

DE JURE NEXUS LAW JOURNAL

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DUTY OF CARE: IT'S IMPLICATION TO MEDICAL PROFESSIONS**Introduction**

Medical profession is one of the noblest professions in the world and, doctors and nurses being a crucial part of it because they save the lives of people and try their level best to cure the people from even the deadly diseases.

But Medical Negligence has become one of the serious issues in the country in recent years. Negligence in medical profession often leads to the death of the patient, impairment or any other misery resulting in the adverse effects on the health of the patients.

Around 52 lakhs medical injuries are recorded in India every year, out of which 98,000 people lose their lives due to medical negligence. It is a serious concern for our country that due to this medical error, 10 people fall victim to medical negligence every minute and more than 11 people die every hour.

It is nothing unexpected that even the smallest misstep made by a doctor can have life altering effects on the patients. Thus, it is the duty of a doctor to take proper care to avoid such happenings.

Duty Of Care

Background

The principle of 'duty of care' was set up in 1932 by *Donoghue v. Stevenson*, also known as the 'snail in the bottle case', wherein Lord Atkin identified that there was a general duty to take reasonable care to avoid foreseeable injury to any person¹. In this case, a woman drank ginger beer from a bottle that was opaque until she discovered a decomposing snail at the bottom. As a consequence of it, the woman fell ill. A case was brought against the manufacturers for compensation. Lord Atkin determined the company as negligent since the duty of care was breached by them.

Duty of Care in Medical Professions

In case of medical professions, the relationship between a doctor and a patient is a significant one. A doctor has a duty of care in:

- deciding whether to undertake that particular case or not;
- taking the appropriate decision with respect to what sort of treatment is to be given;
- the management of that treatment;
- not to attempt any sort of procedure which may be far off his control, and so on.

It is hoped from a medical practitioner that he should deliver a reasonable level of skill and knowledge and bring forth a reasonable degree of care.

Breach of Duty of Care

The breach of duty of care can also be called as 'Negligence'. The three elements of negligence are:

1. The defendant owes a duty of care towards the claimant.
2. There is a breach of that duty by the defendant.
3. Plaintiff suffers an injury due to this breach.

Medical Negligence is a branch of negligence which can be defined as the wrongful acts or omissions by the medical professionals, in the course of dealing with the patients.

Burden of Proof

The burden of proof lies on the claimant. If it is proved that a doctor has negligently breached his duty of care and caused injury to the patient then, the doctor would be responsible for the damages.

Legal Claims Regarding Breach of Duty By a Doctor

Following are the examples of legal claims regarding medical negligence and breach of duty:

- Failing to diagnose the health condition of the patient accurately.
- Failing to review patient's present medications.
- Prescribing incorrect medications to a patient.
- Failing to analyze an ailment altogether.
- Giving a prescription for the inappropriate dose of medicine.
- Ignoring the laboratory reports.
- Failure to order required tests.
- Discharging a patient prematurely from care.
- Committing a severe mistake while performing surgery.

Obligations of a Doctor

- Doctors have to communicate to their patients and relay adequate information. This includes:
 - Consent- Informing the patients about the reasonable risks during the procedures or the course of treatment.
 - Disclosing the actual health conditions within a suitable time period.
 - Informing patients of potential side effects associated with medicines prescribed to them.
 - Proper documentation and record keeping of complaints, history, examination along with date of examination and follow ups.

Liability in Case of Medical Negligence

The person committing wrong and causing injury to the other person is liable under three heads:

- i. Civil Liability

- ii. Criminal Liability
- iii. Disciplinary action
 - **Civil Liability** refers to monetary compensation in the form of damages.
 - **Criminal liability** can be imposed under Indian Penal Code, 1860. An action can be taken against the offender under Section 304 A, 337 or 338 of IPC.
 - **Disciplinary action**- For the professional misconduct by the medical practitioners, penalties can be imposed under the Indian Medical Council Act, 1956.

Extent of Liability of Hospitals

For the actions of its employees, hospitals can be held vicariously liable on many grounds.

The NCDRC holds that the hospitals cannot be escaped by mere statement that it only provides infrastructural facilities [***Rekha Gupta v. Bombay Hospital Trust & Anr***]ⁱⁱ

For the negligent actions of its medical professionals, the State can also be held vicariously liable, [***Smt. Sarita v. State of Haryana & Ors***]ⁱⁱⁱ

Medical Negligence under Consumer Protection Act

Through the landmark judgement on the case of ***Indian Medical Association v. V.P. Shantha***^{iv}, the Supreme Court brought the medical profession within the ambit of service^v, as under the Consumer Protection Act, 1986.

From then onwards, the cases of medical negligence can be filed before the Commissions under the Act by patients and their family members, who fall within the definition of 'consumer'^{vi} under the Consumer Protection Act. In case of medical negligence, the aggrieved parties can now approach:

- **District Forums** for cases of up to Rs. 25 lakhs.
- **State Consumer Redressal Forum** for cases of up to 1 crore and it also deals with the cases coming in appeal from the district forums.
- **National Consumer Disputes Redressal Commission** for cases of claims over Rs. 1 crore and it also has appellate jurisdiction over cases coming in appeal from all the State Consumer Forums.

Remedies Against Medical Malpractices

The remedies that are available for seeking redressal for medical malpractices are as follows:

- i. Suit for damages under Civil Procedure Code.
- ii. Complaint for negligence under Criminal Procedure Code.
- iii. Redressal under the Consumer Protection Act.
- iv. Disciplinary action by the Medical Council of India.

The Supreme Court has laid down specific guidelines for medical negligence in the landmark decision of *Indian Medical Association v. V.P. Shantha and Ors* III^{vii}. Supreme Court held some exceptions as well. For example-

- The services that are rendered free of cost would not fall under the scope of the Consumer Protection Act, 1986.
- Services rendered by a doctor under a contract of personal service would also be excluded from the scope of the Consumer Protection Act.

Duty of Care during COVID-19 Pandemic

Doctors constitute a vital part of an effective response to the COVID-19. Doctors and the medical staff came up as the frontline workers, endangering their own lives in order to save the masses from this pandemic. They have been going through high work volume, personal risk and societal pressure to meet extraordinary demands for health care.

But people barely pay attention towards the protection of rights of doctors^{viii}. Assaults on medical workforce have been taking place for a long time across various states in India. But, during the current epidemic, these cases have been noticed at a national level. The incidents of violence at designated hospitals, quarantine centers and even at the residence of the health care workforce have been witnessed. In 2020, two resident doctors were attacked in a hospital in West Bengal which led to a nation-wide protest by doctors. The Indian Medical Association (IMA) also stood in support with this protest. The Central and State Governments came out in strong support of the health care personnel and the new Epidemic (Amendment) Ordinance,

2020 was passed in India. The academic community such as established doctors in WHO must design modules regarding prevention of violence and protection of health care workforce, the violation of which result in serious repercussions.

Conclusion

The medical profession owes a duty of care towards the patients and the breach of which may result in serious harm to the patients. Such breach of duty may lead to civil case by the injured party or a criminal prosecution by the state. Several laws are enacted in order to prevent medical negligence. The medical ethics need to be reformed so as to serve the purpose with complete righteousness. At the same time, the rights of medical work force must also be respected.

ⁱ Donoghue v. Stevenson, 1932 AC 562

ⁱⁱ [(1995) 6 SCC 651]

ⁱⁱⁱ [Section 2(1)(o)]

^{iv} Section 2(1)(d)

^v [2003(2) CPJ 160 (NCDRC)]

^{vi} [(2005)5 SCC182]

^{vii} (1995) CPJ 1(SC)

^{viii} pmid:<http://www.ncbi.nlm.nih.gov/pubmed/25205389>



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