN INDIAN PERSPECTIVE

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ABSTRACT

Medical negligence is an act or omission by which medical providers or health care institutions cause harm to the patient. Medical negligence is a term that is not defined under any Indian law, but there is of huge importance to this because due to negligence of medical practitioners a person can lose his life. Where term medical negligence is so wider that can't be described easily. The aim of the article is to describe medical negligence in terms of criminal law, and the necessity to improve the criminal legislation, so patients may get fast remedies for their damages.

Keywords: Negligence, Criminal law, law.

INTRODUCTION

"In my opinion, our health care system has failed when a doctor fails to treat an illness that is treatable."

- Kevin Alan Lee

Medical negligence has become a very serious issue in India. "Negligence refers to the omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do or the doing of something which a reasonable and prudent man would not do."¹ Failure to meet a standard of behavior established to protect society falls under negligence. In tort liability negligence are the cornerstone and key factor in most personal injury and property damage trials. According to Wikipedia, "Negligence is a failure to exercise appropriate and /or ethical ruled care expected to be exercised amongst specified circumstances". Going for its dictionary meaning, it's 'lack of care' or 'not being careful enough. The term medical negligible refers to the wrongful actions or omissions of a medical practitioner in the field of medicine. As we can say a doctor has ruled out a wrong diagnosis with treatment leading to the endangerment of life. But a doctor is always not liable in all the cases, where a patient has suffered an injury. The

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¹ According to Black's law dictionary

judgment of medical negligence falls under two categories that can be of as an error of judgment or the error of judgment due to negligence. It has a wide array of ranges to be explored in this area. Some of the common categories that have fallen under this are wrong diagnosis, delayed diagnosis, error in surgical procedures, or making a wrong differential diagnostic chart.

Going for its judgment that it will fall under negligence or not, we can say a doctor has opted for a method for the treatment which is riskier but if successful it will provide a greater chance of success for the patient. If the method didn't yield the desired result it will not fall under medical negligence. Going for the second scenario, a patient undergoing surgical procedures had a loss of life due to doctor negligence like wrong suturing or improper anesthesia will fall under medical negligence. In that situation, a medical practitioner or the health care set-up shall be held liable for all the actions against the patient where they have not taken the proper standard of care and it results in suffering to the patient part. Over the decade there is an increase in such cases and the reason behind it can be ruled as an adaptation of commercialization and corporate culture value. Doctors are generally seen as a healer and it can't be denied that the livelihood of doctors and the medical fraternity depends on patients. But due to new adaptations, this age old sanctity has not remained the same and this is a matter of great concern in the medical field. As there is an increasing trend in medical litigations, The Supreme Court has laid down guidelines for the criminal prosecution of doctors. It has also decreased the unnecessary legal medical issues and clarified the nuisance over the allegations of medical negligence.

“Profession in the present use of language involves the idea of an occupation requiring either purely intellectual skill, or of manual skill controlled, as in painting and sculpture, or surgery, by the intellectual skill of the operator, as distinguished from an occupation which is subsequently the production or sale or arrangement for the production or sale of commodities. The line of occupation may vary from time to time.”²

MEDICAL NEGLIGENCE IN CRIMINAL LAW

When we talk about medical negligence under criminal law it is described under,

1. “Section 284 Negligent conduct with respect to poisonous substance”³

² SC held in Indian Medical Association V. V.P. Shantha and others / 1996 AIR 550, 1995 SCC (6) 651

³ INDIAN PENAL CODE, 1860

2. **“Section 304A Causing death by negligence”**⁴
3. **“Section 337 Causing hurt by act endangering life or personal safety of others”**⁵
4. **“Section 338 Causing grievous hurt by act endangering life or personal safety of others.”**⁶

In the case of “Poonam Verma v. Ashwin Patel”⁷ the Apex Court distinguished between negligence, rashness, and recklessness. “A person is said to be a negligent person when he/she inadvertently commits an act of omission and violates a positive duty that he/she should have performed otherwise. A reckless person knows the repercussions of his/her acts but stupidly thinks that they will not occur as a consequence of her/ his act. Any conduct falling short of recklessness and deliberate wrongdoing should not be the subject of criminal liability”. Honorable Apex court said that person entitled to practice homeopathy was prescribing allopathic medicine and which results in the death of the person, which is gross negligence, and hence court held the doctor liable for negligence.

MEDICAL NEGLIGENCE LAW NEEDS REFORMS

- Public awareness of medical negligence is growing in India day by day. The number of complaints against health care providers and cases of medical negligence is increasing. After 75 years of independence and about 135 years from the first case of medical negligence in India (Sukaroo Kobiraj v. The Empress⁸), no medical negligence Act is enacted in the country.
- Where for the case of medical negligence there should be a medical tribunal that was merged by any other tribunal (national green tribunal) for the fast remedy of the cases and for the justice on time, someone said “justice delayed is justice denied”.
- Under the Medical Council Act, 1965 there is no provision to penalize a doctor for the negligence that he has done.
- Where many times the medical council cancels the registration of a doctor temporarily or permanently if he or she is found guilty, but they don't have the power to order compensation to the victim.

⁴ Indian Penal Code, 1860

⁵ Indian Penal Code, 1860

⁶ Indian Penal Code, 1860

⁷ AIR 1996 SC 2111

⁸ 30 April, 1887, (1887) ILR 14 Cal 566

- Ordinarily, cases of medical negligence can't be filed under criminal court because there are laws to safeguard a medical practitioner under section 88 of IPC 1860.
- A private complaint against a doctor may not be entertained unless the complainant produces prima facie evidence before the court and an opinion from the expert who is competent to the doctor but due to lack of evidence the complaint got rejected.
- Now there are many doctors who buy a degree and get a license, but with no knowledge and skill and they make negligence because they are not as competent as the doctors with high knowledge and skill. There should be strict law regarding this.

CONCLUSION

Through this paper, I can conclude that medical negligence is a very serious issue in society nowadays. As patient deaths increasing day by day and this is becoming a threat to mankind. Many people are slowly losing faith in the medical profession because there are lots of cases arising of medical negligence, and the law is not so proper to punish the people who are negligent in their service. In order to save or protect the right of life of people, we need to establish an effective legal mechanism, where every case should be investigated properly and on time. Law is there for negligence but not specific for medical negligence in our country, if there is a law for punishment then there is a way to avoid it also by using other laws.