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Civil and Criminal Liability for Medical Negligence in India

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Abstract – To hold a doctor criminally responsible for a patient's death, it must be established that there was negligence or incompetence on the doctor's part, which went beyond civil liability. Civil liability for medical malpractice may be attributed either to a doctor or a hospital when any of these persons' acts or omissions causes injuries to a patient; it may be also the hospital's liability for the damage caused by negligence of its staff (doctors and other personnel).Criminal liability would arise only if the doctor did something in disregard to the patient's life and safety. George Bernard Shaw has righteously quoted we have not lost faith; we have just transferred it in the medical profession. Thus, an exceptional venerable position has been given to doctors, but, it is natural that greater the reverence comes with great responsibility. Over time, we have witnessed a pace of globalization and too much commercialization in all spheres of life including the medical profession. New technologies and medicine have assisted us in improving the healthy lifestyle. Negligence is usually an exception to the general rule, but when such circumstances arise, the legal framework must be appropriate to ensure the accurate treatment of both the physician and the patient. New cases arise each year about doctors who are being charged with criminal medical negligence because their actions in treating patients under their care lead to death. Negligence can include patient falls, bedsores, or any other unintentional acts that happen in a long-term care case. The most distinctive difference between the two is intent. In simple terms, medical negligence is a mistake that resulted in causing a patient unintended harm. Medical malpractice, on the other hand, is when a medical professional knowingly didn't follow through with the proper standard of care.

Key Words – Medical Negligence, Criminal Liability, Civil liability, Medical Council of India, State Medical Councils, Supreme Court of India

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INTRODUCTION

A patient approaching a doctor expects medical treatment with all the knowledge and skill that the doctor possesses to bring relief to his medical problem. The relationship takes the shape of a contract retaining the essential elements of tort. A doctor owes certain duties to his patient and a breach of any of these duties gives a cause of action for negligence against the doctor. The doctor has a duty to obtain prior informed consent from the patient before carrying out diagnostic tests and therapeutic management. The services of the doctors are covered under the provisions of the Consumer Protection Act, 1986 and a patient can seek redressal of grievances from the Consumer Courts. Case laws are important sources of law in adjudicating various issues of negligence arising out of medical treatment. The medical profession is considered a noble profession because it helps in preserving life. We believe life is God given. Thus, a doctor figures in the scheme of God as he stands to carry out His command. A patient generally approaches a doctor/hospital based on his/its reputation. Expectations of a patient are two-fold: doctors and hospitals are expected to provide medical treatment with all the knowledge and skill at their command and secondly they will not do anything to harm the patient in any manner either because of their negligence, carelessness, or reckless attitude of their staff. Though a doctor may not be in a position to save his patient's life at all times, he is expected to use his special knowledge and skill in the most appropriate manner keeping in mind the interest of the patient who has entrusted his life to him. Therefore, it is expected that a doctor carry out necessary investigation or seeks a report from the patient. Furthermore, unless it is an emergency, he obtains informed consent of the patient before proceeding with any major treatment, surgical operation, or even invasive investigation. Failure of a doctor and hospital to discharge this obligation is essentially a tortious liability. A tort is a civil wrong (*right in rem*) as against a contractual obligation (*right in personam*) – a breach that attracts judicial intervention by way

of awarding damages. Thus, a patient's right to receive medical attention from doctors and hospitals is essentially a civil right. The relationship takes the shape of a contract to some extent because of informed consent, payment of fee, and performance of surgery/providing treatment, etc. while retaining essential elements of tort. In the case of Dr. Laxman Balkrishna Joshi *vs*. Dr. Trimbark Babu Godbole and Anr., AIR 1969 SC 128 and A.S.Mittal v. State of U.P., AIR 1989 SC 1570, it was laid down that when a doctor is consulted by a patient, the doctor owes to his patient certain duties which are: (a) duty of care in deciding whether to undertake the case, (b) duty of care in deciding what treatment to give, and (c) duty of care in the administration of that treatment. A breach of any of the above duties may give a cause of action for negligence and the patient may on that basis recover damages from his doctor. In the aforementioned case, the apex court *inter alia* observed that negligence has many manifestations – it may be active negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, gross negligence, hazardous negligence, active and passive negligence, willful or reckless negligence, or negligence per se. Black's Law Dictionary defines negligence per se as “conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of statute or valid Municipal ordinance or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, so constitutes.” To prescribe medicine without studying possible effect whether rash and stramonium and a leaf of dhatura as a treatment for guinea worms is negligent act. After taking the medicine the patient started feeling restless and ill, various antidotes were given but she was not relieved, ultimately she died. In autopsy the cause of death was said to be ascertainable only after the result of chemical analysis. The chemical examiner reported that no poison could be detected in the contents of the stomach and the pieces of liver, spleen and kidney be sent to him.

The Supreme Court considering the oral evidence trustworthy observed that in no system of medicine, expect perhaps in the Ayurvedic system, the dhatura leaf is given as cure for guinea worms, in Homoeopathy, Dhatura leaf is never given. The Supreme Court held that the homoeopath prescribed the medicine without thoroughly studying what would be the effect of giving 24 drops of stramonium and leaf of dhatura. It is a rash and negligent act to prescribe poisons medicines without studying their probable effect.[1]

Wrong medicine administered by mistake – nurse whether criminally liable – the accused was the duty midwife in charge of the labour ward. She was charged with criminal negligence for causing the death of a pregnant woman who was a patient in the hospital, by administering carbolic acid to her instead of carbonate mixture.

It was by mistake that carbolic acid happened to be administered to the patient. Immediately on realizing the mistake she ran up to the resident medical officer and confessed it. The court took the view that simple lace of care such as one of which it might be said she was guilty, will constitute if at all, only civil liability and that is not sufficient to charge her with criminal liability entailing punishment. In order to attribute reckless to her, the prosecution must prove that she was knowingly indifferent to risk involved in the act. The negligence or rashness must be of a very high degree amounting to recklessness or utter indifference to consequence and not merely negligence in civil law.[2]

Vaccination with wrong medical supplied through oversight: Liability of the several persons involved for death caused by: whose liability criminal – instance – accused no.1 was the sanitary inspector. Accused no.3 was vaccinator and accused no. 4 was compounded – cum – store-keeper in the collieries hospital. It was the main function of accused nos. 1 to 3 to conduct vaccinations with due diligence and care. Seventy vials of triple antigen were indented by accused no.1 through accused no 3, the vaccinator. Accused no 4 while issuing triple antigen vials, also issued scalene vial and all these vials were entrusted by accused no 1 to accused nos. 2 and 3 for giving triple antigen injections to the school children. Accused nos. 2 and 3 used those vials and injected nearly 172 children. Accused no. 3 was given the duty of drawing out the vaccine from the vials into the syringes and changing the needles while accused no.2 was entrusted with the work of injecting the vaccine. Accused no.3 without verifying whether the vial from which he was drawing into the syringe was triple antigen vial or scoline vial, which is a poisonous drug, drew out of scalene vial and gave the syringe for injecting the school children of whom, after being injected, four died on the way to hospital and the remaining six survived after timely medial aid was given to them at the hospital.

The medical officer who conducted the autopsy on the corpses of the four unfortunate school boys expressed the opinion that they died due to asphyxia and shock and scalene injection, when given will cause congestion and frothy mucus in lungs. The drugs inspector also stated that scalene is muscular relaxant and it will produce respiratory failure resulting in death if given in material doses. The drug inspector stated that triple antigen and scalene vials can easily be distinguished as the color of the two drugs is different. There is also difference not only in color

but also in the packing. The outside labels, for the two being different.[3]

The negligence and the criminal liability of the several accused were determined as follows on basis of the above facts and expert opinion:-

"Accused no. 4 though issued scoline and was negligent enough in not looking at the label before issuing the vial, he is not the direct cause for the death of the four school children as there are other intervening causes. Similarly accused no 1 who made the indent for triple antigen cannot be found guilty although he was careless enough in not checking the vials before he handed over the box containing the vials to accused nos. 2 and 3 though accused nos. 1 and 4 have in a way contributed to the ultimate result, the death of the four unfortunate school children they are not the causal cousins of the negligence of accused nos. 1 and 4 they are, entitled to the benefit of doubt.[4]

It was the duty of respondents 2 and 3 [accused ns. 2 and 3] who have been entrusted with the duty of giving triple antigen injections to school boys to see before the vials was opened and the vaccine was drawn out into the syringe whether the vial which they were using was triple antigen vial or not. The fact that the indent was made for triple antigen vials is no ground for accused nos. 2 and 3 for not bestowing that amount of care which they ought to and is required of them. The label on scoline and also the colour of the drug is different. Accused no. 3 who was taking out vials from the box and drawing out from the vials should have known when he took out, these colane vials that its color was different and label attached to it was also different. It was for him to see why there was that different and colour which was not there till the scalene vial was opened.

A duty is cast on accused 2 similarly before he mechanically injected the drug to see whether what he was injecting was triple antigen or some other drug. He could have easily notice when a syringe loaded with scoline was given to him that it did not have the colour of the vaccine each vial of scoline, it is in evidence, can be used for 10 to 12 children and he could have easily noticed it, at least after the first or second injection was given . the fact that accused no.2 went on giving injections unmindful of the giddiness complained of by the affected school boys and the further fact that accused no.3 went on loading the syringe from the scalene vial in utter disregard of the symptoms appearing in those boys to whom scalene was injected to show that they (accused Nos. 2 and 3) acted in utter disregard to the safety of the innocent boys who had come there for vaccination to protect themselves against possible attacks of disease like diphtheria etc. accused nos. 2 and 3 displayed gross and unpardonable negligence in the discharge of their duties which has been the direct result of the death of the four ill-fated boys.[5]

Failure to give warning to shake the medicine before use. – The patient asked the Civil Surgeon for some prescription for trouble in the era. The medicine was used as directed by the doctor. After a year the patient had actual sensation in the era and also considerable pain. It appeared from the evidence that the doctor had prescribed a novel and dangerous mixture and had failed to give the warning that it must be vigorously shaken before use, it was held that failure to give this warning was negligence.[6]

Judges do make law. The self-perception of a court of last resort of its own role in law making is profoundly important to a country. The areas of judicial activism and development of law by the judges of past have largely added to the development of law in the right direction when such aid and direction was necessary. The creative contribution of judges of the past to the Development of law deserves a more attentive and respectful retrospection.[7]

Jurisprudential developments have taken place in the area of liability for medical negligence in India. Medical profession involves a battery of personnel as well as institutions for doing service to the society. There may be an error, mistake or inadvertence on the part of these personnel or institutions while rendering service to the seekers of health services and this may attract civil as well as criminal liability. Civil liability may be either for breach of contract or for tort.

Criminal liability may be for rash or negligent conduct a prescribed under the Indian Penal Code. Off late the evolution of consumer protection Act has provided a convenient machinery and procedure for giving civil remedy to the aggrieved persons agains deficient medical services. So for a the tortuous liability for medical negligence is concerned, the courts in India have largely followed the principles of English Law which necessary modifications.[8] Under the C.P. Act also, the lapses, gaps and ambiguities in the statutory provisions have necessitated the judicial law making to give justice to the masses. In ascertaining criminal liability under IPC, the Apex Court has acted pro-actively to render justice in their wisdom.

There has been enormous litigation on negligence in various High courts and State Consumer Dispute Redressal Commissions, National Commission and Supreme Court of India. For the sake of convenience, an attempt has been made in this paper to identify the decisions of Apex Court only wherein significant principles related to medical negligence have been enunciated.

A very first case of liability of Doctor for medical negligence before the Apex court was Dr. Laxman Bal Krishan jishi V/s Trimbak Babu Godbole.[9]

Wherein the supreme court relied on halsbury's Laws of England. It says- " A person who holds himself out ready to five medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties viz a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give, or a duty of care in the administration of that treatment.

A breach of any of these duties gives a right to action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest not a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.[10]

Some more illustrative cases – A Hakim [a Unani medical practitioner], who had no knowledge of penicillin injection treatment, gave such an injection to a patient and, as a result of it the patient died. He was held guilty of the offence under sec.304 –A of the Indian penal code for causing death by negligence.[11]

A doctor, in charge of a dispensary, carelessly mixed up bottles of poisonous drugs and administered them, without reading the labels on the bottles, with the result that several patients died. He was held guilty under sec. 304-A of the Indian Penal code for causing death by negligence.[12]

Liability for negligence can exit under different branches of law such as negligence as a tort, negligence under contract, negligence under consumer protection legislation and negligence as a crime. The main concern of the present Article is" negligence as a crime "which shall, therefore, be dealt with accordingly in some detail.

Criminal negligence means recklessly acting without reasonable caution and putting another person at risk of injury or death or failing to do something with the same consequences.

Criminal negligence applies to medical practitioner when he shows gross negligence in the treatment of patient leading to severe injury or death. The doctor should not be held criminally responsible for the patient's death unless his negligence or incompetence shows such disregard for the life and safety of the patient as to amount to a crime. The most important criterion is the degree of negligence required to prosecute medical practitioner under the charge of criminal negligence which should be gross one or of very high degree.

Negligence under criminal law is dependent on the degree or amount of negligence. Courts have repeatedly held that the burden of proving criminal negligence rests heavily on the person claiming it. Criminal law requires a guilty mind. If there is a guilty mind, a practitioner will be liable in any case, but if, under the criminal law, rashness and recklessness amount to crime, then also a very high degree of rashness would be required to prove charges of criminal negligence against a medical practitioner. In other words, the elements of criminality is introduced not only by a guilty mind, but by the practitioner having run the risk of doing something with recklessness or must be 'gross' in nature.[13]

Section 304 –A of the Indian penal code of 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 affine, or with both. Section 304 –A of the penal code, 1860 prescribes punishment for death due to rash or negligent conduct of a person. It is under this section that doctor or other medical practitioners have generally been proceeded against under criminal law. Even though there is protection given to accidents caused during performance of law full acts under section – 80 and acts not intended to cause death and done for the person's benefit by his consent and in good faith under section -88, the fear of criminal liability has been lingering while performance of their duty even today.

This test of reasonable degree of care has been the anvil for long in determining the liability for medical negligence in India. A doctor who had qualified in homeopathy but practiced in allopathy prescribed allopathic[14] medicine causing death of the patient was held to be negligent per se, hence liable to compensate the wife of deceased patient.

The supreme court relied on Bolam test.[15] Wherein as per mc Nair J .-"the test is the standard of the ordinary skilled man exercising and professing to have that skill.

A man need not possess the highest expert skill; It is well established law that it is sufficient if he exercise the ordinary skill of an ordinary competent man exercising that particular art. In the case of medical man, negligence mean failure to act in accordance with the standards of reasonably competent medical man at the time. There may be one or more perfectly proper standards and if he conforms with one of these proper standards then he is not negligent.

The supreme court said "it is true that a doctor or a surgeon does not undertake that he will positively cure a patient nor does he undertake to use the highest degree of skill, as thee may be persons more learned and skilled than himself, but he definitely undertakes to use a fair, reasonable and competent degree of skill ". The courts in

India are following this yardstick in the cases of medical negligence.

On the principle of Vicarious liability, since the doctor who conducted the operation was an employee of the state government and acting as such, state of Rajasthan was held liable in Rajmal v/s state of Rajasthan.[16] In this case a woman died during Tubectomy operation in the absence of adequate facilities and qualified / trained staff. Supreme court was again confronted with the issue of vicarious liability of state for medical negligence in Achutrao Haribhau Khodwa V . state of Maharashtra.[17] In this case a mop was left inside the abdomen during sterilization operation, which result in peritonitis and subsequent death of a woman. The supreme court considering running of hospital to be welfare activity undertaken by the government regarded it as non-sovereign function and held the state vicariously liable for causing death by negligence.

On the skill expected of a doctor, the court held that as long as a doctor acts in the manner which is acceptable to the medical profession and the court finds that he has attended on the patient with due care, skill and negligence … it would be difficult to hold the doctor to be guilty of negligence. In state of Haryana V/s Santra devi[18] the supreme court held the state vicariously liable for the negligence of doctors in performing unsuccessful sterilization operation on a woman leading to conception of unwanted child liability cannot be imposed for every unwanted pregnancy the court has to examine the facts 'and circumstances of individual case for fastening the liability. In State of Punjab V/s Shiv ram.[19] The claim of plaintiff on account of unwanted pregnancy was dismissed as the court found this case different from the Santra's case wherein by issuing a certificate of complete sterilization, an assurance was given she would not conceive in future. In fact, only the right fallopian tube was operated and left fallopian tube was left untouched. Thus it was a case of medical negligence and compensation in tort was justified.

Medical negligence attracts criminal liability also under the Indian penal code. Various sections i.e. – 337, 338, 304 – A etc of IPC. Prescribed a punishment for rash and negligent conduct. Criminal negligence has rendered the medical practitioners liable under these provisions but the Supreme Court has laid down a significant judicial innovation in Dr. Suresh Gupta V/s Govt. of NCT of Delhi.[20] In the case, the patient was operated by a plastic surgeon for removing nasal deformity. While conducting the operation, the surgeon gave incision at wrong part due to which blood seeped into respiratory passage and the patient expired. Surgeon was prosecuted under section 304 – A of IPC, who approached the high court for quashing the criminal proceedings. High court declined to quash the proceedings. In appeal against the high court order, the Supreme Court Observed:

"When a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as 'criminal'. It can be termed criminal only when the medical man exhibits a 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.

Where a patient's death is a result of merely from error of judgment, or an accident, no criminal liability should be attached to it. Mere inadvertence or mere some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable. Further is stated that the act complained against the doctor must show negligence or rashness of such a higher degree as to indicate a mental state, which can be described as totally apathetic towards the patients. Such gross negligence alone is punishable.

Thus the Supreme Court has interpreted negligence to be gross negligence and has done away with the legislative sprit to criminalize even the negligent acts causing death. The court was in favor of civil liability in such cases.

The issue of fastening the criminal liability on medical practitioners again came up before the Supreme Court in Jacob Mathew V /s State of Punjab.[21] The case relates to rash or negligent act of doctor whose lack of care in not keeping the equipments in order in the hospital led to the death of patient, who was cancer patient. While put on oxygen, the cylinder was found empty and before arrangements could be made, the patient died for want of oxygen. FIR was lodged and the doctor was charged under section 304 A of IPC.

The doctor approached the high court for quashing the proceedings but the high court declined. Appellant field SLP in the Supreme Court against the orders of the High Court. The Supreme Court applying the principles laid down in Dr. Suresh Gupta case said –"to fasten liability in criminal law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in the civil law. The essential elements court consists of criminal negligence… where negligence is an essential ingredient of the offence, the negligence is to be established by the prosecution must be culpable or gross and not negligence merely based upon error of judgment.

The Supreme Court laid down different standards for determining the criminal liability in Medical profession in the following words "it is the amount of damages incurred which is determinative of the extent of liability in tort; but in criminal law it is not the amount of damages, but amount and degree of negligence i.e. determinative of liability.

Negligence in the context of medical profession necessarily calls for a treatment with a difference … A case of occupational 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) of which it is suggested it should have been used … A professional may be held liable for negligence which he professed to have possessed or he did not exercise with reasonable competence in the given case, the skills which he did possess: the standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession."

The Court further issued directions for the prosecution of medical professionals that (a) the investigating officer should, before proceeding against the doctor obtain an independent and competent medical opinion preferably from a Doctor in the Govt. Service in the concerned branch by applying the ordinary standard of Bolam Test; (b) a doctor accused of rash ness or negligence may not be arrested it may be withheld etc. thus the court has take a lenient view of the criminal liability in medical negligence opposed to earlier line of emphasis on greater accountability of the medical professionals as enunciated V.P.Shantha case.[22]

This departure from the earlier principle of criminal liability and liberal approach of the Supreme court has given a significant respite to the doctors and has drawn appreciation from the medical profession. A study of all these pronouncements of the Supreme Court illustrates the active role of the Apex Court either for filling the gaps in law, laying the principles of law or changing the law wherever necessitated in the area of medical negligence. This creative contribution of courts has significantly enriched the law relating to medical negligence of India.

A writ petition was filed under article 32 of the constitution of India where in the petitioner asked for directions, in public interest, banning import, manufacture, sale and distribution of such drugs which were recommended for banning by the drugs consultative committee and there was prayer for cancellation of all licenses authorizing import, manufacture, sale and distribution of such drugs. There was also prayer for seeking directions to the central government to check the hazard of such drugs and remedial measures including award of compensation. Furthermore, it was prayed that quality and standard of approved drugs should be maintained and harmful and injurious drugs should be removed.[23]

It was pleased that the drug industry in the country was dominated by multinational corporations and companies from the west who dumped banned and poisonous drugs into India with the sole motive of earning profit and the Indian government is not enforcing the laws and there is no control over this dangerous phenomenon. It was also allege that the government is not implementing the drug policy and the routine prescriptions are also misused by quacks and inexperienced doctors. Quite often publicity of such drugs also adds to the trouble.[24]

Having regard to the nature of the petitions, the supreme court issued notices to medical council of India, Indian medical association and the drugs medical council of India and drug control authorities of states. It was observed that the notice from the court had not evoked any response, except the state of Karnataka. It was held," statutory bodies when called upon by a court, in particular the apes court of the country, are duty bound to respond and join the proceedings of the court. These bodies are not litigants and do not have the choice of keeping away from the court like private parties in ordinary litigations opting to go ex parte. The present matte is certainly one which is sufficiently important and the stake of the entire nation is high; when the court *suo moto* extended the opportunity of being heard and invited the named statutory and other authorities to come forward, and place their viewpoints on relevant aspects, an attitude of callous indifference cannot be appreciated".[25] It was also observed that the issues that fall for consideration are not only relating to technical and specialized matter relating to therapeutic value, justification and harmful side effect of drugs but also involve examination of correctness of action taken by the bodies concerned, the matter also involves the interest of manufactures and traders of drugs as also the interest of patient who require drugs for treatment.

Although the supreme court found that the technical aspects which arose for consideration in this case could not be effectively handled by the court and the question of policy which is involved in the matter was also one for the union government to decide, therefore, no final say came under the purview of the court but at the same time, it held the central government on the basis of expert advice can indeed adopt an approved national policy and prescribe an adequate number of formulations which would on the whole meet the best owed to keep abreast of the changing situations and make proper and timely amends. While laying the guidelines on this score, the court stated that injurious drugs should be totally eliminated from the market.

The drugs which are found necessary should be manufactured in abundance and availability to every demand should be ensured. Undue competition in the matter of production of drugs by allowing too many substitutes should be reduced as it introduces unhealthy practice and ultimately tends to affect quality. The obligation of the states to enforce production of qualitative drugs and elimination of injurious ones from the market must

take within its sweep and obligation to make useful drugs available at reasonable prices so as to be within the reach of the common man. Price should be regulated. Strict regulatory measures must govern the quality of drugs. Attempt should be made to manufacture drugs indigenously and lot of research should be encouraged. Te indigenous drug manufacturers should disclose the formula of preparation and other information and warnings too. Licensing should be centralized. Adequate representation should be given to consumers.

The Supreme Court appreciated the initiative taken by the petitioner. As the above judgment has direct bearing on both medical men and patients, strict compliance should be made.

Criminal Negligence. The question of criminal negligence may arise in a criminal court, when the defence counsel may attribute the death of an assaulted person to the negligence or undue interference of the medical attendant in the treatment of the deceased. For criminal negligence, the medical practitioner, whether qualified or unqualified, may be prosecuted by the police and charged in a criminal court with having caused the death of his patient by doing a rash or negligent act not amounting to culpable homicide under s 304-A, IPC, if the death was the result of gross carelessness, gross negligence or gross ignorance displayed by him during the administration of an anesthetic, performance of an operation or any other treatment.[26] In last few years as the doctor-patient relationship has deteriorated, and the complaints against doctors have increased. Persons who offer medical advice and treatment implicitly state that they have the skill and knowledge to do so, that they have the skill to decide whether to take a case, to decide the treatment, and to administer that treatment. This is known as an “implied undertaking” on the part of a medical professional. Doctors are not liable for their services individually or vicariously if they do not charge fees. Thus free treatment at a hospital, health centre, dispensary or nursing home would not be considered a “service” as defined in Section 2 (1) of the Consumer Protection Act, 1986.According to the provisions of Indian Penal Code 1860, any act of commission or omission is not a crime unless it is accompanied by a guilty mind. The actions are not punishable only because it led to adverse results unless associated with the intention or mental attitude of the person. Most of the times doctors treat in good faith, with the consent of the patient and hence most of the provisions of IPC are not applicable to the doctors unless or until there is rashness or gross negligence. An error of judgment constitutes negligence only if a reasonably competent professional with the standard skills that the defendant professes to have, and acting with ordinary care, would not have made the same error. Doctors must exercise an ordinary degree of skill. The basic difference is that in Sec. 304 there is an intentional act of negligence while in 304-A the act is never done with the intention to cause death.

Section 304-A of IPC 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. In Poonam Verma vs Ashwin Patel the Supreme Court distinguished between negligence, rashness, and recklessness. A negligent person is one who inadvertently commits an act of omission and violates a positive duty. A person who is rash knows the consequences but foolishly thinks that they will not occur. A reckless person knows the consequences but does not care whether or not they result. Thus a doctor cannot be held criminally responsible for a patient’s death unless it is shown that she/ he was negligent or incompetent, with such disregard for the life and safety of his patient that it amounted to a crime against the State. According to Section 88, a doctor cannot be accused of an offence 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. The burden of proof of negligence lies with the complainant. Even after adopting all medical procedures as prescribed, a qualified doctor may commit an error. The National Consumer Disputes Redressal Commission and the Supreme Court have held, in several decisions, that a doctor is not liable for negligence or medical deficiency if some wrong is caused in her/ his treatment or in her/ his diagnosis if she/ he has acted in accordance with the practice accepted as proper by a reasonable body of medical professionals skilled in that particular art, though the result may be wrong.

CONCLUSION

At last it can be conclude that the negligent act of Professionals especially of Medical Practitioners cannot be ignored by the law and in all situation action is required so all doctors are suggested to take precautions as their act may fall in the ambit of negligence when a doctor fails to take proper care, precaution and is just indifferent to the consequences of his act. Lack of skill proportional to risk undertaken also amounts to negligence. Common examples of gross medical negligence include giving the blood transfusion to the wrong patient or operating on the wrong side of the body or wrong patient. Unfortunately, in many cases, a doctor treating with “good faith” also becomes a victim of medical negligence complaint just due to mere documentation error. Ayurveda and Homoeopathic doctors are not allowed to practice modern medicine, if they do so it will be illegal and punishable. The Delhi Medical Council has notified that only persons who possess any of the recognized medical qualification as per First, Second or Third Schedule to the Indian Medical Council Act, 1956 and registered with the Delhi Medical Council is authorized to practice in modern

scientific system of medicine (allopath) and same applies to the doctors of other States too in India.

REFERENCE

1. Jugganknan v. State of Madhya Pradesh, (1965) I SCR 14:A.I.R.1965 S.C. 831.
2. State v. Devaki Amma, 1971 A.C.J.45:1970 Ker. L.T.958.
3. Public Prosecuter v. E.O. Charistian, 1971 A.C.J.20: (1970)2 AndhWR293.
4. Ibid
5. Public Prosecuter v. E.O.Christian, 1971 ACJ 20:1970,2 aNDHwr 293.
6. Banarasi dass Kankan v. Shyam Behari Lal, 1932 (Bom) LR 187.
7. Mr. Justice M.N. Venkatachalish, Chief Justice of India- M.C.Bhandari memorial lecture on "Indian Judges as law makers: some glimpses of the past"1995, I S.C.C.(jour)I.
8. Mahalwar, K.P.S," Medical negligence and the Law",1991, Deep& Deep, New Delhi.
9. A.I.R. 1969 S.C.128.
10. Halsbury's Laws of England
11. Khusaldas v. State of M.P.A.I.R. 1960 M.P.50 : 1960 Cr. L.J.234.
12. P.M. De'Souza v. Emperor, A.I.R. 1920 (Alld)32:1920,21 Cr.L.J.367.
13. 'Medical Negligence – A comparative analysis of the law in India and UK',p.l,retrieved from <http//:www.news.indlaw.com/uk/focusdetails.asp?ID=26> on november1.
14. Poonam Verma v. Ashwini Patel, 1996,4,S.C.C.322.
15. Bolam v. Friern Hospital management committee 1957,2 All. E.R.118.
16. 1996, A.C..J 1166.
17. 1996,2S.C.C.634
18. A.I.R.2000 S.C 1888.
19. JT,2005,7 S.C.606.
20. (2004)6 S.C.C. 422
21. A.I.R.2005, S.C.3180.
22. Supra note-11
23. Vincent Panikurlangara v. Union of India, A.I.R.1987S.C.990
24. Ibid
25. Vincent Panikurlangara v. Union of India, A.I.R.1987 S.C.990
26. BMJ,12 July 1975, 108

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