

# Study on Medical Negligence

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**ABSTRACT:** *As these issues are deemed argumentative and often even ignored and taken lightly, this paper is being written down as an attempt to carve out the problem of criminal medical negligence. Civil and criminal neglect have both been documented and distinguished between them as well. Different case laws were quoted to accurately point out the matter along with the guidance. The doctor-patient dynamic has evolved and medical practice has been modernized, affecting the practice of medicine. From one point of view, care may have complicated implications and then the patient again speculates that neglect is a cause for their pain. The patient's medicinal suit has a growing history of medical negligence and this paper discusses the same in brief.*

**Key Words:** *Medical, Negligence, Remedies, Reimbursement, Criminal offence, Law and order.*

## INTRODUCTION

Carelessness implies inability to practice due consideration which sensible man need to require in everyday circumstances. These circumstances and conditions should be predictable.

### FUNDAMENTALS OF NEGLIGENCE

#### *Duty to take care-*

Defendant has an obligation towards the offended party Grant v. Australian Knitting Mills Ltd- where producer have an obligation towards its client.

#### *Duty to whom-*

Duty is reached out towards the neighbor. Neighbor signifies "the people who are so intently and straightforwardly influenced by my demonstration that I should sensibly to have them in thought as being so influenced when I am guiding my psyche to the demonstrations or exclusions which are brought being referred to."

Breach of obligation to mind: The fundamental condition for the risk is that the offended party should demonstrate that the there was a break of obligation to take care by the respondent or that he neglected to play out that obligation. There are times when the specialist will be mindful vicariously, which implies if his worker demonstrations impulsively causes the passing of a patient, in such case the specialist will be Vicariously Liable [1].

This is the idea of Tort Law. There are two kinds of carelessness

(1) Civil carelessness

(2) Criminal carelessness 'Criminal Negligence' is an offense against the State while 'Common Negligence' is an offense against the person, which causes actual injury model Hurt-Section 319, Grievous hurt-Section 320 Indian Penal Code. Loss of property because of some carelessness is a common carelessness. There has been banter over the point 'Criminal Negligence by Doctor' over recent years and the Supreme Court have alluded to different choices given by House of Lord.

In India criminal law has put the clinical expert at an alternate stage contrasted with others and expert. Segment 304A of the Indian Penal Code, 1860 states that "whoever causes the demise of an individual by a rash or careless act not adding up to chargeable crime will be rebuffed with detainment for a term of two years, or with a fine or with both."<sup>2</sup> Therefore, if an individual carried out an offense inside the ambit of IPC and causes passing by carelessness however with no expectation to do such damage will be subject for discipline of the offense which he did adding to the discipline of compulsory guilty manslaughter [2].

Criminal risk is likewise forced on specialist under specific circumstances wherein the patient passes on at the hour of managing sedation; the demise should likewise be expected to mala fide or carelessness. Special cases Sections 80 and 88 of the Indian Penal Code which contain guards for specialists accused of criminal risk. Under Section 803 - 'nothing is an offense that is finished coincidentally or hardship and with no criminal goal or information in the doing of a legitimate demonstration in a legal way by legal methods and with appropriate consideration and alert.' [3]

Section 88 explains, 'an individual can't be blamed for an offense in the event that she/he plays out a demonstration in compliance with common decency for the other's advantage, doesn't plan to cause hurt regardless of whether there is a danger, and the patient has unequivocally or certainly given assent.' Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee and Ors<sup>5</sup> which is otherwise called Anuradha Saha case, the case was presented in the year 1998 with the supposed clinical carelessness by three specialists of AMRI medical clinic. [4]

Dr. Sukumar Mukherjee, Dr. Baidyanath Haldar, and Dr. Balram Prasad. The realities of the case are that there was a medication hypersensitivity from which Mrs. Saha was languishing. At the point when the couple moved toward the clinics, the three specialists endorsed such medication which escalated the state of the Mrs Saha which prompted her passing. High Court gave a ultimate conclusion in the year 2013 and remunerated the casualty with 6.08 crore rupees. This case extended the ambit of clinical carelessness in India. The expert is added with extra obligation added through Bolam test which came to being through the situation of Bolam v. Frien Hospital Management Committee where the respondent speak to himself as having more than ordinary aptitudes and capacities, this test expects guidelines which should be as per a dependable group of assessment. Along these lines the Bolam test expresses that "If a specialist arrives at the norm of a mindful collection of clinical assessment, he isn't careless."

Large measure of carelessness is important to demonstrate the charge of criminal carelessness under area 304-A of IPC. For fixing criminal obligation on a specialist or specialist, the norm of carelessness needed to be demonstrated ought to be as high as can be depicted as "gross

carelessness". The Supreme Court held that "Subsequently a specialist can't be considered criminally answerable for patient's demise except if his carelessness or inadequacy indicated such dismissal forever and security of his patient as to add up to a wrongdoing against the State". Court further adds, "Along these lines, when a patient consents to go for clinical therapy or careful activity, each thoughtless demonstration of the clinical man can't be named as 'Criminal'. It tends to be named 'Criminal' just when the clinical man displays as gross absence of skill or inaction and wanton lack of concern to his patient's wellbeing and which is found to have emerged from net obliviousness or gross carelessness [5].

The Supreme Court held that "Accordingly a specialist can't be viewed as criminally responsible for patient's downfall except if his heedlessness or deficiency showed such lack of concern perpetually and security of his patient as to amount to a bad behavior against the State". Court help incorporates, "Subsequently, when a patient agrees to go for therapeutic treatment or careful activity, each hurried exhibit of the remedial man can't be named as 'Criminal'. It very well may be named "Criminal" exactly when the remedial man shows as gross nonattendance of capacity or inaction and wanton absence important to his patient's security and which is found to have risen up out of gross deadness or gross indiscretion [6].

On account of Jacob Mathew v. Territory of Punjab Supreme Court additionally added that "Where a patient's demise results simply from 'Mistake of judgment' or "a mishap", no criminal risk ought to be connected to it. Simple carelessness or some level of need of sufficient consideration and alert may make common obligation yet wouldn't get the job done to hold him criminally at risk. The accompanying closing perceptions of the educated creators as cited by the Supreme Court are suitable regarding the matter and a valuable manual for the courts in managing the specialists blameworthy of carelessness which causes passing of their patients: "Criminal discipline conveys generous good hints. The precept of exacting risk considers criminal conviction without moral reprehensibility just in extremely restricted conditions. Conviction of any generous criminal offense necessitates that the charged individual ought to have acted with an ethically reprehensible perspective. Wildness and purposeful wrong doing, levels four and five are order of fault, are typically culpable yet any lead missing the mark concerning that ought not to be the subject of criminal risk [7].

There are certain guidelines which Supreme Court gave regarding the same

1. Obligatory prima facie evidence: A private complaint would not be allowed unless complainant produces prima facie evidence before a court in form of an 'opinion by another doctor supporting his charge of 'recklessness' or 'gross negligence'.
2. Directions for Police Before proceeding against doctor on the allegation of criminal negligence, the Investigating Officer should obtain independent and competent medical opinion on the facts.
3. Directions in Matter of Arrest Doctor may not be arrested as a material of schedule. Arrest of doctor should be delayed unless required for collecting evidence or if there is a chance of his not being available for probe or when try to obstruct probe or not cooperating law enforcing agencies.

A doctor may be arrested, if his arrest is necessary for furthering the investigation or for collecting evidence or the doctor would not make himself available to face prosecution unless arrested. Various cases have been registered against the doctor under section 304 of Indian Penal Code are those of murder where bail has also been not granted. For conviction of a doctor charged

There are certain conditions under which doctors are held liable. Either the doctor does not possess of the requisite skill which he should professed.

He did not exercise, with reasonable competence in the given case, the skill which he did possess.

In the case of V. Krishan Rao Vs Nikhil Super Speciality Hospital, plaintiff an officer in malaria department filed a complaint against the hospital for being negligent in their conduct while treating his wife. His wife was wrongly treated for typhoid while she was suffering from malaria fever, wrong medication provided by the hospital and therefore Rao was awarded a compensation of Rs 2 lakhs. In this case, the principle of *res ipsa loquitur* was applied [8].

S. N. Thakur was admitted in Apollo Gleneagles Hospital on 07.04.2012 with complaints of multiple black patches on skin and bleeding from mouth. The victim was taken to the emergency ward, where an initial observation was made and held that the patient was suffering from ecchymotic patches and bleeding from oral cavity.

Condition of deceased patient was highly alarming and the doctor on duty had made a diagnosis that he was suffering from Chronic Myeloid Leukaemia and for immediate management they have administered injection Raciper and Zofar as the patient complained of nausea and vomiting. The consultant Dr. Soumya Bhattacharya over telephone advised the doctor on duty to admit the patient and also advised a series of tests.

On the next morning when the patient was found unconscious, consultant Dr. Soumya Bhattacharya was informed and she advised for infusion of four units of platelets and also for shifting the patient to ICU. CT scan of the patient revealed cerebral haemorrhage and blood report showed a platelet count was very low. Unfortunately the patient was declared dead at 3.40 p.m in the afternoon. Supreme Court viewed that, Section 304A of Indian Penal Code although the section does not contain the word "GROSS" but it deals with cases as if the word "gross" is present. It must be the *causa causans* otherwise doctor concerned would always be under the dangling fair of facing a prosecution and to refuse to treat the patient by referring the patient to some other hospital, which eventually would lead to disservice to the society.

## CONCLUSION

Substantial metaphysical overtones are borne by criminal liability. Some of the misfortunes of life are incidents for which no body is criminally liable, others are erroneous for which liability is diffuse, and some are instances of criminal behaviour that are grounds for restitution and penalty at times. It takes cautious, morally sensitive & scientifically based research to differentiate between these groups.

Judicial Medical Negligence has become the focus of the court's dilemma since, in the one side, the culprit must be prosecuted on the grounds of fairness, equality and good faith, though, on the other hand, as the Supreme Court states, if doctors are charged of being kept criminally accountable, they would never help the patient and ask them to go to separate hospitals. Therefore, it is important to establish proper guidelines as to what will result in criminal negligence and what does not. There have been many incidents when infants have died because at the right time they were not given medication, but the doctors have been released so they should not be held accountable for frivolous matters.

Thus, specific laws need to be made and even doctors who decide whether or not wrong has been committed must be asked not to be partial and thus both the identity of the accused and the victim must be concealed as the examinations are carried out by the government doctors and the doctor who investigated the name must not be disclosed in order to get equal findings and therefore we will be able to attain justice, fairness.

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