



Medical Negligence

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Court has killed all medical negligence cases

MS Kamath / DNA

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Mumbai: A recent order of the Supreme Court reiterates the prevailing law on when a doctor is to be held responsible for medical negligence. It states that a doctor can be held to be negligent only if the complainant can prove that the standard of medical care given does not match the standards of care set up by the profession itself. It says a wrong outcome or recourse to one of several different methods available to treat a patient cannot be termed as negligence.

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In an earlier order, the apex court had held that courts must make it a practice to refer cases of medical negligence to an expert or panel of doctors in the same field of medicine to opine on the merits of the case.

Both these rulings have sounded the death-knell for a number of cases in consumer courts where patients or their relatives will now have to run from pillar to post to prove their allegations. The medical fraternity, of course, does nothing to help the poor consumer, though there are instances of a doctor who would privately tell a patient that his colleague had totally mishandled the patient's treatment, but refuse to give it in writing, "because he is my professional brother".

The Supreme Court orders have thrown all negligence cases in turmoil because getting an "expert opinion" from a doctor against another is next to impossible. The courts will have no option but to rely on already burdened public hospitals to provide them with such opinions.

For example, how does the court ensure that the opinion of the doctor making the opinion is unbiased? How does the court ensure that the ubiquitous system of doctors influencing the expert from their own profession is kept at bay? Lastly, if the issue of negligence is left to this group of "experts", what is the role of the court in deciding on the merits of the case? In short, will justice be outsourced?

It seems that the apex court judges have erred in not adhering to the principles of the Indian Evidence Act which state that the person who makes an allegation must prove it. Consumers should be allowed to rely on medical texts, practices and precedents in the medical profession to make a strong case on whatever is available to them.

Many of these problems arise because the systems in India are not abreast of the situation in other parts of the world. Peer bodies like medical councils are powerful tools of discipline and rendering justice in the West, but the situation in India leaves much to be desired.

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