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## Medical Negligence

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*In India, medical negligence has the most critical issue. The medical profession can be considered one of the noblest professions based on our experience. Since doctors treat illnesses, and medical issues, and in the end will cure or heal their patients, patients usually see them as Gods and expect professionals to be as cautious as they can while carrying out their responsibilities. In 1995, the Supreme Court ruled that the case of Indian Medical Association v V.P. Shanta & Ors. Defined medical services as "services" under the 1986 Consumer Protection Act.<sup>1</sup> 'Procedure-free' consumer protection courts the relationship between patients and medical professionals was defined by giving contractual patients the right to sue doctors if they were injured during treatment. Indian healthcare is deteriorating due to an increase in medical negligence cases. In this paper, the concept of medical negligence is examined in light of the Supreme Court of India's interpretation of the law.*

**Keywords:** *negligence, medical negligence, consumer protection, civil liability, and damages.*

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### AIM AND HYPOTHESIS

The aim of this is to study the concept of medical negligence and analyse its scope under CPA, 1986 ("COPRA"). Despite the concrete laws on the point, there are many cases of medical negligence now and then. Proving medical negligence is difficult as hospitals seldom hand over

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<sup>1</sup> Consumer Protection Act 1986

documents to the patients that could be used as evidence, and this contributes to the ineffectiveness of law in curbing this problem. Though there is a law in place, the problem still persists and the same indicated that the law hasn't been able to achieve its intended target yet.

## RESEARCH QUESTIONS

1. What is medical negligence?
2. When does a medical duty fall under the CPA, of 1986?
3. What was the difficulty faced in proving medical negligence?
4. How courts interpreted the concept of negligence?

## INTRODUCTION

Let us first understand the meaning of negligence, we have many definitions of negligence as it has different aspects such as contract, crime, and tort. Negligence according to Baron Alderson means failing to do something that a reasonable person, guided by the ordinary considerations that govern the conduct of human affairs, would do, or doing something that a reasonable and prudent person would not do. **Blyth v Birmingham waterworks company**. Any precise definition is defined by the jurisprudential concept of negligence. Negligence has been assigned various meanings by eminent jurists and leading judgments.

Donoghue v Stevenson, one of the most famous cases in negligence law, introduced the concept of negligence and negligence law. Before this case, there were many relationships that led to negligence. Created specific roles such as doctor and patient, employer and employee. As observed in King v Phillips, negligence arises only when the misconduct directly harms the plaintiff and the harm is foreseeable. As a result, damage is one of the essential components of negligence.<sup>2</sup> It confers a medical and lawful right on another person that must be respected. In a recent forensic speech, Charles Worth and Percy defined negligence as having three meanings.

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<sup>2</sup> Rao YV, *Law Relating to Medical Negligence: Under Civil, Criminal & Consumer Laws* (Asia Law House 2010)

They are a state of mind that is diametrically opposed to intention. Careless behavior and a breach of duty to exercise caution.

The complaints can be filed before the State Medical Council and in case the complaint is proven, the punishment can be awarded ranging from reprimand to cancellation of license. Besides this, the doctor can be prosecuted for damages under the Law of Torts. Previously, usually, civil suits were filed but after the promulgation of the CPA, 1986 all professionals including Doctors and Lawyers, are included as service providers and damages can be granted in case of any professional negligence by Consumer Courts.

### **WHAT IS MEDICAL NEGLIGENCE?**

Medical carelessness, also known as medical misconduct, is defined as the improper, unqualified, or negligent treatment of a patient by a doctor, dentist, nurse, pharmacist, or another medical professional. Medical malpractice occurs when a healthcare provider deviates from the accepted "standard of care" in treating a patient. What a reasonably prudent healthcare provider would have done or would not have done in the same or similar circumstances is defined as causal criteria. This is an unfairly intimidating practice, and secondly, the actor foresaw or should have foreseen that it would put others at risk of harm because the magnitude of the perceived risk was such that the actor should have acted safely. Mistakes or negligence by medical personnel can result in minor or serious injury, and in some cases, such mistakes can even result in death. It is clear that even those who are knowledgeable and knowledgeable about the subject can make mistakes during practice.<sup>3</sup> A major cause of medical malpractice or negligence is the negligence of the physician or medical professional involved.

### **WHEN DOES THIS DUTY ARISE?**

It is common knowledge that a physician has a duty to care for his patients. The duty can be both contractual and tortious in nature. However, even when no doctor-patient relationship exists, the courts have given the order to impose a duty on the doctor. The Apex Court stated

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<sup>3</sup> Jana S & Ors, 'Medical Negligence' (*Academike*, 22 March 2019)  
<<https://www.lawctopus.com/academike/medical-negligence/>> accessed 25 September 2022

that "every doctor, whether at a government hospital or elsewhere, has a professional obligation to extend his services with due expertise for the protection of life." All cases like this are, however, limited to things in which the person's life is in danger. As a result, the doctor does not owe a duty in other circumstances. CONSENT is also used. While major consent refers to the consent given by the patient ahead of time, proxy consent refers to the consent given by a valuable and related person.

### WHAT IS THE DUTY OWED?

In common, Traders owe their clients a reasonable duty of care when providing advice or services, both in tort and in a contract. Physicians in all medical specialties, including allopathic, homeopathic, and naturopathic, can be held liable under consumer protection laws. A doctor's obligations to his patients are well-defined.<sup>4</sup> A medical practitioner has a duty of care when deciding whether to take on the case, a duty of care when deciding what treatment to provide, and a duty of care when administering that treatment. A breach of these duties gives the patient the right to sue for negligence.

### WHAT IS A REASONABLE DEGREE OF CARE?

A low-cost diploma of supervision and talent in the same way that a diploma of care and competence that an "everyday capable member of the profession who professes to have the aforementioned competencies might exercise within the situation in question." It is required that health practitioners be reasonable, and not have to comply with the high or low degree of care given. The level of care is variable and depends on the situation.

### MEDICAL NEGLIGENCE AS UNDER CONSUMER PROTECTION ACT, 1986

In the case **Indian Medical Association v V.P. Shanta and Ors.**, the apex Court decided to clarify all ambiguities on the subject of coverage of medical professions under the CPA, 1986. The epochal decision taught doctors and hospitals that even if treatment is free, patients are

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<sup>4</sup> Pandit MS & Pandit S, 'Medical Negligence: Coverage of the Profession, Duties, Ethics, Case Law, and Enlightened Defense - a Legal Perspective' (*Indian journal of urology*, July 2009)  
<<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2779963/>> accessed 25 September 2022

consumers as long as they have paid for it. A classic example is the failure of family planning operations. In general, the Apex Court does not favor burdening doctors with ex gratia awards. The Commission has acknowledged the chance of hospital death despite no lack of care in a few landmark decisions dealing with hospital death.

## CASE LAWS

**BOLAM v FRIERN HOSPITAL COMMITTEE** - This situation is seminal authority for figuring out the same old care required from scientific specialists. In this case, The apex court ruled that "in this, a clinical man, negligence means failing to behave in accordance with the standards of fairly placed medical guys at the time, and that there can be one or even more perfectly right requirements, and if the scientific guy conforms with one of these perfectly right requirements, he isn't negligent." As a result, the Courts in that jurisdiction ruled that a physician is not liable for misunderstanding if he acted in the exercise of common as proper through a responsible frame of physician guys. When determining clinical negligence, the court will consider what other clinical specialists do in comparable situations. As a result, the Bolam case established a low and "normal professional standard of care" for determining liability.

**Savita Garg v Director, National Heart Institute** - The excellent courtroom in its landmark selection held that It becomes no longer essential to enroll the treating everyone as parties as long as the sanatorium changed into made a celebration; The complainant bears only the preliminary burden of proving negligence. Following that, the health center may be required to expose records, and so on. as to what care and treatment have been provided.

**Subh Lata v Christian Medical College, 1994** - The person claimed that her husband died as a result of complications from a kidney biopsy. The country commission determined that the complainant withheld critical information in her grievance. In addition to serious life-threatening illnesses, the deceased developed tuberculosis and staphylococcus aureus septicemia (critical contamination of the blood by way of bacteria). These are extremely severe illnesses with extremely high mortality rates, particularly when the coronary heart, lungs, and brain are infected. Because the complainant did not come with easy fingers, she was no longer

eligible for relief under this jurisdiction of the Buyer Protection Act. The complaint was dismissed for a fee of Rs. 1,500/-.<sup>5</sup>

**Liability Civil Liability** - Civil liability involves a demand for compensation for the injury caused. In the event that a hospital or medical professional breaches their duty of care during an operation or while the patient is under their supervision, they are held vicariously liable. And are obligated to pay compensatory damages. Physicians are sometimes held vicariously liable for mistakes made by young doctors. If a person is a hospital worker, the hospital is liable if that worker injures a patient while appearing helpless. In other words, if the employee is irresponsible (does not exercise reasonable care in treating or treating the patient), the sanatorium is liable for the injury caused to the patient. In the case of M. Ramesh Reddy v Andhra Pradesh State, hospital administrators were convicted of negligence, among other things, for failing to keep toilets clean and causing obstetric patients to fall into them. Damages of Rs. 1 Lac were filed on the clinic.

**Criminal Liability-** Patients may die after treatment and criminal proceedings may be filed under section 304A of the Indian Penal Code for allegations of intentional or negligent death. Under Section 304A of the IPC, a person who causes death through willful or negligent acts that do not result in manslaughter is punishable by imprisonment for a term not exceeding two years, imprisonment, or both. Hospitals can be prosecuted for negligence in transmitting infectious diseases, in addition to HIV, HBsAg, etc. If a patient develops such an infection during treatment in a sanatorium, it is clear that this was due to negligence. If a lapse on the part of the health center causes a loss of affordable responsibility to care, the clinic may be held accountable. My grandmother died as a result of a medical professional's negligence. Because of the physician's carelessness, some contamination was transmitted it was soaked in her blood and set the Furthermore, the Supreme Court of India held in Dr. Suresh Gupta's Case - Apex Court of India, 2004 - that the position was clear that if a patient dies due to medical negligence, the doctor bears the civil liability to pay compensation. A crime under section 304A of the Indian

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<sup>5</sup> Rao YV (n 2)

Penal Code, 1860 would only be criminalized if the negligence was so gross that his actions were so negligent as to endanger the patient's life.<sup>6</sup>

Malpractice was brought under the Consumer Protection Act, 1986 in a landmark case by the Indian Medical Association against V.P. Shantha and others. The ruling defined health care as a statutory "service" and clarified that a person seeking medical assistance would be considered a consumer if certain criteria were met. This meant that certain types of patients could sue a negligent healthcare provider for reimbursement for breach of contract under the Consumer Protection Act of 1986. The only exceptions to the CPA were facilities and doctors where all services were free to all customers. However, even patients who do not fall within the law can sue for negligence under tort law. However, the burden of proof of negligence rests with the injured party.

## REVIEW OF LITERATURE

It's miles very tough to outline negligence; however, the idea has been popular in jurisprudence. A breach of this duty offers the patient a proper to initiate action in opposition to negligence. All medical experts, doctors, nurses, and different fitness care carriers are liable for the fitness and protection of their sufferers and are anticipated to offer a high stage of nice care. alas, medical professionals and fitness care vendors can fail in this duty to their treatment to „a provider of remedy.“ In the Jacob Matthews case, the apex Court of India has long weighed in detail what it means to be lazy to medical professionals. I need a measure. Additional considerations are needed to conclude professionals, especially physicians, negligence or negligence. Professional negligence cases should not be equated with professional negligence cases. Violations can result from a lack of talent, care, speed, or attention. A breach can result from a lack of talent, care, speed, or attention. Experts who provide mental health care to patients are also accountable for providing proper care to their patients. They may be charged with medical negligence if they are negligent in any way. During their treatment, patients are entitled to high-quality medical care. As a result, any negligence in this is also compensable.

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<sup>6</sup> Jana S (n 3)

## SUGGESTIONS AND CONCLUSIONS

The cordial courtship between the health practitioner and the patient has undergone severe shifts as a result of the commercialization of the medical profession, resulting in the commercialization of the respected profession, which runs counter to both accordances with the terms of the Hippocratic Oath. The improvement of regulation pertaining to unethical conduct and carelessness is far from pleasant. The law is just not acceptable because it does not cover the entire subject of professional error. In a situation where clinical services are commercialized, making use of the guideline of “everyday skilled expert general of care” laid down in Bolam’s case in setting up the scientific negligence won't do the right justice to the injured patients. Subsequently, it's miles more truthful if the judiciary while figuring out medical negligence instances, shows a greater incline closer to injured sufferers ensuring them higher medical competencies on the hand of doctors rather than making use of the “ordinary skilled” rule.