



MEDICAL NEGLIGENCE AND RIGHTS OF PATIENT

The recent mis-happenings across the country during the pandemic has exposed the plight of medical infrastructure, which has costed lives of numerous people. The law developed by the precedents has successfully balanced the safeguard to the medical practitioners and the monitor declining medical standards by imposing penalties and prosecution as per the law.

Meaning & Scope of Negligence in Civil/Tort and Criminal Law

The word "negligence" has been included in both civil (under tort law) and criminal law, which exposes liability under both law. The Hon'ble Supreme Court has defined "negligence" as:-

*"Negligence is a breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do."*¹

The cardinal criminal legislation i.e. the Indian Penal Code, 1860, provides abundant safeguards to a medical practitioners under Section 88, 92 and 93 wherein the accused is exempted from the liability. However, under Section 304-A of IPC, the death caused by any person due to the rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment for a maximum term of 2 years and/or fine. The Hon'ble Supreme Courts in **Jacob Mathew v State of Punjab**², has decipher the law pertaining to negligence in medical profession and held that the nature of negligence or recklessness in criminal law needs to be of a higher degree as to be "gross". Further, the Hon'ble Court held that to impose the liability under Section 304-A, it is quintessential to establish that the death was the direct result/cause of a rash/negligent act of the accused and that the act must be the proximate and efficient cause without the intervention of another's negligence, which in legal terms is that the actions must be *causa causans* and not merely *causa sine qua non*. Additionally, the Hon'ble

¹ *Kusum Sharma v Batra Hospital*, (2010) 3 SCC 480.

² (2005) 6 SCC 1.



Court held that recklessness will constitute *mens rea* in criminal law for negligence.

The Hon'ble Supreme Court in ***Kusum Sharma v Batra Hospital & Medical Research Centre***³, has held that a doctor must possess reasonable degree of skill and knowledge and exercise care of reasonable degree, neither highest nor very low. The liability will arise when the conduct of the doctor falls below that of a reasonable competent doctor. The relevant extract from the judgment read as:-

"To prosecute the medical professional for criminal negligence, it is necessary to be shown that the accused has done something or failed to do something which in the given facts and circumstances no medical professional in his ordinary sense and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such nature that the injury which resulted was most likely imminent."

Further, the Hon'ble Court held that the adoption of higher risk procedure with *bonafide* expectation of greater chance of success, in preference to a procedure involving lesser risk but higher chances of failure, although not yielding desired result, will not amount to negligence.

In ***Arun Kumar Manglik v Chirayu Health & Medicare Private Limited***⁴, the Hon'ble Supreme Court held that the "standard of care" as provided under ***Bolam*** test (*supra*), the disposal of the matter on basis of the expert opinion should be cautioned and the court must duly apply their mind to the reasonableness of the treatment/care given to the patient and/or approach adopted in the circumstances of each case, to protect the medical standards from declining. Such "standard of care" is expected to be of reasonable degree of skill and knowledge and if the conduct falls below the standard of reasonable competent practitioner then the liability would fall on such accused medical professional.

Investigation under Criminal Law

The aggrieved person from the negligence of the medical professional and/or the hospital may initiate lodge a report in the

³ (2010) 3 SCC 480.

⁴ (2019) 7 SCC 401.



appropriate police station, on account of damage caused directly from the negligence of the medical practitioner and/or the hospital.

In regard to no knowledge of medical sciences and complexities involved therein, the investigating officer and the private complainant are required to ascertain whether the act of the accused medical practitioner amounts to a rash or negligent act within the meaning of Section 304-A IPC, the Hon'ble Supreme Court in **Jacob Mathew** (*supra*) has placed reliance on the famous **Bolam**⁵ test wherein before proceeding against the doctor, the investigating officer is required to obtain an independent and competent medical opinion preferable from a doctor in government service, qualified in that branch of medical practice who can be expected to be impartial and unbiased. This is to safeguard the medical practitioner from vexatious cases.

Compensation under Consumer Protection Act

The newly enacted Consumer Protection Act, 2019 (hereinafter referred as **Act, 2019**) provides the scope of "deficiency in service" under Section 2(11) read with 2(42) of the Act, 2019. The medical professional and the hospital may be held accountable for negligent act or omission of the duty-bound act or malpractice or trade against public policy, causing distress or harm or damage to the patient/customer. The complaint against the defendant for breach of duty to take standard care which has resulted in damage may be instituted as per the provisions of Act, 2019.

The Act, 2019, establishes three level of Consumer Dispute Redressal Commission under Chapter IV, namely, District Consumer Dispute Redressal Commission (DCDRC), State Consumer Dispute Redressal Commission (SCDRC) and National Consumer Dispute Redressal Commission (NCDRC).

The Act, 2019 under Section 34, 47 and 58, provides the pecuniary jurisdiction of the three abovementioned Commissions as:

⁵ *Bolam v. Friern Hospital Management Committee*, (1957) 1 WLR 582; (1957) 2 All ER 118, at p. 121 D-F.



- For DCDRC, the paid consideration for goods and service does not exceed Rs. 1 crore.
- For SCDRC, the paid consideration for goods and service does exceed Rs. 1 crore but does not exceed Rs. 10 crore. In case of complaint against unfair contracts, the consideration for goods and service does not exceed Rs. 10 crore.
- For NCDRC, the paid consideration for goods and service over Rs. 10 crore and for the complaint against unfair contracts, the consideration for goods and service is over Rs. 10 crore.

The appeal against the order of the NCDRC, may be preferred before the Hon'ble Supreme Court under Section 67 of the Act, 2019. The limitation prescribed under Section 69 of the Act, 2019 is 2 years from the date of cause of action has arisen.

Investigation under Consumer Protection Act

The Act, 2019 has also established Central Consumer Protection Authority (CCPA) who shall have investigative, search and seizure powers in terms of the Act with regard to the matters relating to the violation of rights of consumers, unfair trade practise, and false or misleading advertisements. Under Section 17, a complaint may be filed either in writing or electronically, to the District Collector or the Commissioner of regional office or the CCPA.

The laws as well as the case laws has attempted to strike a balance between the rights of the medical professionals as well as the rights of the patient. The courts across the country has adopted reasonable "standard of care" given to the patient approach to ensure the medical standards in the country. The Hon'ble Supreme Court reiterated that the immunity to the medical practitioners is not absolute and failure to exercise reasonable skill and care may cause initiation of civil and/or criminal proceedings against such medical professional.



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⁶ The aim of the present article is to provide insights regarding law relating to negligence in medical profession, as on 28 June 2021. The opinions presented in the article are personal in nature and not to be deemed as legal advice.