



MEDICAL NEGLIGENCE AND CRIMINAL LAW: AN INDIAN PERSPECTIVE¹

INTRODUCTION:

Negligence is a term of art, but has distinct meanings in different jurisdictions. In ‘Tort’, damage is an essential ingredient but that element is not necessary in the law of master and servant. In criminal law, there are series of offences based on negligence in which loss or injury is not material, it is enough if the act is likely to cause injury or endanger life. Operation of patient without consent is an example of negligence (Statutory Damage) even without actual apparent damage. Dictionary meaning of term ‘Negligence’ is ‘Lack of Proper Care’. As defined by Baron Alderson negligence means: “Omission to do something which a reasonable man guided by those consideration which regulate conduct of human affairs would do, or doing something which a reasonable man would not do”. Same definition is quoted in many decisions of the court. ‘Criminal Negligence’ is an offence against the State while ‘Civil Negligence’ is an offence against the individual act, which leads to injury i.e. physical injury, hurt- Section 319, grievous hurt- Section 320 Indian Penal Code (IPC). Loss of property (financial loss) due to some negligent act is always a civil negligence. The decision of the Supreme Court delivered on last year raises a fresh debate on the issue of ‘Criminal Negligence by the Doctors’. In this case the Supreme Court relied on various decisions of the House of Lords.

There have been an ever-increasing number of cases of patients suing doctors for alleged ‘Criminal Negligence’. Is it just that more patients report to the courts against innocent doctors, or does it have to do with an actual fall in the standards amongst medical practitioners? In the last decades, technical advances in the medical field have meant a better quality of life, with an increased longevity and falling morality levels. Unfortunately, there has not been a corresponding shift in the standard of medical education or investment in the concept of patient management in most of the healthcare setups. Fast-track commercialisation and the adoption of corporate culture values by hospitals and members of the medical fraternity only put more strain on the doctor – patient relationship.

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REASONS FOR INCREASING LITIGATIONS.

DEGREE OF NEGLIGENCE:

High degree of negligence is necessary to prove the charge of criminal negligence u/s 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”. It is not merely a lack of necessary care, attention and skill.

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.

“Where a patient’s death results merely from ‘Error of judgment’ or “an accident”, no criminal liability should be attached to it. Mere inadvertence 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 apt on the subject and a useful guide to the courts in dealing with the doctors guilty of negligence leading to 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. Common-law systems have traditionally only made negligence the subject of criminal sanction when the level of negligence has been high – a standard traditionally described as gross negligence.....

Blame is a powerful weapon. When used appropriately and according to morally defensible criteria, it has an indispensable role in human affairs. Its



inappropriate use however, distorts tolerant and constructive relations between people. Some of life's misfortunes are accidents for which nobody is morally responsible. Others are wrongs for which responsibility is diffuse. Yet others are instance of culpable conduct, and constitute grounds for compensation and at times, for punishment. Distinguishing between these various categories requires careful, morally sensitive and scientifically informed analysis".

ROLE OF MEDICAL EXPERT'S OPINION:

No case of criminal negligence should be registered without a medical opinion from Expert Committee of doctors and it should be given within a reasonable time. Indian Medical Association (IMA) Punjab claimed "they had secured a directive from Director General of Police (DGP) Punjab that no case of criminal negligence can be registered against a doctor without a report from an Expert Committee. Similar situations exist in the case of State of Delhi where Lieutenant Governor issued directions to the Delhi police regarding how to arrest a doctor in medical negligence case, the Delhi High Court also decided to form guidelines for lower judiciary as well as the police to deal with such cases.

Hon'ble Supreme Court endorsed the same view, as "criminal prosecution of doctors without adequate medical opinion would be great disservice to the community – as it would shake the very fabric of doctor- patient relationship with respect to mutual confidence and faith the doctors would be more worried about their own safety instead of giving best treatment to their patients".

APPLICABILITY OF SECTION 304 & 304-A OF IPC:

"The legal position is almost firmly established that where a patient dies due to the negligent medical treatment of the doctor, the doctor can be made liable in civil law for paying compensation and damages in 'Tort' and at the same time, if the degree of negligence is so gross and his act was reckless as to endanger the life of the patient, he would also be made criminally liable for offence under section 304-A of IPC".

Incidences are reported in which cases are registered against the doctor' u/s 304 IPC as doctors are murderer and even not granted bail.



WHY DOCTORS ARE CONFUSED OVER THE ISSUE OF ‘CRIMINAL NEGLIGENCE’?

Doctors are victims of ‘Trial by media or post mortem of Court’s judgment done by the media’ or misinformation spread through the media and technicality of legal words used in the matters of ‘Criminal Negligence’. As reported by various leading national news papers after the recent decision of Supreme Court “ Doc not Criminally Liable if Patient Dies”, “Saving the Doctors”, “SC Judgment Qualifies Medical Negligence”, SC Insures Docs Against Patient Death”, SC Ruling a Deliverance for Medical Fraternity”, “SC Comes to the Rescue of Doctors” etc. “This would mean that the relief the doctors had got due to the Judgment, would not be available to them till the larger Bench give its opinion”.

Doctors relying on these media reports without verifying the facts from original judgment or through discussion with the legal experts on the issue may fall prey of this misinformation perceived through the eyes of media and may propagate same feeling and knowledge to other colleagues and junior doctors and always remain confused on the issue of criminal negligence. While SC judgments mention nothing new except verifying the previous established fact that ‘error of judgment is not negligence’.

ROLE OF MEDIA:

The freedom of information is implicitly covered by, Article 19 and Article 21 under the Indian Constitution. Disposing off a case of contempt of Court against the editors of two newspapers recently, the Supreme Court remarked: “It is the duty of a true and responsible Journalist to inform the people with accurate and impartial presentation of news and his views after dispassionate evaluation of the facts and information received by him to be published as a news item”.

Since the 1970,s Indian media has played an extremely important role in sensitizing people with information about governance, development, science and technology, foreign relations and so on. However, lately it has also come in for criticism, as highlighted by the above the Supreme Court decision. There is a decline in journalistic credibility, as noted by the Chairman of the Press Council of India as well as the President K.R. Narayanan.



Recently, due to the media preoccupation with the trivia, personality cult, one-sidedness, and instant in-depth investigation, 51 senior journalists feel that the media sides away from important people's issues that it is losing social content and becoming a consumer product with a manager overshadowing the editor. The media has a tendency to launch "trial by the media"; even sentencing by the media, while a Court proceeding is underway.

DIVIDED JUDICIARY:

Referral of judgment of SC to the larger bench further confirms the divided opinion of judiciary and complexity of legal words used in cases of negligence. The much-debated judgment of the SC is now referred to a larger Bench for reconsideration on September 9, 2004. A Bench of Mr. Arijit Pasayat and Mr. C.K. Thakkar observed that the words "gross negligence" or "reckless act" did not fall within the definition of Section 304-A IPC, defining death due to an act of negligence or the culpable homicide not amounting to murder.

Between Civil and Criminal liability of a doctor causing death of his patient the court has a difficult task of weighing the degree of carelessness and negligence alleged on the part of the doctor. For conviction of a doctor for alleged criminal offence, the standard should be proof of recklessness and deliberate wrong doing with a higher degree of morally blameworthy conduct.

CONCLUSION:

Thus, where a patient's death, results merely from error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold doctor criminally liable.

"To convict, therefore, a doctor, the prosecution has to come out with a case of high degree of negligence on the part of the doctor. The courts have, therefore, always insisted on the case of alleged criminal offence against doctor, causing death of his patient during treatment, 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 patient. Such gross negligence alone is punishable".



Court further adds, “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”.

This approach of the courts in the matter of fixing criminal liability on the doctors, in the course of medical treatment given by them to their patients, is necessary so that the hazards of medical men and medical profession being exposed to civil liability, may not unreasonably extend to criminal liability and expose them to risk of landing themselves in prison for alleged criminal negligence.

Medical Council of India and State Medical Councils should come forward to strictly implement its regulations over medical profession because the failure of these regulatory bodies to keep check on the erring doctors or to effectively enforce ethical guidelines framed in 2002, are the reasons for falling standard of health care in India.

The editor of a newspaper or a Journal, the Supreme Court said, has a greater responsibility to guard against untruthful news and its publication. “If the newspaper publishes what is improper, mischievously false or illegal and abuses its liberty, it must be punished by a court of law”. While a free and healthy press is indispensable to the functioning of a true democracy, the Court said the freedom of the Press is subjected to reasonable restraints.

What everybody can hope that new decision would come up not only with clear definition of the ‘criminal negligence but also with exact meaning of the legal words used in defining the case of criminal negligence by the highest law protector and giver of India.

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