

A Study on the Vicarious Liability of Hospitals in Case of Medical Negligence

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Abstract: *In India, recently, there's been an increase within the litigation against the medical profession. In the legal parlance negligence has different meaning than from its general sense. In the general sense negligence simply means carelessness but in the legal world negligence is more than mere carelessness it is the failure of the person to do or perform a certain act which he was expected to do in the course of his duty. Further, an act to be negligent in the legal arena the failure of reasonable duty should be such that it results in an injury for a third party. There are other civil and criminal laws and tort laws which enumerated provisions regarding medical negligence and liability. The aim of this is to study the vicarious liability of hospitals for negligence, whether a doctor is responsible for medical negligence when there's a mistake of judgement. The present paper was analysed through the non-doctrinal research methodology and through a random sampling method where the survey was taken from the common public. The sample size in the present analysis is 205 samples, the data was collected and analysed through statistical tools and results were graphed. The result of the study was that negligent acts are more committed in the government hospitals in the semi-rural areas. Further, the majority of the educated people agreed that we need a legal framework to check negligence in the medical field and hospitals should be held vicariously liable for the acts of negligence from the hands of the doctor's.*

Keywords: Medical Negligence, Tortious Liability, Hospitals, Medical Care, Damages

I. INTRODUCTION

Legal liability of a hospital for injury to a patient may, depending upon the facts, be based upon either the negligence of the hospital entity itself or upon the doctrine of respondeat superior. the previous sort of liability is usually mentioned as corporate negligence and is illustrated by the furnishing of defective equipment, negligence within the selection or retention of incompetent personnel, or the failure to exercise the specified degree of care within the maintenance of buildings and grounds. The second sort of liability is vicarious. Literally translated, the doctrine of respondeat superior means "let the master answer" and it operates to render the master responsible for the wrongs of his servant and therefore the principal responsible for the wrongs of his agent committed while furthering the master's or principal's business. in addition to the present liability of the master or principal the negligent or wrongful actor is usually individually responsible for his act. This paper cares with the possible vicarious liability of a hospital for the wrongful or negligent act of a physician, an intern, a nurse, or other person working within the hospital. it's not concerned with the liability for corporate negligence, neither is it concerned with cases defining negligence or the quality of proof required. The applicability of the doctrine of respondeat superior to a hospital depends, first, upon the sort of hospital involved and therefore the law of the actual state during which it exists and, second, upon the sort of employment relationship existing between the hospital and therefore the person causing injury to the patient.

When a doctor fails to exercise due care and skill while causing foreseeable damage to the patient, civil negligence cases may arise; whereas when the negligence of the doctor involves gross incompetence and inattention resulting in serious injuries or death of a patient, it's termed as culpable negligence and is culpable. the notice of medical negligence is on the increase in India and doctor-patient relationship has strained considerably resulting in the increasing number of malpractice suits.



The meaning of vicarious liability or respondeat superior (let the master answer) is that a person could also be susceptible to damages for an act of negligence committed by his servants or agents within the course of their employment or agency. The paper aims to study about the law of negligence in tort law and common laws, the liability of hospitals in providing medical care. Further the paper study about the occurrence of negligent acts in government and private hospitals and the vicarious liability

OBJECTIVES:

- To study about the law of negligence in tort law and common laws.
- To study about the liability of hospitals in providing medical care.
- To study about the occurrence of negligent acts in government and private hospitals.
- To study the vicarious liability of hospitals for negligence.

II. REVIEW OF LITERATURE:

Hospitals are organized as privately-owned, for-profit institutions, privately-owned, non-profit organisations, or governmental hospitals. The private for-profit hospital is termed a proprietary hospital and it's going to be an organization, a partnership, or a sole proprietorship (**Smith 2020**). Within the US all states the doctrine of business that exists for the aim of creating a profit for its owners(**Jasper, 2008**).

Hence, the sole issue determining the imposition of vicarious liability is whether or not or not the negligent actor was an agent or a servant of the hospital(**Thomas, 2009**).

Government hospitals could also be owned and operated by the federal government, a government or a political subdivision of the state, like a municipality or a county(**Koley, 2010**).

American common law adopted from England the principle that a sovereign government is immune from suit based upon the negligence of the government's agents and servants unless it consents to the suit(**Clifton R, William M Landes et al., 1987**).

the various state governments are considered sovereign, their hospitals have traditionally been immune from the appliance of respondeat superior. In both England and Canada it's now said that a public governmental body operating a hospital is liable in negligence even as a personal individual would be under similar circumstances(**Weiler & Henry J Friendly Professor of Law Paul C Weiler, 1991**).

The conditions in India under which a hospital could also be held directly liable include: Improper maintenance of the hospital resulting in injuries or death to the patient; Failure in providing safe and suitable environment for treatment as guaranteed, viz, when the patient care is suffering from absence or malfunctioning equipments, inadequate accommodation, incompetent staff, etc(**Chandra & Math, 2016**).

The acts of leading to harm to the patients; Deceptive or misleading signboards and advertisements, wrong claims of availability of certain facilities could also be construed as deficiency in commission or unfair trade practice under the buyer Protection Act, 1986 and damages are often awarded for such practices; Charging for a bed facility, which wasn't provided, taking surcharges, amount taken as medico legal charges or charging fees in more than that mentioned within the list of charges displayed or disclosed or prescribed (**Nagpal, 2016**).

When the testing is legally avoided without the consent of the person, it's referred to as mandatory testing, e.g., for screening donors of blood, semen, organs, or tissues, etc(**Singh & Bhushan, 2004**).

Failure handly over such medical records to the patient or his authorized attendant or legal authorities within, which are in violation of the Medical Council of India Regulations 2002(**Nundy et al., 2018**).

Moreover, if these medical records aren't provided to the patients/attendants, it may, additionally, amount to the deficiency in commission under the buyer Protection Act, 1986(**Boylan, 2016**).

On the other hand, a hospital could also be held vicariously responsible for damages caused to the patient by negligent act of its employees. borrowed servant doctrine" consistent with which the employer isn't liable for negligent act of one of its employees when that employee is functioning under direct supervision of another employer(**Kazarian, 2020**).

In certain instances, honorable courts in India have held the hospitals liable in malpractice suits on the bottom that persons who run hospitals are in law under an equivalent duty as a doctor, i.e., once they accept a patient for treatment,



they need to use due care and skill to ease him of his ailment(Marathe et al., 2020). The courts observed that the hospitals must roll in the hay by the staff that they employ; and if their staffs are negligent in giving treatment, they're even as responsible for that negligence as anyone else who employs others to try to to his duties for him(Sandeepa Bhat, 2016).

A hospital cannot escape liability by mere statement that it only provided infrastructural facilities, services of nursing staff, supporting staff, and technicians which it cannot suo moto perform or recommend any operation/amputation(Singh & Bhushan, 2004).

The hospital authorities aren't only liable for their nursing and other staff, doctors, etc., but also for the anesthetists and surgeons, who practice independently but admit/operate a case. In case of state hospitals, it's been held that the State is vicariously responsible for negligence of its doctors or staff or maybe primarily liable where there's a scarcity of proper equipment or staff. During a few cases, the Court has passed orders to the effect that the compensation paid to the complainant could also be recovered from the govt doctors whose negligence has been established(Dudeja & Dhirar, 2018).

Running a hospital may be a welfare activity undertaken by the govt but it's not an exclusive function or activity of the govt so on be considered as being in exercise of its sovereign power(Nundy et al., 2018).

Hence, the State would be vicariously responsible for the damages which will become payable on account of the negligence of its doctors or other employees as per the Honorable Supreme Court verdict in "Achutrao and ors versus State of Maharashtra and Ors case [JT 1996(2) SC 664]."

The government was held vicariously liable within the "Rajmal versus State of Rajasthan (AIR 1996 Raj. HC 80)", where the patient died of neurogenic shock following laparoscopic ligation done at a primary clinic (Sharma, 2008).

Search committee constituted on the directions of the Rajasthan supreme court found that the doctor wasn't negligent in conducting the operation, nor his competence, integrity, or efforts were doubted(Kannan, 2014).

Lack of adequate resuscitation facilities and trained staff was held liable for the death. Providing adequate medical facilities for the people is an important part of the obligations undertaken by the government during a state(Chauhan, 2008).

Failure on the part of government hospitals to supply timely medical treatment to an individual in need of such treatment is violation of his right to life guaranteed under Article 21 of the Indian Constitution (death of the patient occurring for not being admitted/given proper treatment for want of bed during a government hospital)(Shenoy, 2013).

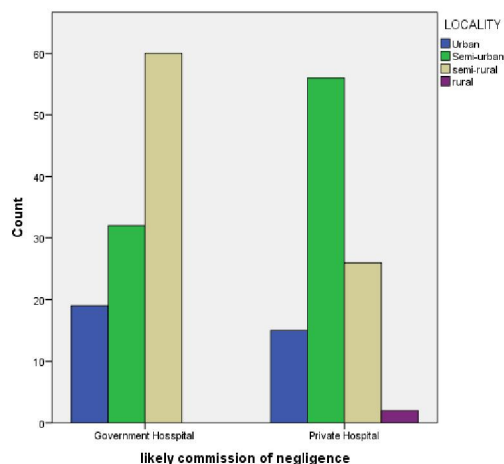
III. METHODOLOGY

The present paper was analysed through the non-doctrinal research methodology and through a random sampling method where the survey was taken from the common public. The sample size in the present analysis is 205 samples, the data was collected and analysed through statistical tools and results were graphed.



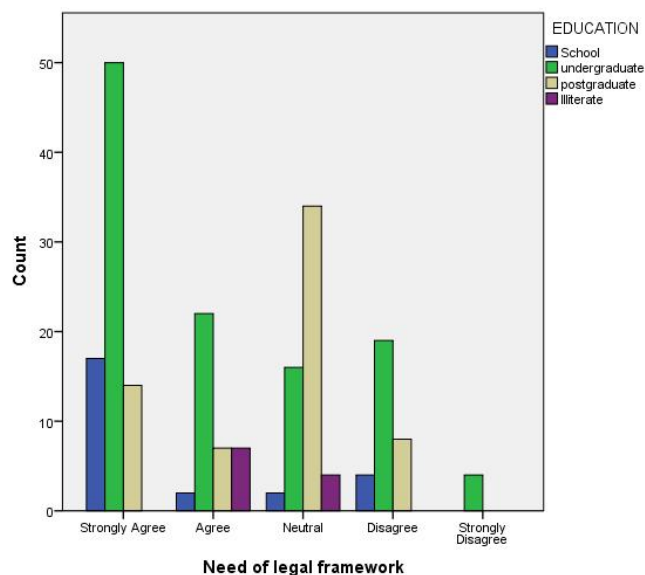
IV. ANALYSIS

Figure 1



Legend: The fig.1 shows the locality distribution of the respondents with respect to the respondents opinion on the place where likely commission of negligence is more.

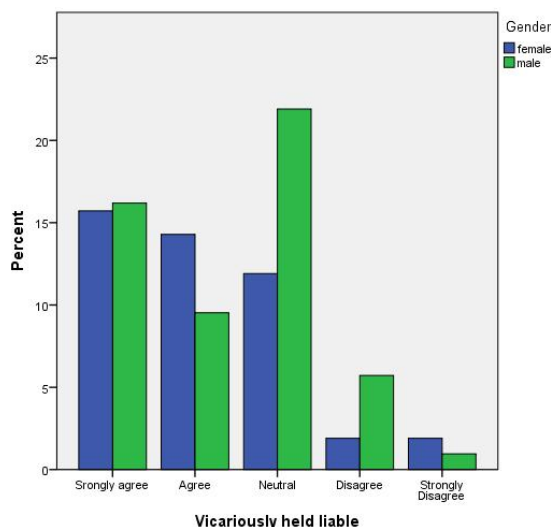
FIGURE 2



Legend: The fig.2 shows the educational qualifications of the respondent and their distribution over their responses on the need for stronger legal framework to prevent negligence and hold the hospitals vicariously liable.

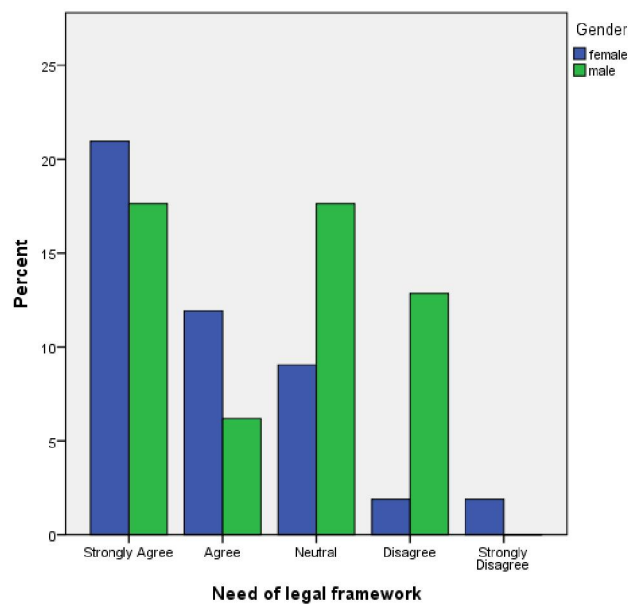


FIGURE 3



Legend: The fig 3 shows the distribution of the respondents with respect to their gender on the x-axis scale of opinion towards whether hospitals must be vicariously held liable for acts of negligence committed by doctors.

FIGURE 4

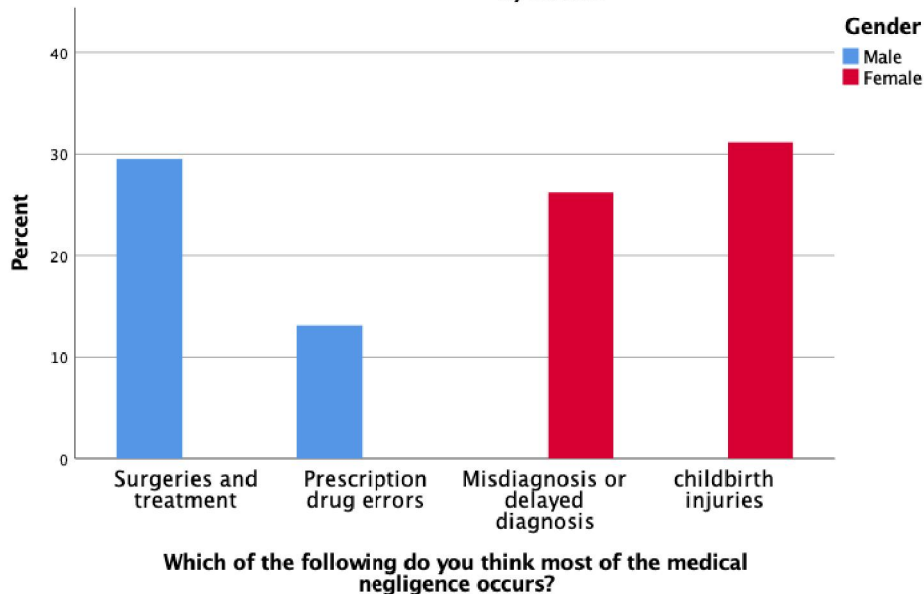


Legend: The fig.4 shows the distribution of the respondents pertaining to their gender and their responses on the need for a strong legal framework for preventing medical negligence.



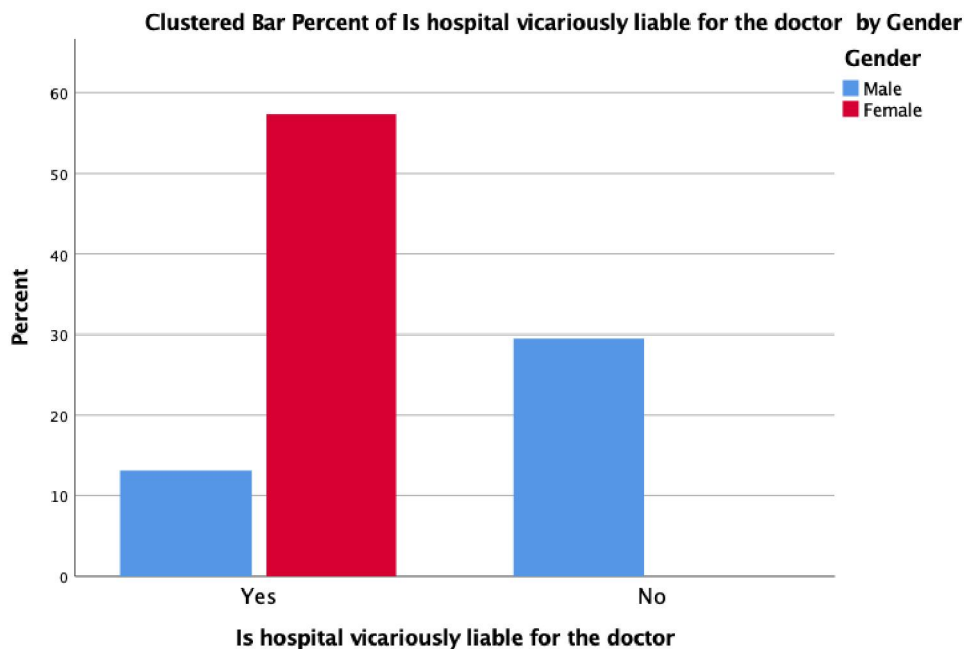
FIGURE 5

Clustered Bar Percent of Which of the following do you think most of the medical negligence occurs? by Gender



Legend :- Figure 5 shows the distribution of the respondent pertaining to their gender and their responses on their opinion about which of the factors of medical negligence occurs the most.

Figure 6



Legend :- Figure 6 shows the distribution of the respondent pertaining to their gender and their responses on is hospital vicariously liable for the doctors



V. RESULTS

Most of the respondents residing in semi rural place believes that government hospitals have commission of negligence more compared to private hospitals(**figure 1**) . it is clearly seen that UG students strongly agree on the fact that there is need for stronger legal framework to prevent negligence and hold the hospitals vicariously liable (**Figure 2**) Most of the male respondents are neutral in the fact that hospitals must be vicariously held liable for acts of negligence committed by doctors. whereas most of female respondents strongly agree that hospitals must be vicariously held liable for acts of negligence committed by doctor(**figure 3**). Most of the female respondents strongly agree on the need for a strong legal framework for preventing medical negligence. Whereas the male respondents are neutrally responded (**figure 4**). Most of the female respondents have responded to childbirth injuries and misdiagnosis or delayed diagnosis whereas male have responded to surgeries and treatment and prescription of drug errors (**figure 5**). It is clearly seen that hospital is held responsible for the doctors behaviour (**figure 6**)

VI. DISCUSSION

From **Figure 1** it is known that the majority of the respondent has said that the negligent acts are more committed in the government hospitals than the private hospitals. Majority of the semi-rural areas have responded that negligence is more likely to occur in government hospitals while the majority from semi-urban areas have said private hospitals.

From **Figure 2** it can be seen that the majority of the respondents who strongly agreed that we need a legal framework to check negligence in the medical field are undergraduate people. Most of the postgraduates have given a neutral answer. In the responses from the school students the majority of them have strongly agreed that they needed a strong law.

From **Figure 3** it is seen that the majority of the respondents have given neutral answers to the question on whether hospitals should be held vicariously liable. Second majority of the respondents have strongly agreed to the statement and next to it majority have agreed to the statement. Only some of the respondents have disagreed and strongly disagreed with the statement.

From **Figure 4** it is seen that the majority of the respondents as a whole has strongly agreed to the need for stronger legal framework and in those who said they strongly need a legal framework majority were female respondents. Majority who gave neutral responses were males and only few responded that they disagreed with the need for a stronger legal framework.

From **Figure 5**, the inference might be due to females might have experienced more issues on their health during their time of childbirth which is done by the doctors and males might have responded on the factor of surgeries and treatment, as we all know that before the surgery is held a contract is made in the default as there shall be no negligence if the patient has some kind of side- effects, the inference might be due to in some cases patients are not informed about the side- effects

Figure 6, it is clearly seen that the respondents are aware that the hospital is vicariously liable for the doctors as the doctors works for the hospital and hospitals has there own prospectus to follow, if the doctors do against the prospectus there license should be ceased immediately

VII. LIMITATIONS

In the current research, self-reported scales to analyse of occurrence of medical negligence and comparison between private and government hospitals were used which could have incurred response biases. The present study was a cross-sectional study. The major drawback of my study are the sample frames. The sample frame opted by me is the general public through digital platform. The digital platform was ineffective in bringing in responses from the diverse set of people around. The restrictive area of sample size is the major drawback. The physical factors are the most impactful and a major factor limiting the study.

VIII. SUGGESTIONS

Providing adequate medical facilities for the people is an important part of the obligations undertaken by the government during a state . Failure on the part of government hospitals to supply timely medical treatment to an



individual in need of such treatment is violation of his right to life guaranteed under Article 21 of the Indian Constitution. Therefore the government must form strict laws which hold the hospitals vicariously liable for negligence. It must also form effective implementation systems and inspection counsels that will prevent incidents of negligence and also protect the victimised person.

IX. CONCLUSION

To conclude, there's a rising trend of medical negligence suits in the world . The Hospitals which are accused with negligence could also be sued within the civil or criminal or consumer courts. To err is human and health care providers are not any exceptions. However, awareness of the rules, proper maintenance of all the facilities and medical equipment, and proper management of staff employed, would help in minimizing these problems to some extent. The principle of respondeat superior implies that one who acts through another is going to be treated because the act is done by himself which is applicable even to the hospitals when there's negligence of its doctors. Thus hospitals are legally responsible for the death or injury as a result of negligence of doctors or nursing staff appointed by them. The medical professionals are allowed to require a defense that medicine is so complex where no standards are often set to evaluate the doctors and one cannot make them liable when there's a mistake of judgment.

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