

**MEDICAL NEGLIGENCE AND CRIMINAL LAW**

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**ABSTRACT**

This paper is being written down as to bring out the matter of criminal medical negligence as these topic are being held controversial and also being neglected. Both civil and criminal negligence has been told and also differentiated between them.

Various case laws have been cited to bring out the matter correctly along with the guidelines. There has been change of relationship between doctor-patient and medical practice has been modernized, it affected the practice of medicine. From one perspective, there can be difficult consequences of treatment and then again the patient speculates negligence as a reason for their suffering. There is an increasing pattern of medicinal suit by the patients. This paper deals with such situations.

## **CASES REFFERED**

- ❖ Grant v. Australian Knitting Mills Ltd
- ❖ Malay Kumar Ganguly v. Dr. Sukumar Mukherjee and Ors
- ❖ Bolam v. Frien Hospital Management Committee
- ❖ Jacob Mathew v. State of Punjab
- ❖ V. Krishan Rao v. Nikhil Super Speciality Hospital
- ❖ Dr. Sudhir Kumar Thakur v. The State of West Bengal & Ors.

## ANALYSIS

### MEANING

Negligence means failure to exercise due care which reasonable man need to take in day to day situations. These situations and circumstances need to be foreseeable.

Essentials of Negligence-

- Duty to take care- Defendant has a duty towards the plaintiff Grant v. Australian Knitting Mills Ltd<sup>1</sup> - where manufacturer have a duty towards its customer.
- Duty to whom- Duty is extended towards the neighbour. Neighbour means “*the persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.*”
- Breach of duty to care- The essential condition for the liability is that the plaintiff must prove that there was a breach of duty to take care by the defendant or that he failed to perform that duty.

There are times when the doctor will be responsible vicariously, which means if his employee acts rashly causes the death of a patient, in such case the doctor will be Vicariously Liable. This is the concept of Tort Law.

There are *two* types of negligence-

- 1) Civil negligence
- 2) Criminal negligence

‘*Criminal Negligence*’ is an offence against the State whereas ‘*Civil Negligence*’ is an offence against the individual, which causes physical injury example- Hurt- Section 319, Grievous hurt- Section 320 Indian Penal Code. Loss of property due to some negligence is a civil negligence. There has been debate over the topic ‘*Criminal Negligence by Doctor*’ over

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<sup>1</sup> 1935 AC 85

past few years and the Supreme Court have referred to various decisions given by House of Lord.

In India criminal law has placed the medical professional at a different platform compared to other individuals and professional. Section 304A of the Indian Penal Code, 1860 states that “*whoever causes the death of a person by a rash or negligent act not amounting to culpable homicide shall be punished with imprisonment for a term of two years, or with a fine or with both.*”<sup>2</sup>

Therefore, if a person committed an offence within the ambit of IPC and causes death by negligence but without any intention to do such harm will be liable for punishment of the offence which he did adding to the punishment of involuntary culpable homicide. Criminal liability is also imposed on doctor under particular situations wherein the patient dies at the time of administering anaesthesia; the death must also be due to mala fide or negligence.

## EXCEPTIONS

Sections 80 and 88 of the Indian Penal Code which contain defences for doctors blamed of criminal liability. Under Section 80<sup>3</sup> - ‘*nothing is an offense that is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.*’ Section 88 explains<sup>4</sup>; ‘*a person cannot be accused of an offense if she/ he performs an act in good faith for the other’s benefit, does not intend to cause harm even if there is a risk, and the patient has explicitly or implicitly given consent.*’

*Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee and Ors*<sup>5</sup> which is also known as Anuradha Saha case, the case was brought forward in the year 1998 with the alleged medical negligence by three doctors of AMRI hospital; Dr. Sukumar Mukherjee, Dr. Baidyanath Haldar, and Dr. Balram Prasad. The facts of the case are that there was a drug allergy from which Mrs. Saha was suffering. When the couple approached the hospitals, the three doctors prescribed such medicine which intensified the condition of the Mrs Saha which led to her death. The

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<sup>2</sup> Indian Kanoon

<sup>3</sup> [indiankanoon.org/doc/602933/](http://indiankanoon.org/doc/602933/)

<sup>4</sup> [indiankanoon.org/doc/862963/](http://indiankanoon.org/doc/862963/)

<sup>5</sup> MANU/SC/1416/2009

Supreme Court gave the final decision in the year 2013 and compensated the victim with 6.08 crore rupees. This case expanded the ambit of medical negligence in India.

The professional is added with additional responsibility added through Bolam test which came to being through the case of *Bolam v. Frien Hospital Management Committee*<sup>6</sup> where the defendant represent himself as possessing more than normal skills and abilities, this test expects standards which must be in accordance with a responsible body of opinion. Thus the Bolam test states that "*If a doctor reaches the standard of a responsible body of medical opinion, he is not negligent.*"

Large amount of negligence is necessary to prove the charge of criminal negligence under section 304-A IPC. For fixing criminal liability on a doctor or surgeon, the standard of negligence required to be proved should be as high as can be described as "gross negligence".

The Supreme Court held that "Thus a doctor can't be held criminally responsible for patient's death unless his negligence or incompetence showed such disregard for life and safety of his patient as to amount to a crime against the State". Court further adds, "Thus, when a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man can't be termed as 'Criminal'. It can be termed 'Criminal' only when the medical man exhibits as gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence.

The Supreme Court held that "Subsequently a doctor can't be considered criminally in charge of patient's demise unless his carelessness or inadequacy indicated such nonchalance forever and security of his patient as to add up to a wrongdoing against the State". Court assist includes, "Consequently, when a patient consents to go for medicinal treatment or surgical operation, each rushed demonstration of the restorative man can't be named as 'Criminal'. It can be named "Criminal" just when the therapeutic man shows as gross absence of ability or inaction and wanton lack of interest to his patient's security and which is found to have emerged from gross numbness or gross carelessness

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<sup>6</sup>[1957] 1 WLR 582

In the case of *Jacob Mathew v. State of Punjab*<sup>7</sup> Supreme Court further added that “Where a patient’s death results merely from ‘Error of judgment’ or ‘an accident’, no criminal liability should be attached to it. Mere negligence or some degree of want of adequate care and caution might create civil liability but wouldn’t suffice to hold him criminally liable. The following concluding observations of the learned authors as quoted by the Supreme Court are appropriate on the subject and a useful guide to the courts in dealing with the doctors guilty of negligence which causes death of their patients: “Criminal punishment carries substantial moral overtones. The doctrine of strict liability allows for criminal conviction in the absence of moral blameworthiness only in very limited circumstances. Conviction of any substantial criminal offence requires that the accused person should have acted with a morally blameworthy state of mind. Recklessness and deliberate wrong doing, levels four and five are classification of blame, are normally blameworthy but any conduct falling short of that should not be the subject of criminal liability.

**There are certain guidelines which Supreme Court gave regarding the same-**

1. Obligatory prima facie evidence: A private complaint would not be allowed unless complainant produces prima facie evidence before a court in form of an 'opinion by another doctor supporting his charge of 'recklessness' or 'gross negligence'.
2. Directions for Police Before proceeding against doctor on the allegation of criminal negligence, the Investigating Officer should obtain independent and competent medical opinion on the facts.
3. Directions in Matter of Arrest Doctor may not be arrested as a material of schedule. Arrest of doctor should be delayed unless required for collecting evidence or if there is a chance of his not being available for probe or when try to obstruct probe or not cooperating law enforcing agencies. A doctor may be arrested, if his arrest is necessary for furthering the investigation or for collecting evidence or the doctor would not make himself available to face prosecution unless arrested

Various cases has been registered against the doctor under section 304 of Indian Penal Code are those of murder where bail has also been not granted. For conviction of a doctor charged

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<sup>7</sup> AIR 2005 SC 3180

with criminal offense, the standard ought to be evidence of rashness and consider wrong doing with a higher level of conduct. Keeping in mind the end goal to hold the presence of criminal carelessness it might need to be discovered that the impulsiveness was of such an extent as to add up to taking a danger realizing that the risk was of such an extent, to the point that harm was in all likelihood up and coming. The onus of demonstrating that a specialist was "rash" or "careless" would lie on the complainant i.e. at prima facie case. The Court noticed that unless the danger of being subjected to "trivial" criminal grievances was evacuated, no specialist would go out on a limb of sparing a patient at 'terminal stage'. The subject of carelessness with regards to the therapeutic calling fundamentally calls for treatment with contrast. A straightforward absence of care, a blunder of judgment or a mischance, is not verification of carelessness with respect to a medicinal calling.

### **Liability of doctors under criminal law**

There are certain conditions under which doctors are held liable-

- Either the doctor does not possess of the requisite skill which he should professed .
- He did not exercise, with reasonable competence in the given case, the skill which he did possess.

In the case of *V.Krishan Rao Vs Nikhil Super Speciality Hospital*<sup>8</sup>, plaintiff an officer in malaria department filed a complaint against the hospital for being negligent in their conduct while treating his wife. His wife was wrongly treated for typhoid while she was suffering from malaria fever, wrong medication provided by the hospital and therefore Rao was awarded a compensation of Rs 2 lakhs. In this case, the principle of *res ipsa loquitur* was applied.

### **Dr. Sudhir Kumar Thakur v.The State of West Bengal & Ors.**<sup>9</sup>

S.N.Thakur was admitted in Apollo Gleneagles Hospital on 07.04.2012 with complaints of multiple black patches on skin and bleeding from mouth. The victim was taken to the

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<sup>8</sup> MANU/SC/0332/2010

<sup>9</sup> MANU/WB/0608/2016

emergency ward, where an initial observation was made and held that the patient was suffering from ecchymotic patches and bleeding from oral cavity. Condition of deceased patient was highly alarming and the doctor on duty had made a diagnosis that he was suffering from Chronic Myeloid Leukaemia and for immediate management they have administered injection Raciper and Zofar as the patient complained of nausea and vomiting. The consultant Dr. Soumya Bhattacharya over telephone advised the doctor on duty to admit the patient and also advised a series of tests.

On the next morning when the patient was found unconscious, consultant Dr. Soumya Bhattacharya was informed and she advised for infusion of four units of platelets and also for shifting the patient to ICU. CT scan of the patient revealed cerebral haemorrhage and blood report showed a platelet count was very low.. Unfortunately the patient was declared dead at 3.40 p.m in the afternoon. Supreme Court viewed that, Section 304A of Indian Penal Code although the section does not contain the word “GROSS” but it deals with cases as if the word “gross” is present. It must be the *causacausans* otherwise doctor concerned would always be under the dangling fair of facing a prosecution and to refuse to treat the patient by referring the patient to some other hospital, which eventually would lead to disservice to the society.

## CONCLUSION

Criminal responsibility carries substantial moral overtones. Some of life's misfortunes are accidents for which no body is morally responsible, others are wrong for which responsibility is diffuse, yet others are instances of culpable conduct & constitutes grounds for compensation & at times for punishment. To distinguish between these categories requires careful, morally sensitive & scientifically informed analysis.

Criminal Medical Negligence has been the topic of dilemma for the court since on one hand on the basis of *justice, equity and good conscience* the culprit must be punished while on the other hand as Supreme Court says that if doctors comes under the threat that they will be held liable criminally, then they will never treat the patient and will ask them to go to different hospital. Hence proper criteria must be laid down as to what will amount to criminal negligence and what may not. There have been several cases where children have died because they were not given oxygen at right time but the doctors were set free because they cannot be held liable for trivial matters. Therefore, clear laws need to be made and also the doctors who determine whether wrong has been done or not must be asked to not to be partial and therefore when the tests are being done by the government doctors both the name of accused and victim must be sealed and doctor who inspected name must not be revealed in order to get fair results and therefore we would be able to achieve *justice, equity and good conscience*.

## **BIBLIOGRAPHY**

### **BOOKS REFERRED**

- P.S.A. PILLAI BOOK ON CRIMINAL LAW
- RATANLAL AND DHEERAJLAL- INDIA PENAL CODE
- RATANLAL AND DHEERAJLAL-LAW OF TORTS

### **ONLINE DATABASE**

- <http://medicaldialogues.in/>
- <http://blog.ipleaders.in/>
- medind.nic.in

### **LEGAL DATABASE**

- Manupatra
- SCC Online
- Indian Kanoon