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Civil Liabilities for Medical Negligence in India

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Abstract – Medical negligence in India is both a criminal offence under IPC and CR.P.C as well as a civil liability under the law of tort. If there is a violation of duty of care, civil responsibility normally involves a claim for damages in the form of compensation. It refers to a lack of caution in a situation when caution is required by law. When this responsibility is breached, a patient has the right to sue for negligence. Under the general law, civil culpability, i.e. monetary compensation, can be sought by pursuing a remedy before an appropriate Civil Court or consumer forum. Dependents of the deceased patient or the patient himself (if alive) file a lawsuit claiming civil culpability for the erring medical practitioner in order to obtain compensation.

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NEGLIGENCE

'Negligence' means either subjectively 'a careless state of mind' or objectively 'careless conduct'. Negligence is not absolute term, but is a relative one. To determine whether an act would be or would not be negligent, it was relevant to determine if any reasonable man would foresee that would cause damages or not. If the answer was in the affirmative, it was a negligent act.[1]

MEDICAL NEGLIGENCE

Negligence may be either civil or criminal. When the negligence is of aggravated kind as to be termed as rashness the liability of such act results in shall be criminal in nature. The question as to whether 'medical negligence' is a civil wrong criminal offence has been a question that has been mooted in legal circles for long. In order to address this issue, the essential differences between these two branches of law have to be elaborated. A lack of care is sufficient for civil culpability, but a significant degree of negligence is necessary for criminal accountability. Any decision in a civil case has to be decided by balancing the probabilities whereas in criminal law, the act alleged has to be proved beyond reasonable doubt.[2]

Most of the cases regarding 'medical negligence' now are generally brought before the Consumer Redressal forums constituted under the Act under the Consumer Protection Act 1986.

As a result of it, the concept of medical negligence slowly and streadily has undergone such a sweeping changes that the day it's not for away when no civil case regarding medical negligence shall be found to be instituted in future.

There are also some checks of Indian Medical Council through the Indian Medical Council, 1956 but there too doctors prevail. Most of the patients do not know how to approach the council. Otherwise also the role of council is more towards academic and they do little for the pain and sorrow of the patient and exploitation. Even in medical colleges the position of patients is just like experimental thing. On the other hand, there are Unions of doctors, who not only fight with the government for pay scale but also towards the relatives of the patients, who venture to attract the attention of the doctors towards their duty. In substance there is friction in the relationship of doctor and the patient. The patient looks him with doubtful eyes while the doctors look at the pocket of the patient. A poor patient remains without any means and he cannot seek opinion from another doctor too. He is imprecated to remain in the net of one. Although doctors are conscious of their reputation but it there is some fear of law, then there is possibility of strained relations between the doctor and the patient being minimized. During the present time, there is fight between the duty and the money matter. The basis of relations is also economic. This also prevails between the relations of doctor and patient. In our society there is no custom to implicate the doctors in litigation. He is our God alone. There are few cases in which there was some litigation but none was benefited by this. There is also question of duty and right. Doctor gets pay takes fees then he should also accept himself to be answerable. Then a patient is not only patient but is also a consumer, why we should not accept it also.

New concept of negligence in context of medical profession has been propounded in Jacob Mathew's case[3] which laid down that "such a negligence calls for treatment with the difference and also propounds

that one can be held liable for medical negligence either when he does not possess requisite knowledge which he has profess to possess or he did not exercise the reasonable competence, the skill which he did not possess".

CIVIL LIABILITY FOR MEDICAL NEGLIGENCE

In civil law, a basic lack of care is sufficient to establish culpability; however, criminal law requires proof of gross negligence. To show negligence in civil law, one just needs to examine the case's likelihood of success. However, in criminal law, the doctor's negligence must be shown beyond a reasonable doubt.

Complaints for relief related to "public utility services" in a hospital or dispensary can also be made to the doors of permanent 10k Adalats, established under the Legal Services Authority Act, 1987, wherein first a conciliation is attempted and then a determination on the merits of an issue is made.

If you do something that a sensible and reasonable person would not do, you have committed negligence as a tort because you were negligent.[1] The definition involves mainly three elements:- A legal duty to exercise due care, breach of the duty and consequential damages. A proceeding for negligence arises only when damages has taken place as damages is a crucial ingredient of tort.

REMEDY IN A CIVIL COURT IN REFERENCE OF MEDICAL NEGLIGENCE

For a claim under law of contract or tort, a civil suit has to be filed in a civil court of appropriate jurisdiction. It involves: (i) a time consuming and elaborate procedure of a civil suit as envisaged in the Code of Civil Procedure: (ii) leading of oral and documentary evidence; and (iii) payment of court fees according to the amount of the claim. Where treatment is provided free of charge as in case of treatment in a charitable hospital or dispensary or a government hospital, dispensary, etc., the remedy only under the law of tort can be availed of in a civil court.

REMEDY UNDER THE CONSUMER PROTECTION ACT, 1986

Since its inception on April 15, 1987, the Consumer Protection Act, 1986 has been heavily weighted in favour of consumers, much like the Industrial Disputes Act, which favours employees. The Preamble to the Act states that the Act's goals and objectives include, among other things, the protection of consumer interests and the resolution of consumer disputes. In contrast to civil lawsuits, which can take years to resolve, this method allows for quick and economical resolution of conflicts in a short period of time. The Act's provisions are compensatory in nature and do not conflict with any other legislation in effect at the time of the Act's passage.

CONTRACTUAL LIABILITY FOR MEDICAL NEGLIGENCE:

Contractual liability is the main aspect of civil law. Since the inception of medical science, the human beings professing it have been abiding the principles with fidelity and sincerity. As the physician or surgeon is a skilled person, a patient has to repose confidence and faith in him. The relationship of fidelity and mutual confidence occurs at the time when doctor undertakes or assents to provide medical service.[4] A doctor is not under obligation to render service to any one and could not be held liable for consequence of such failure to treat a person except as a government servant.[5] Therefore the nexus between physician and patient is normally the result of implied contract between them which usually amounts to surrender of a patient before the physician to get the treatment for consideration. The obligation of physician or surgeon arises when a physician agrees to provide medical service to a patient.

In contract, liability depends upon the expressed or implied terms of contract and is based on what the medical man in question contracts to do. The duty in contract is only binding to the parties in the contract.[6]

A medical man could not examine, treat or operate a patient without the patients consent except for committing a trespass or assault. Where however the medical practitioner is privately engaged, he owes a contractual duty to attend and treat the patient and to exercise reasonable skill and care in doing so.[7]

REMEDIES UNDER THE CONSTITUTION:

Articles 32 and 226 of the Constitution respectively confer jurisdiction on the Supreme Court and the High Courts for the enforcement of fundamental rights. The High courts have in addition jurisdiction to enforce other legal rights. It has been held that the power conferred by these provisions is not merely injunctive, i.e., preventive but also remedial and includes a power to award compensation, interim or final, in appropriate cases.[5] Ordinarily, these provisions are not to be used as a substitute for a suit for compensation but there Re course can be taken in exceptional cases.[8] It is only in these cases that an infringement of the fundamental right on a large scale, affecting the fundamental rights of many people, or that it appears unjust or oppressive because of their poverty, disability, or social or economic disadvantage to require them to take legal action against the infringement.[9]

A public law wrong that is sui generis, or distinct from other wrongs, is a violation of a constitutional right or any other right granted by the Constitution. Articles 32 and 226 of the Constitution allow for

damages to be sought in circumstances of this sort, such as those outlined above.[10]

The right to compensation in public law was developed by the courts to compensate the family of a deceased person whose right to life was violated by the state, as well as to alleviate the pain of the deceased's family.[11] The State is responsible for compensating victims of constitutionally protected rights to life and liberty harmed by the tortious actions of public servants and police officers.[12] A palliative order of compensation is issued "to impose monetary penalties on those who violate the rights of others," according to the law.[13] Further, the Supreme Court has expanded the doctrine of locus standi, stating that any member of the public or social action group acting bona fide can file a petition under Article 32 and 226 seeking redress for legal injury or legal wrong done to a person or class of people who, because of poverty or disability or socially or economically disadvantaged position, cannot approach the court of law for justice[14]

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