

## **STUDY ON THE LIABILITY OF HOSPITALS IN INDIA**

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### **ABSTRACT**

In India, there has been an increase in the number of lawsuits filed against medical professionals as a result of greater public knowledge of patients' rights, particularly following the passage of the Consumer Protection Act, 1986. A medical professional is considered medically negligent if he or she fails to meet the legal standard of care that is required of them and this failure results in damage to the patient, which gives the patient or patient's party the right to sue for compensation or to file a criminal complaint against the medical professional. The goal of this paper is to illustrate how hospitals might be held liable for the negligence of doctors who are chosen by them under the principles of vicarious liability and contributory negligence. Indian courts have ruled in a majority of cases, indicating that the master is liable for the actions of its servants in both the case of service contracts and the case of service contracts for services. This article also makes an attempt to explain if a doctor is accountable for medical negligence when a mistake is made in his or her decision-making.

### **KEYWORDS:**

#### **1. INTRODUCTION**

An error of judgement is a mental blunder in which a doctor treats patients incorrectly, which is referred to as a faulty diagnosis. The physician always asserts that medicine is such a complex field that no standard can be established to judge the doctors and that we cannot hold them liable for their actions. I found it very interesting to see the defence that the defendants in the Passarellovs case used. Grumbine<sup>1</sup> argues that doctors should use clinical judgement and that there are no strict guidelines for practising medicine, and that he cannot guarantee the outcomes because each patient's treatment is unique. It is an impossibly high standard to expect doctors to be perfect. Yes, we should not expect a guaranteed outcome from the physician in every situation. Essentially, it does not matter whether the doctor was careless in his or her use of judgement, whether or not the outcomes were perfect, or whether the judgement used was reasonable; what matters is whether or not the physician followed the standard of care that was expected of a physician in a medical negligence case. A physician's liability is not incurred when an error of

judgement occurs, provided that the error of judgement did not occur as a result of his carelessness. There may be error within the bounds of the standard of care, and there may be error as a result of neglect in numerous instances.

Liability under the general law can be enforced through the pursuit of a remedy before an appropriate civil court or consumer forum, which can result in monetary compensation being awarded. An action to compel the imposition of civil liability on the negligent medical professional is brought by the dependents of a deceased patient or by the patient himself (if still alive) in order to recover compensation. A complainant seeking relief in relation to services "in a hospital or dispensary" that are considered to be "public utility services" within the meaning of the Legal Services Authority Act, 1987, can also knock on the doors of permanent lok adalats, which were established pursuant to the Legal Services Authority Act, 1987, wherein first a conciliation attempt is made and then a determination on the merits of the matter is made. Lokayukta Adalats (Permanent Lok Adalats) are granted powers similar to those of a civil court in some situations (such as summoning and enforcing the attendance of witnesses) and have jurisdiction over disputes up to a total value of Rs. 1 Crore.

### **1.1 INDIAN CONTEXT**

The most notable Indian case involving an error of judgement is Kamanisharma vs Pamposh Medical Care Centre, in which complainant MsKamani filed a complaint against the doctor of Pamposh Medical Care Centre for wrong diagnosis, in which they diagnosed a case of tuberculosis that was later discovered to be an advanced case of lung cancer at the Rajiv Gandhi Cancer Hospital and Sir Gangaram Hospital. The patient died in the year 2000 at the Sir Ganga Ram hospital, where he had been treated and 'undergone' biopsy before passing away. The complainant (his wife) argued that a doctor at Pamposh Medical Care Centre made a wrong diagnosis, causing the patient's condition to deteriorate and ultimately result in death within a short period of time. She sought compensation in the amount of Rs. 65 lakh for the alleged deficiency in service. The petition was dismissed by the bench on the grounds that it was a 'error of judgement' rather than a medical blunder, and the court also noted that the patient had not seen a doctor in the hospital for eight months. The bench also noted that the patient was a drug user and a smoker, despite the fact that he had previously taken anti-tubercular therapy. Because the patient did not seek

medical attention for eight months, the commission determined that the physician made an error of judgement in failing to diagnose the cancer during his initial examination. The commission also determined that there was negligence on the part of the patient, for which the physician was not held liable.

## **2. VICARIOUS LIABILITY OF THE HOSPITALS**

In the event of medical malpractice, hospitals may be held directly liable or held liable through their employees. The hospitals are immediately liable in the event of a death or injury as a result of bad hospital maintenance, incompetent staff, deceptive advertising or other unfair trade practises, or in the event of a failure to maintain proper medical records. Furthermore, the hospital is liable not only in the above-mentioned example, but also in any other case in where an employee's acts or omissions are in violation of the concept of respondent superior. A legal maxim known as 'quasi facit per alium facit per se' (quasi facit per alium facit per se) states that a person who acts via another shall be viewed as if the conduct was done by himself. Generally speaking, the vicarious liability idea falls under the doctrine of respondent superior, which means that one individual is responsible for a tort committed by someone else. According to this principle, an employer is accountable for the tortious acts of his or her employees, provided that the act occurred within the framework of the employment relationship. The following requirements must be met in order for the vicarious liability concept to be applied:

- The conduct must have taken place within the time and space constraints that were set for the employee.
- The motivation for an employee to perform a specific act in order to forward the goals of the employer can be partial or complete.
- The act must be one for which the employee has been employed to perform; else the employee will be fired.
- Contract of Service and Contract for Service are two different contracts.

The fact that an employee acts within the limits of his or her employment is important to remember. Take, for example, a person employed as a truck driver who collided with a pedestrian and caused significant injury to her. There are two scenarios that we must consider in order to properly examine this.

If a driver is travelling from his office site to his manufacturing site, for example, the employer may be held accountable for the conduct performed by his employee. Second, if a driver uses his or her company car to do personal business, such as purchasing a movie ticket for oneself or herself, the employer may not be liable for such conduct.

Furthermore, an employer is not accountable for an act done by an independent contractor who performs work for another and is not under the authority of that other party's management. Because of inconsistencies in the classification of employees and the wide diversity of employment relationships, establishing the vicarious liability of an employer can be challenging. It is the court, not the parties, that is responsible for determining the nature of the relationship between the parties. The court devised a number of tests to analyse the relationship, including the control test, the integration test, and the multiple test. The control test, which was conducted before to determine whether or not the master had the authority to control the work that had been completed, was critical in determining this issue.

In this context, "control over the work" refers to the ability to direct not just what work is done but also the manner in which it is done. It implies that the employee is the one who establishes or dictates the work policy. However, some argue that this is improper in situations such as those involving loaned labour, and even some of the most prestigious courts in the United States have recognized that a single test is insufficient to determine employment status.

It was decided in the case of *Ready Mixed Concrete vs. Minister of Pensions* that the court devised a multiple test, emphasizing the importance of taking into account all variables affecting the employment relationship status, as it was determined that there is no conclusive or definitive test.

It is a number that represents the number of people who have reached the age of majority in their country. This test includes an examination of a variety of elements related to employment status, and it recognizes that each and every point is essential in determining the nature of the employment relationship, and that no single point should be viewed as a determinative factor. At the same time, it is critical to distinguish between self-employment (contract for service) and employee status in the workplace (contract of service). In the event of a service contract, three conditions must be met in order for the contract to be valid. They are as follows:

- The talents and knowledge offered should be in exchange for or in exchange for monetary compensation.
- The employer must be able to exert control over the task and the manner in which the employee performs that work.
- The terms and conditions of the service contract must be consistent with the terms and conditions of the service control.

### **3. CONTRACT FOR SERVICE IN CASE OF MEDICAL NEGLIGENCE**

The degree of control can be determined by way of power to appoint and dismiss, payment of salaries etc. who owns the materials or tools used in the work, who has paid for such tools or materials which is important to the contract of service. However, according to the number of instances the court has heard in the case of hospitals, they are accountable not only for the actions of their own employees, but also for the actions of independent contractors such as anesthesiologists and special surgeons who deal with specialized cases. According to the court's ruling in the case of Aparna Dutta vs. Apollo Hospitals Enterprises Ltd., the hospital cannot claim that doctors are not engaged as servants by them. Whatever the terms and conditions under which the hospital hires a doctor, it is a private matter between them. The hospital is liable in the case of a third-party claim. The hospital will not be able to escape liability by asserting that there is no master-servant relationship in place.

In the case of Smt. Rekha Gupta vs. Bombay Hospital Trust & Others (2002), it was also determined that the hospital is accountable for the misbehavior of a consulting doctor. In this case, the hospital cannot claim that they just supply supporting staff and infrastructural facilities in an attempt to avoid liability. Regardless of the outcome of the litigation, the hospital is not permitted to avoid its legal responsibilities.

This means that hospitals or their employers are liable for the actions of independent doctors such as anesthetists' and surgeons who agreed to perform the treatment on their own time. It makes no difference whether the doctors are residents, permanent employees, visiting employees, temporary employees, or part-time employees. On the basis of this logic, the act done by the consultant is construed as if it were a service rendered by the hospitals.

#### **4. CONCLUSION**

The principle of respondent superior indicates that one who acts via another will be treated as if he had performed the act himself. This principle is relevant even in the case of hospitals when there is carelessness on the part of their medical staff. Consequently, the hospital is legally responsible for any death or damage caused by the carelessness of doctors or nursing personnel who are employed by them. The medical experts are permitted to assert that medicine is so complex that no standard can be established to judge the doctors and so they cannot be held accountable when an error of judgement occurs.

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