**MEDICAL NEGLIGENCE**

Medical negligence is a combination of two words. The second word solely describes the meaning, though the meaning of negligence has not been described in a proper way but it is an act recklessly done by a person resulting in foreseeable damages to the other. Negligence is an offense under tort, IPC, Indian Contracts Act, Consumer Protection Act and many more. Medical Negligence basically is the misconduct by a medical practitioner or doctor by not providing enough care resulting in breach of their duties and harming the patients which are their consumers***.***

Medical negligence also known as medical malpractice is improper, unskilled, or negligent treatment of a patient by a physician, dentist, nurse, pharmacist, or other health care professional.Medical malpractice occurs when a health-care provider strays from the recognized “standard of care” in the treatment of a patient. Standard of caremeans what a reasonably prudent medical provider would or would not have done under the same or similar circumstances.

Mistakes or Negligence in medical profession may lead to

1. minor injuries; or
2. some serious kinds of injuries and
3. sometimes even death.

The fundamental reason behind medical negligence is the carelessness of the doctors or medical professionals where reasonable care is not taken during the diagnosis, during operations, sometimes while injecting anaesthesia etc.

**NEGLIGENCE**

There are distinct definitions for negligence.

* It is 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. It must be determined in all cases by reference to the situation and knowledge of the parties and all the attendant circumstances.
* Conduct which is below the standard behaviour established generally for protection of others against unreasonable risk of harm is negligence.

Negligence doesn’t arise just because of a wrongful conduct by a person; it is essential that that misconduct has caused a foreseeable harm to the other***.*** If there’s no harm, there’s no negligence.

In **King v. Phillips** it was observed that the question of negligence arises only when there is a direct harm to the plaintiff by the misconduct and the harm should be foreseeable. Damage is an important ingredient to bring negligence under tort.

## ESSENTIALS

### Doctor’s duty to attend the patient with care

Amedical practitioner is supposed to have requisite knowledge and skill needed for the purpose and has a duty to exercise reasonable duty of care while dealing with the patient. The standard of the care depends upon the nature of the profession. A surgeon or anesthetist will be determined by the standard of average practitioner in that field while in case of specialists, a higher skill is needed.

If the doctor or a specialist doesn’t attend a patient admitted in emergency or under his surveillance and the patient dies or becomes victim of consequences which could have been avoided with due care from the doctor, the doctor can be held liable under medical negligence.

This was held in **SishirRajanSaha v. The state of Tripura** that

1. If a doctor did not pay enough attention to the patients in government hospitals as a result of which the patient suffers, the doctor can be held liable to pay compensation to the patient.
2. Moreover the liability of the doctor cannot be invoked now and then and he can’t be held liable just because something has gone wrong. For fastening the liability, very high degree of such negligence was required to be proved.

When you go to a doctor, you expect to be seen promptly and attentively, and at a reasonable cost. You expect the doctor to be knowledgeable about the latest advances in his field of specialty, and educate you about your diagnosis and prognosis, and explore the best possible solution to your health issue.

Reasonable degree of care and skill means that the degree of care and competence that an “ordinary competent member of the profession who professes to have those skills would exercise in the circumstance in question.”

There’s a difference between the standard of care and the degree of care. The standard of care is a constant and remains the same in all cases***.*** It is the requirement that the conduct of the doctor be reasonable and need not necessarily conform to the highest degree of care or the lowest degree of care possible. The degree of care is a variable and depends on the circumstance. It is used to refer to what actually amounts to reasonableness in a given situation.

### Doctor acting in a negligent manner

In the cases of gross medical negligence the principle of **res ipso loquitur** is to be applied. This principle is an evidential principle and is intended to assist the claimant.It basically means ***things speak for itself***.

While deciding the liability of the doctor it has to be well established that the negligence pointed out should be a breach in due care which an ordinary practitioner would have been able to keep. One is presumed to be negligent if he/she/it had exclusive control of whatever caused the injury even though there is no specific evidence of an act of negligence, and without negligence the accident would not have happened.

A doctor is not an insurer for the patient, inability to cure the patient would not amount to negligence but carelessness resulting in adverse condition of the patient would.

In **Gianchand v. Vinodkumar Sharma** it was held that shifting of the patient from one ward to another in spite of requirement of instant treatment to be given to the patient resulting in damage to the patient’s heath then the doctor or administrator of the hospital shall be held liable under negligence.

1. **Plaintiff has suffered an injury due to this breach/negligence.**

A doctor owes a duty of care to his patient. This duty can either be a contractual duty or a duty arising out of tort law. In some cases, however, though a doctor-patient relationship is not established, the courts have imposed a duty upon the doctor.

In the words of the Supreme Court “***every doctor, at the governmental hospital or elsewhere, has a professional obligation to extend his services with due expertise for protecting life***” **(ParmanandKataria vs. Union of India)**. These cases are however, clearly restricted to situations where there is danger to the life of the person. Impliedly, therefore, in other circumstances the doctor does not owe a duty.

**How any person can claim for damages due to medical Negligence?**

You can approach a case of medical negligence in 2 ways.

* Firstly you can a file a case which would help you to have a financial compensation from the defaulter(s).
* Second approach is, when there are gross cases of medical negligence one can always file a criminal case. But the most important detail you must always keep in mind is to approach a lawyer who is comfortable with medical terms and is in the know about the medical procedures undertaken by doctor - or has prior expertise and experience in dealing with complex cases of medical negligence.

**Documents which are mandatory for Claiming Damages:**

First thing a person who is claiming for damages must do is, prepare a case. One needs to gather all medical records related to the case at hand before starting preparation for the case. It includes the discharge summary, diagnosis reports and any other records of medical procedures carried out. After collecting all these documents, you must meet a lawyer who has a great experience and knowledge in handling such cases and as mentioned before, has the knowledge about medical terms and procedures.

**What should be your expectations from a case?**

The last and the main question, that an individual thinks about is what to expect if we present the case in a court of law. The law has most precise and accurate answers to tackle the issue of medical negligence. Supreme Court in its recent verdict directed a government doctor and the hospital to pay almost Rs 2 crores to the parents of a small child who went blind due to the gross negligence of the government doctors treating her. The compensation ultimately depends on the severity of the injury and the degree of negligence in each case presented.

**INDIAN LAW ON CONSENT**

Medical practitioner is obligated to provide the necessary information before obtaining consent from a patient. A medical practitioner in India ***has a duty to provide all the necessary information to the patient in a language that is understandable to him.*** Regarding the quantum of information, there are no clear parameters laid down by the courts. Therefore, it is reasonable information which a doctor deems fit considering best practices. Considering the knowledge gap in this regard, the professional regulatory body for medicine can play an important role in establishing standards.

**Art. 21of the Indian Constitution** deals with right to life and personal liberty. The expression personal liberty covers a wide variety of rights, including the ***right to live with human dignity*** and any act which damages, injures, or interferes with the use of any limb or faculty of a person, either permanently or temporarily

In a **leading case law** a doctor who went ahead in treating a patient, to protect the patient's own interest, was held liable as he was operating without consent. The patient was suspected to have appendicitis. After obtaining due consent, she was subjected to an operation. However, upon incision, it was found that her appendix was normal and not inflamed. To protect the interest of the patient, the doctor removed her gangrenous gall bladder. Later, it was discovered that the kidney of the patient was affected. The doctor was held liable as he was operating without consent.