

**BALTIC JOURNAL OF LAW & POLITICS** 

A Journal of Vytautas Magnus University VOLUME 15, NUMBER 4 (2022) ISSN 2029-0454

Cite: *Baltic Journal of Law & Politics* 15:4 (2022): 985-992 DOI: 10.2478/bjlp-2022-004089

# An Integrative Study on Liabilities of Health Centers in Cases of Medical Negligence

# Ms. Jayapreethi Manoharan

Ms. Jayapreethi Manoharan, M. Sc., B.Ed., ML., Assistant Professor of Law, Saveetha School of Law, Saveetha Institute Of Medical and Technical Sciences (SIMATS), Chennai-77

# Dr. Asha Sundaram

Dr. Asha Sundaram Professor of Law, Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences (SIMATS), Chennai-77,

Received: August 8, 2022; reviews: 2; accepted: November 29, 2022.

### Abstract

Negligence acts still exist in the world because medical practitioners fail to perform their legal duty. In earlier periods the medical profession is most trusted by people so the concept of negligence is not identified. But at present the legislative body established the punishable instruments for medical practitioners under various grounds like Torts, Indian penal code 1860, Indian contract Act, 1872 and Consumer Protection Act, 1986. The concept of negligence are diversified in civil and criminal law. Thus in civil case burden of proof is lies upon plaintiff (patients) to prove the negligence of medical practitioners results in severe injuries or death and in criminal case the defendant held liable to prove on before court thus negligence act occurred in natural manner with substantive evidence. Hence, the court will declare the person in guilt based on facts with relevant evidence of the case. So based on circumstances of the case the court entails to give punishment for the convicted person. The main object of the study is to analyze the legal aspects of medical negligence in India, to find out the common errors occurs by medical professionals, to examine the concept of medical negligence in civil and criminal law, and also to create awareness for people (consumer) about negligence act done by medical practitioners. The type of research is empirical study, convenient sampling method used, sample size is 1554. The study was entitled to analyse the remedies for negligence of medical practitioner is effective based on current status.

### Keywords

Legislature, Legal Duty, Burden of Proof, Medical Negligence, Awareness.

### INTRODUCTION

The literal meaning of negligence (L. Kumar and Bastia 2011) is "breach of a legal duty of care" and liability is the responsibility of a person for his acts of commission and omission. Hence the duty of all medical practitioners like doctors , nurses and other health care providers are solely responsible for health of their patients.(Schumaker 1979) Unfortunately, medical practitioners fails to perform their duties to their patients. There are 12 types of medical negligence are occurred by medical practitioners:-(Yadav 2015) Active negligence, Passive negligence, Collateral negligence, Comparative negligence, Concurrent negligence, Continued negligence, Criminal negligence, Gross

negligence, Hazardous negligence, Wilful negligence, Reckless negligence and Negligence Per Se. Medical negligence is punishable under various ground like Torts, Indian penal code 1860, Indian contract Act, 1872 and Consumer Protection Act, 1986. (&na; 1957) **Negligence as a tort:-**(Joga Rao 2009) Juris Ratanlal and Dhirajlal defined the term negligence in a precise form with the help of three constituents:- A legal duty to exercise due care , breach of the duty and consequential damages. Thus claimant satisfies the court with the help of evidence and also follow above elements hence, the defendant held liable to pay compensation.

# **Generally medical negligence comes under three grounds:-**(Koley 2010)

- 1. Civil law
- 2. Criminal law
- 3. Negligence under consumer protection act

**Civil law in medical negligence:-**(P. Smith 2012) Hence in civil case burden of proof is lies upon plaintiff (patients) to prove the negligence of medical practitioners results in severe injuries or death The plaintiff have to fulfil the following essential elements: person committed an act of omission or commission, breach of the legal duty, resulted injuries are should be proved with the help of evidence (medical science , expert opinion).

In the case of the State of Haryana v. Smt Santra, the Supreme Court held that every doctor "has a duty to act with a reasonable degree of care and skill manner." Criminal law in medical negligence:-(Pandit and Pandit 2009) Under IPC, 1860 expressed the punishments for negligence act occurred by medical practitioners in India. In section 269 deals about negligent act by which an infection spread results in dangerous disease to life of a person, section 270 deals about malignant act by which an infection spread results in dangerous disease to life of a person, section 274 deals about adulteration of drugs, section 275 deals with sale of adulterated drugs, section 276 deals about the sale of drug as a different drug or preparation, section 284 dealt with negligent conduct of doctors regarding poisonous substance, section 287 deals with negligent conduct in respect of operation of machinery, section 304A is based on negligence resulted death of a person, section 312 specifies the negligence resulted miscarriage, section 313 deals about negligence of miscarriage without woman's consent, section 314 dealing the death of the plaintiff when the doctor was miscarrying a baby and section 315 deals about punishment for the person intent to kill unborn child or try to kill after birth.(Ormerod 2011) Hence the defendant held liable to prove on before court thus negligence act occurred in natural manner with substantive evidence. ("Negligence: Hospitals: Liability for Negligence of Servants" 1910) In case of Andrews v Director of Public **Prosecutions** stated that lack of care are reasonable in civil liability and is not justifiable under criminal liability. (Nelson-Jones and Burton 1990) In case of Syad Akbar v State of Karnataka dealt with the effect of evidence between civil and criminal proceedings. (Singh and Bhushan 2004) In case of Indian Medical Association v. VP Shantha (1995), the Supreme Court included the term medical profession in definition of services under section 2(1)(0) of the Consumer Protection Act, 1986.(Gupta 2015) Based on the definition pointed out the relationship between patients and medical practitioners is a contract for a personal service but it is not a master and servant relationship. Thus medical practitioners occur injuries to patients during the course of treatment so the patients has the power to claim compensation from doctors by filing a suit under consumer protection courts / tribunals.(Arora et al. 2017)

### A complaint can be filed before 3 tier system of CPA, 1986

• **District forum:-** If the value of services and compensation claimed is less than 20 lakhs can file a suit in the district council.

State commission:- If the value of services and compensation claimed does not exceed than 1 crore can file suit in the state council. more а National commission:- If the value of services and compensation exceeds more can file a suit in the national council.(Joga Rao 2009) than 1 crore The major aim of the research is to study the liabilities of hospitals in cases of medical negligence and to fulfil the above objectives: - 1. To analyze the legal aspects of medical negligence in India 2. To find out the common errors of medical professionals and to create awareness for people about negligence act done by medical practitioners.

# Hypothesis

**Ho:-**The compensation for medical negligence is not sufficient. **Ha:-** The compensation for medical negligence is sufficient.

### **REVIEW OF LITERATURE**

**1. Medical negligence: civil vs criminal issue settles - DR. B.D. Gupta:**(Kale 2015) The study deals with analysing negligence act are punishable under different laws. The paper dealt with finding out the common errors of doctors in course of treatment and our legislative body has enacted many provisions to protect the health and safety of patients. For ex:- negligence as Torts, negligence by medical professionals in civil and criminal and consumer protection act, 1986 etc. The study concludes that medical practitioners held liable to prove on before the court act is not done in a criminal manner.

2. Measure of liability in Medical Negligence: A hospital based study-Naveen Kumar Edulla1, K. Ramesh, Yadaiah Alugonda, Jyothinath Kothapalli and Ambreesha K Goud: The study deals with the role of liability of hospitals in case of medical negligence. The author has examined the percentage of medical negligence occurs between male and female in hospitals. Thus study concludes women pregnancy are the common matter of negligence and most of medical negligence occurs on major health problems because of lack of facilities, carelessness, standards of medical practitioners etc. (J. W. Smith 2017)

**3. Medical negligence in India : A critical study- Dayar ShankarTiwari :** The study deals with analysing the negligence act occurs by two person ex:- doctor and staff. In certain situation there may be a possibility of negligence both doctor and staff. Hence, most of the cases there will be a joint and several liability so both doctor and hospital are held liable to pay compensation for patients (consumers). The study concludes that defendant are held liable to prove on before court thus negligence act occurs in accident with relevant evidence.(Tiwari 2013)

**4. Medical negligence and the law - K K S R Murthy :** The study deals with analyzing the public awareness related to medical negligence in India. The article was explicit about the effectiveness of the consumer protection act, 1986 because people came forward to file cases against doctors, nurses and other medical services etc. In earlier days the hospital faced problems regarding the facilities, standard of professional doctors and appropriateness of their therapeutic and diagnostic methods. But today's scenario is a negligence act constituted by medical practitioners due to carelessness so recklessness happens to the patients in hospitals. The study concludes that under section 304A of IPC, 1860 deals with any person commits negligence act resulted death of a person are punishable with imprisonment for two years or fine or both. (Mahalwar 1991)

# **5. Medical negligence : Hospital's responsibility- Sweta S. Agarwal & Swapnil S. Agarwal:-**

The study deals with comparative analysis of functions in hospitals between earlier and present scenario. Therefore public awareness of medical negligence are growing in India.

Generally the liability given by the hospitals to the injured party based on the circumstances of the case. The study concludes that court discretion is the medical practitioners have to pay compensation to the patients (consumer).(S. Kumar 1998)

### METHODOLOGY

The research is based on the conveyance sampling method, 1554 responses are collected. The researcher conducted the study based on a qualitative method. The object of the study is focussed on finding out the common errors of medical practitioners in hospitals and collected information has been limited to primary sources like e-books, newspapers and secondary sources like journals and websites.

### Data Analysis Frequency Table:

			AGE		
		Frequency	Percent	Valid Percent	Cumulative Percent
	Below 18yrs	504	32.4	32.4	32.4
	19 - 30 yrs	632	40.7	40.7	73.1
Valid	31 - 50 yrs	371	23.9	23.9	97.0
	Above 50 yrs	47	3.0	3.0	100.0
	Total	1554	100.0	100.0	

The combination of correlation is dependent and independent variables. Thus the above table represents age and has independent variables. Thus cumulative percentages are 32.4 for below 18, 73.1for under the category of 19-30, 97.0 for under the category of 31-50 and 100. 0 for under the category for above 50. Hence, totally 1554 people are done my survey

		Crosstab			
		Count			
		Q. Have you ever faced medical negligence?		Total	
		Yes	No		
	Below 18yrs	432	72	504	
AGE	19 - 30 yrs	355	277	632	
	31 - 50 yrs	141	230	371	
	Above 50 yrs	18	29	47	

### CROSS TAB:-

Total	946	608	1554
-------	-----	-----	------

The combination of correlation is dependent and independent variables. Thus the above table represents age has independent variables and the people faced through medical negligence are considered to have dependent variables. Hence, 946 people are accepted they faced medical negligence and 608 people are not faced medical negligence in hospitals. So totally 1554 people are done my survey.

# Chi Square

Chi-Square Tests				
	Value	df	Asymptotic Significance (2- sided)	
Pearson Chi-Square	227.963ª	3	.000	
Likelihood Ratio	244.998	3	.000	
Linear-by-Linear Association	211.296	1	.000	
N of Valid Cases	1554			
a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is				

18.39.

In this report I have proved that my value on chi- square is below 0.05 so it is considered has alternative hypothesis. Hence it is proved that people are aware of the negligence act by medical practitioners existing in hospitals and accept also that they faced medical negligence during the course of treatment. However, the chi-square test was used for my empirical research analysis.

# DISCUSSION

The chi- square value is 0.00 so the alternative hypothesis is accepted, there is an association between two variables. The data collected information were summarised and formed in to a standard deviation method (SD). However, the chi-square test was used for my empirical research analysis. The combination of correlation is dependent and independent variables. Hence, the study is analyzed on categories of age that are considered as independent variables and the people faced through medical negligence are considered as dependent variables. Thus the majority is 432 people under the category of 18 yrs by comparing other categories (19-30, 31- 50, above 50 yrs) and the majority is 277 people who are rejected under the category of 19- 30 yrs. Hence, 946 people are accepted they faced medical negligence and 608 people are not faced any medical negligence occurs in hospitals. So a total of 1554 people did my survey. Therefore it is proved that people are aware of medical negligence acts exhibited in

hospitals and it reveals to the world that people are being exploited by medical practitioners during the course of treatment. The study concludes that people can claim compensation from doctors or other medical services etc and also they have to be aware of the activities that exist in hospitals.

# SUGGESTIONS AND CONCLUSION

The paper has clearly stated that medical practitioners fail to perform their legal duty and hospitals failed to take appropriate action towards its stakeholders. The study is based on collecting information from the public opinion and pointed out that at present people are aware that medical negligence exists in hospitals. So the people filed a suit in court regarding compensation from the medical services (doctors, nurses, related to medical profession etc.) The combination of correlation is dependent and independent variables. So the ages represented in tabulation are independent variables and the people undergone difficulties because of medical negligence are considered as dependent variables. Hence, 946 people have accepted that they faced medical negligence and 608 people have not faced medical negligence in hospitals. Therefore 790 people are accepted, they are being exploited by hospitals and 764 people are not faced exploitation during the course of treatment. So a total of 1554 people have responded to my questionnaire prepared solely for this research purpose. However chi square value is above 0.05 so it is considered to have a null hypothesis. Hence it is proved that people are being exploited by medical practitioners during the course of treatment and concludes that negligence acts are existing in hospitals.

# REFERENCES

- Arora, Mani, Research Scholar, IKG Punjab Technical University, Jalandhar Associate Prof., DAVIET, and Jalandhar. 2017. "Role of Consumer Protection Act, 1986 in Protecting the Consumers." International Journal of Emerging Trends in Science and Technology 4 (9). https://doi.org/10.18535/ijetst/v4i9.14.
- Gupta, Ms Chhavi. 2015. "Medical Negligence-a Deficiency in Services Under Consumer Protection Act, 1986." IMS Manthan (The Journal of Innovations) 10 (1). https://doi.org/10.18701/imsmanthan.v10i1.5657.
- Joga Rao, S. V. 2009. "Medical Negligence Liability under the Consumer Protection Act: A Review of Judicial Perspective." Indian Journal of Urology: IJU: Journal of the Urological Society of India 25 (3): 361–71.
- Kale, Kiran Ranganath. 2015. "Medical Negligence: Issues and Response." SSRN Electronic Journal. https://doi.org/10.2139/ssrn.2556682.
- Koley, Tapas Kumar. 2010. Medical Negligence and the Law in India: Duties, Responsibilities, Rights. Oxford University Press, USA.
- Kumar, L., and B. K. Bastia. 2011. "Medical Negligence- Meaning and Scope in India." JNMA; Journal of the Nepal Medical Association 51 (181). https://doi.org/10.31729/jnma.46.
- Kumar, Sanjay. 1998. "India Rules on Medical Negligence." The Lancet 351 (9111): 1262.
- Mahalwar, Krishan Pal Singh. 1991. Medical Negligence and the Law.
- &na;, &na; 1957. "LIABILITY OF HOSPITALS FOR NEGLIGENCE." Anesthesiology 18 (5): 803.
- "Negligence: Hospitals: Liability for Negligence of Servants." 1910. Michigan Law Review 8 (4): 347.
- Nelson-Jones, Rodney, and Frank Burton. 1990. Medical Negligence Case Law. Tolley.
- Ormerod, David. 2011. "Crimes of Negligence." In Smith and Hogan's Criminal Law, 146–54.
- Pandit, M. S., and Shobha Pandit. 2009. "Medical Negligence: Criminal Prosecution of Medical Professionals, Importance of Medical Evidence: Some Guidelines for Medical Practitioners." Indian Journal of Urology: IJU: Journal of the Urological Society of India 25 (3): 379–83.

### BALTIC JOURNAL OF LAW & POLITICS

VOLUME 15, NUMBER 4

Schumaker, M. 1979. "Duty." Journal of Medical Ethics 5 (2): 83-85.

Singh, Jagdish, and Vishwa Bhushan. 2004. Medical Negligence and Compensation.

Smith, James Walker. 2017. Hospital Liability. Law Journal Press.

- Smith, Paul. 2012. "Civil Litigation and Procedure Equitable Remedies for Negligence by Solicitors." <u>Amicus Curiae</u> 1997 (1). https://doi.org/10.14296/ac.v1997i1.1659.
- Tiwari, Daya Shankar. 2013. "Medical Negligence in India: A Critical Study." SSRN Electronic Journal. https://doi.org/10.2139/ssrn.2354282.
- Yadav, Mukesh. 2015. "Chapter-02 Medical Ethics and Negligence Cases in India." In Recent Advances in Forensic Medicine and Toxicology (Volume 1), 23–38.
- S. Kumar, Indian rules on medical negligernce Lancet, 1998. https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(05)79335-1/fulltext.

# Plagiarism

	.5	mall580 Tools		
	PLAGE	ARISM SCAN REP	ORT	
Alainte:	039	Outer	January 17.3839	
Charactere	100.00	Wallade UI		
6%	94%	2	29	
Propertor	Appropriet in the local division of the loca	Pagestown	Dispus Sectores	
Contert Checked For Fia	CHEMICAL VI			
antiler periods the medical Bit at present the legislative grounds like Torts, todars p constant of registrations of the secondary of registration of the time stellar and the secondary of the units stellar and the secondary of the secondary of the analyzet to based on picturmitancies of of the study is the analyzet to the stellar people (come memories for people (come neurostatic and people) for the medical professional secondary memories for people (come neurostatic and people) for the memories of the study of the study of the study of the study of the study of the study of the study of the study of the study of the study of the study of the study of the study of the study of the stud	entropy established the entropy established the entropy established the Manufact in Colin and Namelhad in Colin and Differentiation of modelaal good the color of modelaal good the color of modelaal the manufact paratic and ma amment about negligen to amplify method so method paratic and ma method paratic, want of a legid addry of col or a l	atted by people to the in portification instruments in contract Ar., 1922 a communities instruction tell threads the second tell at the second second second tell atternets instruction to fail the give portainment in spatial analysisment in fail familitation any people at the second second second in spatial analysisment in spatial analysisment or postation of second in spatial analysisment in spatial analysisment in spatial analysisment in spatial analysisment in spatial analysisment in spatial analysisment in postation of second in postation of the second in postation of the second in patients. (Schummake in patients, Schummake in patients, Schummake in patients, Schummake in patients, Schummake second due care, these second second and into the second due care. Second second due care, best second second and into the second due care. Second second due care, best second second and into the second sec	inactilitation this to perform concept of conjugation and a performance of the second second second of Consumer extends of prior fu- lation of consumer extends of the held cases burdless of prior fu- ing the second second second second to set the relevance second second of the second second second second all practitions in the second all practitions in the second	ne not identified, sunder vorjour, 1, 1966. The insupport plantfoll to thermal case between the sease of the the sease of the sease sease of the sease of the analyse the plantfold create analyse the plantfold create analyse the plantfold create analyse the plantfold create analyse the plantfold create analyse the plantfold create analyse the plantfold create the sease of the create plantfold create the sease of the sease plantfold create the sease of the sease plantfold create the sease of the
introduction of committaises, into oversitial science, expert as oversy too too too too too too too too too too	Let us a series of second seco	The State of Hervinne is degree of k-and and a 1000 wapressed the pis- is about regrigent act 0 deals about matigms 4 deals about matigms are of drug as a differ occus substance, such is based on respigeror. Celon 313 deals about whith when the docum will endoor to deal accu- grigence act acco- grigence act acco- deals of the docum bein chell labeling are where y down of Kama	a) Self Selfin, the Sequences and mexers: For registence is uninterests for registence is on the web-ch on infections interest of act by which an infection into at those sections 27.8 d and 20.7 deals with registence in resultad dealsh of a person regulations of inficienting or much infection in inficienting of much information information (in class of the inficienting of the instrument inficienting of 1920) in case of Address y is noted in nature inficiences of each the effect of evid	Court needs that medical of occurred by of occurred by opened results in spend results in section and sale of our activation conduct in section 313 vithout warrants transform 315 2013) Hence the Substantive Director of Public Wind (tablety)
consistent of committaises, the reverse factors in the second second second every factors. These a study to reverse factors in the decorrect as because to the of damperous downers to the of damperous downers to the of damperous downers to the of second second second second with register of operations of magnetic of operations of the respect of operations of the expected second second second with register of operations of the data about provident of the decise about provident of the decise about provident of the respect of operations of the data about provident of the decise about provident of the decise about provident of the Proventions and button 10.	Let us a series of second seco	The State of Hervinne is degree of k-and and a 1000 wapressed the pis- is about regrigent act 0 deals about matigms 4 deals about matigms are of drug as a differ occus substance, such is based on respigeror. Celon 313 deals about whith when the docum will endoor to deal accu- grigence act acco- grigence act acco- deals of the docum bein chell labeling are where y down of Kama	v Sent Sentra, the Sequences will memory Continuit two initial memory Continuits two in unitial memory in the Continuit two in the Sentra and the Continuits and the Sentra and the Continuits and the C	Court needs that medical of occurred by of occurred by opened results in spend results in section and sale of our activation conduct in section 313 vithout warrants transform 315 2013) Hence the Substantive Director of Public Wind (tablety)
omospon or commission, the presided science, expert as meny factors. This is alway to mental process the science of the medical procession of the medical procession of the medical procession of mass specifies the science 314 dealind deals about provident of mas specifies the science 314 dealind deals about provident of mas specifies the science 314 dealind deals about provident to pro- tection of the science 314 dealind deals about provident to pro- tection of the science and the science and the science a	creaters) in the case of and 2009 Under PC. In the sector 200 data is a transmission 200 data is a person, excition 37 is perman, excition 37 is perman, excition 37 75 david automatic this is acctore reparating point interpret and the per- timage and the sector 38 the period the sector 38 the period the sector 38 the period the sector 38 the period the sector 38 periods. Labellity for fee periods. Labellity for fee periods. Labellity for fee periods. Sector 38 (Singh and Bhush sector 48 (Singh and Singh sector 48 (Singh and Singh sector 48 (Singh and Singh sector 48 (Singh sector 48 (Singh sector 48) (Singh sector	The State of Hervane degree of cave and a 1000 expressed the y solution registered and solution registered data was a solution and solution and the data was a different and solution and the data was a different occus substate, a different data was a different d	v. Sent Sentra, the Sequences Mit Memory Credinal law in unspannents for ingligence is unspannents for ingligence is the original sentence of the sentence and the sentence of the sentence of the intervent of the sentence of the sentence in 2017 device with requirement is the sentence of miscatrospe is use instance with do a perman- ingligence of miscatrospe is use instance with do a sentence to kill where kitch do a perma- ter of the sentence of the sentence to kill where kitch do a sentence to kill where and here the to kill where and here the to kill where an Andrewey is in each sentence of here the takes device the effect of evid every ficility. The sentence of the sentence every ficility. The sentence of the sentence of the sentence every ficility. The sentence of the sentence every ficility. The sent	Court next that medical or sociated by or fealth in approach reaches to approach reaches or reaches in conduct in unactive 313 vithout social 313 vithout warman's 2013 Hence the substrative of Public instal liability, encoded

VOLUME 15, NUMBER 4

Inedical practitioners in India. In section 269 deals about negligent act by which an infection spread results in dangerous disease to life of a person, section 270 deals about malignant act by which an infection spread results in dangerous disease to life of a person, section 274 deals about malignant act by which an infection spread results in dataterous disease to life of a person, section 274 deals about adulteration of drugs, section 275 deals with self of adulterated drugs, section 276 deals about the sale of drug as a different drug or preparation, section 284 deals with negligent conduct of doctmar regarding poisnous substance, section 287 deals with negligence resulted machiners, section 284 deals consent, section 314 dealing the deals to based on negligence resulted death of a person, section 315 deals about punstiment. For the person intent to kill writern child or try to kill after bitth. (Orwerod 2011) Hence the defendant held liable to prove on before court thus negligence act occurred in natural manner with substantive evidence. (Negligence: Hospitala): Liability for Negligence of Servants'' 1910) in case of Andrews w Director of Public Prosecutions stated that liack of care are reasonable in civil liability and is not justifiable under criminal liability. (Netion-Jones: and Burton 1990) in case of Syad Akbar v State of Karnataka dealt the effect of evidence between civil and criminal proceedings. (Singh and Bhushan 2004).

Sources	Simiarity
Neolical Neoligence And Law In India - An Analysis - iPleadersCompare fact. In the case of the state of harywara x serif sar/rs.[23] The samenre tawn held that every doctor them a study to est with a mean-fact biogroup of cases and safe the biofram runsware. The states of mehanandrice.325] in the same concerning section 304 (a) of 1.2	4%
Nedscal negligence in inde   Reserv Supreme Coart subrgul2prepare test in the sample cose. The superine court has ported and that lacking in the last subsect spon the amount of damages incurred in crimental likes. The amount and above or impligance to a factor in determining lability however, certain elements must be established to determine criminal lability in in the lower lawser labels.	4%