



E-ISSN: 2789-9500
P-ISSN: 2789-9497
IJCCSL 2022; 2(2): 89-90
© 2022 IJCCSL

www.criminallawjournal.org

Received: 10-05-2022

Accepted: 29-06-2022

Dilraj Kaur

University School of Law, Guru
Kashi University, Talwandi
Sabu, Punjab, India

Simranpreet Kaur

BA, LLB 1st Semester,
University School of Law, Guru
Kashi University, Talwandi
Sabu, Punjab, India

Medical negligence and the Indian law

Dilraj Kaur and Simranpreet Kaur

Abstract

Professionals such as doctors are believed to possess special skills and responsibilities. They are expected to work for the betterment of the society by acting in accordance with the standards established by law, in their respective fields. Nevertheless, there are times when such respected citizens act negligently. The brunt of this negligence is born by people dependent on them. As a student of law, I often come across cases of negligence on part of professionals such as doctors and nurses, where their negligence proves to have disastrous consequences.

Article 21 grants us the fundamental right to life. Anyone who endangers our life and causes us bodily injury violates this right which according to the laws of our country is a punishable offence. In this article I will discuss one such punishable offence called medical negligence. A 2017 study by the Harvard University showed that 5000000 deaths occur in India due to medical errors. The reason being a lack of practical knowledge among medical professionals.

Keywords: Negligent, administration, O injury, criminal negligence, civil negligence

Introduction

Modern life cannot be imagined without medical professionals. This was made clear to us by the covid 19 pandemic. We all agree that doctors and nurses saved millions of lives during the pandemic but we also came across cases where negligence at the hands of medical professionals led to loss of human lives. It cannot be denied that there was a deficiency of medical necessities such as masks, PPE kits, sanitizer, medicines etc. but negligence on part of medical professionals is a matter of serious concern and cannot be ignored specially by persons in the field of law.

What constitutes a negligent act?

A) **Duty:** The defendant must owe a duty of care to the plaintiff. Only then a negligent act is said to have been committed.

For example, a doctor owes a duty of care to his patients, similarly a pilot owes a duty of care to the passengers in his flight.

B) **Breach of duty:** It must be proved that the defendant breached his duty towards the plaintiff and acted in a way contrary to his professional standards.

For example, when a doctor behaves negligently while he operates on a patient's body and leaves a surgical instrument inside.

Civil negligence vs. criminal negligence

Negligence in civil law is different from what it is in criminal law. Civil negligence is said to have been committed when a person does not take ordinary care while performing his duties. The offender usually pays compensation to the plaintiff and no other punishment is given.

For example

1. Not putting out sign boards around dangerous objects such as live wires and poisonous trees.
2. Being a doctor negligently operating on a patient's wrong body part.
3. Not providing enough security to shoppers during a huge sale when mob scene seems possible.

Criminal negligence or Negligence under section 304 A of the Indian Penal Code

According to section 304A of the Indian penal code a person whose negligent act leads to the death of a person will be punished with fine, imprisonment or both. It must be noted that here the negligent act does not amount to culpable homicide.

Corresponding Author:

Dilraj Kaur

University School of Law, Guru
Kashi University, Talwandi
Sabu, Punjab, India

^[1]. In the criminal sense negligence is an act of omission that leads to injury to a person.

In criminal negligence the consequences are serious and justice is administered by punishing the offender seriously. It is a criminal offence hence it is said to be committed against the state and the public at large.

For example

1. A mother leaving an infant alone inside a locked car where the infant is likely to die of suffocation.
2. A driver driving and texting at the same time leading to an accident.
3. A doctor prescribing addictive drugs to a known drug addict.

Some landmark cases of negligence (medical)

In *V Krishna Rao vs. Nikhil Super Specialty hospital*, the appellant alleged that his wife complained of fever and chills and was treated for typhoid while she was actually suffering from malaria. Subsequently the patient's condition worsened and she passed away. The hospital administration was later found to be negligent and the Supreme Court held that the principle of *res IPSA coquito* ^[2] was applicable in the said case.

The Supreme Court was very considerate in the above-mentioned case and the judgement reflected the values that we stand up to in the law of our country. The court was absolutely correct when it held that, "there cannot be a mechanical or straitjacket approach that each and every negligence case must be referred to experts for evidence" ^[3] because in such cases the discharge of justice must not be delayed when the facts are clear and the presence of negligence on part of the defendant is very obvious.

In *Dr. Balam Prasad vs. Dr. Kunal Saha and ORS*, Dr. Saha's wife who suffered from toxic epidermal necrosis was admitted to Advanced Medicare and Research Institute (AMRI) where it was later found that the deficiency of various medical services led to the deterioration of the patient's health and subsequent death. It was found that the doctors' negligence had and several other inefficiencies on part of the doctors had been the cause of the patient's untimely demise.

In this case, the court awarded a huge sum of money as compensation in order to make it clear to negligent medical professionals that negligence will not be tolerated as in the case of *Dr. Balam Prasad vs. Dr. Kunal Saha*.

In both the above cases the deceased was a victim of medical negligence which is also referred to as medical malpractice. Medical negligence occurs when a medical professional acts in a negligent manner and unintentionally causes harm to the patient due to which he or she either incurs an injury or succumbs to death. Every year almost 26 million people die because of medical errors as per a WHO report. Hence medical negligence is an important topic which every law student must study and reflect upon. To understand medical negligence, we must understand negligence in criminal law as mentioned in article 304 A of the Indian penal code which actually deals with punishment for death by negligence.

¹ Intention is an important component of culpable homicide. In the case of negligence there is no intention hence here negligence does not amount to culpable homicide.

² The act speaks for itself.

³ *V Krishan Rao vs Nikhil Super Specialty Hospital*.

Medical negligence

Definition medical negligence refers to the negligence committed by a medical professional in his field while dealing with his patients and pursuing his career. It is a civil offence punishable under law.

The term medical negligence has not been directly defined in any of the Indian laws but seems to be in vogue.

To prove medical negligence the following points must be proved.

1. Due care was not taken of the patient and the standard procedure was not followed.
2. The patient suffered some kind of injury or incurred some physical damage because of such negligence.
3. The damage caused by such injury must be significant.

Punishment

Section 337 of the Indian penal code tells us that a person who endangers somebody's life by acting in a negligent manner will be punished with imprisonment which may extend to six months or with a fine up to the sum of rupees 500, or both.

Section 338 states that a person who grievously hurts another person by acting so negligently as to endanger human life or the personal safety of others will be punished with imprisonment which may extend to a term of 2 years or with fine up to a sum of Rs. 1000 or with both.

Solution

The rate of medical errors can be reduced significantly by endeavoring to educate medical professionals about their duties and the consequences of their errors. They must be made aware of the laws relating to medical negligence. They must be inspired to follow their work ethics and respect the sanctity of their profession. They must be motivated to not work for monetary gain alone but for the betterment of the society.

Speedy justice in the cases of medical errors can help us eradicate medical negligence completely. People must be made aware of the laws relating to such offences so that they can demand justice when they experience such negligence at the hands of medical professionals. The compensation granted to victims of medical negligence must be considerable so as to help us bring it to the notice of negligent and careless professionals that such behavior will not be tolerated inside this country.

Conclusion

This paper has discussed negligence in both civil and criminal cases and elucidated medical negligence by citing various sections from the Indian penal code. It spreads awareness about medical negligence and helps the reader understand its essential components. The reader also gains knowledge about the phrase culpable homicide and the legal maxim "*res IPSA loquitur*". I have cited various cases of medical negligence and explained how they are relatable to us as common Indian citizens dependent on medical professionals.

References

1. The bare act of Indian penal code.
2. <https://indiankanon.org>.
3. blog.ipleaders.in.
4. *laws.asia India business law Journal*.
5. *Lexis Nexis-the Indian penal code 34th edition by Justice KT Thomas and MA Rashid*.
6. <https://wap.business-standard.com>