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Negligence and Medical Negligence (Jacob Mathews v State of Punjab)

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We have come to an era where the last profession everyone would ever hope to get materialistic has now become very much the same. Without a doubt, it is the medical industry. Similar to the legal profession, helping to preserve life makes the medical profession a noble vocation as well. The patient thinks of the doctor as a god and god is faultless but this is only what the patient believes. As for reality, doctors are also humans who are prone to errors sometimes. The word "negligence" simply refers to carelessness in everyday life. In a legal sense, it draws attention to the performer's failure to exercise the fundamental care that a reasonable man would exercise in all circumstances. Negligence when incurred by doctors or their subsidiaries is known as Medical Negligence. It nowadays is a critical topic in India. This paper will help us to our goal of understanding the in-depth meaning of negligence and medical negligence and how to impose liability in either of them with the help of our study on the case of "Jacob Mathew vs State of Punjab". With the help of this current paper, we will comprehend the theory of negligence in the medical profession by taking into consideration the most infamous case in this field.

keywords: *negligence, medical negligence, carelessness, liability.*

INTRODUCTION

"Negligence is the rust of the soul that corrodes through all her best resolves."

- Owen Feltham

In the simplest of terms, Negligence primarily means carelessness. When this carelessness is coupled with the practice of medicine it is known as Medical Negligence. Negligence means that the alleged injury was not intentionally caused. It refers to reckless or unreasonable behaviour. However, even if it might be considered a crime, simply being unreasonable without causing harm is not actionable. When such behaviour is continued, it can hurt someone else and creates liability for carelessness. Everyone who decides to pursue a certain career commits to exercising it with a reasonable amount of attention and expertise. He implies that the person dealing with him that the competence that he claims to possess shall be exercised and exercised with a reasonable degree of care and caution. He requires a specific level of learning to be a professional in that branch. A doctor does not guarantee the outcome to his patient. Even the medical field, which is regarded as one of the finest professions, is not exempt from neglect, which frequently results in the patient's death, complete or partial impairment, or any other suffering that has a negative impact on their health. Doctors might act carelessly. The support team might be irresponsible. Two careless actions could result in a much greater issue. The cause can be egregious neglect. Everything is conceivable. Identification of the negligent party and the circumstances surrounding their negligence are crucial in this situation. Such disputes are brought before a judge in a nation that upholds the rule of law, and the judge is intended to make the decision. Judges, however, who lack medical science training, find it challenging to assess doctor carelessness. They rely on their decisions on the advice of specialists. In order to reach a conclusion, judges need both the law of the land and fundamental legal concepts. The deciding criteria are prudence and reason.

RESEARCH METHODOLOGY

An exclusively doctrinal method of research was taken on. Comprehensive analytical, foundational, and conceptual research is being carried out with a primary focus on secondary

sources, such as books, magazines, blogs, and various governmental and non-governmental websites. This research paper dives deep into the denotation of negligence and medical negligence and aids us to gain knowledge about them.

REVIEW OF LITERATURE

NEGLIGENCE

- According to Winfield, “Negligence as a tort is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff.”
- According to Austin, “Negligence is a faulty mental condition that is penalized by the award of damages.”

On the basis of justice, equity, and good conscience, Indian courts adopt and modify the legislation pertaining to negligence. The Latin word negligent, meaning "failing to pick up,"¹ is where the word "negligence" originates. The word "negligence" is defined as "the act of being careless" and "the failure to exercise a standard of care that the doer as a reasonable man should have exercised in a given context"² in the legal sense.

There are 2 main theories for negligence in the law of tort. These are:-

1. **Subjective Theory** - According to this theory, being negligent simply entails having an unreasonable mental attitude toward one's behaviour and its results, such as when one negligently commits trespassing, a nuisance, or defamation.
2. **Objective Theory** - As per this theory negligence is not always a state of mind or form of men's rea but also a particular kind of conduct or an act.

Let us take an illustration to understand the concept of negligence better: A person boarded a DTU bus, just when he stepped his foot on the footboard of the bus the conductor in a hustle rang the bell and the driver started the bus. The person was not inside the bus and the driver

¹ Srishti Chawla, 'Negligence In Law Of Torts' (IPleaders, 4 April 2019) <<https://blog.ipleaders.in/negligence-in-the-law-of-torts/>> accessed 23 July 2022

² *Ibid*

tried to overtake the bus and he got crushed between the two buses and died. The widow of the deceased brought action, it was held by the court that both driver and conductor both had a responsibility or duty to take care and were negligent.

ESSENTIALS OF NEGLIGENCE

To commit the tort of negligence, there are primarily 3 main essentials that are required. An act will be categorized as negligence only if, all the conditions are satisfied namely:

- 1. Legal Duty of Care** - This indicates that the plaintiff must demonstrate that there was a legal duty toward him in addition to a moral, religious, and social duty. Depending on the facts and circumstances, each case will determine how much legal responsibility is owed.
- 2. Breach of Duty** - It usually refers to failing to use the proper caution that is called for in a particular circumstance. A plaintiff must establish that the defendant violated his responsibility to him in addition to proving that the defendant owes him a duty of care. By failing to take reasonable care to satisfy the obligation, the offender violates the responsibility. The meaning of reasonable care differs from case to case.
- 3. Damages** - It is important that the defendant's breach of duty must cause damages to the plaintiff. Proving that the defendant failed to exercise reasonable care is not enough. It should also be proved that the failure of the defendant to exercise reasonable care resulted in damages to the plaintiff to whom the defendant owed a duty of care. The onus to prove is on the plaintiff, in such cases any fact which enables the court to determine the number of damages. The duty to assess damages is on the court.

TYPES OF NEGLIGENCE

There are 2 main types of negligence -

- **Composite Negligence:** One or more than one person is negligent. A person who has suffered has not contributed to the accident but due to the outcome of a combination of the negligence of two or more other persons.

- **Contributory Negligence:** Plaintiff is also guilty of negligence. A person who has contributed to the accident cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence.

RES IPSA LOQUITUR

- It literally means things speak for themselves.
- Generally speaking, the plaintiff must establish negligence on the part of the defendant. Once this is done, the defendant must demonstrate that the occurrence occurred as a result of an unavoidable accident or due to the plaintiff's own fault. Plaintiff has to prove negligence either directly or indirectly with the help of circumstantial questions. But sometimes there is a presumption of negligence as per the maximum of Res Ipsa Loquitor. But a defendant can prove himself innocent by showing that it was not in his hands to save the happening of the incident. As a result, the defendant now has the burden of proof instead of the plaintiff.
- This maximum is an evidence rule that benefits the plaintiff by obviating the need for him to demonstrate carelessness. When the cause of the accident is more of the negligence of the defendant than any other cause then this doctrine applies.

MEDICAL NEGLIGENCE

Unfortunately, no law now in effect in India defines medical negligence as anything other than "the improper or unskilled treatment of a patient by a medical practitioner."³ This covers carelessness when treating 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. Medical malpractice means that the doctor didn't provide care up to an acceptable standard and caused some harm to a patient. Professional negligence includes medical malpractice, which is covered by tort law. Medical malpractice is defined as the professional carelessness of a health care practitioner or professional when the patient receives subpar care

³ Richa Singh, 'Medical Negligence in India' (*IPleaders*, 3 August 2019) <<https://blog.ipleaders.in/medical-negligence-india/>> accessed 23 July 2022

that results in harm, injury, or death. The majority of times, medical malpractice or carelessness entailed a medical error, which could have occurred during the diagnosis, dose, management of the patient's health, treatment, or aftercare.

We frequently hear about deaths brought on by poor medical care. An enraged crowd would storm the hospital and destroy its property. Both the media and the police will be present. The worried doctor typically denies any responsibility, despite the family members' insistence that the doctor was at fault. What is actually accomplished in the end? The more effective course of action is to gather all the data and evidence and consult an expert to ascertain the actual cause of death. If there is preliminary proof of medical malpractice, you can think about suing the physician and the hospital administration. Negligence here on behalf of the doctor during carrying out his professional responsibilities is considered malpractice and will result in legal repercussions since it violates the patient's trust in the doctor's ability to provide quality care.

Similar to the legal profession, helping to preserve life makes the medical profession a noble vocation as well. Patients have two expectations of doctors and hospitals: first, that they will treat them with the knowledge and competence at their disposal, and second, that they will not in any way injure the patient via staff negligence, carelessness, or recklessness. A doctor is obliged to apply his unique knowledge and skill in the most appropriate way while bearing in mind the needs of the patient who has trusted him with his life, even though he may not always be able to preserve it. Hence, before beginning any significant treatment, surgical procedure, or even invasive investigation, a doctor is expected to conduct the required investigation or obtain the patient's informed consent. In India, there are about 52 lakh medical injuries reported annually, of which 98,000 result from medical malpractice-related deaths. The fact that 10 individuals nationwide die as a result of medical malpractice every minute and more than 11 more are injured raises severe concerns for the entire country.

A person who presents himself as prepared to offer medical advice and treatment implicitly represents that he has the knowledge and skill necessary for the job. When a patient consults with such a person, the patient owes him specific duties:

- A responsibility to use caution while choosing to take on this matter.
- A duty of care in selecting the course of therapy.
- A responsibility to administer the treatment properly.

A medical professional who is found guilty of medical negligence may suffer a variety of penalties. The medical professional may be suspended as well as face civil and criminal penalties. In most cases, medical carelessness has civil repercussions. Since negligence is a civil violation, it is covered by Tort Law. The complainant may also seek financial restitution in consumer forums because the medical industry is now covered by The Consumer Protection Act of 1986. Also open to complaints are Lok Adalats. According to Section 304A⁴ of the Indian Penal Code, a doctor may be criminally accountable. (Death by any reckless or careless conduct), but there must be "gross negligence."

JACOB MATHEW *v* STATE OF PUNJAB⁵

Brief Facts:

In the private ward of the CMC Hospital in Ludhiana, a patient by the name of Jiwan Lal was admitted. On February 22, 1995, at about 11 p.m., the patient began to have trouble breathing. After noticing his father's condition, his oldest son Vijay Sharma summoned the nurse and doctor. For about 20 to 25 minutes, no doctor appeared. Drs. Allen Joseph and Jacob Mathew then arrived in the patient's room. An oxygen cylinder was immediately attached to the patient's mouth, but the issue persisted. There was no alternative oxygen cylinder available and the oxygen cylinder was discovered to be empty. Vijay Sharma carried another gas cylinder from the adjacent room. During this, five to seven minutes were lost. During this time, the physician declared the patient dead. Ashok Kumar Sharma, the younger son, filed a First Information Report (FIR) in accordance with Section 304A read in conjunction with Section 34⁶ of the IPC.

⁴ Indian Penal Code 1860, s 304A

⁵ *Jacob Mathew v State of Punjab* (2005) Appeal (Criminal) Nos. 144-145/2004

⁶ Indian Penal Code 1860, s 34

(Section 304A⁷ of the IPC – Negligence causing death.)

(Section 34 of the IPC: Common Intention for Criminal Activity; Liability of All Parties)

Procedural History:

The patient had cancer that was already in an advanced stage, according to Dr. Jacob Mathew. To maintain the patient at their house and provide them with the necessary care and comfort, the family was consulted. But the sons, who were well-known individuals and held government positions, asked the hospital to keep the patient under their care. Despite the instructions offered, the patient was awarded a hospital admission.

Issues:

1. Is there a difference between civil and criminal law in the concept of Negligence?
2. Is there a test to determine the negligence level through which it will be decided whether the doctor is held liable for the negligence or not?

Arguments raised by the Petitioner:

Since it is their duty to treat and heal the patient and their reputation is on the line, no professional doctor would intentionally aim to harm their patient. A single setback could have a significant negative effect on their career. The principle of "the matter speaks for itself" (*res ipsa loquitur*) is not always applicable, even in civil jurisdictions, and must be utilized with great care and caution in cases of professional negligence, particularly that of doctors. A medical professional assumes complete responsibility for the patient and is not financially benefited by any negligence or omission that results. If this is the case, the practitioner faces criminal charges. Unintentional and unplanned accidents occurred during the course.

Judgment:

Referring to the circumstances of the case in front of us, we are confident that, even if found to be true, none of the allegations in the complaint establishes the accused-criminal appellant's

⁷ Indian Penal Code 1860, s 304A

haste or negligence. It is not the complainant's case that the accused-appellant lacked the medical training necessary to treat the patient he pledged to care for. It is a reason why there aren't any oxygen cylinders available, either because the hospital forgot to keep one on hand or because the gas cylinder was discovered to be empty. The hospital may then be held legally responsible (or not; we express no view on this), but the accused-appellant cannot be prosecuted under Section 304-A of the IPC based on the results of Bolam's test.

*(Bolam's Test: This test is used to establish if a doctor or other medical professional has violated their obligation to provide patient care. In the 1957 case of **Bolam v Friern Hospital Management Committee**, the Bolam test was developed.)*

SUGGESTIONS

The rights that are accessible to them, which they can use to obtain compensation for the wrongs they have endured, are not often well understood by people. Being a new and original topic, medical negligence has very few supporters. Doctors frequently con those who are unaware of this. Because of this, medical malpractice must be made more widely known. People need to be aware of their legal options and what needs to be done if they become victims of medical malpractice. The majority of individuals who are unaware that the person harmed can file a lawsuit against the doctor who was negligent and seek compensation. The fact that only three significant medical compensation cases have been filed since 2010 serves as evidence of this. Obtaining compensation is once more a very difficult task because the legal system is slow and judges may not fully understand the medical field, which can result in poor decisions. Additionally, initiatives should be taken to expedite this procedure and fairly pay the affected parties. There are patients who have suffered as a result of negligence but have not filed a complaint, either because they were unaware of what had happened or because it would take too long, etc. In addition, many doctors prescribe drugs that are too potent for their patients. Both their body and brain could be harmed by these. Typically, these treatment flaws are never publicly exposed. You should take care of this. It is appropriate to hold a physician accountable for the varied medication formulations that he dispenses. It is now necessary to create a forum where such sufferers can quickly receive treatments. But doing

that by itself wouldn't work. It needs to be fully implemented by easing the processes and publicizing them to educate people about their rights.

CONCLUSION

The tort of negligence developed from English law and is recognized by Indian law as a substantively significant tort. It is impossible to classify medical negligence as a straightforward type of tort. When a patient receives the incorrect treatment and may vomit as a result, medical negligence evolves from a straightforward tort to a potentially fatal one in which the patient perishes from a minor wound or fracture. A doctor of a reasonable calibre is required to exercise a level of care that is comparatively high in cases of medical negligence. The standard of care is set by a doctor who falls into the same category as the doctor who will be evaluated using that standard, not by an ordinarily cautious man. So, following a rigorous analysis of the study, I arrived at the following conclusion. In cases of carelessness, there are two possible explanations: either the doctor or the staff was negligent. There is a chance that the personnel and the doctor both acted negligently. In the majority of cases, there will be joint and several liabilities, meaning that both the hospital and the doctor are responsible. According to their agreement, they will decide how much responsibility each of them will bear. Courts must rely on expert testimony for assessing negligence, with the exception of obvious protocol violations and actions that are deemed to be reckless and unreasonable. Due to the great degree of subjectivity in these judgments, the goal of the law – to be precise and specific – is largely undermined. There is a need for an established legal position in other industries as well, in as much as it relates to consumer protection in India since the law on medical negligence appears to have been settled by the Hon'ble apex court.