Medical Negligence in India

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Abstract: **Medical Negligence happens by the medical practitioner when he does an act which is not expected by a trained medical professional who are bound to fulfill certain obligations towards sufferer's as it is the right of the sufferer's to know the pros and cons of the treatment being given by the medical practitioner but fails to do so, before or after a sufferer's treatment and do a mistake of which the sufferer has to pay a heavy price either in the form of bodily/ psychological damage or death of the sufferer, which makes the medical practitioner liable and are punished with imprisonment or fine or both. When a medical professional does a professional misconduct, then the Indian Medical Council and State Medical Councils take disciplinary actions against them, after which they are banned from pursuing medicine in the country. There have been instances in our country when the medical practitioner was not held liable such as when they acquire a forte of medication which does not give an expected outcome, when they acquire a substitute medication during treatment of the sufferer as per their knowledge and experience which causes harm to the sufferer and when the sufferer fails to prove the medication to be miserable for treatment, non infringement of obligation of protection by the medical practitioner for which the Article mentions various Acts such as Drugs and Cosmetics Act, 1940, Medical Termination of Pregnancy Act, 1971, Clinical Establishments (Registration and Regulation) Act, 2010, Consumer Protection Act, 2019, Bharatiya Nyay Sanhita 2023. Similarly, there are various Articles under Indian Constitution that aids the sufferers to litigate when their rights are violated due to medical negligence such as Article 21, 32, and 226. Few renowned cases on medical negligence in India, various lawful structures that acknowledge medical negligence in the country are also mentioned in the article such as Indian Penal Code, Consumer Protection Act, Tort Law, Medical Council of India and State Medical Councils.**

Keywords: **Medical Practitioner, Sufferer, Negligence, Treatment, Remedies, Liability**

INTRODUCTION

In the profession of medicine, it is expected from the medical practitioner that the medication, they provide to the patients or sufferers as per their wisdom and knowledge is given with best intent, but there have been instances in our nation when the medication given by the medical practitioner leads to harm or loss to the sufferer, which makes sufferer to litigate or file legal action against the medical practitioner. The burden of proof is on the sufferer to prove that the medical practitioner failed to perform their duty as a medical professional. The Indian Medical Council of India (Professional Conduct, Etiquette, and Ethics) Regulations, 2000 which governs discipline actions against the medical practitioners when they commit medical negligence. This Article is an attempt to explain that every case is different from the other, the final judgement is made on the basis of the loss, the sufferer endured by the medication and was the medical practitioner true to his profession during medication. The medical practitioner is not in every case liable for medical negligence, it completely depends on the facts and circumstances of the case.

What is Medical Negligence?

Medical Negligence happens, when a medical practitioner sputters to provide a level of prudence that a sensible other medical practitioner would have given to the sufferer under the same situation. In order to certify medical negligence it is necessary that the certain situation should consist of following ingredients:

a) It was the obligation of the medical practitioner to look after the sufferer.
b) The medical practitioner infringed his obligation to give a level of prudence.
c) The infringement led to hurt to the sufferer.
d) The sufferer bears losses physically, emotionally and monetarily.[1]

[1] Sumati Sharma, "Medical Negligence and Malpractice in India: An In-Depth Analysis" *The Law Advice* (2024).

Types of Medical Negligence

a) Wrong detection: Wrong detection leads to wrong medication of the sufferer which makes the medical practitioner liable for any loss of the sufferer.
b) Detection Stay : If the sufferer is not treated on a certain slot, and his medication is extended by the medical practitioner which worsens his health.
c) Mistakes during operation: When a medical practitioner does wrong surgery on the sufferer such as slits in any innards, serious haemoglobin wastage, unknown device remaining in the flesh and bones during surgery makes the medical practitioner liable for medical negligence.
d) Unrequired Operation: Unrequired operation of a sufferer without any due analysis of substitute or possibilities involved mainly due to detection of sufferer's indications.
e) Gestation and pregnancy disorder: Negligence by doctors and nurses while treating pregnant women during delivery is a prominent kind of medical negligence such as serious pregnancy disorder, delivery issues, wrong detection of infant's medicinal status.[2]

Liability of Medical Practitioner in cases of Medical Negligence:

1. Civil Liability: A medical practitioner is someone who has expertise to provide medical assistance when a sufferer is medicated. When a mistake is committed by the medical practitioner during surgery or treatment then in such circumstances the medical practitioner, the institute are liable and are bound to pay a fine to the sufferer. In cases of civil liability the losses are claimed in the form of fine, An offence which leads to civil liability are considered to be less grave. The sufferer approaches Consumer Courts as the patient or sufferer is the privilege taker and the medical practitioner is the privilege provider who failed to provide the kind of benevolences which is expected from them.

2. Criminal Liability: A medical practitioner who by his reckless action causes demise of the sufferer during operation or later is held criminally liable as it is a grave offence which makes the medical practitioner liable under Section 304A of IPC, 1860 which leads to 2 years of jail or penalty or both. The aid available under civil and criminal matters are not antagonistic but complementary. In criminal cases the offender is strictly punished but in civil cases the offender is not strictly punished they rather pay a penalty for their wrongful act.[3]

3. Res Ipsa Loquitur: "Things speak for themselves" is the Latin phrase Res Ipsa loquitur. When a patient is injured during surgery or therapy, he can hold the medical practitioner accountable for his carelessness using inferential proof or certainty, which requires the medical practitioner to demonstrate that his actions were negligent. Since the sufferer lacks medical competence, it is extremely challenging for them to demonstrate that the injury was the result of carelessness and would not have happened in any other circumstance. In order to justify certain cases. The latin maxim is not applicable in all cases and if it is, then the sufferer also have to prove the conditions that constitute medical negligence.[4], Washington Court has mentioned occasion which will suffice and be applicable in such cases such as remaining of device inside the sufferer led to wounds out of negligence, the act happened due to negligence, the scholar agree as well that the act committed by the medical practitioner led to wounds was because of negligence.[5]

Obligation of Medical Practitioner during Medical Negligence:

1. Sufferer inspection and detection: Medical Practitioners are supposed to properly examine the sufferer to detect their health status. Medical history of the sufferer is collected by questioning the indicators, past ailment, lineage, curative past, daily habits. Medical Practitioners also suggest and expound detection analysis for instance blood tests, X- rays, MRI's, ultrasounds etc which helps in detection methods.
2. Therapy preparation and perpetration: On the basis of detection, a medical practitioner makes self created therapy preparation keeping in mind

[2] Swarnima Jha, "Medical Negligence in India - 10 Ways to Avoid It" *Adjuva Legal* (2021).

[3] "Medical Negligence in India; Laws and Procedures" *LawRato* (2024).

[4] Sanjay Kumar Sah, "Medical Negligence Laws in India" *LegalServiceIndia* (n.d.).

[5] Harshita Agarwal, "Res Ipsa Loquitur and its Application in Medical Negligence" *Legal Service India.Com* (n.d.).

the curative status, peer group, and curative past of the sufferer. Treatment plans include cure, habitual variations, recommending curative intrusion, or alluding victims to other medical practitioners. They do clarify alternatives of recovering from the medical issues, and mention the viable welfare, prospect and final result of such alternatives and make necessary changes as per the sufferer's medical status in order to ensure highest care is provided to the sufferer.

3. Victim supervision and supplement: The medical practitioner estimates sufferer progress, medication productivity and inscribes any distress or difficulties which might accrue. Listing of assignations to check the sufferer's condition, give counselling, and respond to queries. The medical practitioners will also work jointly with other medical staff members to give complete supervision to the sufferer.
4. Disclosure and Sufferer Guidance: The medical practitioner should explain to the sufferer and his descent about the difficult curative themes, detection, cure alternatives, possible danger and apprehend results of the disease. The medical practitioner tries their level best to make the sufferer think about their curative status and includes the sufferers in the final verdict.
5. Curative Data Management: Medical Practitioner prepares proper curative data of the sufferer, as curative data are extremely important for futurity sources, persistence of alertness, and lawful agenda. The medical practitioner makes sure that the curative data of the sufferer are to be kept private.
6. Participation and Barometer: Medical Practitioner participates with other physicians to negotiate, talk and find suggestions regarding difficult matters when required. The medical practitioner makes sure beneficial disclosure between physicians /groups, stimulates mindful transformation and comprehensive participation.
7. Uninterrupted Guidance and Exploration: In order to stay latest, the medical practitioner keep themselves skilled and informed about the latest curative evolutions and also involves themselves in conventions, workplace and meetings they also involve themselves in curative exploration and research to enhance the sufferer's result.
8. Moral Contemplation: Medical Practitioner regards the sufferer, they take consent before surgery and method, preserves secrecy about the disease, adhering to legal obligation regarding privacy, the decisions formed by the medical practitioner are by taking into consideration that all the upright and law- abiding calibre would be comprehensive and greatest calibre of competence is preserved.
9. Direction and Operation: Medical Practitioner also involves themselves in executive functions such as budget planning, resource allocation and policy development to better health service transmission, standard boost dynamism, obeying to health service procedures and stimulating sufferer's security.[6]

Code of Medical Ethics, 2002 : Discipline against medical practitioners is governed by the Indian Medical Council (IMC) (Professional Conduct, Etiquette, and Ethics) Regulations 2002, which were created in compliance with the IMC Act of 1956. The IMC and the State Medical Councils have the authority to discipline healthcare professionals who commit professional misconduct. One of the several behaviors that come under this category of professional misconduct is medical carelessness. Discipline proceedings may result in a medical practitioner's suspension or permanent removal from the medical register, which would bar them from practicing medicine.[7]

Rights of Sufferers:

In cases of Medical Negligence, the patient have following rights which get breached due to medical negligence such as:

1. Rational Authorization: The sufferer has the right to know about his medical status, any interference required to improve the medical situation, or probability during serving the sufferers. So that the sufferers can make decisions on the basis of information received and their own medical requirements.
2. Right to get facts on health: It is the right of the sufferers to have way into all the medical reports and facts related to his health condition so as to perceive the detection, observe the improvement formed while remedy takes place including

[6] "What Does a Doctor Do?" *CareerExplorer by Sokanu* (n.d.).

[7] Arunima Rajan, "Medical Negligence and the New Criminal Law Codes" *Healthcare Executive* (2024).

suggestive arenas with errors which assures important alterations are formed.

3. Right to Security: Health organisations must avail such an atmosphere where patients get their cure done without any angst. Any form of recklessness by the health organisations or by the medical practitioner gets lawfully questionable.
4. Right to Standard of Discretion: The sufferers are bound to get a good standard of discretion. If the Health institutes sputter to avail the standard discretion to its sufferers, sufferers shall uphold legit undertaking against them.[8]

When the Medical Practitioner is not liable for Medical Negligence :

The Supreme Court in case of M.A. Biviji v/s Sunita & Others[9], replicate the need of greater weight on the aggrieved party to prove medical negligence, the hon'ble Supreme Court while coming to the closure had put away the NCDRC's judgement which stated that as per bronchoscopy proclamation the aggrieved party was capable to snore by means of tracheostomy tube, NI method being certain method for treatment led to ache and misery for which compensation shall be claimed, and held that in order to determine medical negligence, the existence of requisite components to constitute it should be there which are mentioned above in page no. 2. The hon'ble Supreme Court made analysis such as:

a) Medical practitioners will be liable for medical negligence when their action comes beyond the level of a prudent medical practitioner.
b) A medical practitioner cannot be held liable for medical negligence if he acquires a specific forte of medication, and does not attain the expected outcome even if the forte of medication acquired was perceived as logical and reasonable.
c) To prove medical negligence, the medical practitioner should focus on the best line of treatment as per their knowledge and experience and should not be afraid of abuse or torment they might encounter in great probable curative circumstances.
d) As mentioned in the Jacob Mathew case, acquiring a substitute forte of medication does not constitute medical negligence.
e) The victim was not able to prove medical negligence by the medical practitioner due to non presence of proof to determine that the Nasotracheal intubation method was a miserable curative application.
f) Healthcare institutes and medical practitioners established that there was no medical negligence on their part and overdue heed was provided prior to choosing the Nasotracheal intubation method for treatment.
g) There is non infringement of the obligation of protection, and no connection was created between the Nasotracheal intubation method and perpetual sound - depletion, perpetual breathing neck defect.[10]

Legal Protection of Medical Practitioners in India :

Legal protection is available to medical practitioners beneath varied legislations, statutes and suggestions. The initial lawful structure regulating the execution of medication in the nation is the Indian Medical Council Act, 1956. The Act determinants the Medical Council of India (MCI) that curbs medication instruction and execution of medication in the nation which is displaced with National Medical Commission (NMC) whichever concedes appreciation of curative credentials, provides authorization to curative educational institutes, allows enrollment to medical practitioners and observes curative execution, analyse curative structure in the country.[11]Acts that avails lawful shield to medical practitioners are mentioned below:

Drugs and Cosmetics Act, 1940 : The Act curbs making, trade, allocation of medication and makeup in the country. It avails advice for condition, security and usefulness of medication, specifying punitive action for disobedience.

Medical Termination of Pregnancy Act, 1971: Act avails for the conclusion of conceiving in irrefutable circumstances. It avails shield to medical practitioners to conduct misscarriage in conformity with the proviso of the Act.

[8] "Navigating Medical Negligence: Patient Rights and Legal Recourse" *Barelawindia* (2023).

[9] (2023 INSC 938)

[10] Dheeraj Nair, Kumar Kislay and Vedika Gandhi, *et.al.*, "Supreme Court Lays Down Test for Medical Negligence" *Jsa Advocates & Solicitors* (2023).

[11] "National Medical Commission" *Wikipedia* (2024).

Clinical Establishments (Registration and Regulation) Act, 2010: Act curbs enrollment and running of medicinal institutions, inclusive of health centres, rest homes, hospice. It avails suggestions for the status of carefulness and sufferers security, imposes compensation for disobedience.

Consumer Protection Act, 2019 : Act avails shield to customers opposed to preferential exchange operations and deal of damaged products and offerings. Remuneration is availed in matters of hurt or infliction caused by the products and offerings. Apart from these legislations, there are many regulations and code of behaviour which avail lawful protection to medical practitioners for instance Indian Medical Association[12] Primarily called as All India Medical Association is a confidential democratic elective institution of medical practitioners in the country which got relabeled as Indian Medical Association (IMA) in the year 1930, which is the fraternity enrolled in Societies Act of India.[13]

Bharatiya Nyay Sanhita 2023 :The primary goal of implementing medical negligence under BNS is to improve healthcare standards and enforce harsher penalties to guarantee that medical professionals provide the best possible care to the sufferer's. Sufferer's bear the burden of proof in cases involving medical negligence, and their ignorance of the law and their legal rights renders them incapable of handling such cases.When medical practitioners are afraid of going to court, they are unable to make judgments that could hurt their sufferers. The BNS 2023 helps these sufferers receive justice. Section 106 of the BNS 2023 now covers medical negligence, which was formerly covered by Section 304 A of the IPC, 1860. The penalty has been extended for a maximum of five years in accordance with the new BNS 2023 regulations. Separate penalties, which are comparably less severe at two years, have been added to the regulations when the act is performed by a registered medical practitioner. The BNS 2023 stipulates that medical negligence offenders must be imprisoned.[14]

Articles under Indian Constitution that aids the Sufferers of Medical Negligence:

Article 21 : Article 21 assures right to existence and individual sovereignty, inclusive of the right to wellness and curative aid.

Article 32 : This Article avails the right to intrinsic solutions, It means that an individual can approach the High Court or Supreme Court to save their rudimentary rights. For the medication of medical error, the sufferer can litigate below Article 32 of the Indian Constitution.[15]

Article 226 : Article 226 of the Indian Constitution empowers High Courts to issue writs to tackle instances of medical negligence. This can occur when a cause of action exists and the High Court has the appropriate jurisdiction.[16]If a patient suffers harm as a result of medical negligence, they have the option to file a case under Article 226 of the Indian Constitution. The High Court has the authority to grant compensation to patients who have experienced harm due to medical negligence.[17]The High Court is not authorized to intervene in choices made by medical professionals.

The High Court cannot conduct trial-like processes under Article 226.

[18],The High Court is unable to re-evaluate the determinations made by expert organizations, in such situation the final decision is made on the basis of Article 226 of the Indian Constiution.[19]

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[12] Abhinav Pandey, "Legal Protection of Doctors in Providing Healthcare Services in India : Act, Case Laws and Challenges" *Legal Service India* (n.d.).

[13] "India Medical Association" *Wikipedia* (2024).

[14] "Medical Negligence Under BNS" *Drishti Judiciary* (2024).

[15] "Medical Negligence - a Distressing Phenomenon in India" *Taxolawgy* (n.d.).

[16] Advocate Sushant Biswakarma, "Subtle Differences Between Article 226 and Article 227 of the Constitution of India" *Das Legal Advocates* (n.d.).

[17] "Writ Jurisdiction of the High Court and the Supreme Court" *The Association of Surgeons of India* (n.d.).

[18] Editor_4, "[Medical Negligence] 'High Court Cannot Act as an Expert Body with Reference to Medical Terminology'; Madras High Court Dismisses Petition Seeking Compensation... Https://Www.scconline.com/Blog/Post/2023/06/15/Madras-Hc-Not-To-Interfere-With-Opinion-Of-Medical-Expert-Under-Art-226/" *SCC Online Times* (2023).

[19] "Medical Negligence Not Established by Mere Dissatisfaction": Delhi High Court", *Ndtv*, Dec. 31,

Renowned Cases on Medical Negligence:

Indian Medical Association v/s V.P. Shantha[20] : The hon'ble Supreme Court, held that default in attaining logical permission from the sufferer to notify about inclusive danger in the curative method foregoing to receiving permission from the sufferer and abstaining from it, amounts to curative carelessness.[21]

Bolam v/s Friern Hospital Management Committee[22] : The case explained that neglect happens when anticipated measures are not superseded by medical practitioners, nevertheless if ordinary care has been taken, then the neglect will not be incorporated.

Jacob Mathew v/s State of Punjab and Another[23] : The hon'ble Supreme Court of India construed "Negligence" so long as an offender flops to utilise due care or flair regarding an individual to whoever he or she obliged to reverence, subsequent in the sufferer ordeal detriment to their individual or possession. Judicature elucidated that, just because the curative method concludes in catastrophic result, and does not haphazardly lead to lawless neglect.

Kusum Sharma v/s Batra Hospital and Medical Research Centre and Ors[24] : The hon'ble Supreme Court in this case held that to be neglectful denotes to perform or not to perform an act which a careful person might perform or might not perform.

Lawful structure for acknowledging medical negligence in the nation fundamentally rely on the columns mentioned below :

1. Indian Penal Code: The Section 304 A of IPC discloses upon prompting of demise due to carelessness, whereas Section 221 of IPC mentions rash and negligent acts endangering life.
2. Consumer Protection Act: The consumer protection Act comprehends medical management as a benevolence, strengthening sufferers to aspire remedy for impaired medication by consumer tribunal.
3. Tort Law: Standards of carelessness and infringement of job for solicitude avail lawful possibility for loss endured because of a medical practitioner's conduct.
4. Medical Council of India and State Medical Councils: The administrative framework consists of punitive dominion upon medical practitioners, inclusive of delay or lambast in matters of foul carelessness.[25]

CONCLUSION

The medical profession is one of the most noble professions in the world. The medical practitioner is said to have required prowess and experience to give good treatment to the sufferers as per their ailment. The offence of medical negligence is viewed from both the sufferers side and from the side of the medical practitioner, because it is said that the treatment or medication by the medical practitioner was done with good intent, there are certain things which a medical practitioner cannot envision and if a treatment or medication does not go as thought or planned and causes loss to the sufferer, cannot make the medical practitioner liable for it. The laws in our country are for both, the sufferer as well as for the medical practitioner. The burden of proof is on the sufferer, to make the medical practitioner liable for the offence and if the sufferer proves that, then the medical practitioner will not be able to pursue his profession as a medical practitioner as the Indian Medical Council and State Medical Council will remove his name from the medical register. If the sufferer fails to prove, then the medical practitioner can freely pursue his profession without any fear or remorse.

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[20] AIR 1996 SC 550

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[22] [1957] 1 WLR 582

[23] AIR 2005 SC 3180

[24] (2010) 3 SCC 480

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