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LIABILITIES OF MEDICAL PRACTITIONERS UNDER NEGLIGENCE

ABSTRACT

The Author through the article has elucidated the expertise of doctor's and his liability in terms of civil and criminal Liability, followed by the code of Indian Penal Code. The author has additionally coated the essential ingredients and factors that verify the liability of a doctor. It additionally focuses on the fundamental principle of doctor – patient relationship so as to beat Negligence. The article additionally deals with the disciplinary actions below the Medical Council of India, to bring light-weight to their powers and their roles so as to keep up disciplinary actions against Medical Practitioners.

INTRODUCTION

The importance of any profession requires the degree of success which a practicing professional can give in his results. But, it doesn't mean that every and each skilled would deliver the leads to identical experience. At the same point there are many other factors that determines the particularities of an individual and his highly skilled practice. So, the main importance is one's action, his conduct and discharge of his duties in manner conducted as prudently as possible.

One can leave some room for factors like standards of basic education, facilities regarding initial period of training and specialized exposure and stress while executing a given set of assignment and the like which in the ordinary course of day to day life are sufficient to lead to differences of performance but certainly there is no room for recklessness and blatant failure of duty such activities comprises of omission leading to a negligent act.

LIABILITIES OF MEDICAL PROFESSION

The Term Profession itself symbolically suggests that, a plan of AN occupation requiring either strictly intellectual ability or of manual ability controlled, as in painting or during a surgery. however, the road of the variations varied from time to time thanks to the evolution within the medical era. The word “Profession” accustomed be confined to the 3 learned professions like the church, Medicine and Law.¹

According to Rupert M.Jackson and John L. Powell , the occupations that are considered professions have four characteristics:

- i. Skilled and specialized and therefore the work associated with it shall be mental instead of manual
- ii. Ethics, Honesty and Responsibility towards a concerned patient
- iii. Professional association that regulates admission and seeks to uphold the standards of the profession through skilled codes on matters of conduct.
- iv. High status within the community

Thus in present, due to the development and differences in the medical era have brought an increasing number of occupations have been seeking and achieving “professional” status and that this has led inevitably to some blurring of the features which traditionally distinguish professions from other occupations.

In the matter of Professional Liability, a medical practitioner may differ from other field of profession because the chances of success in medicinal case are unpredictable and uncertain with the results, which basically depends on the practitioners control.

¹ *Commr. Of Inland Revenue v. Maxse*, (1919) 1 KB 647 as quoted in *Indian Medical Association v. V.P. Shantha*, 1995, AIR 1996 SC 550.

Medical Practitioners don't enjoy any immunity and they can be sued based on the grounds of their defect, depending on that a tort or a civil proceeding can be initiated. Though, belonging to the medical profession, there is no immunity as such from any claim of damages based on the grounds of negligence

In *Bolam vs. Frien Hospital Management*, three criteria set for the safety of the medical professional: -

- (i) The doctor must possess adequate skill in that area of medical practice
- (ii) Exercise reasonable care while performing his skill
- (iii) Mere Negligence will not make out a case for compensation against him but that negligence should have a direct nexus with the injury caused to the complainant. If the injury does not have a direct link towards negligence, no award of compensation exist.²

Liabilities of a Medical Practitioners specifically covers two aspects namely:

1. Civil Liability

2. Criminal Liability

CIVIL LIABILITY

A medical practitioner is often liable underneath civil law either in contract or in delict. A medical practitioner who causes the death or injury of a patient irrespective of the contractual relationship between the patient, still the practitioner would be held liable.

An example is where a dentist furnishes a patient with ill-fitting dentures. A delict is just an act which during a wrongful and culpable manner causes harm to a different (the patient during this case).

In the case of *Thebe vs. Checkpoint Laboratory Services* although it involved Laboratory HIV/AIDS tests. During this case the complainant was tested positive for HIV/AIDS at the defendant's laboratory and was mistakenly found to be positive. He went for additional tests which showed that he was negative. The appellant court found that the defendant was negligent on the basis of committing an error while collecting and labeling of the blood.

² (1957) 2 AUER

In order to find a medical practitioner to be held liable in delict, the following elements should be proven:

- a. Act - Act is an action which leads to an omission of duty that a medical practitioner fails to discharge his duty. If the act of duty to treat is not established, then duty to take care is also not relevant.
- b. Wrongfulness – an omission or commission of a mistake during the process of surgery or treatment
- c. Damage – an injury caused during the course of surgery or treatment.
- d. Causation – an act which reflects the doctors lack of duty

The above said essential ingredients to prove a medical Practitioner's under Civil Liability. As it is clear that an act determines the initial step of committing an injury to the patient life or causing death. The process itself bring the other attributes such as causation due to the act, damage after the act being processed and wrongfulness in terms of committing a wrongful act which may be a negligent act or a willful which the patient or the aggrieved party has to prove.

In the case of Indian Medical Association v. V.P. Shantha and Others

“The duties that a doctor owes to his patients are crystal clear. A person who holds himself out able to give medical suggestion, recommendation and treatment impliedly undertakes that he's possessed of utmost skill and knowledge for the aim . Such someone once consulted by a patient owes him sure duties, an obligation to worry when making a decision whether or not to undertake the case, an obligation of care when making a decision what treatment to relinquish or a obligation of care within the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the aggrieved party or a consumer. The practitioner must bring back his task an inexpensive degree of experience and knowledge and must exercise an inexpensive degree of care. Neither the very highest nor a really low degree of care and competence judged within the light of the actual circumstances of every case is what the law requires.

At the outcome, a legal duty of a doctor is to take care and duty, as a corresponding factor which may arise in a contractual relationship. When such reasonable care is not rendered and the action on the part of the Doctor comes within the ambit of negligence, it can be safely concluded that the

said practitioner –did not perform his duty properly which was expected of him under the law and breached his duty to take care of the patient.

CRIMINAL LIABILITY

The Criminal Liability also lies on the Practitioner following the same elements but under this circumstances the doctors are being governed under the IPC and CrPC provision. Wherein when a criminal liability arises the doctors are either booked under Murder or Culpable Homicide or Other offences.

MURDER & CULPABLE HOMICIDE

The term ‘murder’ is comes from the Germanic word ‘morth’, which eventually suggests ‘secret killing’. ‘Murder’ is when one is slain with his own action, and with a malafide intention to kill an another being. Murder is unlawful homicide with guilty intention. Murder is a heinous offence than the culpable homicide. Culpable homicide may be a genus, whereas murder may be a species. An offence cannot amount to murder unless it falls under the ambit of culpable homicide. Under Murder, a medical Practitioner can be penalized for deliberately killing a patient by satisfying all the essential ingredients such as ‘mens rea’ and ‘actus rea’.

Homicide is a Latin terminology in which “homi” means human and “cido” means to cut or injury. This literally means to kill a person's being through another being. So, the homicide term may be a generic one to mean the demise of an individual by another person or a person's species. This doesn't mean all homicides are unlawful.

A three Judge Bench of this Court within the case of Jacob Mathew v. State of Punjab and Another had the occasion to deal with and decide the liability of doctors in a death case arising due to criminal medical negligence for an offence under Section 304-A of the Indian legal code, 1860. In the case of professional negligence, it had been observed that within the law of negligence, professionals like lawyers, doctors, architects et al. are included within the category of persons professing some special skill or as skilled persons generally. Any task which is required to be performed with a special skill would generally be admitted or undertaken to be performed as long as the person possesses the requisite skill for performing that task.

Any reasonable man getting into a profession which needs a specific level of learning to be called knowledgeable of that branch, impliedly assures the person handling him that the skill which he professes to possess shall be exercised with reasonable degree of care and caution. He doesn't assure his client of the result.

A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practicing and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. This is all what the person approaching the professional can expect.

Judged by this standard, the professional may be held liable for negligence on one of two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices.³ A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.⁴

In the case of State of Punjab v. Shiv Ram and Others [2005] 7 SCC 1, a three Judge Bench of this Court while dealing with the case of medical negligence by the doctor in conducting sterilization operations, reiterated and reaffirmed that, if negligence of a medical practitioner is established, the primary liability cannot be fastened on the medical practitioner

In accordance with the Shiv Ram case and Jacob Mathew, it is crystal clear that a criminal liability of a doctor arises when two essential factors are determined. Firstly, the concerned medical practitioner is expert in the particular field of medical study. Secondly, whether the medical practitioner implied his genuine and reasonable competence while exercising his duty. Thirdly, a

³ <https://blog.ipleaders.in/professional-misconduct-by-doctors/> (Last Visited April 14, 2021, 11.12pm)

⁴ Jacob Mathew v. State of Punjab and Another [(2005) 6 SCC 1]

doctor must show negligence or rashness of such a high degree as to indicate a mental state which can be described as totally apathetic towards the patient. Such gross negligence is punishable.

DOCTOR AND PATIENT RELATIONSHIP

The relationship of a doctor with his patient is like a lawyer and client relationship as their information is considered to be the utmost and confidential. To illustrate this utmost confidence, even a diehard criminal would open mindedly confess his issues with his lawyer and the same applies to a lady who is ready to expose her organ to a doctor as he is the savior for her problems. Likewise, a patient in hard time of his life or limb looks to his doctor as a god. The reason behind is their implicit faith in their dignified profession. It is the opinion of some those who the differential in power between the patient and doctor is important to the steady course of treatment. The patient seeks info and technical help, and also the doctor formulates choices that the patient should settle for. Though this appears acceptable in medical emergencies, this model, referred to as the activity-passivity model, has lost quality within the treatment of chronic conditions.

REMEDIES FOR CLAIMING COMPENSATION

The Patient or a consumer are entitled to recover damages or compensation in case of medical Negligence, either under law of tort or law of contract both the law has a stand for recovery and compensation. Under law of tort it is not essential that consideration should have been paid for the treatment. But compensation is recoverable under tort for breach of duty by the hospital/medical practitioner. The following are the remedies available for claiming compensation for medical Negligence:

- i. Under law of contract and tort in a civil court
- ii. Under the constitution of India by filing a writ in the appropriate High Court or Supreme Court
- iii. Under Medical Council of India Regulations and State of Medical Council Acts
- iv. Under the Fatal Accidents Act, 1855

- v. Under criminal law where apart from punishment, compensation can also be awarded against the doctor.⁵



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⁵Dr Jagadish, “Medical negligence and Compensation,” 2020, p. 68

Chapter 5: Liability of Medical Professional for Negligence under Criminal Law, Medical Negligence and Compensation, [Dr Jagadish, 4th edn, 2020]