



MEDICAL NEGLIGENCE AND LAWS IN SELECTIVE COUNTRIES OF WORLD

PALLAVI PRASHANT NIKHARE

Ph. D. Research Scholar
Dept of Commerce and Research Centre
Savitribai Phule Pune University
Pune (MS) INDIA

DR. PRAMOD BOTRE

Associate Professor
Mahatma Phule College, Pimpri,
Pune (MS) INDIA

ABSTRACT

In all type of services provided by professionals Medical Services are considered to be of great importance as it is directly connected with human life. Doctors get high respect in the society all over the world. In India doctors are treated like God. No wonder healthcare sector is a rapidly expanding sector all over the world. Investments made in this sector are increasing on a large scale. But with expanding market for this sector the number of cases related to medical negligence is also increasing day by day. Increasing medical negligence cases against doctors and hospitals is changing the image of doctors everywhere in the world. Various laws are applicable for redressal of such cases in every country. The proceedings and form of redressal is different in every country of the world. The present paper aims to analyse the concept of medical negligence and understanding various laws practiced in various countries in connection with medical negligence.

Key words- Medical Negligence, Consumer Protection, Duty of care, Deficiency in care, Criminal Negligence, Burden of Proof, Law of torts

METHOD-

Data for this article is collected by referring to many articles published in India and other countries. It is purely a review based article. Doctrinal method of research has been adopted.

AIMS AND OBJECTIVES-

The aim of the article is to present a detailed study of medical negligence related law in India and outside India.

PALLAVI PRASHANT NIKHARE

DR. PRAMOD BOTRE

1P a g e



SOURCES OF DATA-

Following secondary sources were referred for study

- Books
- Websites
- Articles

INTRODUCTION

Professions are governed by law in every country. The application and implementation of these laws depends on that nation. In India one profession has to follow many different laws. In the present situation of medical sector in India we can see many conflicts occurring between doctors, hospitals and consumers, ultimately resulting in increasing numbers of cases of medical negligence. But this situation about increasing cases against doctors is somehow similar in other countries also. With improving technologies in the hands of doctors the expectations of the patients from the doctors are also increasing. When doctors did not serve as per the expectations the relation between doctor and patient become sour and it results in conflict. The cases which are heard in Consumer Court are now striking that there should be a separate law and separate system to handle such cases of medical negligence all over the world.

Negligence-

In 'Law of Torts' by Ratanlal and Dhirajlal Negligence has been explained as- 'Negligence is a breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consist in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing care and skill, by which neglect the plaintiff has suffered injury to his person or property.

The above definition contains three important factors-

- A legal duty to exercise due care on part of the party complained of towards the party complaining the former's conduct within the scope of the duty.
- Breach of the said duty.
- Consequential damage.

While proving negligence plaintiff has to prove the following

PALLAVI PRASHANT NIKHARE

DR. PRAMOD BOTRE

2P a g e



- VOL 2, ISSUE 3** **www.puneresearch.com/world** **SEPT - NOV 2017**
(IMPACT FACTOR 3.02) **INDEXED, PEER-REVIEWED / REFEREED INTERNATIONAL JOURNAL**



In case Taiwan Kaohsiung District Court Criminal Judgment Yi-Su-Zi No. 2. Nurse Practitioner made default in her duty of care so she was held liable in failure to act. Due to her negligence patient died so she was held criminally liable for violating criminal law Article 14 and Nursing Personnel Act Article 26 of Taiwan. She was imprisoned and she also had to pay fine.

From all this information it is clear that in Taiwan also medical negligence is considered to be civil and criminal offence. As well as negligent person can be punished with imprisonment and fine just like India.

Medical Negligence and Law in US-

America is a developed country with huge healthcare sector market. American doctors carry their personal medical malpractices insurance to protect themselves from instances of medical negligence and unintentional injury. In India law applicable to medical negligence is same throughout the country, but in America all its States have separate laws applicable to medical negligence. There is no defined line between criminal liability and civil liability for medical negligence in America. Just like India the burden of proof lies with the complainant in America as well. Lawyers in America are paid on contingency basis which is not a base in Indian system.

Medical Negligence Law in Italy-

Like many other countries Italy also has a separate rule for medical negligence. They have absolute Volume 467, Number 2 in their laws applicable to medical negligence. Italy has the highest number of doctors sentenced under criminal proceedings. The reason behind it is mostly the suit against doctors are filled in criminal court in Italy. In India burden of proof lies with claimant but in Italy evidence gathering is a responsibility of state. The increasing number of medical negligence cases and high amount of compensation payable and refusal of financial institutions to provide insurance to doctors resulting in defensive practice by doctors in Italy. These conditions are increasing trouble for the patients.

All these present condition striking the need of Italy to find out some redressals for these matters in civil law just like India.

Medical Negligence and Law in Bangladesh-

Just like India, Bangladesh constitution also have 'right of life' as a fundamental right. In one more thing Bangladesh resemble India, in both the countries health is a primary duty of state. But Bangladesh does not have separate 'Law of Tort' as an act. Medical negligence is not



defended by specific law in Bangladesh. Different laws are applicable to medical negligence depending on the type of negligence such as Consumer Protection Act, Contract Act, Penal Code etc. The problems faced by Bangladesh in dealing with medical negligence are enormous. There is a lot of conflict in deciding the exact authority or court to file case of medical negligence. In addition to all these matters the fees of court are also very high which are not affordable by general people. In Bangladesh also the burden of proof lies with complainant. There Judges are not competent enough to decide medical negligence cases. The important thing to be focused is people are not aware of their healthcare right and concept of medical ethics.

This is clear that Bangladesh is lacking in proper system to handle medical negligence issues effectively.

Conclusion-

Medical negligence is a global problem. Developed, developing and under developed countries all are facing this. Every country has its own way to tackle this issue. They have framed their laws as per their requirement. Some countries have separate rules for this but some in force various laws to these cases. It is found that in most of the countries the burden of proof lies with the claimant but in some countries state take this burden. In most of the countries people are unaware of their rights and duties related to medical negligence. Nearly in all countries judge are not competent to decide these cases as they don't have medical background.

This can be recommended that a separate law handling medical negligence cases should be drafted by all countries. Judges should be either made competent to decide such cases or judges should be appointed from medical field to decide such cases. Countries should take efforts to educate their citizens about their rights related to medical negligence. Reducing medical negligence cases could be hard for countries but deciding these cases in a short time span will help countries on a large scale.

BIBLIOGRAPHY

1. 'Law of Torts' by Ratanlal and Dhirajlal
2. Juggankhan vs. State of Madhya Pradesh [(1965)1 SCR 14]
3. Dr. Kunal Shah vs. Dr. Sukumar Mukherjee [(2006) CPJ 142 NC]
4. Taiwan Kaohsiung District Court Criminal Judgment Yi-Su-Zi No. 2.



5. Hui-Man Huang, Fan-Ko Sun, Ya-Fen Lien. "Nurse practitioners, medical negligence and crime: A case study." *Clinical Nursing Studies* (2015).
6. Akter, Khandakar Kohinur. "A Contextual Analysis of the Medical Negligence in Bangladesh: Laws and Practices." *The Northern University Journal of Law* (2013): Vol 4.
7. Traina, Francesco. "Medical Malpractice: The Experience in Italy." *Clinical Orthopaedics and Related Research* (2008): 434-42.
8. Saraf, Prerana. "Comparative Analysis of the Medical Negligence Law in India and United States of America ." *International Journal Socio Legal Research*_(2015): Vol. 1, Issue 4.