**VICTIMOLOGY: AN EMERGING JURISPRUDENCE IN RELATION TO HOSPITAL NEGLIGENCE**

Vidushi Goel¹, Dr. Neha Behl²

¹,²Assistant Professor-II, Amity Law School, Noida, UP (India)

**ABSTRACT:**

The Research Topic under the title “Victimology: An Emerging Jurisprudence in Relation to Hospital Negligence” is a topic of essence keeping in view the development of victimology concepts on one side and on the other obligations of hospitals and liabilities for their negligence towards patients/consumers. The victimology is mostly concerned with the victim of negligence and/or of crime with a thrust to restore the victim to his original position by compensation or otherwise. It is the study of relationship between the victim and the perpetrator which by now became the subject of jurisprudence. The hospitals are bound by the rules and regulations and maintain ethical principles concerning profession. Any breach is answerable departmentally as well as through the medium of civil/criminal courts, besides, as a consumer grievance before the consumer forums/commission. For hospital negligence the liability can be either direct or indirect. In case of indirect which under some circumstances is vicarious that is the liability of the hospital for negligence of its employees / professional doctors. The negligence presupposes duty of care, breach of duty and such breach resulting in loss. In some Jurisdictions and especially in England, the professional negligence of a doctor is also subject to Bolam test, meaning, if under similar circumstances with similar infrastructure any other professional/doctor would have done the same with similar results. The research topic is providing suggestions at the last and has been dealt/deliberated on the strength of doctrinal methodology based on primary and secondary sources of data.

**Keywords:** Victimology, Jurisprudence, Negligence, Vicarious Liability, Curative measures, Ethics and Obligations.

**I. INTRODUCTION**

Victimology is a study concentrating on victim of an act committed by any authority like Government, semi-government, professional and/or any other person which results in direct consequences towards loss. The loss in the present context may be bodily, intellectual or monetary. Where the loss is with respect to the body and mind it is difficult to evaluate such loss, nor can such loss be substituted in its fullest form for restoring the victim to his original position. But still damage and compensation are considered as substitute to victim in lieu of bodily and mental loss. The study of victim has assumed importance and is the subject of study. However, negligence as a component is remedied by just compensation. The doctor’s negligence has now been recognized and warrants for payment of compensation to the aggrieved. But there still is a scope of study from the point of victimology as to whether the compensation is enough and/or there need to be different aspects to be addressed under victimology. All this is dealt sufficiently and separately here and after in different sub-headings.

**II. VICTIMOLOGY MEANING AND LEGALITY:**

2.1 Victimology as subject seems to be an appendage to Criminology developed in its evolutionary phases in a process that Criminology opened the study of penology. Though at one time penology was considered as consequences as well as mode of prevention of crime and / or maintenance of social order, with least attention towards victim, just because the crime was said to be against the state. The current criminal jurisprudence is showing concern towards the victim of crime also which study falls within the term “Victimology”. As per Benjamin Mendelsohn “Victimology is the scientific study of victimization, including the relationships between victims and offenders, victims and the criminal justice system, and victims and other social groups and institutions”

Other writers define it as “Victimology is the study of the relationship between the victim and the perpetrator. . .”
For this concept, we must first understand the meaning of terms victim and perpetrator. The victim is a person who has been harmed specifically by perpetrator, whiles the perpetrator and/or offender as called, is an individual who has committed the crime against the victim. Law enforcement agencies use the study of victimology and the theories of victimology to determine why the victim was targeted by the offender and how to restore the victim to his position and/or how to compensate where restoration is not possible.

2.2 Victimology in legal parlance:

Victimology in earlier period was of concern when one finds instances like blood money, compensation and labor imposed on person committing such act as a civil wrong or crime. With the advent of modern era, reputed jurists have concentrated on victim and how he can be repatriated/restored to his original position. The role of victimology is victim centric study. In case of negligence by hospital and/or doctor it is the patient who becomes the point of focus for providing the relief. Like any other judicial approach, the modern studies are leading towards victimology against the State action of profession and/or otherwise. It is just like the jurisprudence which is said to be the science of law. The victimology comprises of the words victim and logy in which victim means the sufferer. As per the Chamber’s Dictionary victim means:

“...a living being offered as sacrifice; a living being subject to death, suffering, or ill-treatment; a prey; a sufferer ...”

On the other hand, “logy” means study. In short a per the dictionary meaning Victimology means “... the behavioral study of victims of crime, to discover the psychological effects on them and their role in commission. . .” For the present topic, doctor’s negligence is co-related to victims suffering for computing the compensation at least to the extent of loss suffered by the victim. This is an attempt by law to put the victim in his position in which he was, before he was under care and control of the doctor. Under civil law also restoration is considered imperative as the parties are put to the original position. But in case of doctor’s negligence, though compensation is awarded, it cannot be said that the victim is restored to his original position. No doubt it acts as a deterrent towards doctor and prevents re- occurrence of similar acts in future. Apart this, as per victim is concerned it is difficult to restore in its original position, more so where death, amputation and other wrongs are the consequences of doctor’s negligence. The jurisprudence ought to proceed further for adopting new methodology so that victim is not only compensated but also placed in his earlier position wherever possible. It is said that “Certainty of Law is a Judicial Myth for the fact that law evolves and develops with the society, so there is a need of attention and concern towards victimology not as discretion with the judges but a compulsion under law for which legislators need to pay attention. Victimology in relation to hospital is a phenomenon whereby a person becomes victim of hospital negligence or negligence that of medical professional and/or it may be negligence of both hospital as well as medical professional. Medical professional is governed by conduct rules while for hospital there are different compliances which they must adhere

III. PROFESSIONAL ETHICS AND OBLIGATIONS:

In the contemporarily arena, it is seen that for every segment of society, there are norms for the conduct, and anything done against the established norms amounts to misconduct. The medical profession is also based on principles of conduct what is called ethics with corresponding obligations. The ethical principles are both in a general form adopted traditionally from time to time since the emergence of ‘hypocrite’s oath’ for the professional like doctor. Side by side there are statutory obligations in the laws related to hospitals and professional doctors.

The hospitals are bound under the general laws applicable to them as well as the laws concerning the medical profession with which they must comply, besides, the professionals engaged by them for performing duties in accordance with professional mandate. From the general laws as emanated from the torts and loosely so the hospitals have to take the duty of care not only with respect to establishment of hospitals but also with respect to infrastructure and quality of the services expected from them. It is the incumbent duty of the hospitals to engage the qualified professions. For deviation to the professional ethics, the doctors can be proceeded departmentally and in accordance with the conduct rules applicable to them. At the same as far as hospital is concerned the liability of a doctor binds them vicariously, otherwise there can be direct liability of a hospital for non-compliance of terms and conditions of the license under which they are operating, besides for other deviations with respect to building norms and/or under labor laws so on and so forth.

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The consumer protection Act of 1986 has changed the scenario with respect to deficiency in services whether of hospitals or doctor in view of the fact that the hospital has been considered to be falling within the definition of services. As such any deficiency in services and/or working of hospital as a whole causing loss to the patient is accountable and remedied by the consumer forums/commissions in terms of the referred Act. The aggrieved patient is entitled for compensation for negligence and/or deficiency in services in terms of Section 14 1 (d) read with 2(d)(ii), (g) and (o) of the referred Act. In the matter of Kolkata based hospital and three doctors against whom negligence was proved, damages to the tune of Rs 11.41 crore was awarded in favor of US based Indian origin doctor who lost his 29-year-old wife working as Psychologist doctor. In many cases hospitals were held vicariously liable.

As far as the conduct is concerned, it is purely the subject matter under the Medical Council Act read with conduct rules which can lead to the cancellation of license of a medical practitioner.

From the deliberations what transpires is that the medical professional can be proceeded departmentally under the conduct rules and for compensation/damages under the consumer protection Act, alternatively the civil remedy before the courts is also available to the aggrieved. On the other as far as hospital is concerned they can also be proceeded under the criminal law, besides under consumer protection laws and/or respect to civil laws. However, the hospital as an entity or promoters or beyond the scope of conduct rules as applicable to medical professionals. Towards the aforesaid deliberations, the professional ethics and obligations arising out of breach have personal consequences for the doctor with respect to civil services but for victim and victimology he has to suffer monetary consequences. On the other for direct hospital negligence, the consequence of meeting the damages and compensation arise from civil wrong in the form of negligence and/or deficiency in services. For conducive atmosphere and for welfare of all it is desirable that professionals and hospitals ought to perform their allotted obligations as provided by the law. Towards this the hospital negligence in its deeper study can be dealt under the respective sub-headings of direct liability, vicarious liability and overall liability for negligence in a manner as follows.

IV. HOSPITAL NEGLIGENCE:

Hospital Negligence usually is not independent to medical negligence of a doctor. Hospitals are held liable in an indirect way for the acts of its employee what in common law countries is said to be vicarious liability in the nature of tort. In some other respects they can also be held responsible for their staff. There is a direct liability of the hospital also where it relates to infrastructure, compliances and forms of negligence the examples of which are Gorakhpur Hospital relating to death of 1317 children due to want of oxygen cylinders. This incident of hospital negligence is also followed by negligence of Kota hospital. The hospital negligence is further being deliberated from two different point of view, one direct liability and second vicarious liability.

i) Direct Liability:

A hospital can be held directly liable for negligence on many grounds.

Failure to maintain equipment’s in proper working condition constitutes negligence. In case of damage occurring to a patient due to absence/ non-working equipment e.g. oxygen cylinder, suction machine, insulator, ventilator etc. the hospital can be held liable.

Failure to hand over copies of medical records, X-rays, etc., constitutes negligence or deficiency in service. In India, a provision in respect of medical records has been made in The Indian Medical Council [Professional conduct, Etiquette and Ethics] Regulations 2002, Regulations 1.3.1 and 1.3.2 which state that every registered medical practitioner has to maintain medical records pertaining to its indoor or outdoor patients for a period of at least three years from the date of commencement of treatment in the prescribed form given by MCI and if any request is made for medical records either by patient/ authorized attendant or legal authorities involved, the same may be duly acknowledged and documents be issued within the period of 72 hours. Also it must not be forgotten that it is the right of every patient to obtain in writing about his/her medical illness, investigations and treatment given on a prescription/ discharge ticket. Non-providing of medical records to the patients/ attendants may amount to deficiency in service under the Consumer Protection Act, 1986.
ii) Vicarious Liability:

A hospital can be held vicariously liable on numerous grounds on different occasions. Several High Court Judgments have held hospitals vicariously liable for damages caused to the patients by negligent act of their staff. In one judgment of the Kerala High Court in Joseph Pappachan v. Dr. George Moonjerly support of the following effect stated that, persons who run hospital are in law under the same duty as the humblest doctor: whenever they accept a patient for treatment, they must use reasonable care and skill to ease him of his ailment. The hospital authorities cannot, of course, do it by themselves; they have no ears to listen to the stethoscope, and no hands to hold the surgeon’s scalpel. They must do it by the staff which they employ; and if their staffs are negligent in giving treatment, they are just as liable for that negligence as anyone else who employs other to do his duties for him.

In another judgment by the Madras High Court in Aparna Dutta v. Apollo Hospitals Enterprises Ltd it was held that it was the hospital that was offering the medical services. The terms under which the hospital employs the doctors and surgeons are between them but because of this it cannot be stated that the hospital cannot be held liable so far as third party patients are concerned. It is expected from the hospital, to provide such a medical service and in case where there is deficiency of service or in cases, where the operation has been done negligently without bestowing normal care and caution, the hospital also must be held liable and it cannot be allowed to escape from the liability by stating that there is no master-servant relationship between the hospital, and the surgeon who performed the operation. The hospital is liable in case of established negligence and it is no more a defense to say that the surgeon is not a servant employed by the hospital, etc.

V. COMPARATIVE STUDY ESPECIALLY WITH UNITED KINGDOM:

Researcher in order to understand victimology in relation to hospital negligence has collected data’s from other jurisdictions across the globe. The data so collected have been segregated and selected for the present study for which the researcher has concentrated on victimology and hospital negligence in United Kingdom. The hospital negligence in UK is under the common law including under the law of torts but for professional negligence of a doctor connected with hospital, the different tests for negligence including that of duty of care, breach of duty and damages thereto have been accepted but with an additional rider of “Bolam Test” The test simply says that what any other doctor would have done in similar situation and with same infrastructure so as to fasten the liability.

In the UK also, the negligence of a hospital unconnected with the doctor is dealt under the common law under the referred parameter, besides, in compliance of laws applicable to hospital at a given place. The liability of the hospital unconnected with medical professional is different than the hospital negligence connected with the doctor. Thus liability of a hospital for staff employed by the National Health Service attracts the tort principle of vicarious liability in England. It is also deduced that claims against hospitals for negligence of its employees are also covered under program known as the Clinical Negligence Scheme for Trusts. Deductions also reveal that for England and Wales, the National Health Service are vicariously liable for the acts and omissions of the physicians. This being the case with UK as far as hospital and/or National Health Service negligence is concerned. Usually same is the position in other common law countries. But in some other jurisdictions like Canada, medical professionals are sued individually for negligence though Hospitals can also be held liable for the act of their staff.

VI. CONCLUSION AND SUGGESTIONS:

To sum up and in view of data’s and their analysis as contained in deliberation herein before the deductions are drawn that the negligence’s is an important component which warrants redressal so as to place victim in his original position. Towards this the hospital negligence brings forth multi-dimensional aspects. The hospital itself being legal entity is governed by different regulators as far as activities are concerned but as a service provider its activities are health specific. Any negligence and/or deficiency in health services gives cause of action to the aggrieved against the hospital. But this cause of action may be against the hospital solely if negligence is not in relation to acts of its professional medical person or however if the negligence is of medical professional, then hospital stands vicariously liable. To redress the grievance of patient/consumer the compensatory jurisprudence is adopted as a norm fixing the liability jointly and/or severely to the hospital/doctor. In addition against the doctor the action can proceed on the strength of conduct rules but that may be limited to his/her license as a medical practitioner. The research paper provides an insight for redressal of grievance system a far as victim is concerned by addressing the victimology and substituting compensation for the wrong and/or a punishment as far as the crime is concerned. In addition there is a civil remedy in India before civil courts for meeting and contesting the wrong alleged to be committed by the doctor and/or hospital concerned. The paper has also provided an insight of similar
nature adopted in United Kingdom and other commonwealth countries which satisfies the maxim “where there is a
wrong, there is a remedy”. This abort it is suggested that the remedial measures provided are time consuming
where victim has to face hierarchy of courts/forums. The delayed remedy is at the cost of long wait and expenses
which warrants absolute and instant justice for which the future legislations may provide a scope.

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