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**DOCTOR PATIENT RELATIONSHIP- DISTINCTION BETWEEN
CONTRACTUAL AND TORTIOUS LIABILITY**

ABSTRACT:

In this research work, the author is going to deal with a doctor-patient relationship, their rights and duties and how a doctor becomes liable if any injury has been caused to his/her patient. This paper also has provided some of the provisions which can be referred in case of medical mishaps. Also, conclusion being mentioned at the end of the paper with a viewpoint which is absolutely personal. Some landmarks judgements too have been mentioned to create a line of meaning of contractual duty and tortious liability of medical practitioners. This paper has been made to make the reader identify the doctor-patient relationship and be able to differentiate between contract law and tort law and lastly to analyze the objective of writing this paper.

KEYWORDS:

Provision, liable, duty, judgement, rights.

INTRODUCTION:

As it is very well articulated that God gives life to doctors so that doctors can give life to people and come with a ray of hope and happiness to their patients. Doctors have been equated with God, in this sense, since Vedic time. And the COVID19 times where the warriors disguised as doctors saved many lives, selflessly working day and night, has proved the very above stated fact.

Whenever a patient comes to a doctor, there is a trust upon which the patient relies over the doctor, there is some sense of mutual trust and good faith between them. This kind of relation is fiduciary in nature. The kind of relation a doctor and a patient enter into with the consent of the patient is a contractual one. But also at the same time, the doctor carries a responsibility of utmost care towards his/her patients. If he/she does any negligence or blunder or any mistake while performing the duty, he/she carries a tortious and contractual liability and in India, he/she will also be held liable under the Consumer Protection Act, 1986.

India is a democratic country with such vast law where the social welfare is the ultimate objective. The law of the land makes sure that everyone gets justice and follows rights and duties. If doctors be not held under the obligation to perform their duty with utmost care and in a standardized manner, then who should be held responsible in case of mishap and after all, it is a question of so many lives relying on doctors.

DOCTOR-PATIENT RELATIONSHIP:

A doctor-patient relationship is a very fundamental one. The doctor-patient relationship is fiduciary in nature that means there is existence of utmost and mutual trust and good faith between them. This relationship also deals with contractual duty, tortious liability and also concerns of standard care.

- **CONTRACTUAL DUTY/OBLIGATION:**

When a patient reaches doctor with a medical problem, the patient offers the doctor to treat him in return for consideration as his fees. As we noted that there exists a legal relation between a doctor and patient, the doctor would advice patient and gives a guarantee that the patient's suffering shall be treated properly and by this, the doctor assures him/her that he/she will be fine.

Any prudent person will not just merely utter some words if he has no skill or knowledge of that particular work. So, in case the doctor could not advice or give

opinion over something or assure that his/her patient will be getting desirable consequences if later the result might be deviated from what was desired by the patient. The patient, in this case, can sue the doctor for breach of contract because the doctor could not perform his duty as required by the patient which has injured the patient. This situation is further backed by the following landmark judgements.

There are four basic assumptions upon which the contractual relation exists between them. These are that both of them share a unique responsibility, relationship between them is consensual, both of them are willing to negotiate and both of them must get something in return.¹

LANDMARK JUDGEMENTS:

1. *Sullivan V. O' Connor*²: The plaintiff wanted to reshape her nose so she went to the defendant, Dr. O' Connor, a plastic surgeon who agreed to perform the surgery. The doctor told the plaintiff that two operations will be conducted which the surgeon informed her it as rhinoplasty procedure. But, after the second operation, it was found that the nose bone got removed somewhat extra giving a concave shape in the midline. Her nose looked asymmetrical. She filed a suit against the doctor for breach of contractual duty. Doctor's blunder deformed and disfigured her nose. The jury held the doctor liable on the count of contract. If there is contractual relationship between a doctor and patient, then like any other contract, there are corresponding rights and duties. There are rules to adhere to and if there is breach of duty, then one must be held liable for the same and pay compensation for it.
2. *Leighton v. Sargent*³: Till then at that time, there were theories of negligence still developing and the fact that if there is lack of usual skill and knowledge by the doctor or any physician, then he/she would be held liable for the breach of contractual duty. In this case of New Hampshire, the defendant physician was held

¹ Almas Sheikh, Doctor-Patient Relationships: Distinction between Contractual and Tortious Liability, National University of Advanced Legal Studies, Kochi, February 14, 2015, Doctor-Patient Relationships: The Distinction Between Contractual and Tortious Liability - Academike (lawctopus.com).

² Sullivan v. O' Connor 296, N.E.2d, 183

³ Leighton v. Sargent, 27 N.H. (1853)

liable for breach of his contractual duty. This judgement was merely based on the fact that the physician agreed to treat the patient.

- **TORTIOUS LIABILITY:**

“Whenever a doctor cannot do good, he must be kept from doing harm.”⁴

In terms of tort law, the physician is definitely required by law to follow a ‘*standard of care*’ while performing his/her duty. When in a case, contractual approach seems give unreasonable or unjust results, lawyers generally bypass the contract law and come invoke tort law and vice versa. Under common law, there is an imbalance of power in a doctor-patient relationship where the tort law protects the patient from risks. The doctor being the more powerful party, the tort law has established some set of tortious and fiduciary duties over him/her.

It should also be noted that if a restaurant owner can be held liable for providing low quality food and service then a doctor also should be held liable for low quality treatment to the patient. The question of standard of care arises here whether the doctor followed it or not irrespective of whether it was intentional or not.

A patient can sue for damages under *res ispa and negligence per se*. Negligence made under tort law does not require violation of statute. This situation is further backed by following landmark judgments.

LANDMARK JUDGMENTS:

1. *Jacob Mathew v. State of Punjab*⁵: The doctors were not held liable for negligence in this case. The Supreme court gave the verdict:

“Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a

⁴ W.H. Auden & Louis Kronenberger, Viking Book of Aphorisms: A Personal Selection, 213 (1988)

⁵ (2005) 6 SCC 1 (India)

doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.”⁶

2. *Jasbir Kaur v. State of Punjab*⁷: The court held that the hospital was being negligent when a new born baby child went missing out of his bed and was found bleeding somewhere in hospital near a wash basin where the defendant contended that a cat took away the child. In this case, the hospital authorities were being negligent by not providing a standard care and required precautions.
3. *Dr Laxman Balkrishna v. Dr Trimbak Babu Godbole and Anr.*⁸ : The court held in this case that a physician has certain duties and obligations which are aforesaid to be adhered to and if a medical practitioner violates it, he/she shall be held liable.

The responsibility of the doctor with respect to his/her patients moves between contractual and tortious liability. Many a times it makes difficult to make a clear

⁶ Anurag K Aggarwal, *Medical Negligence: Law and Interpretation*, IIM Ahmadabad, 2011, *Medical Negligence: Law and Interpretation* (repec.org).

⁷ (1995) ACJ 1048 (India)

⁸ (1969) AIR 128 (India)

distinction between contract law and tort law in such cases and they may even overlap each other.

PROVISIONS:

1. **The Medical Council Act, 2001⁹**- This Act aims at maintaining uniform standards of medical education and recognition and de-recognition of medical institutions established in India or foreign countries, non-temporary or provisional enrolment of medical professionals with the perceived clinical capabilities, and the correspondence with outside nations regarding common acknowledgement of clinical capabilities.
2. **Minimum Qualifications for Teachers in medical Institutions Regulations, 1988¹⁰**- It defines the minimum qualifications for teachers to become eligible to teach in medical institutions.
3. **Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002¹¹**-This aims at guiding the conduct of medical practitioners and professionals also specifying their rights and duties and establishing guidelines for good medical care.
4. **Indian Nursing Council Act, 1947¹²**- This guarantees uniform nursing norms in India.
5. **Drugs and Cosmetics Act, 1940¹³**- This act accommodates testing and clinical trials for sending off new drugs.

⁹ Medical Council Act, 2001, No. 34, Acts of Parliament, 2001 (India).

¹⁰ Minimum Qualifications for Teachers in medical Institutions Regulations, 1988

¹¹ Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002

¹² Indian Nursing Council Act, 1947, No. 48, Acts of Parliament, 1947 (India).

¹³ Drugs and Cosmetics Act, 1940, No.23, Acts of Parliament, 1940 (India).

6. **Consumer Protection Act, 1986¹⁴**- Consumers have the right to have their health care information confidential, to communicate with medical care providers confidentially and also can review and make copies of their medical record.

CONCLUSION:

There always remains a shortage of words to define any relationship even if it is a doctor-patient relationship. Also, medical profession is considered to be a heroic one as doctors has the power to save and cure many lives but it is also true that doctors too are human and can commit mistakes just as a layman. There can be several approaches to held the doctors liable for injury caused by them. Most of the approaches come under contract law and tort law. According to me, laws shall be clearer about creating a clear distinction between contractual and a tortious liability. It is required so that the lawyers stop oscillating between both the laws by surpassing one over the other and so that the doctors could be held liable for only what they wrongfully or negligently committed under one law being an only option. But at the same time, it does not mean that the doctors should not follow due care standards, in fact they should be more serious about the same.

¹⁴ Consumer Protection Act, 1986, No. 68, Acts of Parliament, 1986 (India).