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## Medical negligence during Covid-19: Did we successfully implemented Section 304A IPC?

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*The medical profession is a noble profession because of its ability to preserve the life of people. There is a belief that it is God given. Like God, the doctor carries out his command. The patient approaches the hospital one because of his reputation in the market and secondly the ability to heal. The patient expects the doctors and the hospital to provide them the best treatment with their ability and skill and secondly the doctors will not do anything to risk the lives of their patients because of their negligence, or recklessness of their staff. Although a doctor may not be able to save a patient's life at all times, he or she is expected to use his or her special knowledge in the most appropriate manner. For most patients, this obligation is a contractual right that they are expected to give their consent before any treatment or surgery is performed. The failure to discharge this obligation is considered a tortious liability. The right to receive medical attention is generally regarded as a civil right. This relationship can be structured depending on the contractual relationship between the patient and the doctor. A medical error during the Covid tragedy has affected people who are already grieving the loss of a loved one. This article aims to explore the specific instances where medical negligence has caused death.*

**Keywords:** *negligence, tortious liability, contractual right, covid-19, death.*

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## INTRODUCTION

Nearly 14 months have passed since the World Health Organization declared COVID-19 a pandemic. A sudden increase in Covid 19 cases sparked a global health emergency, and all nations made efforts to stop the infection, including bringing awareness to the problem and ramping up medical facilities. There is a significant strain on the public healthcare system in India as the number of new cases rises every day with this second wave of coronaviruses. Despite these preparations, no one can deny that the medical system exposed its vulnerabilities, pushing many into the cobweb of illegal medical practices, which cost heavily on patients. Doctors, who are Corona-Warriors, have been put in a difficult position where they must manage their caseload while on the other hand, patients are being denied assistance due to medical negligence. There are discussions on medical negligence in the medical field and 304(A)<sup>1</sup> of the IPC when dealing with a pandemic such as COVID-19. In addition, the article emphasizes the medical malpractices that raise concerns over the commercialization of medical and healthcare.

## DEFINITION OF MEDICAL NEGLIGENCE AND ITS RELATIONSHIP WITH PANDEMIC

Negligence is primarily defined as the result of a breach of duty, a failure to take care, and a breach of duty.<sup>2</sup> A medical professional is considered negligent if an act or omission deviates from the accepted medical standard of care. Medical professionals are held liable in cases of medical negligence when they possess a high level of culpability. Depending on the circumstances of the case, the victim may have the option of bringing either a civil action or criminal action against the medical professional. Doctors obviously know that the slightest mistake during their medical career or any misjudgements could lead to eventually cost someone's life. Standard care is needed depending on professional skills. Referring to the case of *Dr. Pinnamaneni Narasimha Rao vs Gundavarau Jayaprakasu*<sup>3</sup> it was seen that an anesthetist or surgeon will be judged on the basis of the average practitioner of the class to

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<sup>1</sup> Indian Penal Code, 1860, s 304(A)

<sup>2</sup> Dr. R.K. Bangia, *Law of Torts* (Eastern Law House 2018)

<sup>3</sup> *Dr. Pinnamaneni Narasimha Rao v Gundavarau Jayaprakasu and Ors.* I (1990) ACC 468

which he belongs or holds himself out to belong. Surgeons and anesthetists need more skill than the average practitioner. Due to their specialized skills, professionals such as lawyers, doctors, and architects fall under negligence law.

In a normal sense, the main elements of negligence are the duty of care, breach of duty, and injury resulting from that breach of duty. The term Medical Negligence refers to any action or omission by a medical professional that deviates from the accepted medical standard of care. A medical professional must have a very high degree of culpability in order to be held liable for medical negligence. In some cases, a victim has the option of bringing a civil action or criminal action against an individual medical professional, based on the circumstances of the case. Under civil law, negligence is punishable under the law of torts under the Consumer Protection Act, 1986. It can also be framed under Section 304A of IPC. As a general matter, the burden of proving a doctor's gross negligence rests on the complainant. When the patient suffers an unexpected complication, the Courts have invoked the principle of *Res ipsa loquitur* (things speak for themselves) in those cases. The idea that a doctor cannot be held responsible for medical malpractice if he performs his duties with reasonable skill and competence is no longer *res integra*. It does not matter whether a doctor chooses one course of action over the other available ones if that course of action is acceptable to the medical profession.

A case of *Bolam v Friern Hospital Management Committee*<sup>4</sup>, the hon'ble court, referring to the decision of Judge Mc Nair expressed, "Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill". After reading this particular statement we could analyse that medical negligence occurs when the professional body can have no knowledge about the patient's health or sometimes does some act knowingly. In legal terms, negligence refers to a negligent breach of a duty of care. Below are the three ways that constitute negligence:

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<sup>4</sup> *Bolam v Friern Hospital Management Committee* (1957)

- It is the duty of the complaining party to exercise due care towards the complaining party when the former's conduct is within the scope of duty;
- Breach of the same duty; and
- The consequential damages

Seeing all these points. There was the various landmark case of Bolonwere held. The article stated that the reasonable man is responsible for negligence. Medical professionals are not immune from torts or contracts, since the medical profession requires that a doctor be liable in torts and contracts for exercising reasonable care in giving advice or providing services to his client.

### **COVID-19 & SECTION 304 (A) IPC: MEDICAL NEGLIGENCE**

There are undoubtedly commendable and worthwhile steps taken by the Government to offer services to COVID patient management using final-year medical and nursing students, but there are certain legal implications that arise from this practice. For example, if due to some negligence on the part of the doctor the patient dies or suffers from any other syndrome then what could be the culpability of the doctor? There is a presumption that the particular person who is entering into this particular profession should possess a reasonable degree of safety and care. The law expects from a person this degree of seriousness and high skilled knowledge.

The serious question which arises here was, whether the same medical "standard of care" applies in assessing medical negligence in an extraordinary case like this when the number of intensive care patients exceeds the healthcare capacity due to rapidly rising cases? The major confusion was with the unidentified treatment. A recommendation was made to formulate a proper guideline for determining medical negligence. Like supposed to balance the interest of doctors and patients. Hospitals faced a shortage of beds, wards, and oxygen cylinders even when there were very few cases of COVID-19. Hospitals faced a shortage of beds, wards, and

oxygen cylinders even when there were very few cases of covid 19.<sup>5</sup> As a result, there were hardly any doctors to patients in hospitals, which was exacerbated by a shortage of medical health professionals. Some doctors practiced forgery and malpractice during this time, while others risked their lives.

In the *Martin F D'Souza* case (2009)<sup>6</sup>, a jury found in favour of doctors who caused death or agony through their negligence but noted that doctors can make mistakes as well, but if they are punished for them then no doctor can practice his vocation with equanimity. Situations that require extraordinary measures can sometimes lead to collateral damage and unintended errors. There is no doubt that medical practitioners trying to save the life of a patient in a situation like COVID-19 will do their best to treat the patient. Remember that a medical practitioner gains nothing by acting negligently; therefore, a medical practitioner will have to prove that he is guilty of gross negligence before he can be charged with medical negligence. It is impossible for a surgeon to do his or her best if he or she is afraid of legal action, so charging doctors with medical negligence in these times would be a disservice to the public.

When the second wave of cases spiked, many cases of black marketing were reported. According to police records, the police arrested a man from Karnataka for attempting to sell cylinders for exorbitant prices. Many people had difficulty finding beds and wards due to the increase in cases, and private hospitals were charging thrice what they normally would. Meanwhile, families unable to afford such outrageous prices lost their homes. During the lockdown period, everything was settled down but as soon as the lockdown got opened up the cases increased and converted into deaths. Even the vaccine was also a bit costly in the private hospitals but now because of the government interference, it has become free, mostly in the government hospitals. It is still a challenging time when the price of the business there is increasing day by day. We could take up examples of various products and one could be the renowned brand, Patanjali. It claimed that their 'Coronel Kit' was tested by WHO. However, this claim was rejected by the medical practitioners.

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<sup>5</sup> Mukesh Rawat, 'Just before 2<sup>nd</sup> Covid wave hit India, ICU beds decreased by 46%, oxygen ones by 36%' (India Today, 3 May 2021) <<https://www.indiatoday.in/coronavirus-outbreak/story/just-before-2nd-covid-wave-hit-india-icu-beds-decreased-by-46-oxygen-ones-by-36-1796830-2021-05-03>> accessed 15 February 2022

<sup>6</sup> *Martin F. D'Souza v Mohd. Ishfaq* (2009) ACJ 1695

In the case of *Sishir Rajan Saha v The state of Tripura*<sup>7</sup>, it was considered as a non-Covid case. On his way to Udaipur on a scooter, the petitioner's son, Ashim Saha, had an accident. Agartala's GB Hospital's emergency ward treated him. That time, Dr. P. Roy, a senior specialist, was unavailable in the hospital. He repeatedly called to check on the patient. He, however, was occupied with his private patients and did not have time to make the trip to the hospital to assist the accident victim. Sadly, Ashim Saha succumbed to his injuries. Dr. Roy was held responsible for paying Rs. 1,25,000 as compensation for the deceased's death. All government hospitals were also directed to upgrade their medical services. Therefore, in this case, if because of the doctor's negligence the patient dies then he would be liable for the same.

## CONCLUSION

Now the question which arises here is whether COVID-19 has increased the probability of medical negligence cases or whether the judiciary is keeping a check on such cases or not? Basically, these types of cases are rising rapidly because of inadequate infrastructure or unavailability of healthcare resources, or outdated knowledge of healthcare professionals. The rules which are made by the medical council of India have made the situation even worse. In most cases, the regulators are circling their wagons while protecting healthcare professionals from their wrongdoing. Because of this, the people are going to court to seek judicial remedies. Still, the courts are unable to provide justice to the people because of their lack of skilled expertise and absence of comprehensive guidelines. So sometimes the judges try to provide contradictory or conflicting judgements just to close the matter.

In the case of *Vinod Jain v Santokba Durlabhji Hospital*<sup>8</sup>, the petitioner's wife was suffering from cancer and was undergoing some chemotherapy treatment in the multispeciality hospital on 15<sup>th</sup> October. A diagnosis was done and it was seen that there was an infection in the White Blood Cell. The Doctor responded that it will infect the whole body if not treated properly. The Doctor however made the wrong diagnosis. Because of this, the infection raised and the patient went into a coma. Thus, it could be seen that the wrong diagnosis proved to be fatal for the patient. Therefore, proper checks and balances should be maintained at different intervals.

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<sup>7</sup> *Sishir Rajan Saha v The state of Tripura* AIR 2002 Gau 102

<sup>8</sup> *Vinod Jain v Santokba Durlabhji Hospital* (2019)

The use of terms over civil liabilities should be the norm for resolving many disputes monetarily. The opposite view holds that doctors should be exempted from criminal liability during the pandemic. In grey areas of medical litigation, it is difficult to reach any decisions, but criminal liability can be lowered so that everything remains in balance. There is an understanding that the medical practitioners can face the situation of COVID-19 but still they try to save the life of the patient. But this is not done negligently. During these times, a doctor cannot be expected to perform his best if he has to worry about legal action, and making doctors responsible for medical negligence would be unfair to society.