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MEDICAL NEGLIGENCE

By

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Injury by a professional, if unlawfully caused to the patient, affords a cause of action for a claim. Unlawfully means due to negligence. Law posits a due of care between the doctor and the patient. The duty of care has been broken by the doctor. **Absence of "reasonable care"** shows the breach. In ultimate analysis these questions of "reasonable care" or "reasonable foreseeability" are questions of legal policy objectively decided by the judges.

To prove the requisite standard of care of a doctor, evidence has to be adduced. Courts work out the "**calculus of risks**" in each case. Diligence, care, knowledge, skill and caution in the administration of treatment vary from case to case. Medical evidence as expert testimony may be called for as part of the proof.

The problems faced by the injured patient are compounded by the inadequacies of the legal system, like, cost, delay etc.. The denial of **Consumer Claims Forum** for such claims arising out of treatment at public hospitals deny the poor all remedies in effect. They are left with the inaccessible civil court.

What is the solution? It is in the interest of the public and the medical profession that **reparation to the affected person should become the responsibility of the community**. In such a context, the negligence of the doctor need not be proved. Only the **causal connection between the treatment and the injury** needs to be made out. **No-fault reparation** has been stipulated by legislation in Sweden, New Zealand and Germany. Would it be feasible in India to cover medical negligence by a similar legislation ? Would it not benefit the poor and the ignorant patients who frequent the public hospitals for free treatment ? They are unequal to the task of expensive and sophisticated process of proof of medical negligence in the court of law.

There is urgent need for **legislation to indemnify patients for loss due to treatment injury, voluntary vaccination and medical research on the basis of no fault liability**.

The Swedish legislation is enclosed for easy reference. In England, such no fault liability has been confined to injuries arising from vaccination - **The Vaccine Damages Payments Act, 1979**.

A legislation on no-fault compensation will also eliminate the context of **conflict between the doctor and the patient**; indeed, we can expect the medical person to even assist the patient in claiming compensation.