MEDICAL NEGLIGENCE AND THE NEED FOR AN INFORMED PUBLIC DOMAIN

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Abstract: *Most of the time, a patient chooses a doctor or hospital based on their reputation. Patients have two main anticipations of medical individuals and organizations: first, that they'll treat them with utmost skill and knowledge, and second, that they won't hurt them through inattention, recklessness, or recklessness. Even if a doctor can't save a persons life, he still has a duty to do what's best for the person who put their trust in him by going to the doctor. Because of this, a doctor has to do the right research or ask the patient for a report. Also, he doesn't do any major therapy, surgery, or invasive study on a patient without getting their permission first, unless it's an emergency. If a physician or healthcare facility doesn't do this, they could be charged with negligence. Tort law says that a civil wrong (right in rem) is a violation of a duty that leads to a court stepping in and awarding damages. This is different from a signed contract (right in personam). So, being able to get medical care from professionals is a basic human right. Knowingly giving permission, paying a fee, and getting surgery, treatment, etc. gives the relationship the look of a contract, but important parts of tort are still there.*

Keywords: *patient, doctor, hospital, medical treatment, negligence, carelessness, reckless attitude, emergency, operation, tortious liability, judicial intervention, contract.*

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Introduction

Sections 88 through 92 of the Indian Criminal Code (IPC) shield physicians from prosecution on the assumption that they are always acting in their patients' best interests. A medical malpractice lawsuit, however, adds complexity to the idea of good faith. Nothing will be deemed to have been done and thought in 'good faith' unless it has been done or believed with reasonable care and attention, as required by Section 52 of IPC. In a similar medical malpractice judgment, the Supreme Court of India said, The medical professional must bring to his responsibility a fair degree of expertise and understanding and must apply a fair degree of care. The law does not mandate a very high or exceptionally low standard of care and competence, but rather one that is reasonable in light of the specifics of each instance. Whereas, the test is the ordinary skill a man exercises and professes to have when the occasion calls for the application of particular ability or competence. It is well established

law that a man's talent is adequate if it is "the usual skill of a competent man practising that specific craft," meaning that he doesn't need to be an expert in the field.

The number of malpractice lawsuits filed against physicians in the United States has skyrocketed in the previous several decades. In light of the above, the Supreme Court of India issued an unique ruling holding that a doctor is only subject to criminal prosecution in cases involving either extreme carelessness or a lack of the requisite expertise, which he need to possess in his line of work. The CJI said in his opinions that the doctor's alleged carelessness must have been "gross in nature" for him to be criminally responsible. Criminal negligence prosecution requires proof that the defendant did or failed to do anything that a reasonably prudent medical practitioner in the same or similar circumstances would not have done or neglected to do.

1. Meaning and Definition of Negligence in Law

Roman law distinguishes between "dolus," or intentional wrongdoing, and "culpa," or carelessness. Deligentia is the opposite of "negligentia," meaning carelessness. This use of the term diligence is now considered archaic but is nevertheless often used in legal contexts. A person is guilty of negligence if they act in a way that poses an unreasonable risk of injury to another person. It's the failure to use the level of caution that the defendant was obligated to exercise. Carelessness rules out malicious intent since it is impossible for a consequence to have been meant and for anything to have been intended to have been the outcome of carelessness. Negligence, on the other hand, suggests carelessness and lack of intent, whereas wrongdoing (mens rea) suggests the opposite. Injury to a patient as a result of a health care provider's breach of generally recognised standards of care is medical negligence. When a person acts in a way that a sensible and reasonable person would not, or when they fail to take precautions that a reasonable person would take, they are committing acts of negligence.

The three types of carelessness are as follows:

(i) Anything for which one anticipates and deliberately intends harmful results.
(ii) When they unintentionally end somewhere somewhere they might have and should have avoided.
(iii) Those situations where they were not anticipated or planned for, yet may have been.

The first part is obviously illegal. Since the existing defence is often insufficient, a doctor must take further precautions to prevent the second clause. In terms of the third prong, the law presumes that what a doctor should use reasonable care to prevent any unanticipated risks.

The Elements of Negligence

For a claim of medical malpractice to be successful, the patient or legally authorised representative of the patient must prove each of the four premises listed below.

(i) When a medical facility or doctor decides to treat a patient, they are taking on a legal obligation known as a "duty of care."
(ii) There was a failure to uphold a duty and a failure to meet the applicable level of care. Expert evidence or glaring mistakes (the idea of res ipsa loquitor, or "the thing speaks for itself") establish the standard of care. An exception to this general norm is the idea of abandonment, which refers to allegations that a doctor ceased seeing a patient without replacing them with someone equally qualified or without giving them enough time to obtain safe alternative treatment.
(iii) Because to the break, someone was hurt. The reasonably foreseeable harm was directly attributable to the breach of duty.
(iv) Damage. There is no foundation for a claim, irrespective of whether the medical practitioner was negligent, if no harm has been done.

Liability for Negligence

Liability in criminal law often hinges on the existence of mens rea. This implies that no one should face legal repercussions for wrongdoing unless it can be shown that he acted willfully or that a

reasonable person in his situation would have taken the necessary precautions to prevent any negative outcomes. Yet under the civil law, if someone causes injury, he is liable for it, regardless of whether it was intentional, careless, or an unavoidable accident. As the primary purpose of civil procedures is redress for damage experienced by the plaintiff rather than punishment for wrong done by the defendant, in such instances, he is obligated to repair the injury by providing compensation. The approach is based on shifting the burden of loss from the plaintiff to the offender via the imposition of monetary sanctions.

In common parlance, wrongs fall into two categories: those committed privately and those committed publicly. The former are referred to be civil injuries because they include the violation of an individual's private or civil rights, while the latter are crimes and misdemeanours because they involve the violation of public rights and obligations that impact the whole community.

The law considers an act criminal if it has an adverse effect on society as a whole, even if the direct victim is a person. According to the Honorable Supreme Court, "gross negligence" in medicine means that the defendant is criminally accountable even if the injuries were only suffered by one person. This is because "gross negligence" in medicine shows a reckless disrespect for human life.

Whether or whether a patient has provided informed permission, the doctor's duty of care begins the moment the patient arrives at the hospital and the doctor begins treating them. The doctor's responsibility extends beyond only curing the illness; he must also ensure that his patient is protected against any negative outcomes brought on by the therapy itself. Consequently, a doctor's duty of care involves performing all necessary diagnostic tests, correctly interpreting the findings, making an accurate diagnosis as soon as possible, “treating the condition, and following up with the patient until he is totally cured. Care does not include the provision of an expert opinion on a finding, radiological studies, biochemical reports, chemical analysis of poisons, or consultation.” While it performs analysis on bodily fluids and provides treatment recommendations, a laboratory has no responsibility of care to its patients. The onus is on the treating physician to make sense of all the data, positive and negative, true and false, to draw conclusions about the patient's condition based on those conclusions, and to provide the most appropriate care.

The level of forethought and caution expected of someone with a duty of care is known as the "standard of care" in civil law. To win a case for carelessness, there must be some kind of deviation from the norm. The level of care expected of professionals in a certain field is known as the "reasonably cautious professional" standard. The Bolam test is one example of this kind of analysis used to establish professional responsibility in cases of alleged medical negligence.

Degree of Carelessness

Any amount of carelessness is possible. This sets it apart from other types of mens rea. There is no grey area when it comes to the presence or absence of intent. Nonetheless, the degree of negligence increases proportionally with the degree to which the behaviour in issue puts other people in danger. Without malice in mind, one is careless if they put others in harm's way; the higher the threat, the more the carelessness. The danger is proportional to the badness that is threatened and its likelihood. The defendant's negligence increases as the magnitude and proximity of the evil increase.

Negligence under the Indian Penal Code

Actus non facit reum, nisi mens sit rea, a Latin adage, indicates that an act does not constitute guilt unless it is accompanied by a guilty thought. As a result, two prerequisites must be met before a person may be held criminally liable. Mens rea requires that the wrongdoing be committed with either deliberate intent or wanton disregard for the consequences. Mens rea is easily discernible in cases of deliberate action.

1 A reckless and careless action is one for which the actor bears full responsibility for the inevitable or almost inevitable repercussions. Liability under this subsection is based on the idea that the consequences of a wrongdoing are predictable.

To behave criminally rashly is to knowingly risk damage by engaging in a conduct that is both risky and wanton, with the understanding that it may cause injury but without intending to cause hurt or knowing that it would probably cause injury. The criminal element is the conscious decision to disregard the potential negative consequences of one's actions. A physician performs a 24 week abortion while lacking proper training and using unclean equipment, for instance. In this case, the doctor did not take the precautionary measures required of him, such as performing the termination only after receiving enough training in the surgery and only using sterilised tools in a properly prepared setting.

A physician should remember that "no court lawsuit for negligence may be initiated if the negligent act or neglect has not been followed by a harm to any person," notwithstanding the criminality of simple carelessness, including the risk of damage. A patient, for instance, may have surgery in an area where oxygen levels are dangerously low. If the doctor gives oxygen to a patient who doesn't need it, he or she might face criminal charges. According to section 336 of the Indian Penal Code, criminal negligence occurs when the patient is placed in imminent danger of suffering serious bodily harm or death.

2. Case Laws

Case – I

In case of Dr Laxman Balkrishna Joshi vs. Dr. Trimbark Babu Godbole and Anr. , AIR 1969 SC 128 and A. S. Mittal v. State of U.P., AIR 1989 SC 1570", According to the law, "when a patient consults a doctor, the doctor owes to his patient certain obligations, which are: duty of care in determining whether to undertake the case; duty of care in selecting what treatment to administer; and duty of care in the administering of that treatment."

A patient may sue his doctor for negligence if the doctor fails to meet any of the aforementioned obligations and the patient suffers any resulting damages. The highest court noted that "negligence can take many forms, including but not limited to collateral , active , concurrent , comparative , continued , criminal , gross , hazardous , passive and active negligence, reckless negligence, and negligence per se" in the aforementioned case. According to Black's Law Dictionary, negligence per se is "conduct, whether of behavior or inaction, that can be proclaimed and handled as negligence with no assertion or evidence as to the specific mitigating factors, either due to its violation of statutory provision or valid City and county ordinance or since it is so palpably objected to the dictates of prevalent prudence that it may be said without doubt or doubt that no cautious person could have been guilty of it." In most cases, this means "the commission of an act contrary to a public obligation required by legislation to ensure the safety of person or property."

Case – II

In the case of Samira Kohli vs. Dr Prabha Manchanda and Ors. I (2008) CPJ 56 (SC),The Supreme Court ruled that a patient's permission to undergo diagnostic and surgical laparoscopy and "laporotomy if required" did not constitute permission to perform a bilateral salpingo-oophorectomy and a complete hysterectomy. The appellant was not a child and did not suffer from any mental disability or incapacity. The patient was an adult of legal consenting age, therefore proxy permission was unnecessary. The appellant had a brief loss of consciousness due to the anaesthesia, and there was no pressing need for immediate action. When the appellant came to, the respondent should have waited for his or her permission. If there is no immediate danger, there is no need to ask the patient's mother for permission. Her mother's permission is not genuine or legitimate. The issue wasn't whether or not it was appropriate to remove the appellant's reproductive organs; rather, it was whether or not it was appropriate to do surgery on the appellant without first obtaining her permission. The defendant was ordered to pay Rs. 25000/- as compensation for the unlawful procedure and had the total sum paid to him or her refunded.

Case – III

In the case of the Indian Medical Association vs. V.P. Shanta and Ors., III (1995) CPJ 1 (SC), To remove any remaining doubt, the Supreme Court has rendered a ruling on whether or not the medical

profession is within the purview of the Consumer Protection Act of 1986. With this landmark ruling, medical professionals realised that even if care is provided for free, patients are still customers as long as the facility accepts payment from those who can afford it. While the aforementioned supreme court ruling acknowledges that some patients may not react to therapy, medical literature often reports such failures despite the best efforts of medical professionals. The common failure of family planning programmes provides an excellent illustration.

Case – IV

In the case of the State of Haryana and Ors v. Smt. Santra, I (2000) CPJ 53 (SC) (by S. Saghir Ahmad and D.P. Wadhwa, JJ), The Supreme Court ruled that an incomplete sterilisation (family planning procedure) was deficient in service and hence entitled to compensation via a Special Leave Petition. The fact that Smt. Santra's left fallopian tube being left untouched after her family planning procedure suggests that she was not completely sterilised. A poor labourer lady with numerous children decided to have an unsuccessful sterilisation procedure and got pregnant. She went on to have a daughter.

Damages were sought on the basis that a wrongdoer is obligated to provide restitution to an injured party in the form of monetary damages. The Supreme Court ruled that "maintenance" includes the cost of necessities including food, clothes, a place to live, medical care, and schooling for minors. In addition to being a legal requirement, the duty to support a kid derives naturally from the parent's connection with the child. The idea behind a claim for damages is that a wrongdoer owes the victim of his wrong monetary recompense in the form of damages for the harm he has caused.

Case – V

"a compensation of Rs. 5 lacs were given because of mental agony caused to the parents of a child who became entirely disabled for life," according to the judgment in Spring Meadows Hospital and Anr. v Harjol Ahluwalia, 1998 4 SCC 39. The hospital was responsible for the remaining sum after the insurance company paid the first Rs. 12 lacs.

Case – VI

In the case of Pravat Kumar Mukherjee vs. Ruby General Hospital and Ors. II (2005)CPJ35(NC), The National Commission's ruling about the hospital's care for an accident survivor will go down in history. The parents of the youngster who tragically died are the complainants in this lawsuit. They sought aid and compensation from the National Commission. Tragically, second-year B. Tech. student in electrical engineering, Shri Sumanta Mukherjee, went away. The accident occurred on January 14, 2001, at the campus of the Netaji Subhash Chandra Bose Engineering College, when the victim was riding his motorcycle. After the accident, Sumanta was awake and sent to a hospital approximately 1 mile away. The New India Assurance Co., Ltd. had provided him a Mediclaim Policy with coverage of Rs. 65,000/-. The deceased was awake and alert when he arrived at the hospital, and he produced a valid Mediclaim certificate from his wallet. Treatment will be initiated and costs would be covered", he said. Following through on this assurance, emergency department staff began delivering moist oxygen, began suctioning, and administered injections of Driphylline, Lycotin, and titanous toxoid. The responders demanded early repayment of Rs. 15000/- and suspended treatment despite a promise to pay the money made by accompanying persons from the general public. In addition to the patient's motorcycle and insurance documentation, the crowd also gave a total of Rs. 2,000. The hospital was insistent about not continuing treatment beyond 45 minutes, therefore the mob had to take the patient to National Calcutta Medical College, located around 7-8 kilometers away. The patient had already died when they reached the National Calcutta Medical College.

In its ruling, the National Commission agreed with the complaint and demanded that Ruby Hospital, the hospital at the center of the dispute, pay R. 10 lakhs to alleviate the stress the case had caused. The Commission said in its report, "This may serve the purpose of bringing about such a qualitative transformation in the mindset of the hospitals of offering treatment to human individuals as human beings." Their code of behaviour, their responsibility, and the essential implementation are all grounded in the need of a human touch. Let people fulfil their societal responsibilities to help in times of need without expecting payment or permission. It remains to be seen, however, whether the aforementioned prize has resulted in a shift of mindset among the medical community.

Conclusions

The doctor owes the patient certain duty. A therapist has acted negligently if he or she does something that other clinicians of the same standing, and competence would not do, or if the clinician fails to do something that other doctors would undoubtedly do. A medical practitioner's duties include attending to patients with the utmost attention and effort, adhering to generally recognised standards of care, and giving patients their space. As part of the registration process, the Indian Medical Council provides each doctor with a copy of declaration of Medical Ethics Code to guide their professional conduct.

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