

## EDITORIALS

### Supreme Court judgement on criminal medical negligence: a challenge to the profession

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The Supreme Court recently stated in Dr Jacob Mathew's case (1) that in order to make a doctor criminally responsible for the death of a patient, it must be established that there was negligence or incompetence on the doctor's part which went beyond a mere question of compensation on the basis of civil liability. Criminal liability would arise only if the doctor did something in disregard of the life and safety of the patient. Certain directions have also been given in the case.

Negligence, in simple terms, is the failure to take due care and caution. It is a breach of a duty caused by the omission to do something which a reasonable person – guided by those considerations which ordinarily regulate the conduct of human affairs – should have done. It may also be doing something, which a prudent and reasonable person would not have done.

The essential components of negligence are: 'duty', 'breach' and 'resulting damage'. These definitions are rather relative and can change with the circumstances. When trying to drag a person away from the clutches of an attacking animal, one cannot ask whether this would cause damage to the person's limbs. Doctors can also be faced with similar contingencies. On finding an accident victim in a dangerous condition, a doctor may have to attempt a crude form of emergency surgery to try and save the person's life. No negligence is involved in such cases.

Under the civil law, victims of negligence can get relief in the form of compensation from a civil court or the consumer forum. Here, the applicant only needs to prove that an act took place that was wanting in due care and caution, and the victim consequently suffered damage. There is a difference between civil and criminal negligence. However, in certain circumstances, the same negligent act may also be seen as criminal if it constitutes an offence under any law of the land.

#### **Criminal negligence**

According to Section 304A of the Indian Penal Code, causing death by doing a rash and negligent act attracts imprisonment for up to two years, or a fine, or both. The burden to collect evidence of criminal liability is upon the complainant. The accused person will be presumed innocent until proof beyond reasonable doubt is adduced by the prosecution; a mere preponderance of probabilities would satisfy the civil court. For these reasons, an act that is seen as negligent in a civil court need not necessarily be culpable negligence in the criminal court.

The main question in the above case was whether different standards could be applied to professionals (doctors) alone, placing them on a higher pedestal for finding criminal liability for their acts or omissions. The Court noted that as citizens become increasingly conscious of their rights, they are filing more cases against doctors in the civil courts, as also under the Consumer Protection Act, 1986, alleging 'deficiency in service'. Furthermore, doctors are being prosecuted under Section 304A of the IPC (causing death of any person by doing any rash or negligent act which does not amount to culpable homicide) which is punishable with imprisonment for a term which may extend to two years. They are also being prosecuted under Section 336 (rash or negligent act endangering human life), Section 337 (causing hurt to any person by doing any rash or negligent act as would endanger human life) or Section 338 of the IPC (causing grievous hurt to any person by doing any rash or negligent act so as to endanger human life). The Court observed that allegations of rashness or negligence are often raised against doctors by persons without adequate medical knowledge, to extract unjust compensation. This results in serious embarrassment and harassment to doctors who are forced to seek bail to escape arrest. If bail is not granted, they will have to suffer incarceration. They may be exonerated of the charges at the end; but in the meantime they would have suffered a loss of reputation; often irreversible. The tendency to initiate such cases has therefore to be curbed.

Since the medical profession renders a noble service, it must be shielded from frivolous or unjust prosecutions. With this perspective in mind the Court went into the question as to what is actionable negligence in the case of professionals. The law now laid down is as follows:

1. A simple lack of care, an error of judgment or an accident, even fatal, will not constitute culpable medical negligence. If the doctor had followed a practice acceptable to the medical profession at the relevant time, he or she cannot be held liable for negligence merely because a better alternative course or method of treatment was also available, or simply because a more skilled doctor would not have chosen to follow or resort to that practice.

2. Professionals may certainly be held liable for negligence if they were not possessed of the requisite skill which they claimed, or if they did not exercise, with reasonable competence, the skill which they did possess.
3. The word 'gross' has not been used in Section 304A of IPC. However, as far as professionals are concerned, it is to be read into it so as to insist on proof of gross negligence for a finding of guilty.
4. The maxim *Res ipsa loquitur* (Let the event speak for itself; no other evidence need be insisted) is only a rule of evidence. It might operate in the domain of civil law; but that by itself cannot be pressed into service for determining the liability for negligence within the domain of criminal law. It has only a limited application in trial on a charge of criminal negligence.
5. Statutory Rules or executive instructions incorporating definite guidelines governing the prosecution of doctors need to be framed and issued by the State and Central governments in consultation with the Medical Council of India (MCI). Until this is done, private complaints must be accompanied by the credible opinion of another competent doctor supporting the charge of rashness or negligence. In the case of police prosecutions, such an opinion should preferably from a doctor in government service.
6. Doctors accused of rashness or negligence may not be arrested simply because charges have been levelled against them; this may be done only if it is necessary for furthering the investigation, or for collecting evidence, or if the investigating officer fears that the accused will abscond.

The Supreme Court has **not** stated, even now, that doctors can **never** be prosecuted for medical negligence. It has only emphasised the need for care and caution in prosecuting doctors in the interests of society. A certain amount of immunity or extra insulation is now allowed to them considering the noble service rendered by their fraternity and in view of the reports that complainants often use criminal cases to pressurise medical professionals and to extract unjust compensation.

This immunity is available only in criminal courts and not elsewhere. The principles laid down above may apply to other professionals like engineers and lawyers as well. The decision in Jacob Mathew's case(1) is thus a landmark judgment though some of the principles mentioned therein have been mentioned in earlier judgments.

The present judgment, however, may give room for criticism that the court, vested with the power to interpret the written law has, instead, ventured to change the law by interpreting it the way it thought would be better for society. Since Section 304A refers only to rash or negligent acts, it is a doubtful proposition that *mens rea* (guilty intent) must be shown for establishing a case of criminal negligence. The interpretation reading in the prefix 'gross' before 'negligence' (the latter alone appears in Section 304A of the IPC) also attracts the same criticism.

One has to hope that professionals will rise to the occasion and start discharging their functions with more care and responsibility rather than trying to hide under the shield provided by the court. Let not the profession be emboldened by the new shield, and turn less careful and inhumane in their dealings and treatment to the patients who approach them. If this happens, that will be a sad day for suffering patients. The new judgment, reading in many things not in the written law, would result in a serious blow to their rights. While it is necessary to save doctors treading the righteous path, it is also necessary to take to task those violating the oath that they took. Immunity to this group means suffering for vulnerable patients.

**Reference:**

1. *Jacob Mathew v. State of Punjab and another* - 2005 SCCL.COM 456. Criminal Appeal No. 144-145 of 2004 decided by the Supreme Court on August 5, 2005.

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