



Medical Negligence/ Malpractice/ Malpraxis

Definition

- It is the failure to execute
- **Reasonable degree of skill and care**
- Or **wilful negligence** of a medical practitioner
- Which causes some **harm** or **bodily injury** or **death** of the patient

Acts contributing to negligence

1. **Act of commission**

Doing something a reasonable man would not do



2. **Act of Omission**

Not doing something that a reasonable man would do under a circumstance



Ingredients of medical negligence

- **4 D's**

- 1. Duty of care
- 2. Dereliction of duty of care
- 3. Direct causation
- 4. Damage

Note→

- Burden of proving the negligence→ patient
- Burden of proving innocence→ doctor

Doctrine of **Res Ipsa Loquitur**

- 'thing speaks for itself'
- Here, the patient need not prove the negligence
- Doctor will be held liable
- This is applied according to “ doctrine of common knowledge”
- Can be applied to both civil and criminal suits



Examples:

- Operation on a wrong patient on a wrong part
- Loss of hand due to prolonged splinting
- Forgotten instruments
- Mismatch transfusion

Novus actus Intervenens



- 'unrelated act intervening'
- There is always a logical sequence of events
- If such a continuity is broken by an entirely new and unexpected happening
- Due to negligence
- Ex:



Accident → laparotomy → forgotten instrument
Doctor will be held liable

- In some situations it can be a **defence plea**
- 1st doctor prescribed some medication →
- Meanwhile he visits some other doctor → he prescribes another wrong drug →
- Patient dies due to the second drug
- **1st doctor wont be held liable**



Civil and Criminal Negligence

- Civil negligence → not defined in IPC
- pay damages
- Criminal negligence → **Section 304A IPC**
2years imp +/- fine

CIVIL Negligence	CRIMINAL Negligence
No specific violation	Clear violation of law
Simple absence of skill and care	Gross absence of skill and care
Consent – good defence	Consent-Not a defence
Civil court trial	Criminal court trial
Strong evidence is sufficient	Guilt should be proven
Pay damages	2 years imprisonment
Complainant- sufferer	Complainant- public prosecutor (state)
Burden of proof- patient	Doctor has to prove innocence

Professional negligence	Professional Misconduct
Absence of skill and care	Violation of medical ethics
Duty of care- present	Need not be present
Damage- present	Need not be present
Trial- civil or criminal courts	State medical council
Punishment-compensation, fine or imprisonment	Erasure
Appeal- to the higher court	Appeal- to the central government

Defences against medical negligence

1. Calculated risk doctrine

- an element of risk is there in all surgeries
- injury may occur even though reasonable skill and care has been taken

eg: patient dies during cardiac surgery
(5-10%)



2. Contributory negligence

- Any unreasonable conduct from the part of the patient
- Which is combined with doctor's negligence
- Causing injury

- Eg: He doesn't give a history of drug allergy

- Usually it's a **partial defence**
- Court says that **it is the duty of the doctor** to see whether the patient is following his instructions

- Ex: Follow up



Limitations to contributory negligence

- (a) Last clear chance doctrine
- When doctor was given a last chance to correct the negligence patient caused
- But he fails
- It is not a defence plea



(b) Doctrine of avoidable consequences rule

Ex: If doctor knows that the patient is neglected

Recurrent follow up could have avoided these consequences



3. VICARIOUS LIABILITY

- Respondent superior



- Captain of the ship doctrine

Liability for act of another

Responsibility lies on the superior for the act of the subordinate

3 ingredients

- 1. An **employee- employer** relationship must be there
- 2. The conduct should be **within the scope of his employment**
- 3. The negligence occurred **while on the job**



4. Corporate Negligence

- Failure of administrators of the hospital to provide adequate facilities
- Not providing standard equipment and competent employees
- Hospital is liable of the damages



5. Products liability

- Damage due to faulty, defective or negligently designed equipment
- Bad drug
- Manufacturing company is liable

6. Medical Maloccurrence

- Inevitable accidents may happen even if adequate precautions care and skill are applied
- Always a factor of risk
- So doctor cannot be blamed
- Ex: Amniotic fluid embolism following Cesarean section

7. Therapeutic Misadventure

- Somewhat similar to medical maloccurrence
- Its more related to drugs
- Diagnostic procedures using dyes
- Its related to the treatment given

8. Error in judgement

- Purely accidental
- Compared with a doctor of similar competence
- Cant be held liable

9. Res Indicata

- Case against the doctor should be filed within 2 years of alleged negligence

10. Res Judicata

- 'the things have been decided'
- Once a case is completed between two parties it cannot be tried again.

11. Composite negligence

- Damage has occurred due to the negligence of two or more persons
→ Not from the part of the patient

Note:--

- Informed consent is not a defence in negligence cases

Thank you