

**Original Research Article**

# Measure of liability in Medical Negligence – A hospital based study

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## Abstract

**Background:** Negligence is the breach of a legal duty of care. Liability is the responsibility of a person for his acts of commission and omissions.

**Aim:** This study aimed to determine the role of liability in medical negligence in teaching hospital.

**Materials and methods:** A total 36 medical negligence cases reported during the period of 3 years i.e. from July 2011 to June 2014 were gathered from Hospital Case Records, Inquest Reports, Post Mortem Examination Reports, and Forensic Science Laboratory Reports.

**Results:** Among these 36 cases of medical negligence doctors were liable for their negligence in 15 cases i.e. 41.7% and vicariously liable in 3 cases i.e. 8.3%. There was no liability for doctors in 18 cases i.e. 50%.

**Conclusion:** In this study, male and female were equally affected by medical negligence. Among the females pregnant cases were more common. Most of the medical negligence cases had come to the hospital with major health problems. Health care professionals are increasingly facing complaints

regarding the facilities, standards of professional competence and the appropriateness of their therapeutic and diagnostic methods.

## Key words

Medical negligence, Liability, Informed consent, Duty of care, Standard of care.

## Introduction

Medical negligence is defined as an act of omission or commission by a health care provider in which the treatment provided falls below the accepted standard of practice in the medical community and causes injury or death of the patient, with most cases involving medical error” [1].

Salmond’s Law of Torts states that, negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do [2].

When patients suffered with an injury due to medical negligence they deserve to be compounded and compensated is not a new thing. As early as 2000 BC Hammurabi, a great king of Babylon formed rules related to medical practices including fees payable to doctor for satisfactory services and penalties for harmful therapy. During his period doctors whose proposed therapy proved wrong ran the risk of being killed.

Nearly 1 percent of all hospital patients in the United States suffer harm because of substandard medical care; of these, about 25 percent die and 6 percent suffer permanent disability [3]. These figures suggest that substandard medical care in U.S. hospitals causes about 84,000 patient deaths and 20,000 permanent disabilities each year [4]. The malpractice experience is seriously at odds with this prediction. The incidence of negligent injury is not trivial roughly one per hundred hospital admissions [5].

Hospital authorities are liable for the negligence of employee. Public awareness of medical

negligence in India is growing [6]. Health care professionals are increasingly facing complaints regarding the facilities, standards of professional competence and the appropriateness of their therapeutic and diagnostic methods [7].

If a patient dies due to medical negligence in a hospital then its management cannot be prosecuted and it is only the doctors who should be penalized, the Delhi High Court has ruled. Justice Dhingra said “The hospital or company cannot be held liable for the personal negligence of the doctor in giving wrong treatment” [7]. The present study was conducted to determine the role of liability in medical negligence.

## Material and methods

The present retrospective study was conducted in Department of Forensic medicine and Toxicology, Osmania General Hospital, Hyderabad. Materials for this study included 36 medical Negligence suspected cases reported during the period of 3 years i.e. from July 2011 to June 2014. Data for the study gathered from Hospital Case Records, Inquest Reports, Post Mortem Examination Reports, Forensic Science Laboratory Reports, History collected from patient attendants and Expert Opinions.

The following parameters were studied in the present study.

- Age and Sex of patient.
- Medical ailment.
- Consent.
- Duty of care.
- Exercise of reasonable skill and care.
- Negligence.
- Damage.
- Liability.

## Results

Among the 36 Medical negligence cases, 6 cases i.e. 17% were under 18 years of age and 30 cases i.e. 83% were above 18 years. Among them 18 cases i.e. 50% were female and another 18 cases i.e. 50% were male. 12 cases among those females were pregnant. (Table - 1)

**Table – 1:** Age and Sex distribution in study group.

Age	Male	Female	Total
<18 years	6	0	6
≥ 18 years	12	18	30
Total	18	18	36

Out of the 36 Medical Negligence cases, 6 cases i.e. 17% were came to the hospital for treatment of minor medical ailment and 30 cases i.e. 83% were for major health problem. Among them 18 cases i.e. 50% were medically related and another 18 cases were surgically related i.e. 50%.

Among these 36 cases of Medical negligence informed consent was obtained from 30 patients i.e. 83.2%, implied consent obtained from 3 patients i.e. 8.4% and there was not obtained any consent from 3 patients i.e. 8.4%. (Table - 2)

**Table – 2:** Showing number of patients given informed consent.

Consent	No. of patients	%
Informed consent	30	83.2%
Implied consent	3	8.4%
No consent	3	8.4%
Total	36	100%

Among 36 cases of medical negligence duty of care exist in 33 cases i.e. 91.7% and not in 3 cases i.e. 8.3%. Exercise of Reasonable Skill and Care – among the 36 cases of medical negligence doctors have exercised his skill and give reasonable care in 18 cases only i.e. 50%. But in another 18 cases doctors were not exercised his skill and care.

Among 36 cases of medical negligence, doctors were negligent in 15 cases i.e. 41.7%, Other hospital staff were negligent in 3 cases i.e. 8.3% , patient and his attendants were negligent (contributory negligence) in 3 cases i.e. 8.3% and there was no negligence found in 15 cases i.e. 41.7%. (Table - 3)

**Table – 3:** No. of cases suffered with medical negligence.

Negligence	No.	%
Doctors Negligence	15	41.7%
Other Hospital Staff Negligence	3	8.3%
Contributory Negligence	3	8.3%
No negligence	15	41.7%
Total	36	100%

Among these 36 cases of medical negligence the damage was foreseeable by reasonable professional in 18 cases i.e. 50% and it was not foreseeable in 18 cases i.e. 50%. Among these 36 cases of medical negligence doctors were liable for their negligence in 15 cases i.e. 41.7% and vicariously liable in 3 cases i.e. 8.3%. There was no liability for doctors in 18 cases i.e. 50%. (Table - 4)

**Table – 4:** Shows involvement of doctor in liability.

Liability	No.	%
Doctors direct liable	15	41.7%
Vicarious liability	3	8.3%
No liability	18	50%
Total	36	100%

## Discussion

For a patient, the doctor is like God. And, the God is infallible. But that is what the patient thinks. In reality, doctors are human beings. And, to err is human. Doctors may commit a mistake. Doctors may be negligent. The support staff may be careless. Two acts of negligence may give rise to a much bigger problem. It may be due to gross negligence. Anything is possible. In such a

scenario, it is critical to determine who was negligent, and under what circumstances.

Consent from the patient or guardian of the patient for particular procedure is a must task in medical practice. In this study population implied consent was taken from 30 patients i.e. 83.2% and informed consent taken from 3 patients i.e. 8.4%. Consent was not taken from 3 patients i.e. 8.4%. Not getting consent from the patient for particular procedure is also breach in duty. In few cases consent was taken one procedure and also performed another which did not need any emergency service. Implied consent is sufficient for minor procedures but any complicated procedures need informed consent [8].

Existence of duty of care is a must component to establish negligence. Dereliction from Duty when there is existence of the duty [9]. In this study population duty of care exist in 33 cases i.e. 91.7% and not in 3 cases i.e. 8.3%. Every doctor must exercise care and skill that a reasonable doctor can do. If there is any lacunae in this exercise that become negligence [10]. In the present study, 18 doctors exercised their skill and care and 50 were not exercised that a reasonable doctor can do. This non exercise may be due to lack of knowledge about the condition of the patient and lack of facilities in his hospital setup.

Either gross or simple negligence is must be proved before sentencing liability. Four factors to prove the negligence i.e. Existence of duty of care, Dereliction from duty, Damage and Direct Causation are must be proved [11]. In the present study, doctors were negligent in 15 cases i.e. 41.7% and other hospital staff were negligent in 3 cases i.e. 8.3%. Patients or patient attendants were responsible for negligence in 3 cases i.e. 8.3%. There was no negligence found in 15 cases i.e. 41.7%.

Almost in all the hospitals doctors were either owners or independent employee. So he will have utmost responsibility for the patient. Some of the patients or patient attendants were might

not follow the instructions of the doctors and that lead to damage. In that cases patient or attendants were responsible for their negligence (contributory negligence). They may complain to the police even though absence of doctor's negligence due to misinterpretation and misguidance of issues.

The damage must be foreseeable by reasonable doctor to prove the negligence [12]. In the present study, damage was foreseeable in 18 cases i.e. 50% and not in 18 cases i.e. 50%. So in 50% cases doctors is not liable as the damage was not foreseeable.

Liability most important issue for the medical professionals as it may damage his reputation in the society and may cause huge financial loss [13]. In the present study, doctors were directly liable for their negligence in 15 cases i.e. 41.7% and vicariously liable in 3 cases i.e. 8.3%. There was no liability for doctors in 18 cases i.e. 50%.

## **Conclusion**

In the twentieth century, the hospital's sole responsibility was "to provide a properly equipped medical facility". Public awareness of medical negligence in India is growing. Hospital managements are increasingly facing complaints regarding the facilities, standards of professional competence and the appropriateness of their therapeutic and diagnostic methods. The basic rationale for medical malpractice suits is to improve incentives for safety in the presence of asymmetric information between patients and physicians. In this study male and female was equally suffered for medical negligence. Among the females pregnant cases are more common. Most of the medical negligence cases have come to the hospital with major health problem. When there was duty of care exist for a patient that doctor must exercise his skill and care to the standard levels in that society.

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