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THE ROLE OF CONTRIBUTORY NEGLIGENCE IN ALLEGED CASES OF MEDICAL NEGLIGENCE – A REVIEW

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ABSTRACT

Contributory negligence is a key principle in medical negligence law, serving as a contributory defence that can partially shift the blame of the harm inflicted on the medical practitioner to the patient. As in any other common law country, contributory negligence is a well-known legal principle in India as well as several other countries, in that the measure of negligence can be affected by the complainant's own act construed as negligence for reduction of compensation.

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1. INTRODUCTION

Contributory negligence is a key principle in medical negligence law, serving as a contributory defence that can partially shift the blame of the harm inflicted on the medical practitioner to the patient[1]. As in any other common law country, contributory negligence is a well-known legal principle in India as well as several other countries, in that the measure of negligence can be affected by the complainant's own act construed as negligence for reduction of compensation.

[1] Binchy, William, and Richard Akinlabi Komolafe. "Patients, Contributory Negligence and Medical Negligence Litigation." *Q. Rev. Tort L.* 4 (2010): 21.

In the United Kingdom, contributory negligence is provided by the Law Reform (Contributory Negligence) Act 1945[2]. Section 1 of the said Act states that, `wherein a patient or complainant contributes towards their own damage and the damage of another, and they suffer damages, then they can be required to pay rateable damages. This principle is especially applicable in medical negligence and malpractice cases in that the patient's conduct or inaction may have worsened his or her state or otherwise precipitated the consequences[3]. The burning issue here is to decide how much of the accident was caused by the patient and then allocating the responsibility in proportion to the degree. For example, if a patient refuses to heed doctors' advice or omits crucial details of their medical history, they might be deemed partly responsible for the damage and collect a smaller amount of compensation.

Since contributory negligence tends to be a blunt tool in context with medical cases, a stricter scrutiny of the patient's conduct and its relevancy to the situation would always be necessary. In other cases, the [courts] consider the reasonableness of the patient's behaviour and if the detainee's harm would have occurred even if the patient did not make unreasonable contributions. In Jones v. Livox Quarries Ltd. (1952)[4], U.K., the Court of Appeal stated that a claimant was deemed to contribute towards negligence if they did not exercise reasonable care in their own well-being[5]. This principle has been applied to medical cases where negligence by the complainant causes a failure to observe medical advice as given and is likely to lead to a reduction or in some instances nullifying in the quantum of compensation offered.

In contrast, the law of contributory negligence, however, is not enshrined in any particular statute in India, although its working is similar to the law in the UK[6], yet, Indian courts have held contributory negligence admissible as a defence for alleged medical negligence cases by following principles of English law[7]. The distribution of blame generally depends on the quantum of blame that the patient has been held to bear and the applicability of concept of contributory negligence, whereby the court uses its discretion to establish the measure of blame that the patient had for the harm.

The Hon'ble Supreme Court of India has discussed this doctrine involving contributory negligence in few cases. In Poonam Verma v. Ashwin Patel & Ors. (1996)[8], the court recognised that contributory negligence could help to diminish the responsibility of the medical professional in case the patient contributed to the harm done[9]. This is an expansion of this principle, and it was later taken further in Nizam Institute of Medical Sciences v. Prasanth S. Dhananka (2009)[10], where in a situation whereby parties, the medical professional as well as the complainant are found negligent, in such a case, the award made can be apportioned depending on the proportionate negligence of the patient to the injuries that he or she suffered[11].

When determining contributory negligence, the Courts endeavour to determine whether the patient was reasonable in his or her actions. It is usually about the patient's compliance with the doctor's instructions, whether he or she provided all the necessary information, and measures he or she took to prevent damage.

Thus, contributory negligence is used as a mechanism to fairly workout the distribution of the risk between the patient and the doctor. If contributory negligence relieved the medical professional of liability, the responsibility to provide a level of medical treatment would be of little use to patients, but the doctrine acknowledges that patients must share in the responsibility to protect their own health. This doctrine particularly applies to health care, which is a mutual contract between two entities in which both have to protect each other's interests to get the desired results.

[2] Williams, Glanville L. "The law reform (contributory negligence) Act, 1945." *Mod. L. Rev.* 9 (1946): 105.
[3] Basten, John. "Personal injury-contributory negligence." In *TheJudicial Review: Selected Conference Papers: Journal of the Judicial Commission of New South Wales*, vol. 13, no. 4, pp. 417-430. Sydney: Judicial Commission of NSW, 2018.
[4] *Jones v. Livox Quarries Ltd*, 1952 Q.B.2 608 (1952).
[5] "Case: Jones v Livox Quarries Ltd [1952] 2 QB 608." 2024. *Law Journals*. Accessed August 30. https://www.lawjournals.co.uk/cases_referred/jones-v-livox-quarries-ltd-1952-2-qb-608/.
[6] Field, Iain D. "contributory Negligence and the Rule of Avoidable Losses." *Oxford Journal of Legal Studies* 38, no. 3 (2018): 475-499.
[7] Gupteswar, K. "Comparative Negligence in Motor Accidents." *Journal of the Indian Law Institute* 11, no. 4 (1969): 413-429.
[8] *Poonam Verma v. Ashwin Patel*, 4 S.C.C. 332 (1996).
[9] SS, Gowtham. "An Analysis of Medical Negligence." *Part 1 Indian J. Integrated Rsch. L.* 2 (2022): 1.
[10] *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka*, 6 S.C.C. 1 (2009).
[11] Rayamane, Anand P., S. D. Nanandkar, and Pooja A. Kundargi. "Profile of medical negligence cases in India." *Journal of Indian Academy of Forensic Medicine* 38, no. 2 (2016): 144-148.

2. KEY CASES AND JUDICIAL APPROACHES

In fact, the contributory negligence principle in medical negligence cases has been largely determined by judicial decisions and leading cases from the the UK and now India. These jurisdictions have therefore adopted progressive ways on how to apportion blame for contributory negligence, especially taking into account that the patient is also in some ways responsible for the harm that was done to him or her by the medical practitioners.

Several judicial precedents have shaped the contributory negligence analysis in medical negligence action in the UK. For e.g. in Pidgeon v. Doncaster Health Authority (2002)[12], where the respondents were successful after it was argued that the negligence of the claimant to attend follow-up appointments and take required tests led to delay in diagnosing the condition[13]. It was held that though the medical professional had a responsibility to educate and guide the patient properly, the patient also contributed to the damage immensely and thus were awarded less damages. This is a typical case of the willingness of courts for reducing awarded quantum of damages where the patient concerned has had a large effect on final result of management.

In Spencer v. Hillingdon Hospital NHS Trust (2015), in which the claimant had complications after surgery[14][15]. The hospital was deemed to have been negligent in not offering enough postoperative care, but the patient was also deemed to have been negligent in not seeking medical attention when the complications started appearing. It was held that the complainant is negligent, since he vitiated the outcomes of his own treatment by contributory negligence. Based on this case, one can infer that patients are supposed to do everything in their power to avoid further injury once they realise, they have complications.

While not a medical negligence case, the present analysis of the factors considered in Jones v. Livox Quarries Ltd. (1952) has served to inform the subsequent decisions regarding contributory negligence[16][17]. The court stated that even if a defendant was primarily negligent, a claimant could be found to have been contributorily negligent if the latter had not exercised reasonable care for his/her own safety. This principle has been applied to negligence, particularly in medical malpractice, where the patient has the possibility of receiving fewer damages if he or she did not follow the doctor's advice or refused to undergo the recommended treatment.

In India as well, the judiciary has expended much effort on considering this aspect of contributory negligence, and especially in healthcare malpractice claims. As held by the Hon. Apex Court in Poonam Verma v. Ashwin Patel & Ors. [1996][18], the honourable court accepted the proposition stating contributory negligence may ensue where the patient concurrently mischievously and/or omitted to act carefully and resulted in the harm[19]. Since the ultimate negligence was on the side of the medical professional, the court looked at the contribution of the patient towards the injury, thus minimising the amount of blame on the side of the defendant.

Another example to demonstrate how the Indian courts are dealing with the contributory negligence could be the case of Nizam Institute of Medical Sciences vs. Prasanth S. Dhananka, 2009[20][21]. In these proceedings, the Hon. Apex Court upheld the rule of `Par Proximo`, holding that where both parties i.e. the complainant and medical professional are negligent, the compensation can be apportioned proportional to degree of patient's contribution to the harm. The court pointed out that the reduction of liability is based on the following, and it simply means that that amount of reduction will depend on the extent of the fault of the patient, and for this reason, compensation is arrived at fairly and reasonably.

[12] *Pidgeon v. Doncaster Health Authority*, 2002 Lloyd's Rep Med 130 (2002).
[13] Hodgson, Douglas. "Intervening causation law in a medical context." *U. Notre Dame Austl. L. Rev.* 15 (2013): 22.
[14] *Spencer v. Hillingdon Hospital NHS Trust*, 2015 E.W.H.C. 1058 (2015).
[15] Brazier, Margaret, Emma Cave, and Rob Heywood. "Agreeing to treatment." In *Medicine, patients and the law*, pp. 139-170. Manchester University Press, 2023.
[16] *Jones v. Livox Quarries Ltd*, 1952 Q.B.2 608 (1952)
[17] Munkman, John. "Note on the Causes of an Accidental Occurence." *Mod. L. Rev.* 17 (1954): 134.
[18] *Poonam Verma v. Ashwin Patel*, 4 S.C.C. 332 (1996).
[19] SS, Gowtham. "An Analysis of Medical Negligence." *Part 1 Indian J. Integrated Rsch. L.* 2 (2022): 1.
[20] *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka*, 6 S.C.C. 1 (2009).
[21] Rayamane, Anand P., S. D. Nanandkar, and Pooja A. Kundargi. "Profile of medical negligence cases in India." *Journal of Indian Academy of Forensic Medicine* 38, no. 2 (2016): 144-148.

In the proceedings of Dr. Kunal Saha v. Dr. Sukumar Mukherjee & Ors. (2013), which dealt with the aspect of contributory negligence in relation to a clinical negligence case involving a well-known celebrity[22]. While specific attention was given to the medical malpractice, the conduct of the patient too was taken into account, especially concerning the timing of the seeking treatment and compliance with the medical orders. The court thus ruled out a drastic reduction of the damages awarded, and this demonstrates how contributory negligence can be fact sensitive.

The judicial developments in both the UK and India have established the idea that contributory negligence cannot fully relieve the medical practitioners of accountability for their patients but simultaneously acknowledge that complainants are also partly responsible for their own health status[23]. The courts have also not disagreed with the proposition that if a patient has contributed towards the harm in question by either his conduct or inaction, then the compensation should be scaled down accordingly. However, they may be reduced on a specific basis, and the extent of the reduction is considered on the facts of each case, whereby it is important for the court to balance the evidence so that the split of the liability is fair.

3. PRACTICAL IMPLICATIONS

The implications on practicality affect both the patient and health care givers because of the use of contributory negligence in the determination of medical negligence determines the outcomes and compensations awarded by also shape the conduct and expectations of the participants in the healthcare process[24]. It is vital for medical professionals as well as the legal fraternity involved in such litigation to understand the implications of medical negligence.

It also has significant real-world implications since contributory negligence leads to a lowering of the proportion of damages awarded to the patient if they are deemed to be partly at fault for their harm. In deciding on the quantum of damages, it is open to the courts of both the UK and India to bring down the damages by a percentage that may be considered as contributed by the patient. This reduction can be considerable, particularly when the actions or inaction by the patient has had some influence on the result. For example, if a patient neglects to follow the health care workers' instructions in the postoperative period or if the patient withholds vital information that affects his or her compensation, he or she will lose compensation because he or she contributed to the harm[25]. This remains a strong prompt or reinforcement to patients on the need to strictly adhere to the doctors' advice and participate in the management of their ailments.

To healthcare providers, the legal principle of contributory negligence provides a strong defence mechanism that can be used to reduce a provider's legal responsibility in negligence cases[26]. The medical practitioners can minimise their level of responsibility due to the patient's misadventure, hence lowering the financial and reputational penalties of a negligence claim. This defence requires the providers to be very much involved in documenting the times they interact with the patient and the advice they give, warnings, and whether the patient complied with the recommendations given to him or her or not. When it comes to contributory negligence, wide documentation proves crucial as it offers the required info to argue and demonstrate the complainant's failure to take reasonable care in managing their own health.

The practical implications relate to the legal actions taken by both the plaintiff and defendant in cases relating to medical negligence. In particular, the doctrine makes it rather difficult for plaintiffs to argue that defendants' actions harmed them since they are always expected to have contributed to the harm in some way. It could be done by proving that the alleged negligence on their part was minimal or did not prejudice the chances. On the other hand, for defendants, contributory negligence is the legal route that can be exploited in a bid to minimise the level of responsibility and, hence, attract better and more favourable compensation amounts or decisions. Therefore, the legal practitioners have to be very keen in assessing the conduct of the patient and the health practitioner to consider outcomes by considering likely contributory negligence.

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[22] Thomas, George. "The Anuradha Saha Case and Medical Error in India." *Economic and Political Weekly* (2013): 12-14.
[23] Pawar, Anand. "Medical Negligence: Appraisal with Latest Case Laws." *Rajiv Gandhi National University of Law* (2015).
[24] Binchy, William, and Richard Akinlabi Komolafe. "Patients, Contributory Negligence and Medical Negligence Litigation." *Q. Rev. Tort L.* 4 (2010): 21.
[25] Braaf, Sandra, Elizabeth Manias, and Robin Riley. "The role of documents and documentation in communication failure across the perioperative pathway. A literature review." *International journal of nursing studies* 48, no. 8 (2011): 1024-1038.
[26] Runciman, William B., Alan F. Merry, and Fiona Tito. "Error, blame, and the law in health care—an antipodean perspective." *Annals of internal medicine* 138, no. 12 (2003): 974-979.

Furthermore, contributory negligence touches on a broader social aspect that deals with the complex interplay of patients and healthcare personnel. It reaffirms principles of 'primum non nocere' whereby the duties and responsibilities hinge on both, the provider as well as the patient have to harmonise to attain the best results[27]. For patients, this means immersing themselves in their health care process, which includes compliance with the medical recommendations, timely visits to the doctor after the treatment, and disclosing full information about their health. It benefits healthcare providers in establishing well-communicated, well-documented, and attained informed consent, as these aspects form the basis of defence against negligence claims.

Ethical issues can also be seen in practice when the application of contributory negligence also comes into the scene[28]. It is on this premise that healthcare providers are bound to the fundamental, to treat patients, yet at the same time are aware that they are independent persons with the liberty to make decisions that may harm them. Though contributory negligence enables providers to fight against baseless claims, it also entails prudent management of patient contacts to avoid situations that result in patient contribution to their injuries, with consequent shifting of blame to the patient. It should, however, be understood that medical practice has certain ethical measures that prohibit one from over-emphasising contributory negligence while at the same time emphasising willingness and supportive relationships between a medical provider and the patient.

4. CONCLUSIONS

The legal principle of contributory negligence does not only apply to individual patients but to overall healthcare systems in our country. Recognition of reduced liability helps towards formulation of policies and procedures, including those that can foster patient involvement and, most importantly, compliance with doctors' advice within health care facilities[29]. Healthcare organisations such as hospitals and clinics must employ a specialised approach of increased patient awareness, better defined consent procedures, and additional improved procedures of follow-up in order to deal with the dangers that may arise from patient non-compliance.

Finally, in terms of practicality, contributory negligence underscores the necessity of legal training and sensitisation among the members of the health profession. This knowledge enhances providers knowledge of the law as well as possible defences available that enable them to provide quality services while minimising the risk to patients. It also underlines the desirability of refreshing and expanding the knowledge of clinicians on different aspects related to the communication with the patients, documentation processes, and risk management to minimise the incidents that may lead to a contributory negligence claim.

[27] Cheluvappa, Rajkumar, and Selwyn Selvendran. "Medical negligence-Key cases and application of legislation." *Annals of Medicine and Surgery* 57 (2020): 205-211.
[28] Robinette, Christopher J., and Paul G. Sherland. "Contributory or comparative: Which is the optimal negligence rule." *N. Ill. UL Rev.* 24 (2003): 41.
[29] Baker, Tom, and Charles Silver. "How liability insurers protect patients and improve safety." *DePaul L. Rev.* 68 (2018): 209.