

## ANALYZING MEDICAL NEGLIGENCE IN THE CONTEXT OF THE INDIAN LEGAL SYSTEM

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### ABSTRACT

*The medical profession is considered a noble profession because it helps in preserving life. We consider life a gift from God. As a result, a doctor plays his role according to god's plan. The majority of the time, a patient bases their decision on reputation when selecting a doctor or hospital. Patients expect two things from their doctors and their medical facilities: first, that they will treat them with the knowledge and skill at their disposal, and second, that they won't in any way cause harm to them by negligence, carelessness, or recklessness. Nevertheless, a doctor cannot always save his patient. Then, this connection adopts the form of a contract while preserving the fundamental components of a tort. There are various cases that showcase the negligence of the medical fraternity toward their patient. There's a lack of duty of care on part of the doctors. All this overall becomes a part of medical negligence. However, there is a pressing need to stop the rising trend in medical malpractice lawsuits and the declining standard of healthcare in India. Studying determined cases of medical negligence can offer insight into the causes of such cases, the primary contributing elements, the effects of the doctor-patient interaction, etc. The goal of the current paper is to investigate the idea of negligence in the medical field in relation to the Indian Supreme Court's legal interpretation.*

**Keywords:** Duty of Care, Negligence of Doctors/Hospitals, Legal Provisions for Patients, Supreme Court's Interpretation.

### INTRODUCTION

"No Doctor knows everything. There is a reason why it is called "practicing" medicine". In recent years, medical malpractice has emerged as one of the nation's most critical problems. Even the highly regarded medical field is not immune to neglect, which regularly leads to the patient's death, complete or partial disability, or any other suffering that has a negative impact

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on their health. Legal action against doctors with insufficient education has occasionally been taken depending on the severity of their negligence or intentional behavior.

In a recent case of *Flora Madiazagane v GG Hospital and others*<sup>1</sup>, the Madras High Court highlighted that the hospital and doctors were aware of the woman's medical history but nonetheless went forward with the surgery without taking the necessary precautions. It should come as no surprise that even the smallest error by a physician can have a profound impact on the patient's life. Therefore, it is a doctor's responsibility to exercise due caution to prevent such events.

### **MEDICAL NEGLIGENCE**

A health professional's mistakes or incompetence could result in relatively minor injuries, more serious injuries, or even fatalities. Since nobody is perfect, mistakes can be made by even those who have expertise and experience in a particular sector. Everyone makes mistakes occasionally, but repeatedly repeating the same mistake requires neglect. It is usually shown that doctors or other medical personnel did not take reasonable care when making diagnoses, carrying out surgeries, providing anesthetics, etc. This is the main cause of medical negligence. A person who presents himself as willing to offer medical advice and treatment implicitly undertakes that he is qualified to do so. A surgeon does not promise to perform a cure, nor does he promise to use the highest level of skill; rather, he promises to bring a fair, reasonable, and competent level of skill and care. This individual owes the patient various duties when they are consulted, including (i) a duty of care in deciding whether to take on the case, (ii) a duty of care in determining what treatment to deliver, and (iii) a duty of care in administering the therapy. The patient has the legal right to sue for negligence if any of these obligations are broken.

Thus, medical negligence is the poor or incompetent handling of a patient by a medical professional. This covers carelessness on the part of a nurse, doctor, surgeon, pharmacist, or another medical professional. Medical malpractice occurs when a patient is injured as a result of receiving treatment from a doctor or another healthcare provider, which is referred to as medical negligence.

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<sup>1</sup> Upasana Sajeew, 'Botched Up Surgery: Madras High Court Directs Infertility Treatment Hospital To Pay ₹40 Lakh Compensation To Srilankan Woman' (Live Law, 14 February 2023) <https://www.livelaw.in/news-updates/madras-high-court-directs-infertility-treatment-hospital-to-compensate-sri-lankan-woman-botched-up-surgery-221531?infinitescroll=1>.

Here are some instances of medical malpractice:

1. Improper medication administration.
2. Doing an improper or incorrect kind of surgery.
3. failing to offer sound medical counsel.
4. Leaving a sponge, bandage, or another foreign object within the patient's body following surgery.

### **ESSENTIALS OF MEDICAL NEGLIGENCE**

The phrases "medical negligence" and "negligence" are combined to form the phrase. Only failing to use reasonable care is negligence. The same rules apply to medical malpractice. Only the doctor is the defendant in cases of medical negligence.

**The following elements are necessary in a case of negligence:**

1. The defendant owed the plaintiff a duty of care.
2. The defendant disregarded this duty.
3. The plaintiff suffered harm as a result of the breach.

**The duties of care that a doctor owes to his patients are as follows:**

1. It is up to him to decide whether he wants to take on the case,
2. It is up to him to select the type of treatment to offer, and
3. It is up to him to choose the course of action.

If the doctor violates any of the aforementioned requirements, the patient has the right to sue the doctor. A breach of duty occurs when a doctor does not give the standard of care that a prudent doctor would.

### **DOCTOR'S DUTY TO ATTEND TO THE PATIENT**

A doctor would be held accountable if they neglect to treat a patient in the hospital's emergency room and they suffer or pass away. The petitioner's son was involved in an accident while

traveling on a scooter from Agartala to Udaipur in *Shishir Rajan Saha v. State of Tripura*<sup>2</sup>. He was checked into the hospital's Emergency Room. The senior specialist doctor was constantly summoned, but he was preoccupied with his own patients and did not care to come to the hospital. The injuries caused the petitioner's kid to pass away. The physician was ordered to pay Rs. 1,25,000 in damages.

### **CARE OBLIGATIONS TOWARD THE PATIENT**

In circumstances of medical negligence, a doctor has a duty of care to take reasonable precautions to protect another person from injury (patient). In general, doctors have a duty to look after their patients. For a duty of care to be established, certain conditions must be met. These are what they are:

1. A doctor is not expected to treat everyone, but when he accepts a case, he must treat it carefully and in accordance with the established standard of care. It is appropriate for a doctor or clinical practitioner to advise a patient to seek out a provider of an additional healthcare professional. Yet, a medical professional should handle the patient in an emergency. Unless the situation is outside of his area of competence, no healthcare professional should refuse to take on the case right away.

2. A doctor should never downplay or stretch out the condition of a patient. He must ensure that the patient receives the appropriate care given the sort of illness the person has.

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3. A doctor needs patience since he is helpless without it. It is important to maintain the patient's privacy and confidentiality. In select instances, though, he has the option to provide the specifics if he feels obligated to. For instance, if a sickness is dangerous to individuals and is spreading, he can make it known to the public and inform others.

4. A doctor or medical professional is free to select the patients they wish to treat, but in an emergency, they must attend to the patient. But once a case has been started, a medical expert cannot leave it without first telling the patient's family. A medical professional, whether temporarily or permanently licensed, should never knowingly engage in carelessness that fails to provide the required level of care for his patients.

**Wrong Diagnosis** - When someone visits a hospital, clinic, medical office, etc., the diagnosis is the first procedure that is carried out. The proper diagnosis of symptoms is crucial when

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<sup>2</sup> AIR 2002 Gau 102.

providing medical care to any patient. Yet, the doctor may be held liable for any further harm or losses if the patient receives subpar care as a result of a misdiagnosis. In *Dr. N. Ummer v. K.M. Hameed*, the patient actually had cancer, but the pathologist misdiagnosed her as having tuberculosis, and she died as a result of not receiving the right care. The court held that this constituted professional negligence on the part of the pathologist, who made the incorrect diagnosis. The pathologist was consequently found accountable.

**Unnecessary Surgery** - Unnecessary surgery is typically linked to a wrong diagnosis of a patient's symptoms or a medical choice made without fully weighing the benefits and dangers. Conversely, because it is quicker and easier than other options, surgery is sometimes referred to as conventional therapy. In the case of *Dr. P. Narasimha Rao v. G. Jayaprakasu*<sup>3</sup>, the plaintiff—a 17-year-old, outstanding student—suffered a permanent brain injury as a result of the anesthesiologist's and the surgeon's carelessness. The plaintiff could have been prevented from brain damage if the surgeon had avoided doing this operation because there was no accurate diagnosis.

**Error In Surgery** - Surgery calls for a high degree of expertise, and it should be carried out with the required care and caution because even the tiniest mistakes can have a seriously detrimental effect on the patient. Surgical errors include things like doing surgery in the wrong place, significant blood loss, internal organ lacerations, and leaving a foreign item in a patient's body. The plaintiff in *Aparna Dutta v. Apollo Hospital Enterprises Ltd., Madras*<sup>4</sup>, resided in Saudi Arabia with her spouse. She started having gynecological issues. She was advised to have surgery, so she traveled to India to have her uterus removed. She had surgery at Apollo Hospital in Madras, but the doctor was careless and left an abdominal pack—a foreign object—in the patient's abdomen. Afterward, she complained of pain, and an additional operation was done to remove the abdominal pack that had been left behind. The adage "res ipsa loquitur" was used, and the hospital and doctor were both found accountable.

**Unsuccessful Sterilization** - In the case of the *State of Haryana v. Santra*<sup>5</sup>, it was established that Santra had seven children and had gone to the C.M.O. in Gurgaon for sterilization as part of a state-sponsored family planning program. Following the operation, she conceived and gave birth to a girl child. The poor person was therefore subject to an additional financial strain.

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<sup>3</sup> AIR 1990 AP 207.

<sup>4</sup> AIR 2000 Mad 340.

<sup>5</sup> AIR 2000 SC 1888; 2000 AIR SCW 1491; (2000) 5 SCC 182.

The doctor, who clearly breached his duty of care, was found to be negligent per se by the court, and as a result, both the state and the doctor were found responsible for compensating the plaintiff for their losses.

### **MEDICAL NEGLIGENCE IN CRIMINAL LAW**

Due to the 1973 change to the Code of Criminal Procedure (C.C.P.), a patient may also be entitled to compensation when it is proven that negligent conduct was committed with Mens Rea (guilty mentality). In order for a doctor to be held criminally accountable, the intent to act in such a negligent manner must be established. The Indian Penal Code also provides protection for doctors who act in good faith.

**Prosecution under Section 304A of IPC** - Physicians are to be shielded from baseless and unfair charges, even if they commit an offense for which haste or negligence is a necessary component.

- Many complainants choose to use the legal system as a tool to put pressure on the healthcare provider to demand excessive or unfair payment. These malevolent actions need to be prevented.
- Prior to the Court considering a private complaint, the complainant must provide prima facie proof of the accused doctor's haste or negligence in the form of a trustworthy evaluation performed by another licensed physician.
- A doctor cannot be detained without cause unless it is essential to the inquiry or the gathering of evidence, or if the doctor would not appear in court without being detained.
- The investigating officer should get a professional medical opinion, preferably from a government-employed doctor, before taking any action against the doctor.
- Sections 312 to 316 of the Indian Penal Code (causing miscarriage), Sections 319 to 322 (causing grievous harm), Sections 336 to 339 (act endangering life or personal safety of others), and Section 345 (wrongful imprisonment) all deal with criminal medical negligence both directly and indirectly.

### **BOLAM TEST**

The Bolam test was developed as a result of the *Bolam v. Friern Hospital Management Committee*<sup>6</sup> lawsuit. The Bolam Test serves as the basis for quickly deciding cases concerning

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<sup>6</sup> (1957) 2 All ER.

medical misconduct. The Bolam test refers to the application of common sense by an everyday, capable individual who pursues that specific art. In simple words, it suggests that the individual who procures the ordinary talent of executing the action can conduct such activity there is no demand to have a piece of expert knowledge. The Bolam test typically favors experts. In the above case:

- In accordance with accepted medical practice, a depressed patient who was admitted to a psychiatric hospital and advised to undergo ECT was not informed of the minuscule chance of bone breakage associated with this treatment. Hence, the patient suffered from bilateral acetabular fractures.
- The doctor is accused of failing to administer the proper relaxant in step one, according to the complaint. 2. Without warning the patient of the risks associated with ECT 3. Not offering sufficient manual control.
- On both sides, there were experts. According to the testimony of the defendant, there was a sizable body of expert medical opinion that discouraged the use of relaxants, and it was not prudent to issue a warning unless there was a fracture present.
- A doctor is not negligent if they took a course of action that was approved by a reasonable group of medical specialists experienced in that field.
- A doctor is not acting irresponsibly if he continues to use this practice despite the fact that there is a body of opinion that supports the contrary view.
- The second point is whether a warning would have made any difference if it had been given, assuming that appropriate procedure calls for some sort of caution to be given.

**From the aforementioned case, it can be inferred that:**

- According to the court's decision, a doctor accused of medical negligence only needed to find an expert who could verify that they did the same thing.
- Even if others have different opinions, this exam requires standards that must be in line with a responsible body of opinion.
- This exam has drawn criticism because it relies too heavily on the medical community.
- Even if the Bolam test is utilized, the doctor must keep in mind that he or she must carefully do his or her duties with all due care and competence until the patient is completely convinced of the doctor's abilities and words.



## SUPREME COURT GUIDELINE ON MEDICAL NEGLIGENCE

Examining the most prominent medical malpractice cases from both our nation and other nations, particularly the United Kingdom, reveals some fundamental guidelines for handling medical malpractice claims. The Supreme Court of India issued the following recommendations in *Kusum Sharma v. Batra Hospital & Medical Research Center*<sup>7</sup>:

- Failure to take the appropriate action that a rational and reasonable person would take, as assessed by the criteria that normally control how human affairs are conducted, constitutes an act of negligence.
- Negligence is a necessary component of the crime. The prosecution must prove guilty of excessive negligence; judgment errors do not qualify as sufficient grounds for negligence.
- The medical professional must apply a fair amount of care and bring a reasonable level of competence and expertise.
- Only if a doctor's acts were below the standard of a reasonably skilled practitioner in his field, would the doctor be held liable.
- A professional doctor is not inherently irresponsible just because his view differs from that of other experts in the field; there is room for real disagreement in the diagnosis and treatment domains.
- If a doctor performs their obligations with a reasonable level of ability and competence, they cannot be accused of negligence. If a doctor selects a course of action that is accepted by the medical community, rather than the other option, he is not accountable for the results of that decision.
- No doctor could dispense medicine without a halter around his neck, which would be detrimental to the efficiency of the medical industry.
- Making sure that medical experts are not required is our moral duty and responsibility as a civil society. So that they can carry out their professional responsibilities without fear or intimidation if they are harassed or degraded.
- Medical professionals have a right to protection as long as they carry out their duties in the patient's best interests and with a fair level of ability and competence. Medical personnel must prioritize the needs and well-being of their patients.

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<sup>7</sup> (2010) 3 SCC 480; AIR 2010 SC 1050; 2010 AIR SCW 1315.



## CONCLUSION

Despite the fact that patients view doctors as being on par with God, they nevertheless have faith in their ability to heal themselves and improve following therapy. But occasionally, even medical professionals make mistakes that end up costing people a large sum of money used in various ways. However, sometimes the mistakes they make are so detrimental that the patient has to deal with problems and experience agonizing pain.

In the healthcare sector, equipment and medical tools should be used with appropriate care and prudence because it could result in consumer damage, which could then cause a complaint to be filed against the medical professionals and the relevant authorities. Yet, there is no law that can render the manufacturers of such faulty equipment liable for the damages.

Another significant issue is that the Consumer Protection Act of 1986 does not apply to services provided without charge. Patients that sustain injuries are harmed, which presents a dilemma. Due to certain significant medical malpractice incidents where patients were permanently crippled, people are losing faith in the medical profession. For the medical industry, some serious reflection and analysis are necessary. In terms of self-governance, it has failed totally. It is necessary to establish and change medical ethics in order to practice absolute righteousness. Gandhi's words, to cite on, "It is health that is a person's real wealth and not pieces of gold and silver."