

Medical Negligence under Tort Law

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Abstract: *Medical negligence is a subset of medical law that covers all operations connected with medical recklessness and rashness. The paper is focused on the consistency of practice, explanation and medical conduct. In recent times, medical negligence has resulted to be one of the major concerns in the world. Also the medical industry, which is perceived to be one of the most honourable occupations, is not prone to incompetence, often leading to the patient's demise or complete/partial disability or some other misery that has detrimental health effects on the patient. There are situations where physicians who are incompletely educated lead to legal proceedings because of the level of incompetence or intentional actions displayed by the doctors. The paper explains what negligence is and how the essence of negligence may be deemed to be medical intervention or actions.*

Key words: *Negligence, Medical Negligence, Tort, Medical Action, Awareness, Guidelines.*

Introduction

Medical negligence is a hybrid terminology. The second word signifies the purpose specifically, as the concept of negligence has not been adequately defined, but it is an act carried out irresponsibly by an individual resulting in imminent harm to another. Under tort, IPC, Indian Contracts Act, Consumer Protection Act and many more, negligence is defined as offence.

Basically, medical negligence is the incompetence of a medical practitioner or physician by not offering adequate care that violates their duties and damages the patients who are their clients. At least a physician is known to be a specialist in that domain; a patient seeking treatment under any doctor definitely hopes to be recovered and at least assumes the doctor to be careful when executing his duties many deaths and detrimental health effects have been caused by negligence in medical field.

Each year in India, about 52 lakh medical casualties are reported out of which 98,000 people in the country sacrifice their lives in a year due to medical negligence. The fact that 10 people fall victim to medical negligence every minute and more than 11 people die every hour in the country because of this medical mistakes is indeed a significant problem for the entire India.¹

Negligence is a popular legal principle in an injury-related civil case that comes into play when deciding who is at fault. Think of a car on the road falling into a collision. In a case of a car accident in which individual caused the crash by violating their legal responsibility to comply with traffic laws and drive safely under the conditions, that individual could be presumed liable for any injuries and other losses ("damages") incurred by all parties hit in the crash.

Like drivers, physicians and other medical practitioners, their patients also have a responsibility to provide healthcare in accordance with the "medical standard of care," which is generally

¹ <https://www.indiamedicaltimes.com/2016/05/25/98000-people-lose-their-lives-because-of-medical-negligence/>

defined as the quality and form of care given by a fairly competent and trained medical professional with a similar experience and in the same medical industry under the instances.

Discussion

Meaning

Medical negligence is the medical practitioner's inability to offer adequate treatment and care and to exercise the expertise that, in identical conditions, a responsible, professional person would do. It is a commission or failure by a medical practitioner that diverges from the agreed norms of the healthcare profession, leading to patient being injured. It can be characterised as a medical professional's absence of proper care and expertise in relation to the patient, whether it is his background, clinical evaluation, investigation, diagnosis, and care that has caused injury, death, or an unfavourable consequence.²

Negligence as Tort

The negligence under tort is the violation of a legal obligation to provide care that leads in injury, unwanted to a claimant by the defendant. "Negligence is defined by Charlesworth as a tort involving the violation of a person's obligation to care for him, resulting in harm to the complainant." The violation of duty should be induced either by not practicing anything that a prudent person would perform in such conditions, or by performing things that a normal prudent man shouldn't do.³

Elements responsible for Negligence as Tort

(i) A duty to use reasonable care

The components of negligence are duty of care; violation of the duty of care; causation, i.e. a causal relation among the injury or damage to property of a person; and actual harm to either a person or property.⁴ For an effective claim underneath the law of tort, each of these elements needs to be present, but the initial step is to determine whether there is a duty of care in between the injured victim and the person whose action have led to such injury. There are two main divisions of care responsibility, certain roles recognized by statute and those assumed by the situations. "The test of the imaginable claimant is applied in cases where no standard of care has been established by law. The obligation is not due to the world at large (as a duty in criminal law would be), but rather to a person within the scope of the danger generated, i.e. the imaginable victim.

(ii) Breach of concerned duty

There requires being a violation of that duty after the standard of care has been recognized and accepted, which has historically been described as:

² D. H. Sohn, "Negligence, genuine error, and litigation," *International Journal of General Medicine*. 2013.

³ T. A. Brennan and M. M. Mello, "Patient Safety and Medical Malpractice: A Case Study," *Ann. Intern. Med.*, 2003

⁴ <https://www.lawteacher.net/free-law-essays/tort-law/negligence-in-medical-duty.php>

Negligence is regarded as failure to do things that a logical person would undertake or do anything that a reasonable virtuous person would not do, driven by certain considerations that usually govern the conduct of human existence.⁵

(iii) Causation and Remoteness

Causation and remoteness are the ultimate categories of neglect that have to be recognized. Causation is measured by the but-for test in which the balance of probability is based on causation: if it is most likely than not that an incident was the trigger, it is viewed as if it's the reason.⁶

The main thought of causation is immediate, for example the injury is eventually brought about by the activities set off by the respondent, for example there is no interceding demonstration that eventually caused the injury or the demonstration would have happened in any case even without the litigant's carelessness. Alternative and cumulative cause are the other types of causation, i.e. if there is an alternate trigger so there is no responsibility and aggregate causation is the continual actions of negligence adding up to personal injury and liability if sufficient action has not been exercised to minimise the possible damage.

Tort is a civil wrong inflicted upon other by one individual. The word "person" is a major negligence problem. Fictional persons, while they can be held accountable vicariously, should not be negligent. In a negligence lawsuit, an individual is the tortfeasor who performed the wrong. The negligence theory doesn't really mandate the removal of all risks from the actions of an individual, but it requires the exclusion of all unnecessary risks, determined by the severity of potential repercussions.⁷

Liabilities under Medical Negligence

(i) Civil Liability

As stated previously, the individual who has special expertise and capacity in a profession and uses this experience to handle the other individual then owes the other individual a duty of care. If in this time a wrong is done by him, then he is obligated to pay damages to him in the by way of compensation. Senior doctors or hospital administrators may also be declared liable vicariously in certain cases where wrong is performed by junior doctors.

(ii) Criminal Liability

If the patient dies following the treatment then criminal case is lodged under Section 304A of the Indian Penal Code for supposedly inducing death by reckless or careless actions. Pursuant to S. 304A of the IPC, which specifies that whoever results in the demise of any individual by a reckless or careless act that does not lead to a guilty homicide shall be imprisoned for maximum of two years or by a fine, or even both.

⁵ (1856) 11 Ex 781 784

⁶ Lunney & Oliphant, 2000, Tort Law: Text and Materials, 177

⁷ M. S. Pandit and S. Pandit, "Medical negligence: Coverage of the profession, duties, ethics, case law, and enlightened defense - A legal perspective," in *Indian Journal of Urology*, 2009

Because of the doctor's recklessness, he was so rushed to rush for his next surgery that he failed to sterilise the equipment and as a result there was this transfer of some contamination into her blood that contaminated her whole system and eventually resulted in her death.

There are a wide lot of instances where it is possible to operate side by side for criminal law and civil law. In their sense and effect, the two approaches are not collectively exclusive but obviously co-extensive and ultimately vary. The purpose of criminal law is to punish a criminal who has performed neglect, but the purpose of civil law is not to convict, but to obtain restitution from the other party.

It is possible to apply to a negligent behaviour that is not in line with the defined norm. The duty of care to patients in the medical profession starts when the person gives his implicit consent for medical care regardless of financial concern.⁸

Conclusion

In the case of *Donoghue vs. Stevenson*, the origin of professional negligence can be found in the idea that the producer has a duty of care to the customer during production. It is expected that a medical practitioner would have a competent degree of competence and ability. The theory of professional negligence is slightly different, as recognised in India in the medical industry.

Medical negligence should not be deemed merely a clear form of misconduct. Medical negligence shifts its shape from a basic tort by which an individual is provided a wrong care and can choke because of a dangerous tort damaging life by which the person sacrifices his existence due to a simple fractured injury.

Medical negligence calls for a comparatively high degree of treatment that is fairly anticipated from a physician. The level of treatment is not that of an obvious to a reasonable man, but that of an ordinary educated doctor who contributes to the group to which the doctor are categorized.

⁸ A. Agrawal, "Medical negligence: Indian legal perspective," *Annals of Indian Academy of Neurology*, vol. 19, no. 5. pp. S9-S14, 2016