

An Empirical Study on Vicarious Liability in Medical Negligence

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Abstract: *Vicarious liability is a legal principle that holds an employer or principal accountable for the wrongful actions of their employees or agents while acting within the scope of their duties. In the realm of healthcare, the doctrine of vicarious liability plays a significant role in cases of medical negligence, where patients seek compensation for harm caused by healthcare professionals. The term “medical negligence” is an omnibus one, which has come in vogue to refer to wrongful actions or omissions of professionals in the field of medicine, in pursuit of their profession, while dealing with patients. It is not a term defined or referred to anywhere in any of the enacted Indian laws. A basic knowledge of how judicial forums deal with the cases relating to medical negligence is of absolute necessity for doctors. The need for such knowledge is more now than before in light of higher premium being placed by the Indian forums on the value of human life and suffering, and perhaps rightly so. Indian society has been witnessing the growing awareness regarding the rights of patients. This abstract presents a comprehensive analysis of vicarious liability concerning medical negligence. It delves into the underlying principles, case precedents, and factors influencing the application of this doctrine in the healthcare context. The objective is to provide a clear understanding of the legal implications for healthcare institutions and professionals in such scenarios. Negligence in the medical field is now more careless and we can observe the significant failure. Medical negligence occurs due to not ensuring a standard of care that must be provided. Liability of the hospital as an employer for negligent act. The method used here is empirical research. The final observation from this research is that the medical negligence occurs due to negligence of hospitals and authorities.*

Keywords: Negligence, Reasonable man, Injury, Consumer form, Vicarious liability

I. INTRODUCTION

Medical malpractice occurs when a health care professional or provider neglects to provide appropriate treatment, omits to take an appropriate action, or gives substandard treatment that causes harm, injury, or death to a patient. Medical malpractice occurs when a hospital, doctor or other health care professional, through a negligent act or omission, causes an injury to a patient. The negligence might be the result of errors in diagnosis, treatment, aftercare or health management. Criminal liability can be fastened pursuant to the provisions of the Indian Penal Code, 1860 (“IPC”), which are general in nature and do not provide specifically for “medical negligence.” For instance, Section 304A of IPC3 (which deals with the death of a person by any rash or negligent act and leads to imprisonment up to 2 years) is used to deal with both cases of accidents caused due to rash and negligent motor vehicle driving and also medical negligence leading to the death of a patient. Similarly, other general provisions of IPC, such as Section 3374 (causing hurt) and 3385 (causing grievous hurt), are also often deployed in relation to medical negligence cases. Vicarious liability may be a situation during which one party is held partly liable for the unlawful actions of a 3rd party. Vicarious liability can arise in situations where one party is meant to be liable for a 3rd party and is negligent in completing that responsibility and exercising that control. When medical professionals breaches the duty of care which he requires ,he's said to be medically negligent if it causes damage to the patient which gives a right to the patient or patient party as a consumer to pay for the compensation or to file a criminal case. The purpose of this paper is to explain the liability of

hospitals for the negligence of the doctors appointed by them under the principle of vicarious liability principle. The aims of the research is to determine the vicariously liability caused due to negligence and to create awareness.

1.1 OBJECTIVE

- To Determine the Vicarious liability in the medical field.
- To analyse the doctors is responsible for vicarious liability.
- To study the consequences of medical vicarious liability.
- To create awareness on vicarious liability in medical negligence.

II. LITERATURE REVIEW

Harvard 2008, The Boundaries of Vicarious Liability: An Economic Analysis of the Scope of Employment Rule and Related Legal Doctrines In India, recently, there has been a spurt in litigation against the medical professionals as a result of increasing awareness about patient's rights, especially after the Consumer Protection Act, 1986. When medical professionals breaches the legal duty of care which he requires to take, he is said to be medically negligent if it causes damage to the patient which gives a right to the patient or patient party as a consumer to claim for the compensation or to file a criminal case.

Arneson 2006 "THE ECONOMIC OF VICARIOUS LIABILITY " As a growing number of nurses become employees in private hospitals, health maintenance organisations personal liability of an employee the nurse is discussing liability.

Alan O. Sykes 2007 : Independent consultants who are not employee's of the hospitals but use the property provided by the hospital are responsible for their negligence.

Indian juror, 2009 jul-sept. A patient approaching a doctor expects medical treatment with all the knowledge and skill that the doctor possesses to bring relief to his medical problem. The relationship takes the shape of a contract retaining the essential elements of tort. A doctor owes certain duties to his patient and a breach of any of these duties gives a cause of action for negligence against the doctor. The doctor has a duty to obtain prior informed consent from the patient before carrying out diagnostic tests and therapeutic management.

RV Adomako 2011, The appellant was an anaesthetist in charge of a patient during an eye operation. During the operation an oxygen pipe became disconnected and the patient died. The appellant failed to notice or respond to obvious signs of disconnection. The jury convicted him of gross negligence manslaughter.

M. S. Pandit 2009 Negligence arising from medical acts may result in civil action. A patient approaching a doctor expects medical treatment with all the knowledge and skill that the doctor possesses to bring relief to his medical problem. The relationship takes the shape of a contract retaining the essential elements of tort. A doctor owes certain duties to his patient and a breach of any of these duties gives a cause of action for negligence against the doctor. The doctor has a duty to obtain prior informed consent from the patient before carrying out diagnostic tests and therapeutic management.

C.Y.Cyrus 1995 : In practice the negligence rule still applies to many tort cases, and the principal's monitoring evidence is often needed to prove the agent's negligence. It is possible that the principal will conceal the monitoring evidence from the court in order to avoid the vicarious liability. ("Vicarious Liability under a Negligence Rule" 1995).

Sharkey 2018 Catherine, Modern day vicarious liability cases often address the liability of enterprises and institutions whose agents have committed intentional acts. Increasingly, when employers are sued, the line is blurred between the principal's vicarious liability for its agent's acts and its own direct liability for hiring and/or failing to supervise or control its agent.

Navin Kumar 2007 : In India, recently, there has been a spurt in litigation against the medical professionals as a result of increasing awareness about patient's rights, especially after the Consumer Protection Act, 1986. When medical professionals breaches the legal duty of care which he requires to take, he is said to be medically negligent if it causes damage to the patient which gives a right to the patient or patient party as a consumer to claim for the compensation or to file a criminal case.

Kevin Lewis 2019 :For the dental profession, the greater the level of control exerted by the practice owner and the more unequal the balance of power and freedom to make decisions, the more difficult it becomes to resist the argument that vicarious liability exists.

Radhika Shukla 2008 According to Salmond' Law of Torts, 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. Negligence is the breach of a legal duty of care.

KAMPF 2018: Medical malpractice cases are somewhat complicated because in many instances, there may be other California parties that can be held liable for medical negligence or error than just the doctor that performed the malpractice. The legal doctrine of vicarious liability often comes into play, and under certain circumstances the hospital where the malpractice occurred may also be held liable for the negligent act. ("Vicarious Liability and How It Applies to Medical Malpractice" 2018).

ASHOK KINI 2019 The Supreme Court has observed that a hospital is vicariously liable for the acts of negligence committed by the doctors engaged or empanelled to provide. (Kini 2019).

Paula 2008 This paper will argue that, in the light of recent case law in the UK and Australia, a new approach is needed when dealing with claims for vicarious liability and non-delegable duties in the law of tort. It will submit that lessons can be learnt from a comparative study of these jurisdictions, notably by reflecting on the courts' treatment of claims of institutional liability for child sexual abuse.

Craig Purshouse 2009 In Barclays Bank plc v Various Claimants [2020] UKSC 13, the Supreme Court rejected the claimants' argument that Barclays should be vicariously liable for the sexual assaults of a doctor hired on as a contractor to perform medical examinations on employees and job candidates at the bank. It upheld the traditional rule that a defendant is not vicariously liable for the torts of independent contractors.

Hannah R. Sullivan 2001 , As capabilities of predictive algorithms improve, machine learning will become an important element of physician practice and patient care. Implementation of artificial intelligence (AI) raises complex legal questions regarding health care professionals' and technology manufacturers' liability, particularly if they cannot explain recommendations generated by AI technology. (Sullivan and Schweikart 2019).

Cornelius 2005 A, This review of malpractice cases involving surgical residents highlights the importance of perioperative management, particularly among junior residents, and the importance of appropriate supervision by attending physicians as targets for education on litigation prevention.

Shenoy 2003 In the healthcare context, vicarious liability applies to hospitals, attending physicians and surgeons, resident physicians, and allied hospital staff. The primary research question explored here is the hospital's vicarious liability based on the doctrine of respondeat superior. ("Respondeat Superior in Medicine and Public Health Practice: The Question Is – Who Is Accountable for Whom?" 2021)

Glen Cohen 2017 ,The explosive proliferation of health data has combined with the rapid development of machine-learning algorithms to enable a new form of medicine: black-box medicine. In this phenomenon, algorithms troll through tremendous databases of health data to find patterns that can be used to guide care, whether by predicting unknown patient risks, selecting the right drug, suggesting a new use of an old drug, or triaging patients to preserve health resources.

Fazal Dayan 2020 Medical malpractice negatively affects health care across the globe, and the case of Pakistan is not a novel. Beyond the human consequences such as injuries, loss of lives, complete or partial impairment of limbs, including the factors of misery and violence against healthcare has far reaching, long-term consequences which affect the patients trust on the health-care services that has negative and catastrophic impacts on the public health.

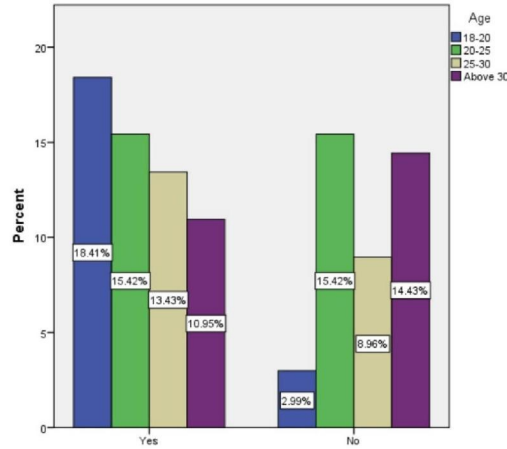
III. METHODOLOGY

The study used both primary data and secondary data. The secondary data collected from journals, research papers, newspapers, books and articles. The primary data was collected from 202 samples through a structured questionnaire. The sampling method used here is convenient sampling. The independent variables considered in the study are age , gender, educational qualification and marital status. The dependent variables in the study are who can be held

vicariously liable , major cause for committing medical negligence , what is medical negligence. The study used graphs, percentages , charts and chi-square tests for good research.

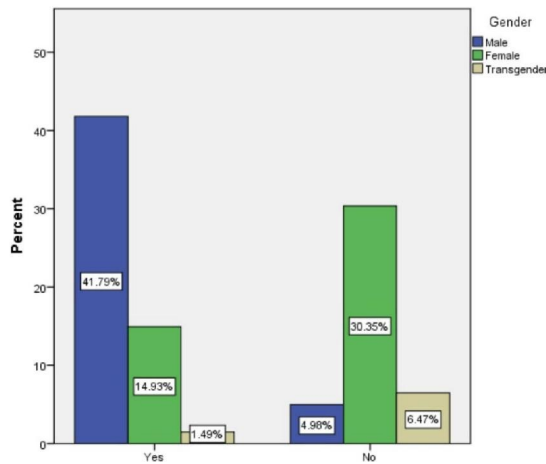
IV. ANALYSIS

FIGURE 1:



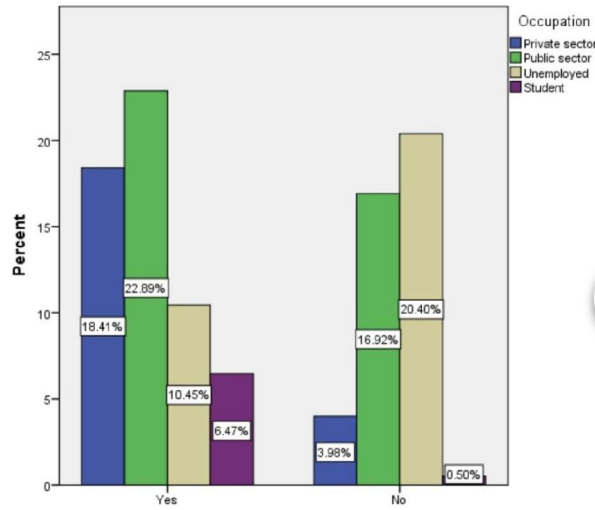
LEGEND : The graph shows the legend between Age and awareness of medical negligence.

FIGURE 2:



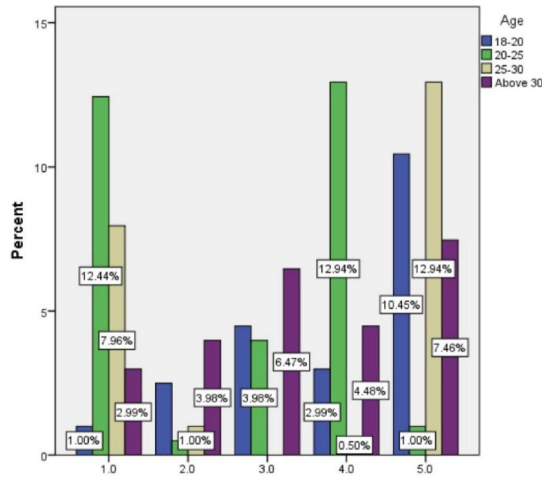
LEGEND : The graph shows the legend between gender and awareness of medical negligence.

FIGURE 3 :



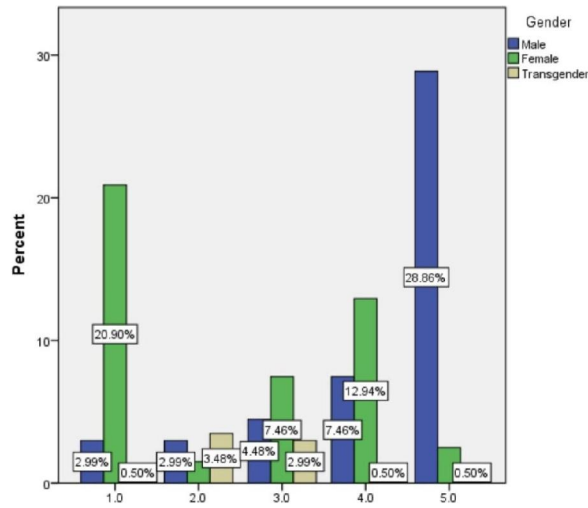
LEGEND : The graph shows the legend between Occupation and awareness of medical negligence

FIGURE 4 :



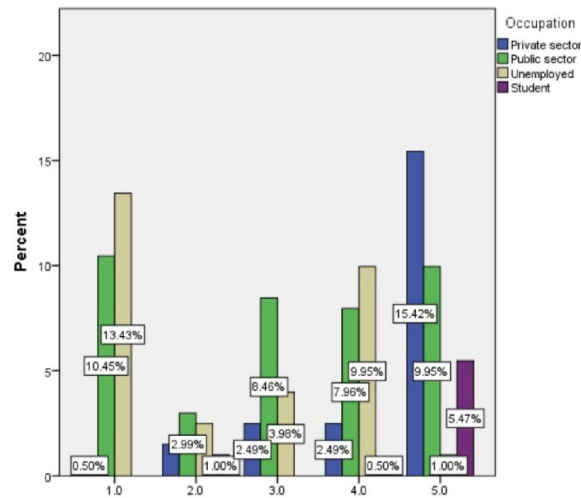
LEGEND : The graph shows the legend between Age and ratings laws for regulation of medical negligence in India.

FIGURE 5



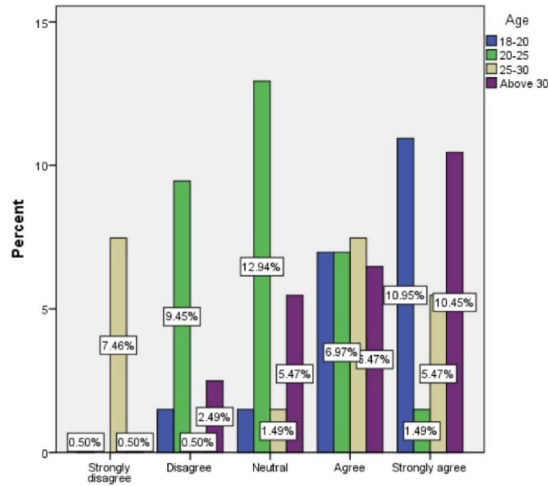
LEGEND : The graph shows the legend between gender and ratings laws for regulation of medical negligence in India

FIGURE 6



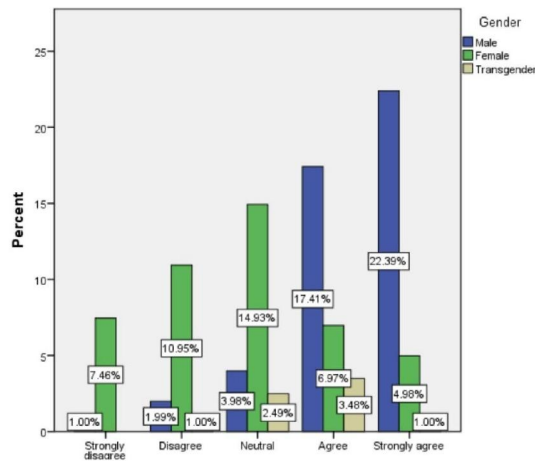
LEGEND : The graph shows the legend between Occupation and ratings laws for regulation of medical negligence in India.

FIGURE 7:



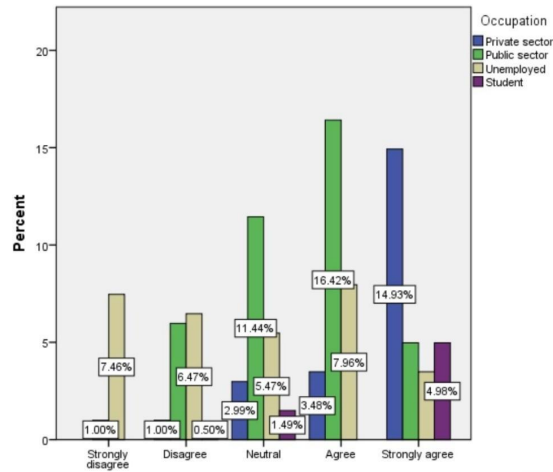
LEGEND : The graph shows the legend between age and the 2 year imprisonment as punishment for medical negligence

FIGURE 8:



LEGEND : The graph shows the legend between gender and the 2 year imprisonment as punishment for medical negligence..

FIGURE 9



LEGEND : The graph shows the legend between occupation and the 2 year imprisonment as punishment for medical negligence

V. RESULTS

18-20 age people are aware of medical negligence. Almost all people have opted for yes. And the least answer given for No is again 18-20 aged group. They are not aware. Male gender have given the highest answer of yes and with least answers collected from transgender they have given No. and female group have given highest answer of NO. All occupations except unemployed are aware of medical negligence. 18-20 have given the highest of 5 while For 20-25 age categories, they have given the highest of 4 and Again the lowest rating is equally given by the 20-25 category. Private sector has given the highest rating of 5. While unemployed people gave rating of 2. 18-20 age group people strongly agree while 20-25 group people stay neutral, And 25-30 people think it's not effective enough. Most male have agreed that imprisonment is fair.. And female groups are not agreeing the same. Public sector groups have agreed that 2 years imprisonment is fair. Private sector groups strongly agree.

VI. DISCUSSION

From figures we can analyse that people have said that one Who fails to provide standard care Is the reason whereas many people have said management of the hospital is the reason. People have mostly said that damage is the major cause; various few people have said breach of duty is the cause. From figures we can analyse that the legal responsibility is the cause for medical negligence where few people have also said that false imprisonment is also a cause for medical negligence. we can analyse that males have said breach of duty and females have said damage for the cause of medical negligence. From figures 6 we can analyse that females have said false imprisonment. We can analyse that schooling respondents have said one who fails to provide a standard of care. We can analyse that people have said breach of duty in majority and also few people have said damage in majority to the question

VII. LIMITATIONS

The limitation in the research is the sample frame. The samples are obtained in the convenient sampling method and the sample size is 202. We can not determine the opinion of people in India with a small sample size. This is a limitation and a disadvantage to the research. We can not collect samples from the entire population of India.

VIII. CONCLUSION

In recent times, Indian society has seen a growing awareness regarding the rights of patients. This is clearly visible from the recent growth in litigation concerning the medical field or establishing liability and claiming redressal for

suffering caused due to medical negligence or forbreach of confidentiality arising from the doctor-patient relationship. The Medical Profession is seen as the noblest of all professions in India; for the patient the doctor or any medical practitioner is like “God is unerring”. But this is what the patient thinks; in reality, a medical practitioner is merely a human and as the old saying goes “to err is human”. Thus, they are proneto committing mistakes, for which laws on medical negligence must be in place; especially in the case of hospitals which are known to abscond their liability in many cases. In the case of negligent acts that take place in government hospitals, it has been held that the state can be directly liable in case there is a lack of proper facilities, equipment or staff and it may be vicariously liable for negligent acts of its doctors. In a few cases, the court has even granted compensation to the complainant paid by the government doctor whose negligence has been established.

IX. SUGGESTION

Vicarious liability in the context of medical negligence refers to the legal doctrine that holds a person or entity (the employer or principal) responsible for the negligent actions of another person (the employee or agent) committed within the scope of their employment or agency. In the medical field, this typically means that a healthcare institution or employer may be held liable for the negligent actions of its employees, such as doctors, nurses, or other medical staff, while they were performing their duties

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