Volume : 2 | Issue : 3 | March 2013 • ISSN No 2277 - 8160

Research Paper | Social Science

Criminal Proceeding for Doctors

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ABSTRACT

With modern day medicine & its commercialization, one of the price the society has to pay is in terms of weakening of the doctor-patient relation trust. It results from unfavourable treatment result, increasing patient awareness & patients' tendency to blame the doctors for their sufferings, & sometimes mere negligence itself, on the doctor's part. Hence there is increasing trend of medical/dental litigation by unsatisfied patients. This has made the Indian Supreme Court to lay down guidelines for the criminal prosecution of the doctors, in cases where gross negligence has occurred. Hence, it is important both for the doctors as well as the patients to know this laid down protocol, which has been elaborated in this review article.

Thus the aim of this review article is to present the protocol to be followed for criminal proceeding against the medical/dental professionals in cases of gross negligence.

KEYWORDS: criminal proceeding, criminal negligence, criminal proceeding of medical/dental professionals/doctors, criminal procedure code.

Introduction

To prove, whether or not medical negligence exists is like chasing a mirage. It requires any of the following to be established in a case of criminal medical negligence, against the practitioner. Gross lack of competency or gross inattention or unjustifiable indifference to the patient's safety (arising from gross ignorance of science of medicine & surgery), gross negligence either in the application & selection of remedies, lack of proper skill in the use of instruments &, failure to give proper attention to the patient [Hampton v/s state, State v/s Lester]

In determining the medical negligence and prosecution of medical practitioners, the Supreme Court of India has also issued certain guidelines. What goes to the basis of these guidelines is that once a criminal investigation begins against a doctor, the loss of reputation is nearly irreversible. It has also been taken into account that since the nature of work that doctors perform is one involving public service, it is even more necessary that certain guidelines should be issued in this regard.

Government of India along with the Medical Council of India should formulate certain rules/regulations etc to regulate aspects of negligence in medical practice. While this exercise is pending, the following guidelines must be kept in mind while prosecuting medical/dental practitioners.

1. To make a case against a doctor, a private complainant has to submit evidence of a prima facie case before the authority, taking cognizance of the act. Such authority must also include credible opinion given by another competent doctor to support his case.1,2
2. The investigating officer must also, independently, obtain an impartial and unbiased opinion of a doctor who practices in the same field in the same regard.
3. The doctor concerned should not be arrested like in a regular prosecution. He may be arrested if there is a fear that the doctor will not make himself available for investigation.

The aim of this paper is to focus on the protocol, to be followed while filing a criminal case against a medical practitioner.

The procedure

There is no absolute immunity against criminal prosecution against medical/dental practitioner and therefore if need arises, following guidelines (INTER-ALIA) are to be followed, according to the Criminal Procedure Code (CrPC), 1973.

- A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor.3,4
- The investigating officer should, before proceeding against the doctor, accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service qualified in that branch of medical/dental practice who can normally be expected to give an impartial and unbiased opinion applying Bolam's test to the facts collected in the investigations.
- Finally that a doctor accused of rashness or negligence may not be arrested in a routine manner unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested.

Thus a doctor accused of rashness or negligence, may not be arrested in a routine manner.

The procedure otherwise is similar to the procedure in Criminal cases, the overview of which is described henceforth in a nutshell.

- Criminal proceeding starts with a First Information Report (FIR) in territorial jurisdiction.
- But in medicolegal cases, first the complaint needs to be verified by a selected team of medical/dental experts. Only then, the FIR can be filed.
- This filed information is reduced into writing at the police station & a copy of it is given to the informant.
- Once FIR is filed, if the case is of cognizable offence, police can arrest person (here doctor) suspected of involvement in the offence. However, this rarely occurs in cases dealing with doctors. As most of the cases are non-cognizable. Ordinarily, arrest is made on the basis of a warrant (order) issued by the Magistrate & persons to be arrested are served the warrant.
- In cases of cognizable offence, the arrested person has to be

produced before a Magistrate within 24 hours, excluding the time taken for the journey.
- Once brought to the Magistrate, he may remand him to Police custody or of jail authorities upto a period of 15 days.

1. Police custody may extend till 15 days (until charge sheet is framed)
2. If still charge sheet isn't framed, then the accused can be held under the Judicial custody, which may extend till 60 days, if CBI is investigating & 90 days if police is investigating.

On expiry of that period he has to be released on bail.
- Once charges are framed, they are imposed on the accused & they are informed about the same, & then the case hearing begins on the pre-decided date – 'Hearing'
- Arrest is a powerful weapon, which has to be exercised only when absolutely necessary. Especially while dealing with personals of noble profession like the doctors, this aspect has to be specially taken care of.
- To ensure that persons aren't deprived of their freedom beyond what is necessary to answer the charged, Criminal Procedure Code (Cr.P.C) provides for liberal granting of bail.
- In bailable offences, (Schedule I of Cr.P.C) the arrested person has a right to be released on bail, if he furnishes bonds with or without sureties as demanded.
- Criminal proceedings can also be initiated otherwise than a Police report, through private complaints made to Magistrate. On receiving a complaint, the Magistrate records the statement of the complainant & witnesses present, if any, & then cause an enquiry himself or through the Police or any other person. If on enquiry he doesn't find sufficient ground for proceedings, he dismisses the complaint, recording reasons for doing so. Otherwise, he issues summons to the accused.
- The trial in Criminal cases can follow one of the 3 proceedings depending on the nature of the crime :

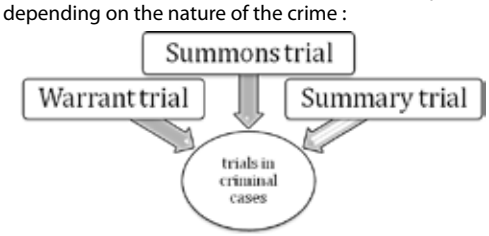

Figure 1: Types of criminal trials

Table 1 : Types of criminal trials

Types of criminal trials	Description
Summons trial	Here, it isn't necessary to frame a formal charge. The accused is told about the particulars of the offence & if he pleads guilty, the plea is recorded & he is convicted. If he doesn't, the evidence of prosecution, the statement of the accused & any other evidence he may give are recorded &, depending on the evidence, he is convicted or acquitted by the Magistrate. In such cases, the complainant can withdraw or compromise the case also.
Summary trial	The Magistrate hears the case summarily, recording only the substance of evidence. They include various petit issues. Maximum punishment – fine only or imprisonment of 3 months.
Warrant trial (cases for death, life imprisonment or imprisonment exceeding 2 years.)	The trial can proceed either on Police report or on a complaint. When an accused appears before a court of sessions, the prosecutor describes the charge against him & informs about the evidence he proposes to advance with. After hearing the parties & examining the materials, if the judge finds no sufficient ground to proceed, he discharges the accused. Otherwise the judge frames the charge & tries it himself, or sends to the appropriate judge. If the accused pleads guilty, he may be convicted. Otherwise a date is fixed for the prosecution evidence. (In criminal cases, the burden of proving the case against the accused is entirely on the prosecution side. In cases of doubt, the benefit is given to the accused & he is acquitted.). After prosecution evidence is over, the accused, is given an opportunity to explain the evidence against him. The accused may also lead evidence in his defense. After evidence & arguments, judgment is pronounced in open court. The decree would be in terms of death, life imprisonment or imprisonment exceeding 2 years.

- Once the decree is pronounced, the court in the respective jurisdiction executes it.
- If acquitted, the respective party needs to obey the court order&if they don't then they would invite criminal sanctions on them.

Note :
- The public prosecutor can withdraw a prosecution with the permission of the court.
- Giving false evidence in court is an offence liable to punishment.
- Constitution also provides that a person tried & convicted or acquitted of an offence can't be tried again for that same offence (at that same judiciary level).

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