

DEPRIVATION OF RIGHT TO LIFE BY MEDICAL NEGLIGENCE – PROBLEMS AND SOLUTIONS

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ABSTRACT

In the present time the doctor has become more negligent in his occupation. The present law needs to be amended, for if the law is not rigid, the poorer and lower class people will die less than the illness, more than the negligence in curing the disease. There is currently more negligence in private hospitals, if the patient dies, the dead body is taken into custody, that the dead body will not be given to the body until full payment is made to the hospital. There is a need for unexpired investigation to be conducted and sent for examination in the hospital itself or to those concerned. If a patient has to undergo an examination at another centre, it is not accepted, and if a patient is admitted in the hospital, he may not be able to purchase the same medicine at his favorite store. Doctors are not at all familiar with the disease of the patients. The crimes which are currently being committed by medicine are called white pox crimes in the language of criminology, but it is defined as a separate offence by creating different methods. If a person contrasts his legal right under tort law, he can obtain compensation. The Consumer Protection Act, 1986 constituted consumer courts in which disputes are settled. At present, the Consumer Protection Act, 1986 has been replaced by the Consumer Protection Act, 2019 Medical is a service under the Consumer Protection Act as the doctor is a service provider and patients are a consumer who takes that service and, therefore, if there is any deficiency in service, the patient can obtain compensation by way of litigation in the consumer court under the Consumer Protection Act, 2019.

Keywords: Constitution of India, 1950, Indian Penal Code, 1860, the Consumer Protection Act, 1986, the Consumer Protection Act, 2019, Indian Medical Council, Retinopathy of Prematurity (ROP) test.

Introduction

Article 21 of the Constitution of India provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law." The right to life and personal liberty is superior in all rights Article 21 provides protection to this right. The term citizen has not been used in this article but is used in person. This means that Article 21 is reserved for citizens and all types of persons from abroad.

It is the duty of the government to provide safeguards fundamental right to life and personal liberty guaranteed by Article 21 of the Constitution of India because this right has been called as repository of all the rights. Constitutionally, it is the duty of the State to provide to all citizens adequate and proper medical services. So that every person has right to proper health dignified life and to achieve his desired goal in life. In the case of *Parmanand Katara vs. Union of India*, the Supreme Court held that it was under article 21 of the of India that it was the duty of doctors operating in both public and private hospitals to provide medical aid at the earliest without waiting for the legal procedure to be completed as per the criminal procedure code and to protect the injured person. Protection human life is the constitutional duty of all physicians. In such cases the injured persons are generally sent to government hospitals only because of the need to complete the police proceedings before the accident. The decision in this case makes it clear that it is his duty to provide medical aid to the doctor at the earliest possible time without going into police action. The life of innocent persons can be saved according to this decision. Delay in police action often leads to death of the injured person due to lack of medical aid.

In the case of *Paschim Bang Khet Majdoor Samiti vs. Paschim Bengal*, respondent Hakim Singh who was a member of the west Bengal farm committee fell down from the train, causing serious injuries to him. He was taken to several Government hospitals in the city of Calcutta for treatment, but the hospital was not admitted as there was no bed. Finally he was admitted to a private hospital where he had spent 17000 rupees in the treatment. The respondent was aggrieved by this disinclined attitude of authorities of various Government hospitals in Calcutta and filed a petition in the Court under Article 32', which argued that the fundamental right conferred under it under Article 21 had declined due to non- availability of facilities for treatment of seriously injured persons in government hospitals. The court held that it was the primary duty of the state to provide adequate medical facilities to the citizens in a welfare state. Article 21' imposes the duty on the State to protect the life of every person. It is the duty of doctors in Government hospitals run by the State to provide medical help to protect the human

life. The failure of the Government hospitals to provide timely medical assistance to persons in need would result in violation of the fundamental right of life conferred by Article 21. In the case of deprivation of Constitutional Rights, the Court has the power to grant compensation under Article 32. 226 The Court gave several directions in the Government hospitals to provide emergency treatment. The State Government also directed the Government to provide adequate financial assistance in Government hospitals.

The Andhra Pradesh High Court in *Shanta vs. State*, case has reported damages to the petitioner for the damage caused by medical negligence. In the case presented petitioner got admitted to a Government hospital in Karnataka state surgically to give birth to a child. The doctors performed the operation and she went home from the hospital. After two days her stomach started pain. The pain became unbearable when the petitioner was admitted to a private nursing home. He was again operation there and it was found that in the first operation doctor had carelessly left the towel and other things in the stomach that caused an opening in the stomach. The doctor operation on to remove the item from the stomach and cut of damaged stomach part. He had to stay in the hospital for about one month and a half. During this period he was selling all his ornaments and running the hospital expenses. The respondent threatened him not to complain. Otherwise his result will not be good for him. The petitioner instituted the case against the doctors and requested the Court to protect the lives of him and his children. The Andhra Pradesh High Court directed the State Government to provide all necessary medical facilities to the petitioner till it became fully healthy. The Court also ordered him to pay 300,000 rupees as compensation. The court held that the petitioner may if so wished complains to the police against the doctors and act against the doctors under the law of tort for damages.

RIGHTS OF WORKERS TO GET HEALTH AND MEDICAL BENEFITS In the case of *Consumer Education and Research Centre vs. Union of India*, Supreme Court held that under Article 21 of the Constitution of India, it is a fundamental right to seek health and medical assistance to workmen during service and even after retirement as it makes his life meaningful and necessary for maintaining the dignity of the individual. The term 'life' under Article 21 does not mean a mere animal life but is very particular and includes a health and relaxation of the place of work of the workers on the best standard of living. This increases the efficiency of the work of the workers. A healthy workman can only take advantage of the fruits of his labour. Medical facilities are essential to protect the health of the workers. The Court clarified that all

functionaries were private individuals and factories owners bound by it to comply with orders issued by the Court under Articles 32 and 142 The Court has prescribed the following guiding principle for all the asbestos (non burning metal) factories of the country

- All asbestos factories will be required to get health insurance for their employees.
- Every workman who is suffering from a professional health crisis will be entitled to compensation for one lakh.
- The asbestos (non burning metal) factories shall be required to record at least 40 years before the commencement of appointment of the health of all their workers or a record statement of at least 15 years after retirement.
- Just like Metalliferrous Mines Regulations, 1961 and Vienna Convention, all factories have to undergo a membrane filter test, to detect the disease caused by asbestos (non burning metals).
- All factories, whether employed under the state insurance act or the hen's compensation act, have to insure the health of every workman.

DEFINITION OF CONSUMER UNDER THE CONSUMER PROTECTION ACT, 2019¹.

- buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

DEFINITION OF SERVICE UNDER THE CONSUMER PROTECTION ACT, 2019

"Service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing,

insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

HEALTH SERVICE UNDER THE CONSUMER PROTECTION ACT

Health services in India were viewed from the standpoint of altruism, but after the advent of modern medicine, medical and allied services were converted into buying and selling. There was a consumer agreement between the medical provider and the patient. For example, if you're having a hernia operation, it's going to take so many thousands of rupees. The contract form was signed by the patient and the health services became entirely market-based. It became necessary to bring these services within the purview of law so that no more money could be rendered to the buyer. As a result of improper treatment. Keeping this in view, the court has made it clear in its orders from time to time that any medical related services are deemed to be a contractual service under the Consumer Protection Act, 1986 and the present Consumer Protection Act, 2019 Health services thus came under the purview of law. The patient takes these services as a consumer, if the service offered by the doctor is deficient, he may sue under the above act and obtain compensation.

MEANING MEDICAL NEGLIGENCE Basically, medical negligence means such negligence resulting from the failure on the part of the doctor to act in accordance with medical standards in vogue which are being practiced by an ordinarily and reasonably competent man practicing the same art. There may be so many instances in which a medical man may act in a highly negligent manner. For example during the course of the treatment, a patient suffers injury or dies due to grave lack of care and reasonable skill, it is negligence

MEDICAL NEGLIGENCE UNDER CRIMINOLOGY

The nature of the medical profession is such that there is ample scope for making money improper and illegally. As a result of illegal sexual intercourse, if a unmarried woman conceives, she or her guardians have to pay a large amount of abortion in order to protect herself against evil and to avoid dishonor. In addition to the doctor, nurse, staff etc. working with him are involved in this illegal act. Even some professionals act as agents to look for illegal abortions to provide medical attention to doctors. Similarly, persons committing theft, dacoity or other serious offences go to their former designated doctor when a physical injury

has occurred during the crime and seek medical treatment which keeps their act secret and in return raises a substantial amount from the offender.

Even when the Government passed the special Act in 1994 and a ban on prenatal sex test is imposed on the child's desire, many married couples, collusion with their doctors conduct sex examination of the child in their womb and do not miss the practice of illegal abortion in the case of a female child. In this, the doctor explores a large amount of money from his client. Although it is a punishable offence, it is not only possible to prevent it by law unless the age-old recognition has been completely freed from the society, the daughter is a burden on the parents, while a son is required to carry forward the race, it is also a deformed form of white collar crime. False medical certificate by doctors has become a common practice, which is not considered to be a crime or a wrongful act. Employees who are employed in Government essential service usually lack leave. As a natural remedy, they make use of the required medical leave by paying the prescribed amount to doctors. In fact, even though it is a white collar crime, it gives great relief to Government employees and is prepared to take on a medical certificate. The doctor is also not afraid of being caught because he does the paperwork pertaining to a false medical certificate so issued at the previous date when he receives the said fee for the same. Many Government, semi - Government or non official employees get paid medical expenses after getting certified by the doctors. of false medical bills in the medical profession. Even many people act as agents, and some have made the illegal and criminal work a regular source of income for them. Almost everyone knows about it, but it is difficult to apprehend these criminals because they pay for it only after completing all the legal processes necessary for them. It is not new to be sold to patients in the form of free of charge medicines, injections etc., by those employed in the medical profession. It is in this way that many doctors maintain their profession and draw money from them for deliberate pendency of treatment. Even having collusion with diagnostic centres, many doctors are obliged to test their patients only at the diagnostic centre of their choice for blood, urine, sugar, etc and the test reports of any other diagnostic centre are not reliable. Considering these illegal crimes in the medical world, it is only natural to ask why they cannot be prevented, though they are known to everyone. It would be sufficient to mention in this context only that it is impossible to expose these white collar crimes because they are more of the interest of the defunct person than of the offender, and that they cannot be exterminated merely by moral or legal restrictions, unless every member of the society is willing to discharge them as its duty. It is to be noted that in the sense that in 1971, as the law relating to abortion was disabled on medical grounds, it became possible to take

control of illegal abortions, so if the employees were made to pay a fixed amount as mental medical allowance, the saving of crores of rupees to be spent by the revenue on payment of false medical bills would save as well as that illegal profession would be wiped out on its own. Many people are making money illegally through advertisements related to medicine. There are many drug advertisements in the television, radio, press which are false and misleading the public. Many of them are of poor medicinal value and have no effect on the patients Similarly, false advertising deals with makeup or food drink products, which are detrimental to public health. Public opinion against such crimes is not possible to avoid them unless prepared

MEDICAL NEGLIGENCE UNDER THE CONSUMER PROTECTION ACT Medical negligence is now covered under the Consumer Protection Act 2019 The act not only protects goods purchased by the consumer but also cover service under the Consumer Protection Act, 2019. If any type of error is found in the service taken by the customer then the service provider will be liable for the same Section 2 (42) of the medical services Consumer Protection Act covers the definition of service and, if any deficiency is made in the medical service, patients can get compensation by filing a suit under the Consumer Protection Act

MEDICAL NEGLIGENCE UNDER THE INDIAN PENAL CODE, 1860 There may be an occasion when the patient has died after the treatment and criminal case is filed under Section 304A of the Indian Penal Code, 1860 for allegedly causing death by rash or negligent act. According to Section 304A of the Indian Penal Code, 1860, whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or fine, or with both

MEDICAL NEGLIGENCE AND VIEW OF THE JUDICIARY

The Court has given decisions regarding medical in many cases. The Supreme Court in Indian Medical Association v. VP Shantha and Other case has clearly reiterated that, services rendered to a patient by a medical practitioner (except where the doctor render services free of charge to every patient or under a contract of personal service) by way of consultation, diagnosis and treatment, both medical and surgical, would fall within the ambit of service as defined in section 2(1)(0) of the Consumer Protection Act 1986. The judgement has faced a lot of opposition from the people involved in the medical field. However, this judgement has come as a wave of relief for all the consumers with increase in commercialisation of services which also includes medical services, the patient has now become a mere consumer. This definitely

causes deterioration in the fiduciary relationship between a doctor and his/her patient. This judgement which extends the arms of the Consumer Protection Act, 1986 to the medical profession will surely enable to keep a check on the doctors so that they perform their duties diligently, for it is always the patient's life that is at stake. It will make the process of treatment and surgery more transparent. One negative aspect about this judgement is that does not prescribe any relief or compensation that avail free medical services. As a consequence, only doctors who work in paid hospitals come under the scanner while those who work in hospitals offering free medical services will go scot-free if they commit any blunder. Also the burden of proof is on the patient to prove that there was negligence on part of the doctor. Instead, the burden of proof should be shifted onto the doctor to prove that he was diligent enough while performing his duties. Whatever is upheld by the Supreme Court in the case of V P Shantha (supra) case not followed in the case of Achutrao Haribhau Khodwa v. State of Maharashtra', in instant case Court refused to hold either doctor or government liable for death caused due to the negligence on the part of the doctor. In such case doctor left towel inside abdomen while conducting the operation. The court held that neither the doctor nor the government is liable unless it is proved that the death was caused due to leaving towel inside the abdomen. It is humble submission with great respect that, leaving a towel itself amount to the negligence on the part of the doctors.

However, The Supreme Court took a very progressive view in the case of Spring Meadows Hospital v. Harjot Ahluwalia. In instant case Court held that, when a young child was taken to a private hospital by parents and treated by the doctors, and then not only the child but his parents also treated as consumer under the Consumer protection Act. Hence, parent can claim the Compensation under the Consumer protection Act. Hence, court, ruled in favour of the parents of the child, and the child who was the beneficiary of the service. The hospital argued that sufficient care had indeed been taken, and therefore would not be entitled to pay compensation for the mental agony the parents went through. They contended that the parents would not come under the definition of consumer, in the consumer protection act. The court rightly pointed out that this contention was false since the definition of consumer under the act does clearly include parents as well.

Jacob Mathew v. State of Punjab and another

In instant case Supreme Court upheld that, the jurisprudential concept of the negligence differs in civil and criminal law. What may be negligence in civil law may not be necessarily be

negligence in criminal law. For negligence to amount an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of the negligence would be much higher ie gross or of a very high degree negligence, which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis of the prosecution.

In Dr. Suresh Gupta case Supreme Court of India in year 2004 upheld that, the legal position on medical negligence is quite clear and well settled that whenever a patient died due to the medical negligence the doctor was liable in civil law for paying the compensation. Only when the negligence was so gross and his act was so rash and his act was so reckless as to endanger the life of the patient, then criminal law for offence under Section 304A of Indian Penal Code, 1860 will apply. In *Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra* while dealing with section 304A of Indian Penal Code, the following statement was cited with approval "to impose criminal liability under Section 304A, Indian Penal Code, 1860 it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that the act must be proximate and efficient cause without the intervention of another's negligence. It must be the causa causans it is not enough that it may have been the causa sine qua non

Maharaja Agrasen Hospital and others vs. Master Rishabh Sharma and others

In this case Supreme Court held that In this suit, due to the negligence of doctors of the appellant hospital, the light of both the eyes of the respondent who had taken birth before delivery, had been lost, to which the respondent filed a suit in the National Consumer Dispute Redressal Commission imposing 64 lakh rupees compensation on the appellant which the appellant had challenged in the Supreme Court. The Supreme Court observed that the premature birth of a child in the medical field should be completed within 3-4 weeks from his birth. R. O. P. (Retinopathy of Prematurity) Test is mandatory otherwise child may be blind for lifetime. Timely by the appellant hospital and his physicians employed in this case failed to R.O.P. (Retinopathy of Prematurity) test. That made the child permanently exposed to his eyes, thus making the appellant liable for compensation to the respondent.

These are some few cases which display the dynamic role of the judiciary to interpret the Consumer Protection Act, 1986 to do the justice with the consumer

SOLUTION

In matters relating to medical services, the consumer should take note of the following points so that the rights of the consumer are not violated. Doctor-patient dialogue Proper medical fees Clear understanding on medical counseling Priority of the generic drugs Second Opinion Medical insurance transparency Medical history Right to health

CONCLUSION

From the perusal of the above reference it follows that it is the duty of the state to protect the life and personal liberty of the person under article 21 of the Indian constitution. Thus, right to life and personal liberty includes the right to health, which the Supreme Court described in *Parmanand Katara vs. Union of India and west Bengal and the union of India and the union of west Bengal* as the fundamental right under article 21. Where necessary medical facility is not extended to a person by the government or private hospitals, he can seek treatment by way of litigation in the Supreme Court under article 32 and in the high court under article 226. The Supreme Court observed its important decision in the *Indian Medical Association vs. V. P. Shantha* that a service is within the definition of Section 2(o) of the Consumer Protection Act, 1986. If the physician undertakes any negligence in the treatment of the patient, the patient may seek compensation by filing a case under the Consumer Protection Act, 1986. Medical negligence was elaborated by the Supreme Court in the case of *Jacob Matthew vs. State of Punjab* and developed principles relating to medical negligence. At the present time, several medical related procedures have been prescribed to give the patient many rights. The Indian Medical Council has also issued a number of directions to the doctors, through which the rights of the patient have been fulfilled. If any negligence is caused by the doctor in the treatment of the patient, the patient can seek treatment by way law of tort, Indian penal code and consumer protection act, 2019 by way of the court. Under the Indian penal code, settlement of cases of medical negligence takes longer time and the patient had to wait longer for justice, but the District Consumer Disputes Redressal Agency, the State Consumer Disputes Redressal Commission and the National Consumer Disputes Redressal Commission have been set up under the Consumer Protection Act, 2019. The patient can also obtain treatment by making a case under the Consumer Protection Act, 2019. A patient should also not rely entirely on one doctor he should seek advice from another doctor known as 'SECOND OPINION.' When the

patient is satisfied with the advice of the doctor, he should be taken medical treatment. It is also right of the patient to speak to the doctor about his illness openly.



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