

Medicine and Society

Legal mechanisms and procedures in alleged medical negligence: A review of Indian laws and judgments

ROHIT GOEL, MAHESHNATH AMARNATH, RANJIT IMMANUEL JAMES,
ARTHY AMARNATH

Supplementary File

APPENDIX 1.

Any case investigation requires the following documents:

1. Authorization by the patient or his legal representative is an essential component for the investigation to begin. In case the patient is a minor, mentally unsound person or in such a case where consent will be inadmissible then the authorization by his/her legal representative will be sufficient.
2. History and clinical examination records: Any omission or incomplete record in this data is sufficient to imply inadequate medical care and conduct by the physician.
3. Inpatient notes: The progress chart of the patient maintained by the doctors and nurses are important documents to identify patients' response to treatment on a day-to-day basis vis-a-vis treatment administered. In addition, doctor's orders encompassing investigation and treatment should also be identified with the physician who ordered them.
4. Specialist referrals, prescription and subsequent follow-ups: All prescriptions of the referred specialist should be obtained.
5. In case of a fatal outcome, an autopsy examination report in conjunction with other examination reports such as histopathology and toxicological examination reports. The relative/next of kin of the patient informs the police and custody of the body is given to the police. Police authorize a post-mortem examination in the nearest centre according to the jurisdiction.

APPENDIX 2

Abbreviations

- i. AIR – All India Reporter
- ii. Anr – Another
- iii. CPJ – Consumer Protection Judgments
- iv. CPR – Consumer Protection Reporter
- v. NC – National Consumer Disputes Redressal Commission
- vi. Ors – Others
- vii. SCC – Supreme Court Cases
- viii. SCW – Supreme Court Weekly

Background of the cited cases, in order of their appearance in the article:

1. *Kanhaiya Kumar Singh v. Park Medicare & Research Centre III* (1999) CPJ 9 (NC)
The petitioner, father of the minor boy, alleged that the treatment done by doctors on his son was negligent and reckless. The child presented with history of fever, vomiting

and abdominal pain, was initially diagnosed as a case of appendicitis and operated for the same. During the surgery, enlarged lymph nodes were observed which on excisional biopsy revealed a reactive hyperplasia with sinus catarrh which represented mesenteric lymphadenitis. The condition of patient did not improve and another surgery was performed suspecting an intestinal leak. The operation revealed hugely distended intestinal loops and firm to hard pancreatic head which signified pancreatic inflammation. Whole of the mesentery was studded with lymph nodes suggesting it to be a case of 'pancreatic pathology and mesenteric lymphadenitis'. The patient was later referred to Christian Medical College, Vellore, for appropriate diagnosis and treatment. The petitioner contended that first operation done by the doctors was futile and criminally negligent even with ultrasound reports showing increase in pancreatic size. This contention was not accepted and in addition the court held that onus of proving negligence and resultant deficiency in service was clearly on the complainant.

2. *Calcutta Medical Research Institute v. Bimalesh Chatterjee I* (1999) CPJ 13 (NC)

The patient was suffering from end-stage renal disease and was undergoing maintenance haemodialysis and ultimately died. It was contended that the patient had died as a result of mismatched blood transfusion which was done at Calcutta Medical Research Institute. It was found that the deceased had survived for 4 years after the treatment complained of. No evidence was brought on record to link the blood transfusion with any of the resultant complications in the case. Nor was any evidence provided which would go to show the hospital/appellant or any of its doctors had been negligent. The National Commission set aside the judgment of the state commission (asking the hospital and insurance company to pay damages) and emphasized that the onus of proving negligence and resultant deficiency in service was clearly on the complainant, which onus has not been discharged.

3. *Upasana Hospital & Anr. v. S. Farook II* (2007) CPJ 235 NC

The complainant had congenital deformity which resulted in slight shortening of the length of his left leg for which he obtained 'Illizarov surgery' treatment from the appellant hospital. After being discharged from the hospital, the complainant never reported back to the hospital. However, he visited another hospital over 3 months later where the

notes entered mentioned pin-track infection in postoperative day, which healed subsequently. The complainant brought a consumer suit against the hospital alleging that his limping was not corrected and owing to the negligence of the doctors he is still experiencing pain and oozing of blood (osteomyelitis). The said complaint was accepted by the state commission and compensation of ₹1 lakh along with refund of treatment costs was granted. However, the National Commission set aside the state commission's order highlighting the lack of substantive proof to prove negligence of doctors in postoperative care.

4. *Jacob Mathew v. State of Punjab & Anr.* (2005) 6 SCC 1

A First Information Report was registered under Section 304A/34 IPC, against the contention that informant's father, late Jivan Lal Sharma had died due to carelessness of doctors and nurses concerned. The patient was admitted in a private ward of Christian Medical College (CMC) Hospital, Ludhiana with difficulty in breathing. The patient's attendant contacted the duty nurse but doctors visit was allegedly delayed by 20–25 minutes. The appellant with another doctor examined the patient. On connecting the oxygen cylinder, breathing problem increased further as the oxygen cylinder was found to be empty. There was no other gas cylinder available in the room. Vijay Sharma went to the adjoining room and brought a gas cylinder from there. However, there was no arrangement to make the gas cylinder functional and in-between, 5 to 7 minutes were wasted. By this time, another doctor came who declared that the patient was dead. On the above said report, an offence under Section 304A/34 IPC was registered and investigated. Challan was filed against the two doctors.

5. *Maharaja Agrasen Hospital v. Rishabh Sharma* (2020) 6 SCC 501

An appeal against the order of the National commission was brought by mother of Rishabh Sharma in the Supreme Court for increasing the compensation amount as granted by the National Commission. The child was born at 32 weeks delivered by caesarean section at Maharaja Agrasen Hospital and was kept in the intensive care unit (ICU) for almost 4 weeks in view of prematurity. No communication with respect to retinopathy of prematurity (RoP) was made to the parents at discharge and follow-up. Later the child was diagnosed at stage 5 RoP in both eyes. When an attempt was made to obtain treatment records from the hospital, the records were also not made available despite serving legal notice. The records were obtained only after 2 years when complaint to the Delhi Medical Council was made in this regard.

6. *Dr. J.J. Merchant & Ors. v. Shrinath Chaturvedi* (2002) 6 SCC 635

The complainant had filed an original petition before the National Commission alleging that his son was admitted to Breach Candy Hospital, Mumbai for operation of slip disc as he was suffering from backache. The victim had returned from the USA after obtaining degree in business management. He died in the hospital itself for which medical negligence was alleged. In addition to the complaint to the National Commission, the complainant had also filed criminal complaint under Sections 304-A/201 and 203 of the Indian Penal Code. The prosecution was also pending. The

Commission rejected the application by holding that there is no universal rule of law that during the pendency of criminal proceedings, civil proceedings must invariably be stayed. The pleading also requested the Supreme Court to frame guidelines as to the type of cases that consumer forum will not entertain.

7. *Dr. Suresh Gupta v. Govt. of N.C.T. of Delhi & Anr.* (2004) 3 CPR 84 (SC)

In this case, the patient, a young man with no history of any heart ailment, was subjected to an operation performed by Dr Suresh Gupta for nasal deformity. The operation was neither complicated nor serious. The patient died. On investigation, the cause of death was found to be 'not introducing a cuffed endotracheal tube of proper size as to prevent aspiration of blood from the wound in the respiratory passage'. The apex court opined that the act attributed to the doctor, could be described as an act of negligence as there was lack of due care and precaution. The Court categorically held 'for this act of negligence he may be liable in tort, his carelessness or want of due attention and skill cannot be described to be so reckless or grossly negligent as to make him criminally liable'.

8. *Lalita Kumari v. State of Uttar Pradesh & Ors.* (2013) AIR SCW 6386

The writ petition was filed by aggrieved with regard to registration of First Information Report (FIR) by police personnel on being informed of a cognizable offence. This case pertained to kidnapping of a minor girl where FIR registration was delayed by the station officer until the Superintendent of Police was approached. The question posed to the Court was whether 'a police officer is bound to register a FIR upon receiving any information relating to the commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1973' (in short 'the Code') or the police officer has the power to conduct a 'preliminary inquiry' in order to test the veracity of such information before registering the same? The matter was referred to a constitutional bench of five Supreme Court judges who held that registration of FIR is mandatory if the information discloses the commission of a cognizable offence. If the information received does not disclose a cognizable offence but indicates a necessity for a preliminary enquiry to decide whether a cognizable offence has occurred or not then FIR is not mandatory. The Court put forward a list of cases where preliminary enquiry could be made. This included matrimonial disputes/family disputes, commercial offences, medical negligence cases, corruption cases, etc. The [redacted] also declared that the list is only illustrative and not [redacted] ustive to include all cases where preliminary [redacted] y may be conducted.

9. *Dr. Azam Hasin v. State of Uttar Pradesh, Allahabad High Court* (2019)

The deceased had been admitted in the hospital of the accused-applicant, after the former met with an accident and remained hospitalized for about 23 days. He was on the verge of getting discharged as he had been cured. Dr Hasin (unit incharge) was also a member of the said team, which was taking care of the said patient. Dr Adil (junior resident) came with a nurse to disconnect the tube which was installed in the chest, blood oozed out profusely and

- thereafter, the patient died. A first information report was lodged by brother of deceased against Dr Adil Mahmud Ali alone. As per post-mortem, cause of death is reported to be due to septicaemic shock. There was no allegation against the accused-applicant Dr Hasin. After investigation, the police submitted charge-sheet under Section 304A of IPC against both doctors and cognizance taken by learned Chief Judicial Magistrate. The High Court quashed the entire criminal proceedings as well as the summoning order passed against Dr Hasin.
10. *Daljit Singh Gujral v. Jagjit Singh Arora* (2014) 12 SCC 198
The complainant's wife was admitted to the ICU of the respondent hospital. However, her condition worsened, and she was transferred to Postgraduate Institute of Medical Education and Research (PGIMER), Chandigarh. The complainant alleged that due care was not provided in the ICU as the respondent hospital hired unqualified doctors. Furthermore, upon learning that a medical negligence case has been filed against them, the hospital manipulated the record to absolve themselves of any wrongdoing. It was pointed out that the Court had decided the case based on the assumption that the patient had died as it was not definitely stated in the complaint. The Court later changed this version, saying that the patient was at the brink of death.
 11. *Jayshree Ujwal Ingole v. State of Maharashtra* (2017) 14 SCC 571
A haemophiliac patient was admitted to the hospital after being involved in a road traffic accident. While being attended by an emergency medical officer, the patient complained of abdominal pain. A surgeon (appellant) was called, and upon her visit, she requested for a physician's consultation. However, the surgeon did not wait in the hospital for the physician's arrival. Furthermore, the physician (Accused No. 1) never turned up in the hospital. The physician was still not available the following morning, when the emergency medical officer discovered that the patient had died. A case of criminal negligence was initiated against all the doctors involved in the management of the deceased.
 12. *Indian Medical Association v. V.P. Shantha & Ors.* (1995) 6 SCC 651
After the Consumer Protection Act (CPA) was notified in 1986, there has been a gradual increase in the number of complaints alleging medical negligence involving those seeking compensation from doctors and hospitals. A series of decisions led to confusion and contradictions in the judiciary regarding the scope and application of the CPA in medical negligence cases. Conflicting approaches were taken in various judgments of the National Commission. Owing to the lack of uniformity in judicial interpretation a series of appeals, special leave petitions, and Writ Petitions were filed against contradictory decisions of the High Courts and subordinate courts. These were heard together and decided by the Supreme Court. This landmark decision brought in a significant interpretation of medical negligence liability, by subjecting the medical profession to the CPA. Patients' rights were recognized through conferring the consumer status to patients, allowing them and their representatives to file complaints in cases of deficiency in rendering medical services.
 13. *Ashish Kumar Mazumdar v. Aishi Ram Batra Charitable Hospital Trust* (2014) 9 SCC 256
According to the complainant, her brother was admitted as an inpatient on the third floor of Batra Hospital. He had a high fever and was delirious. One night on noticing that the patient was absent from the room, the complainant, promptly informed the on-duty nurse. During the ensuing search, a security guard found the patient lying motionless on the ground floor (the hospital's oncology gallery), 50 yards from a point immediately below the patient's window. The plaintiff suffered multiple fractures of lumbar vertebrae with complete dislocation of the spinal cord; and despite treatment became a paraplegic, i.e. 100% disabled below the waist. The contention is that at the time of the incident he was an inpatient in the hospital, hence it was the duty and responsibility of the hospital authorities to take care of the plaintiff who was suffering from high fever and delirious.
 14. *V. Kishan Rao v. Nikhil Super Speciality Hospital* (2010) 5 SCC 513
The complainant, an officer in the malaria department, and his wife (deceased) were suffering from intermittent fever with chills. After admission in the respondent hospital, the initial diagnostic tests ruled out malaria. When the complainant's wife developed respiratory trouble, the complainant brought it to the attention of the authorities of the respondent, who gave oxygen to the patient. Later, the patient was shifted to Yashoda Hospital for further treatment, where she was diagnosed to have malaria. The complainant alleged that it is a case of wrong treatment, i.e. she was treated for typhoid instead of malaria.
 15. *Martin F. D'Souza v. Mohd. Ishfaq* (2009) 3 SCC 1
The complainant, a known case of chronic renal failure, was referred to the respondent doctor in Nanavati Hospital for kidney transplant. He was undergoing haemodialysis and developed fever; and based on the urine and blood culture reports, he was administered amikacin and augmentin, respectively. However, he wanted to get discharged against medical advice and was advised to take injection amikacin to treat his infection. Three days later, during his follow-up in the haemodialysis unit, he complained of tinnitus. He was then advised to stop taking the amikacin and augmentin. He underwent kidney transplant surgery in a different hospital and later he filed a complaint in the National Commission stating that he was suffering from deafness due to the amikacin prescribed by the respondent.
 16. *A. Srimannarayana v. Dasari Santakumari* (2013) 9 SCC 496
The complainant's husband, who was admitted under the care of the respondent doctor, died after undergoing an operation involving the leg. The wife registered a complaint in the district forum and a notice was issued to the doctor in this regard. But the doctor challenged the matter in State Commission, Hyderabad, on the grounds that the complaint could not have been registered by the District Forum without seeking an opinion of an expert, which was dismissed. Thereafter, a petition was filed in the National Commission against the order of State Commission, which was also dismissed.