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MEDICAL NEGLIGENCE LAWS IN INDIA

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Abstract

Laws are made to regulate human conduct and streamline the actions and relations of individuals and groups and also to augment the human resources and human endeavour. Like the all other fields, the medical profession and its allied and incidental vacations and services are governed and guided by Acts of parliament which are the statutory mandates binding on each and every one at the helm of affairs. Laws prohibit practice of medicine by those without a license, with impaired faculties, those convicted of a felony, practicing with abusive behaviour or outside their professional ability many legislations regulates the nature and conduct of medical profession. The various statutory provisions are discussed in this paper

Keywords: *medical profession, patient, treatment, laboratory .*

INTRODUCTION

Medical professionals commits errors despite prudence and care in their day to day medical practice such as incorrect diagnoses, wrong treatment and lack of consent. Any such blunder may result in harm to the patient or even death. This inherent fallibility in the medical profession is directly related to legal action. Hence, medical professionals will now have to learn about moral and legal fallibility while performing their duties

At present, the medical profession has become commercialised practitioners are adopting deceitful methods to attract the innocent patients and thereby procure

money. Some doctors suggest their patients to under to various tests, that too in a particular laboratory which are, in fact unnecessary. There may be unethical collusion between that laboratory and the doctor. And some other doctors prescribe more medicines than necessary on the letter pad of a particular medical shop. There may also exist some understanding between doctor and pharmaceutical companies for prescribing their product. The medical profession is a noble profession and it should not be brought down to the level of simple business. Today in India, many doctors have become totally money – minded and have forgotten their

Hippocratic Oath. Since most people in India are poor, medical treatment is beyond their reach.

REMEDIES AVAILABLE TO THE PATIENT

Patient who is sufferer from the negligent act of the doctors can seek remedy under various laws.

1. Compensatory action involving complaint against doctors, staff, or hospital whether private or governmental hospitals who committed negligence seeking monetary compensation before Civil Court under law of Torts , Law of contract, High Court under the constitution law, or Consumer Courts under Consumer Protection act.
2. Punitic action involving criminal complaint under Indian Penal Code against doctor.
3. Disciplinary action which involves complaint seeking disciplinary action against the medical practitioner or the hospitals as the case may be, before statutory bodies governing the medical practitioners such as Indian Medical Council or State Medical Council.
4. Recommendatory action involves lodging of complaint before the National / State Human Rights Commission seeking compensation.

CRIMINAL LIABILITY OF HEALTH PROFESSIONALS

The Gross ignorance, gross carelessness or gross neglect the may be prosecuted in a criminal court under section 304A¹ of the Indian Penal code. High degree of negligence is required to be proved. There must be direct nexus between the death or any other serious injury of the patients and negligence act of the doctor. A doctor is not criminally liable for the patient's death unless his negligence or incompetence showed.

Under the criminal law, the injured person or representative of deceased victims get nothing in monetary form, but the wrong doer is to be penalized or convicted. But under the section 357 of code of criminal procedure, 1973, the court can make an order to pay compensation to the aggrieved, out of the penalty imposed on accused. In India, Section 357 of the code of Criminal procedure 1973, empowers the criminal courts to award compensation to the victims while passing judgment of conviction. In *HariKrishan's case*² the Supreme Court has directed all criminal courts to exercise the power of award compensation on consideration of the nature of crime, justness of claim of the victim and ability of the accused to pay, the distinction between tort and crime has been reduced to the extent that the degree of negligence in Criminal liability is higher than that of negligence in tortuous liability.

In *Dr. Jacob George –Vs-State of Kerala case*,³ where homoeopathic doctor conducted abortion and caused the death of women. The doctor was convicted under 304 of Indian Penal Code and sentenced to four years rigorous imprisonment and to a fine of Rs.5000. The Supreme Court in appeal reduced the sentence of imprisonment to two months and enhanced to fine to Rs.1 lakh.

In *Juggankhan –Vs- State of Madhya Pradesh*^{4a} a registered homoeopath administered to the patient suffering from guinea worm, 24 drops of stramonium and a leaf of dhatura without studying its effect and the patient died of poisoning. The rash and negligent act of the doctor to prescribe poisonous medicines without studying their probable effect was of such degree as to amount to taking a hazard where by injury was most likely to be occasioned. The criminating lies in running the risk of doing such an act with recklessness or indifference to the consequences. The homoeopath doctor was held guilty under Section

304A of Indian Penal code by the Supreme Court.

The *Indore bench of Madhya Pradesh*⁵ high court held a registered Hakim guilty for committing an offence under section 304A of Indian penal code. The fact that a person totally ignorant of the science of medicine or practice of surgery undertakes a treatment or performs an operation is very material in showing his gross ignorance from which an inference about his gross rashness and negligence in undertaking the treatment can be inferred. Since the Hakim registered under section 46 of the Madhya Bharat Indian Medicines Act, 1952 had no knowledge whatsoever of penicillin injection, his act of giving procaine penicillin injection to the deceased would be clearly rash and negligent within the meaning of section 304A of Indian pencil code.

In *Ram Niwas v. State of Uttar Pradesh*⁶ a person (not a qualified doctor carried on the profession of a doctor) administered a full dose of an injection without giving the test dose and the subsequent reaction, resulted in death. The Allahabad High court ruled that the accused not being a qualified doctor, an injection given without the test dose and the immediate and subsequent death of the person so injected shows not only that the death was the direct consequence of administering the injection, but also that he acted with rashness, recklessness, negligence and indifference to the consequences. The accused was convicted by the trial court under section 304A, IPC to undergo a sentence of one year rigorous imprisonment.

MEDICAL NEGLIGENCE LIABILITY UNDER THE LAW OF TORT.

Tort means civil wrong for which the law provides some remedy. According to Dr. Winfield, 'tortious liability arises from the breach of duty primarily fixed by law; this duty is towards persons generally and its breach

is redressible by an action for unliquidated damages'.⁷

The Supreme Court in *Ram Bihari Lal v. JN Shrivastava*⁸ observed that it may not be questioned that the defendant possessed the necessary skill and knowledge to undertake the operation, but his over-confidence and burry failed him. The defendant failed in his duty of care in undertaking the operations. His act of removing the gall-bladder was highly dangerous which resulted in the death of the patient. So the defendant was liable to pay damages for his wrongful acts.

In *Ram Bihari Lal v. JN Shrivastava*⁹ the operation theatre was under repair. There were no facilities for oxygen and blood transfusions there was no anaesthetist, and some lifesaving drugs were not available. The doctor, therefore, failed in his duty of care in undertaking the operation without taking necessary precautions.

The Supreme Court in *Joseph alias Pappachan & ors v. Dr. George Moonjely & Anor*¹⁰ ruled that regarding the vicarious liability of those who run hospitals for the negligent acts of the doctors employed by them. Therefore, the first defendant is primarily liable for his negligent act, and the second defendant being the owner of the hospital, is vicariously liable for the negligent conduct of the first defendant.

The Supreme Court held that the state would be vicariously liable for the damages which may become payable on account of negligence of its doctors or other employees in *Achutrao H Khodwav. State of Maharashtra*¹¹

In *Ram Binharilal v. Dr. J.N. Srinivastav*.¹² Rs.1000 was awarded under the head 'mental agony and physical suffering'. In *Dr. P. Narasimha Rao v. Gundraru Jaya Prakash*, Rs.2, 00,000 was awarded under the head 'loss of amenities of life'.

In *Aruna Ben D. Kothari and others v. Navdeep clinic and others*¹³,

Rs.40,000 was awarded under the head 'loss of estate' and incase of Maharaj Prasad Aggarwal v. Dr. M.R. Jain, Rs.2,00,000 was awarded under the head of 'loss of consortium'.

LIABILITY OF HEALTH PROFESSIONALS UNDER THE LAW OF CONTRACT

Doctors have to often enter into contracts in their personal and professional lives. If Doctors have an administrative position in a hospital, they may also have to enter into contracts on behalf of their hospitals. A large part of hospital functioning is also related to contracts. Liability of health professionals under the contract Act, 1872 mainly depends on the express or implied terms agreed upon by the patient or his representatives and the doctor or hospital. Consent for treatment on payment of fees on the part of a patient can be treated as an implied contract with the doctor, who by undertaking treatment on acceptance of fees, promises to exercise proper care and skill¹⁵.

The Supreme Court, in *Joseph alias Pappachan and others v. Dr. George Moonjely and another*¹⁶ while dealing with the matter of death of a 24 year old woman due to the negligence and breach of legal duty under section 73 of the contract Act observed that the vicarious liability of those who run hospitals for the negligent acts of the doctors employed by them, the question is no longer res integra. It further held that the first defendant is primarily liable for his negligent act, and the second defendant being the owner of the hospital is vicariously liable for the negligent conduct of the first defendant.

LIABILITY OF HEALTH PROFESSIONAL UNDER THE CONSTITUTIONAL LAW

The constitution incorporates provision guaranteeing everyone's right to the highest attainable standard of physical and mental health. Article 21 of the constitution guarantees protection of

life and personal liberty to every citizen. The Supreme Court has held that the right to live with human dignity, enshrined in article 21, derives from the directive principles of state policy, and therefore included protection of health¹⁷. Further, it has also been held that the right of health is integral to the right to life and the government has a constitution obligation to provide health facilities¹⁸. Public interest petitions have been filed under article 212 in response to violations of the right to health. They have been filed to provide special treatment to children in jail; on pollution hazards.¹⁹

Failure of a government hospital to provide a patient timely medical treatment results in violation of the patient's right to life²⁰. Similarly, the court has upheld the state's obligation to maintain health services,²¹ against hazardous drugs,²² against inhuman conditions in after-care homes,²³ on the right of patients in cataract surgery camps,²⁴ for immediate medical aid to injured persons²⁵, on conditions in tuberculosis hospitals,²⁶ on occupational health hazards;²⁷ on the regulation of blood banks and availability of blood products;²⁸ on passive smoking in public places²⁹; on the health rights of mentally ill patient;³⁰ and in an appeal filed by a person with HIV on the rights of HIV/AIDS patients³¹.

REMEDIES UNDER CONSUMER PROTECTION ACT

In the absence of provisions for the protection of users of medical services in the Indian Medical Council Act, 1956, medical negligence was incorporated within the ambit of Consumer Protection Act³². This was exhorted by the General Assembly of the United Nations deliberations leading up to a resolution adopted by India³³. The Preamble of the Act emphasizes protection for the interests of the consumers. In order to settle disputes, quasi-judicial consumer redressal forums were established and authorized to make awards. It is well-

settled by various decisions of the National Commission that the activity of providing medical assistance for payment carried on by private hospitals and members of the medical profession falls within the scope of the expression "service" as defined in s. 2(l)(o) of the Consumer Protection Act 1986 and in the event of any deficiency in the performance of such service, the aggrieved party can invoke the remedies provided before the Consumer Forum having jurisdiction.

The Supreme Court of India in *INDIAN MEDICAL ASSOCIATION v. V.P. SHANTHA*³⁴ case, ruled that the medical profession comes within the ambit of the consumer protection Act in order to protect the innocent consumers from the malpractices of all service providers, including doctors.

The complainant sustained fracture in the humerus bone of the left arm. The complainant suffered from permanent disability due to negligent treatment of the doctor. The State Commission, U.P.³⁵ directed the doctor to pay compensation of Rs. 1, 63,000 and cost of Rs. 5,000 to the complainant. The complainant was awarded Rs. 1, 00,000 for mental tension, agony, harassment and permanent disability and Rs. 63,000 for medical expenses incurred by him.

The wife of the complainant gave birth to a child who suffered from "erb's palsy" or "brachial palsy". The baby could not move right hand from shoulder to finger. It was established from expert evidence that the baby suffered disability due to excessive fraction given by the doctor during delivery. The State Commission, Andhra Pradesh,³⁶ awarded compensation of Rs. 1,75,000 towards general damages for pain and suffering and permanent disability of right hand of the baby along with costs of Rs. 500.

LIABILITY UNDER MEDICAL LAWS

The following legislations regulate the nature and conduct of medical profession.

1. The Indian Medical Council Act, 1956.
2. The Pharmacy Act, 1948
3. The Indian Medicine Central Council Act, 1970
4. The Dentists Act, 1948.
5. The Homoeopathy central Council Act, 1973
6. The Indian Nursing Council Act, 1947.
7. Medical Degrees Act, 1916
8. The Drugs (Control) Act, 1950.
9. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.
10. The Medical Termination of Pregnancy Act, 1971.

These legislative enactments provide for setting up of Medical Councils at national level and state levels and empower them with the powers, inter alia, to lay down minimum standards for medical education, enrolment of doctors and also regulate their professional conduct by formulating the code of medical Ethics. In order to understand the efficacy, functioning and regulation of medical professionals under the aforesaid central acts it is necessary to examine them.

CONCLUSION

Criminal liability of health professionals, medical negligence liability under the Law of Tort, liability of health professional under the law of contract, liability of health professionals under the constitutional law, remedies under Consumer Protection Act, and liability under Medical Laws provisions protect the interest of the consumers. A doctor should give more importance to excellence in the treatment and patient care. The people are now confident enough while visiting doctors and getting treatment.

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