

# Medical Negligence Laws and Need for Reform

**M.Amaraa**

Assistant Professor, Dr. MGR Educational and Research Institute, Chennai

## Introduction

Medicine bridges the gap between science and society. The application of scientific knowledge to human health is a crucial aspect of clinical practice. It is medical professionalism of doctors that creates confidence of the public in them. Several health providers have entered the health care arena. The patients expect from their doctors noble values and a standard of medical ethics. Medical professionalism is defined as a set of values, behavior, and relationships that creates the trust the public has in doctors.

Medical service is offering invaluable service to humanity and the profession is a noble profession. The word doctor is derived from the Latin word ‘docere’ which means to teach. The relationship between the patient and the doctor was considered as very sacred. It was based on mutual trust and faith, and not based on pecuniary considerations.<sup>1</sup>

Nowadays, the onslaught of mechanization and commercialization of the profession had demolished the noble traits for which the medical men were known for long. There has been an element of dehumanization in medical practice.<sup>2</sup> Health care to-day has plummeted down to a business for minting money. The homely atmosphere and the intimacy which the patient and the doctors enjoyed hitherto before has disappeared.<sup>3</sup>

The medical profession has immensely benefited mankind. Medical service is defined as assistance or benefits pertaining to medicine or its practice offered to another, in the performance of healing disease for the purpose of cure.<sup>4</sup> It should be clear, therefore, that medical services imply delivering quality medical care to the community (ie, service of mankind), in treating and curing.

---

<sup>1</sup> The relevant parts of “*Code of Medical Ethics*”, as propounded by the Medical Council of India.p.48

<sup>2</sup> Phatnani, Pentum, P., *Medico-Legal Aspects of Doctor – Patient Relationship*, Express Pharma Pulse,(November 30, 1995), p. 5.

<sup>3</sup> Mathew, N.M., *Consumer Talk Health for the Millions,CPJ*, (January&February, 1995), p. 62.

<sup>4</sup> Martin, C.R.A., *Law Relating toMedical Practice*, Oxford Publication, London, 1979, p. 17.

The WHO is committed to provide health for all. The Directive Principles of State Policy under the Constitution of India demands the State to make effective provision for public health, and for just and humane conditions of work.<sup>5</sup> It is the primary duty of the State to raise the level of nutrition, the standard of living of its people and the improvement of public health.<sup>6</sup> The Supreme Court had declared that right to medical aid as an integral part of the right to life. It is an obligation on the State to preserve the life by extending required medical assistance. In fact, the Apex Court had held that right to health and medical care is a fundamental right under the Constitution of India.<sup>7</sup> On jurisprudential analysis of this issue, it is clear that it has become a socio-legal problem.

This issue of medical negligence has created complicated problems in the society and health care system and hence this area solely needs legislative reforms.

There is need to discuss the genesis and development of the concept of patients' right in the context of jurisprudence and medical care.

Negligence means the omission to do something which a reasonable man would do or doing something which a prudent and reasonable man would not do. There must be negligence which amounts to a breach of duty towards the person alleging negligence. In the same way, in the treatment of patient 'negligence' has many manifestations. It may be active negligence, comparative negligence, criminal negligence, gross negligence, willful or reckless negligence, etc. There are divergent opinions on what exactly constitutes negligence in the practice of medicine. Therefore, the much importance to be given to focus on identifying the nature and scope of medical negligence.

---

<sup>5</sup> Articles 41 and 42 of the Constitution of India. **41. Right to work, to education and to public assistance in certain cases.**—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. **42. Provision for just and humane conditions of work and maternity relief.**—The State shall make provision for securing just and humane conditions of work and for maternity relief.

<sup>6</sup> Article 47 of the Constitution of India - **47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.**—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

<sup>7</sup> See : *ParamanandKataravs.Union of India*, AIR 1989 SC 2039; *Consumer Education and Research Center vs. Union of India*, AIR 1995 SC 1922; *State of Punjabvs.Mahinder Singh Chawla*, AIR 1997 SC 1225.

The judiciary plays a significant role in the adjudication of medico-legal cases. The consumer courts can assume the authority to call for the medical expert opinion in deciding medical negligence.

There are various remedies for medical negligence such as civil remedy, criminal remedy and administrative remedy. The victim of medical malpractice may approach the Supreme Court or the High Court under Article 32 or 226 of the Constitution of India. They may invoke the ordinary jurisdiction of civil court/consumer court under the law of torts/contract or the Consumer Protection Act or the criminal court under the Indian Penal Code.

In the landmark **Bola** case<sup>8</sup>, it was held that in the ordinary case which does not involve any special skill, negligence in law means a failure to do some act which a reasonable man in the circumstances would do, or the doing of some act which a reasonable man in the circumstances would not do and if that failure or the doing of that act results in injury, then there is a cause of action.

In the context of medical negligence the Honorable Supreme Court of India has laid down the law in *Jacob Mathew vs. State of Punjab*<sup>9</sup> that “A doctor accused of rashness or negligence may not be arrested in a routine manner simply because a charge has been levelled against him. Unless his arrest is necessary for furthering the investigation or for collecting a evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld. A simple lack of care, an error of judgement or an accident is not proof of negligence on the part of a medical professional.”

In *Post Graduate Institute of Medical Education and Research, Chandigarh, vs. Jaspal Singh & Ors.*,<sup>10</sup> it was laid down that the failure to perform the duties with reasonable competence amounts to negligence.

Hon’ble Supreme Court of India in *Kusum Sharma & Ors. vs. Batra Hospital and Medical Research Centre & Ors*<sup>11</sup>, ruled that “as long as the doctors have performed their duties and exercised an ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence”.

---

<sup>8</sup> *Bolam vs. Friern Hospital Management Committee*, (1957) All. E.R. 118.

<sup>9</sup> AIR 2005 SC 3180.

<sup>10</sup> (2009) 7 SCC 330.

<sup>11</sup> AIR 2010 SC 1052, p. 1058.

In *Achutrao Haribhau Khodwavs. State of Maharashtra & Ors*<sup>12</sup>, the Apex Court held as under:

Access to justice and Availability of legal remedies are crucial in protection of rights and addressing grievances of health and safety. It focuses to reveal the obstacles and also the potentiality of the existing legal framework. A scrutiny of the working of Consumer Protection Act, 2019 might enable discovering more appropriate methods in facing the challenges of welfare of consumers in India.

---

<sup>12</sup> (1996) 2 SCC 634.