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MEDICAL NEGLIGENCE AND LEGAL REMEDIES IN INDIA

~Akanksha Singh Baghel

Introduction

In our country, people trust doctors like they trust God. But nowadays, that trust is slowly breaking because of increasing cases of medical negligence. Medical negligence means when a doctor or any healthcare person does not do their duty properly, which causes harm or even death to the patient. Earlier, the relationship between a doctor and patient was full of trust and care. But now, especially in big hospitals and private setups, many doctors seem to treat patients like customers—just a way to earn money.

There are so many people in India who are not well-educated or aware about their rights. In such cases, doctors have a duty to explain everything properly—treatment, risks, side effects—but often they don't. They either ignore the patient's questions or confuse them with medical terms. According to a recent McKinsey survey, around *60% of patients feel they don't get enough information to make the right healthcare decisions.

Also, with our population growing so fast, the number of doctors is not increasing at the same pace. The system is under pressure, and patients are suffering the most. According to the National Library of Medicine, India sees about 5.2 million cases of medical negligence every year. That's a huge number. Luckily, our laws are now changing. Under the *Bhartiya Nyaya Sanhita (BNS) 2023*, **Section 106** clearly mentions that medical negligence is a punishable offence. Apart from this, patients can also take legal action under the *Law of Torts, Indian Contract Act, and Consumer Protection Act.

What is Medical Negligence

Negligence means when someone does not care about the duty they are supposed to perform. In the case of doctors, it means a breach of duty of care. Being a professional, a doctor is legally and morally liable for any carelessness that harms the patient. Medical negligence is a civil wrong, where a doctor or medical professional's actions fall below the expected standard of care, and that leads to harm or injury to the patient.

It is important to differentiate between negligence and a simple mistake. Negligence means failure to meet the required standard of care, and the patient suffers injury because of that. A small mistake without damage may not be called negligence.

The basic principle related to medical negligence is known as the Bolam Rule, which was also accepted by the Supreme Court in the case of **Jacob Mathew v. State of Punjab (2005) 6 SCC 1**. This principle was first laid down in the famous judgment **Bolam v. Friern Hospital**

Management Committee (1957) 1 WLR 582, where Justice McNair gave the judgment and explained what is now known as the “**Bolam Test**” for medical professionals.

the key points of that judgment:

Standard of Care: A doctor is not negligent if he acts according to a practice that is accepted as proper by a responsible group of skilled medical professionals in that field.

Responsible Body of Opinion: If a doctor follows a medical method that is accepted by a responsible body of doctors, then he is not negligent, even if some other doctors would follow a different method. This means there is more than one right way to treat a patient.

Duty to Inform: On the question of informing the patient about risks, the court said that the need for warning depends on what a responsible group of doctors would consider necessary in that situation.

In the Bolam case, the court found that the hospital and its staff were not negligent, because the treatment given to the patient was according to a responsible medical opinion at that time even though other options were available (like using muscle relaxants or restraints).

Medical negligence is one of the most serious issues in healthcare. For example, if you go to a bank to keep your money safe, and later your money is lost due to some system glitch that is serious, but it can be recovered. But when it comes to medical negligence, it can lead to loss of life, mental suffering, and sometimes even a complete breakdown of the family. A life once lost cannot come back.

Essential Ingredients of Medical Negligence

breach of that duty, and some kind of harm or damage because of it. Let’s break them down in the simplest way.

Duty of Care:

This means that the moment a doctor agrees to treat a patient, he is fully responsible for that patient’s health and safety. It’s like a promise “I’m here to help you now.” From this point, the doctor can’t just walk away. But if a doctor is called to see someone who’s not under his care and he refuses, that’s not negligence. Because he never took the responsibility in the first place. So, without duty, there is no negligence both go together. Also, this duty means the doctor should not only avoid doing anything wrong, but also not forget to do what’s necessary.

Breach of Duty:

Now, once a doctor has taken the responsibility, he must do his job properly. If he makes careless mistakes, like giving the wrong medicine, performing surgery without proper check-up, or simply ignoring symptoms, that is called a breach. He didn’t meet the basic standard expected from a professional.

Resultant Injury or Damage:

Lastly, it must be shown that the doctor’s mistake caused real harm. It could be physical pain, mental trauma, or even money problems due to more hospital visits. Just saying “the doctor made a mistake” is not enough — that mistake must lead to some loss or suffering for the patient.

Common Types of Medical Negligence

Misdiagnosis:

Misdiagnosis means when a medical professional fails to understand what illness the patient is suffering from. Sometimes they think the patient has a different disease, or sometimes they completely miss the condition. Because of this, the patient may get the wrong treatment — or no treatment at all. This makes their condition worse and, in some cases, can even become life-threatening. Communication gaps between the doctor and the patient also make this problem worse. If the doctor takes too long to figure out what's wrong, it delays proper treatment.

- **Surgical mistakes**

- Surgical mistakes are one of the most serious types of medical negligence. These errors can directly lead to serious injuries or even death. In almost 75% of cases filed against surgeons, the main issue is a mistake made during the operation. Surgery is already risky, but some mistakes should never happen — like performing surgery on the wrong body part or forgetting surgical items like cotton or scissors inside the body after the procedure. These errors happen because of many reasons — the surgeon may be tired, rushed, distracted, or there might be miscommunication, not enough staff, missing medical records, or just plain negligence.

- **Wrong Medication:**

- Every day, thousands of prescriptions are written. Sometimes, mistakes happen — like giving the wrong medicine, prescribing drugs that shouldn't be combined, or giving medicine to someone who is allergic to it. These mistakes are dangerous and can lead to major health problems. To avoid this, hospitals should use systems like barcode scanning for patients and medicines, computerized prescriptions, weight-based dosing, and have pharmacists double-check the doses. Rechecking everything before giving any medicine is very important to stop such errors.

- **Negligence in Post-Operative Care:**

- This type of negligence happens after surgery when the medical staff fails to take proper care of the patient during their recovery. After an operation, a patient needs extra attention. If the doctor or nurse ignores pain, infections, diet, or other complications, the patient's condition can go from bad to worse. Post-surgery care is just as important as the surgery itself.

- **Birth-Related Injuries:**

- During childbirth, if the delivery is difficult or if there's any complication, injuries can happen to the newborn. One of the most common injuries is a clavicle (collarbone) fracture, which can happen in about 15 out of every 1000 deliveries. These types of injuries usually happen when the baby is pulled too hard or in the wrong way. After birth, signs like the baby not moving one arm properly, swelling, or crying in pain when touched may be seen. Such negligence affects not just the baby, but the entire family emotionally.

Burden of Proof in Medical Negligence Cases

Who must prove negligence and how? The burden of proof generally lies with the complainant, who is required to provide a higher standard of evidence to support the claim of negligence against any doctor or medical professional. If any party files the complaint stating that the doctor breached the duty, or that after surgery the patient was not secure, or for any reason the

patient is not well, then the burden of proof lies with the complainant to prove the negligence and satisfy the court that the doctor was at fault.

Remedies Available to Victims

Civil

Remedies (Compensation Claims):

In civil remedies, there is no special law that directly gives rights to the patient, but the patient can still file for compensation under the broader scope of the Constitution—especially under Article 21, which guarantees the right to life and personal liberty. This right to life is meaningless if proper medical care is not given to a sick person. So, when a doctor or hospital gives negligent treatment, it is considered a violation of **Article 21**. Even **Article 19(1)**, which talks about the right to live with dignity, also gets affected when someone's health suffers due to medical negligence.

In many cases, the Supreme Court has awarded compensation to the victim's family. One important case is *Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Babu Godbole* (AIR 1969 SC 128), where the legal heirs of the deceased got compensation due to medical negligence.

Criminal Liability:

As per Indian law, there is no separate or special law made only for punishing doctors or hospitals for medical negligence. But under Section 106 of the *Bhartiya Nyaya Sanhita* (BNS), if a death is caused by negligence, then it is a criminal offence. Normally, this can lead to imprisonment of up to five years and a fine. But if the mistake is done by a registered medical practitioner during any medical treatment or procedure, then the punishment is lightened up to two years of imprisonment and a fine.

In addition, if someone dies due to rash or negligent driving and the person responsible runs away without reporting the case, then the punishment can go up to ten years of jail and a fine.

Now under the new BNS law, one big change is related to preliminary enquiry, which is a small investigation done before the police files an FIR in sensitive cases like medical negligence. This was earlier mentioned by the Supreme Court in the *Jacob Mathew v. State of Punjab* case and again in ***Lalita Kumari v. State of Uttar Pradesh***. The aim of this enquiry is to check if there is really a cognizable offence or not.

Earlier, the Criminal Procedure Code (CrPC) didn't clearly talk about this, but now **Section 173(3) of BNS** includes it as law. But here's the problem—many offences where punishment is less than 3 years are not allowed for this preliminary enquiry anymore. That's why, sadly, medical negligence cases that result in death—where punishment for doctors is only up to 2 years are not eligible for preliminary enquiry. This is unfair because even if the mistake is serious, the legal process becomes tougher for the victims or their families.

Civil Remedy (Compensation Cases)

Criminal Remedy (Punishment Cases)

Patient could file case to ask for **money/compensation** if they suffered because of doctor's mistake.

Doctor can be **punished** if their mistake leads to patient's **death**.

Civil Remedy (Compensation Cases)

Based on **Article 21** (Right to life) and **Article 19(1)** (Right to live with dignity).

Here, only **money** is claimed. **No jail**.

Focus is on how much the patient/family **suffered**.

Filed in **civil court** or **consumer forum**.

Bit easy to file but takes time to **prove medical mistake**.

Criminal Remedy (Punishment Cases)

Comes under **Section 106 of BNS** – if someone dies due to negligence, it becomes a **crime**.

Here, **jail and fine** both can be given to the doctor.

Focus is on what **wrong** the doctor did.

Filed in **criminal court** with **police investigation**.

Hard to prove — needs **strong proof**, and now **no preliminary enquiry** if punishment is under 3 years.

Conclusion:

Medical negligence is not just a legal issue — it's something that affects real people and their lives. When we go to a doctor, we put our full trust in them. But when that trust is broken due to carelessness or mistakes, the result can be heartbreaking. Through this article, we saw that doctors have a duty to care for their patients, and if they fail to do so, they can be held responsible — either by paying compensation or facing punishment.

Both civil and criminal laws in India give protection to victims of medical negligence, but still, it's not easy to prove these cases. The patient or their family has to collect strong evidence and go through a long legal process. That's why awareness is important — so that patients know their rights and doctors stay careful and responsible. In the end, medical care should be about saving lives, not risking them.