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An Article On Medical Negligence

Abstract

In the recent days medical negligence has eventually become a major issue that is seeks attention and awareness among every individual. As the consumers of the service rendered by the doctors do not have any boundary rather it is wide in its own terms so there is a requirement to give wide awareness to people on the major difficulties involved in the field. The medical field is a field where the human element is dealt predominantly so extra care ought to be taken. But doctors are also humans who are bound to make errors so there must be a test to check is there is any commission of negligence on the part of the doctors with that of the doctors of the same stream. He need not possess extraordinary skill rather must posses the minimal skill to hail himself to be a professional.

Introduction:

Black's Law Dictionary defines negligence as the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do. or doing something which a prudent and reasonable man would not do. There is a standard expected from every individual of ordinary or prudent care to do or not to do anything, if the standard is breached then to counts its part as negligence. In the case of Blyth v. Birmingham Waterworks Co., the issue raised was whether the leakage of water was due to negligence or not and was held as the person has taken all the reasonable of a prudent would take, he was not held liable for negligence.

Negligence Under IPC:

Section 304A. Causing death by negligence. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. It was a well settled law in the case of Cherubin Gregory vs The State of Bihar¹

Medical Negligence:

Medical negligence was a form of negligence where there is a negligence on the part of the professionals. Here the standard is compared with that of the professional of the same level or an expert than a prudent man. He need not be a man of very high skills rather must pose the skill of the man of the same.

Professional Conduct: Under the Indian Medical Council Act, 1956²

Section 20.A

The Council may prescribe standards of professional conduct and etiquette and a code of ethics for medical practitioners. Regulations made by the Council under sub-section (1) may specify which violations thereof respect, that is to say, professional misconduct, and such provisions shall have been appliedwithstanding anything contained in any law for the time being in force.

District Consumer Redressal Commission:

The District Commission referred to legal precedents on the subject matter and reiterated that a medical practitioner is only liable when their conduct falls below the standards of a reasonably competent practitioner in their field³. The medical practioner would be held liable when his

¹31 July, 1963: Equivalent citations: 1964 AIR 205, 1964 SCR (4) 199

²<https://wbconsumers.gov.in/writereaddata/ACT%20&%20RULES/Relevant%20Act%20&%20Rules/M>

³Case Title: T. Saravanan vs St. Isabel Hospital and Anr. Case No.: C.C. No.270/2018

standard fall below the standard of a competent practitioner of their field⁴

In a recent Hyderabad case, a minor who suffered health degradation because of the negligent

surgery done by the hospital was awarded 5 lakhs on an 8 long year protracted litigation process⁵. Just because the doctor has taken the alternative method than the simple method may not constitute medical negligence there is a requirement that the party had to prove that he had not complied with the standard of care required from the same field professionalism. The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those, duties give a right of action for negligence to, the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law require⁶. There is also a contrary opinion where people believe there is increase in trifling cases at the same time, they also prefer stringent rule binding them. Doctors are to be a high qualified professionals as they deal with the life of the person.

In the Bharatiya Nyaya Sanhita 2023 contains a concept of good faith which will include the death of the patients caused by the doctors out of medical negligence. The Indian Medical Association, which had written to the Prime Minister requesting for exempting medical professionals from criminal prosecution over death caused due to medical negligence, welcomed the move⁷. From this move the Central Government wanted to uphold the order of the Supreme Court decision in Kusum Sharma & Ors vs Batra Hospital & Medical Research Centre and Ors⁸. In which the Supreme Court had laid down guidelines for the testing the charge of medical negligence.

⁴Kusum Sharma and others versus Batra Hospital and Medical Research Centre and others (Civil Appeal No. 1385/2001)

⁵<https://health.economictimes.indiatimes.com/news/industry/med-negligence-boy-gets-6-lakh-relief-after-8-yrs/102439374>

⁶Laxman Balkrishna Joshi vs Trimbak Bapu Godbole and Anr on 2 May, 1968

Equivalent citations: 1969 AIR 128, 1969 SCR (1) 206

⁷http://timesofindia.indiatimes.com/articleshow/106163773.cms?from=mdr&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

⁸Civil Appeal no. 1385 of 2001, February 10 2010.

Charter of Patients' Rights for adoption by NHRC Patients' rights are Human rights:

Every individual is bound to be treated equally under Article 14. The Universal Declaration of Human Rights 1948 emphasises on the fundamental dignity and equality of all human beings.

Right to information is one of the basic rights where the patient or the care taker must be provided with the information of the disease and the cause, the effect of any surgery to be undertaken, the payment to be made. Right to informed consent there is a requirement that the patient's or the care taker's consent had to be got in case of seriousness of the treatment. Right of privacy is also a right of the patient but in the case⁹, the patient was HIV positive was communicated and, on an appeal, it was held there is no violation of any confidentiality and privacy of the patient so was not held liable.

Consent:

Consent also plays a major role in the field of medicine. There is a requirement that the patient ought to be given complete information of the treatment that is given and obtain the consent from the patient and in case of incompetence then any person on behalf of the patient ought to give consent. There is no requirement that the consent must always be in written form rather it can also be in oral form or may even be in implied form¹⁰. The doctor had to act within the limit if he exceeds the limit, he may be held liable either in Torts or in criminal law for any grave negligence. When the consent was given to remove the lump in the chest region and the doctor had negligently removed the uterus of 40-year-old woman was held liable for his gross negligence in *Lakshmi Rajan V Malar Hospitals Ltd and Anr*¹¹. And in the case¹², where the doctor had acted without the consent was held liable for operating the patient without consent. There are events where the nurse had chopped off the infant's thumb by negligence. This not just shows the negligence on the part of the nurse but also lack of dedication to her work she ought to be very cautious when dealing¹³

In *Indian Medical Association v VP Shantha*¹⁴, the Supreme Court has authoritatively clarified the following facts relating to consumer law and medical negligence:

⁹Mr. 'X' vs Hospital 'Z' on 21 September, 1998

¹⁰<https://doi.org/10.4103%2F0970-1591.56202>, Consent and medical treatment: The legal paradigm in India Omprakash V. Nandimath

¹¹O.P.No. 379 of 1993: Decided On, 13 June 1997

¹²*Ram Bihari Lal v Rd. J. N. Srivastava*. AIR 1985 MP 150

¹³

<https://timesofindia.indiatimes.com/city/chennai/nurse-cuts-off-babys-thumb-by-mistake/articleshow/83351555.cms>

¹⁴13 November, 1995: Equivalent citations: 1996 AIR 550, 1995 SCC (6) 651

The Consumer Dispute Redressal Agencies are granted with same powers as with Civil court while trying a suit¹⁵. The National Dispute Redressal For had very recently awarded Rs.10 Lakhs compensation for the victim of medical negligence where even after obtaining the report the doctor did not give any treatment to acute pancreatitis, because of which the patient died¹⁶. The procedure followed for the determination of consumer disputes under the consumer protection act is summary in nature involving trial on the basis of affidavits¹⁷. It will be for the party is to place the necessary materials and the knowledge and experience, which would enable the Consumer Dispute Redressal Agencies to arrive at their findings on the basis of the material¹⁸.

Conclusion:

The medical professionals ought to possess the skills of the prudent made of the same profession will poses and must also abide by the duty to care that is needed to be possessed by the doctor. There is a lack of professional ethics and care that is required that causes the major chaos in the field of medicine. There is a lack of awareness and care that is to be taken by the doctors towards their patients which acts as the mainstream cause for the medical negligence. There is need for awareness to be spread among the patients to know their rights and the doctors to know the standard of care that is required, for securing a healthy and prosperous medical field.

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¹⁵1995 (6) SCC65, p672-73, para 37

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¹⁸ibid p671 para 33

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