



KNOWLEDGE ABOUT MEDICAL LAW AND ITS NEGLIGENCE

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ABSTRACT :

To assess the knowledge of health care professionals regarding medico legal aspects and its negligence. Negligence by doctors has to be determined by judges who are not trained in medical science. They rely on expert's opinion and decide on the basis of basic principles of reasonableness and prudence. This brings into a lot of subjectivity into the decision and the effort is to reduce it and have certain objective criteria. This may sound simple but is tremendously difficult as medical profession evolves and experimentation helps in its evolution. Thus, there is a constant tussle between the established procedures and innovative methods, but, innovation simply for the sake of being different, without any reason is not acceptable. These issues make it extremely challenging to decide negligence by Doctors. The paper examines the concept of negligence in medical profession in the light of interpretation of law by the Supreme Court of India and the idea of the reasonable man.

Key words: Courts, Doctors, Hospitals, Medical negligence, Law

INTRODUCTION: Medical profession is considered as most important profession all over world. A Doctor is placed only second to almighty God. He enjoys a position of an Angel. Patient feels a divine image in him. Its sole objective is improvement of the quality of the people and mitigation of sickness and suffering. It is not a mathematical process but a service oriented liberal profession having a self-regulating code of ethics¹. The relationship between Doctor and patient is based on trust and confidence but these trusts, sacredness and confidence has become the talk of olden days and now it sounds hollow. Doctors treat patient like God and people revered and respected them, with commercialization spreading to all aspects of our lives, the medical profession

and services rendered by hospitals and private clinics are going through dramatic changes. Some incidences cause suffering to patients, forcing the legislature and public to think twice about credibility and authenticity of medical treatment given to patients². Hence, Doctor patient relationship has deteriorated considerably and medical negligence is on the increase which is the act or omission by a practitioner and thus the treatment provided is below the accepted level and causes injury to patient, Statistics show that each year in United States approx.195000 people die because of medical errors. As a result it was increasingly felt that medical errors as a result it was increasingly felt that medical treatment should also be made answerable hence doctors were

covered by various laws³ Indian society is experiencing a growing awareness regarding patient's rights. In India Consumer Protection Act in 1986,⁶ which was enacted for better protection of interests of consumers. It covers deficiency of service by medical professionals in such cases to provide redresses to the patients? The law is not made to punish all health professionals that cause injury to patients; it is concerned only with negligent acts. Doctors should be clear while taking the cases they must decide whether to undertake the cases what treatment to give and they must take care in the administration of the treatment. A breach of any of these duties gives the patient a right to act for negligence⁴. The act applies to all goods and services, excluding goods for resale or for commercial purpose, services rendered free of charge and under a contract for personal service. After about a decade of its enactment, in 1995, medical profession was also included within the ambit of CPA by the Supreme court of India in a landmark case of Indian Medical Association vs. VP Shantha.⁵

AIM AND OBJECTIVE:

- 1) To study an awareness about medical negligence among the faculty of medical profession.
- 2) To study medical negligence.

Negligence: It is very difficult to define negligence; however the concept has been accepted in Jurisprudence. The authoritative text on the subject in India is the 'Law of Torts' by Ratanlal and Dhirajlal. Negligence is the breach of a duty caused by the 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. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill by which neglect the plaintiff has suffered injury to person or property.

The Definition involves three constituents of negligence—

- 1) A legal duty to exercise due care on the part of party complained of towards the party complaining the formers conduct within the scope of duty.
- 2) Dereliction or breach of said duty
- 3) Consequential damage.
- 4) Direct causation.

Essential components of negligence are three—Duty, Breach, resulting Damage, Direct relation between the Breach in duty of care and the Damage.⁷

The Reasonable Man: It has been held by courts that the test of reasonableness is that of the 'ordinary man' or also called as the 'Reasonable Man'. The courts used to judge the conduct of any defendant by comparing it with that of the hypothetical ordinary man.

Professionals: According to English Language a professional is a person doing or practicing something as awful time occupation or for payment or to make a living; and that person knows the special conventions, forms of politeness, etc. associated with a certain profession. Professional is contrasted with amateur—a person who does something for pleasure and not for payment.

Negligence by professionals: In the law of negligence, professionals such as lawyers, doctors, architects and others are included in

the category of persons professing some special skill or skilled persons generally any task which is required to be performed with a special skill would generally be admitted or undertaken to be performed only if the person possesses the requisite skill for performing that task. Any reasonable man entering into a profession which requires a particular level of learning to be called a professional of that branch, impliedly assures the person dealing with him that the skill which he professes to possess shall be exercised and exercised with reasonable degree of care caution.

Negligence by Medical Professionals:

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 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 proof of negligence on the part of a medical professional, so long as a 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.

Problems and Suggestions:

Duty: The idea of negligence can be understood only when there is clarity about the duty of the Doctor, assisting staff, and the hospital as a whole. In several cases there is a problem of overlapping duties and thus, it becomes difficult to draw a line between the

duty of A and B. Thus, it is advisable to have clear cut duties laid down for different persons. Practically it is not possible so it should be provided a basic framework which helps in deciding matters in situations of confusion and failure.⁹

General Practitioner Vs Specialist: A number of problems arise when a general practitioner tries to treat a patient who requires services of a specialist or a super specialist. On the other hand, there may be problems also in situation when the general practitioner could have treated a patient however forms an opinion that he cannot do anything and the patient must be taken to a specialist, it may be too late. In both the above mentioned subject, it is to be seen that the general practitioner has a very critical role to play in the treatment of patient. Agreed that GP is not supposed to know everything, however it is expected that he must guide the patient properly.⁹

Risk and adventure: A problem often seen is the experimentation mode of some Doctors. As they might have been practicing as a Doctor for a very long time, they have experience and on the basis of that experience they would like to deviate from the standard set practice and procedure followed by others.⁹

Protocol: Proper guidelines, methods, procedures, and protocol must be laid down for things which are routine or are well known and established by Experts.⁹

Paper Work: Law requires evidence and documentary evidence in the form of case papers has to be meticulously prepared. The duty of Doctor is to treat patient however, it is also important to document the treatment given and at times the reason why such

treatment is given. The matters reach a court after several months and years and by that time the only thing on which the parties can rely in court is the case file. Patient should be given copy of papers, and oral evidence of Doctors and staff adds to the evidence.⁹

Electronic Records: An important improvement in paper work has been in the shape of electronic records, which allow easy storage and retrieval at the same time several copies can be made with minimal chances of errors.⁹

DISCUSSION: Medicine is a noble profession but there is also growing anxiety both within the medical profession and in the community regarding increasing trends of complaints and law suits against doctors. Negligence in the medical world has assumed great importance in relation to the medical malpractice suits in various countries in Asia, USA, Europe and more so in India. In the area of patient doctor relationship two important models dominate viz. One is based on paternalism and other is founded on the doctrine of informed consent.⁸

CONCLUSION: There are two possibilities in cases of negligence either it is negligence of doctor or it is negligence of staff. There may be a possibility of negligence, both of the doctor and staff. In most of cases it will be a case of joint and several liability and both doctor and hospital will be liable. The division of liability between the two of them will be decided according to understanding between the two. As far as determining negligence is considered, courts have to depend on expert's advice, except in cases of blatant violation of protocol and doing things which are considered to be unreasonable. Recent

decisions are a good step in the direction of making murky area a bit tidy, however a lot needs to be done by the courts in shape of clearer judgments so that the layman can benefit.

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Declared