



Medical Negligence Laws In The World's Richest Countries: Uae, Iceland & Luxembourg.

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Abstract: There are high recovery claims for damages suffered by patients in world's richest countries, inspite of best medical care system developed countries face several malpractice suits. Often bad decisions, mistakes and failure to diagnose and treat patients properly attract liability of law. Lofty compensations are claimed against careless medical providers. In developed countries there are caps on damage claims, therefore medical insurance both by the doctors and patients are mandatorily availed to be protected under insurance coverage benefits. The medical malpractice systems around the developed counties of the globe has astonished the Indians who has very meagre idea about medical negligence issues. Hence the Indian Government at the centre and state apply these medical negligence laws of the developed countries to help patients' victims of medical negligence in getting justice from competent courts and authorities.

Index Terms:- Medical Negligence, damages, compensation, medical service providers, healthcare sector, penal & Corrective justice, mandatory health insurance, Duty of care, Doctors and patients.

I. Introduction: Medical negligence issues have raised several vital questions on nature of justice delivery mechanisms operating across the world in terms of compensations, corrective reliefs or imposing sentences and Medical Malpractice occurs when a healthcare professional or medical service provider¹ neglects to provide appropriate treatment, omits to take an appropriate action, or gives substandard treatment that causes harm, injury or death to a patient. The malpractice or negligence normally involves a medical error. This could be in diagnosis, medication, dosage, health management, treatment or aftercare. Medical malpractice law makes it possible for patients to recover compensation from any harm that result from sub-standard treatment. The role of Legal Medicine has become increasingly specific, essential and ineluctable in the judicial setting in order to prevent and avoid erroneous medical malpractice incidents therefore an exploratory supranational survey of international medico-legal guidelines and recommendations governing the ascertainment and evaluation process in cases of suspected medical liability was provided by, the result of a scientific initiative by the President-Representative of the European Academy of Legal Medicine (EALM), proposing European Guidelines on Medico-Legal Methods of Ascertainment and Evaluation Criteria in cases of suspected subjective Medical Responsibility and/or Liability². These medical malpractice developments taking place across the globe brings insight into framing better suitable medical negligence laws in our country.

II. Medical Negligence Laws in UAE: Medical negligence is a critical issue that affects patients worldwide, & UAE is no exception, it is broadly categorised as civil cases seeking compensation & criminal cases seeking punishment.³ UAE ranks first in gulf countries and 6th globally. UAE has comprehensive govt funded health service and a rapidly developing private health sector that delivers a high standard of health care to the population. Art. 34 of the UAE law

¹ Deborah "What is medical malpractice?" Weather Spoon. NEWS LETTER Medical News Today. April 5,2017.

² Santo David Ferrara, "Malpractice & Medical Liability, European Union Guidelines on methods of ascertainment & criteria of Evaluation" Int J. Legal Med (2013) 127:545-557.

³ RAALC Law firm "Medical negligence in UAE: Two Cases , Two Approach" <https://www.raalc.ae.>2023/07/10>.

punishes doctors who commit medical errors that result in the loss of life of a patient with imprisonment up to two years and fine up to 500,000 AED 500,000(136, 105 US dollars) Medical Negligence is occupational crime. Ex: - Fee Splitting, price fixing, fraudulent billing, performing unnecessary surgery, misrepresenting service etc. Art. 6 of Federal Law No.4 of 2016 of UAE, a medical error is an error committed by a practitioner due to the following reasons:-

- 1) Ignorance of technical matters that are supported to be known by any practitioner of same degree and specialisation.
- 2) There is non-compliance with recognised professional & medical principles.
- 3) Practitioner does not exercise due diligence.
- 4) When there is negligence on part of physician and he/she is not paying attention to treatment.

The UAE Regulatory Authorities specially check that if there was medical error with an intention and motive of profit making activity or other benefit Act 389 Civil Liability paying damages. Act. 1/12 & 14 imposes Sentenced to not more than 5 years imprisonment and not less than 2 years imprisonment and shall be tried not less than AED 2,00, 000 and not more than AED 5,00,000 or either of their 2 penalties.

Health Authority of Abu Dhabi (HAAD): The Emirate of Abu Dhabi⁴ has constituted Health Authorities to provide primary health care services to its residents licensing, quality control and regulating all health care facilities and health professionals. All the standards of Medical Practitioners to be observed are specifically outlined in Medical Liability Law issued in 2008, makes medical insurance mandatory for all healthcare sectors. Primary Investigation Authority comprises of 3 members Physician, Legal expert, Another Physician of Speciality. In Oman a welfare estate of UAE, the highest priority is given to educational and health sector, fundamental it to health is assured to its people. If there accuracy medical issues and negligence, the people of Oman can file the complaint before the Royal Oman Police. The Royal Oman phobic and public prosecutor usually investigate the matters and cases in the first instance. In Kuwait Medical Negligence, both public sector and private sector provide health care services people aggrieved of Medical Negligence, can file a complaint before the judiciary and the probe when medical professionals and doctors violate their health care services. UAE follows codified civil law system and not a common law system⁵. In civil law system, statutes are the primary source of law, and there is no precedent system. Previous decisions of higher courts may be referred but has persuasive value only. UAE courts have inherent jurisdiction over UAE citizens & residents. Any claim/dispute (civil or criminal) for medical malpractice or medical negligence must first be considered by medical liability committee, only then the claimant can approach court for claiming damages. The limitation period is three years from date of breach of duty of care or from date when injured party became aware of injury or identified the responsible party causing the injury.

III. Medical Negligence Laws of Iceland: Iceland is located in northern Europe. It is most expensive country in the world. The Iceland Ministry of Welfare looks after health services in its country. The statute governing health care services and medical negligence cases are covered under Medical Director of Health & Public Health Act was enacted in 2007 and amended in 2008, 2011 & 2016 to better facilitate the needs of patients in availing quality health care services. This Act has been broadly divided into five sections spread into twenty four articles like as follows:-

Sec.I.Art.1 to 4 deals with the objectives, appointment of Medical Director of Health, the important definitions of the terms used in the Act and their roles.

Sec. IA provides provisions for Expert Councils spread over Art.4a:Public Health Fund, 4b:Expert Councils.

Sec. II provides for “monitoring of health services” in the country spread over Art.5 to 12.

Sec.III provides for “monitoring of healthcare Practitioners” spread over Art.13 to 17.

Sec. IV provides for “Prescriptions of medicinal products” spread over Art.18 to 20.

⁴ Wayne Jones & Others, “ An overview of medical malpractice in the UAE” Clyde & Co LLP ; 2014. p.1-3

⁵ Rishi Sengupta and Lesley Evans “Pointers on UAE Medical Malpractice Claims” Chambers and partners.; 15/9/2023.

Sec. V provides for various provisions relating to Notifications of Revocation, surrender or restriction of a professional license & revocation of right to prescribe & re-granting of these rights. The Minister of Welfare can make further provisions in regulations for effective implementation of the provisions of this Act.

The laws are very stringently followed in the best interest of the patients. The complaints received are speedily considered and reliefs granted suitably. The recognised titles are to be used by the healthcare practitioners in good faith to serve the patients or else they shall be revoked by the Directorate of Health. All forms of primary health care, medical care, nursing, general or specialised hospital care, transport of patients, medical-aids service, any other services from health personnel within & outside healthcare facilities, provided in order to promote health, to prevent diagnose or treat illness or to rehabilitate patients is primary to health service in the country of Iceland. All the professional standards for operation of health services are defined in this Act. It has comprehensive system of data collection of both the patients as well as doctors and Health sectors operating in its country, governed and controlled by the Icelandic Health Sector Database⁶ which acts vigilantly to punish guilty medical service providers by imposing disciplinary actions suo motu duty violations are detected on data base and suitable reliefs sought by complainants are provided via email-complaints. In grave medical errors complaints are investigated by judicial intervention are accordingly trial goes on to prove and dispose cases.

IV. Medical Negligence Laws In Luxembourg : Luxembourg is one of the top ten world's richest country. Though it is the smallest European country, but is most well known for its best health care system. It is also considered as European capital and is the site of the Court of Justice of the European Union. Despite its small size and low population it is one of the wealthiest nations in the world. And is categorised as a developed country both by the IMF and World Bank. Most of the health policies are based on EU Guidelines.⁷ It is "Consensus Guidelines Document " by EALM Working Group on medical malpractice. Its a complex & multi-faceted harmonization process of the legislation-judicial, optimal & institutional practices of medical liability cases in the European Countries. The guidelines provide step to step guide for collection & examination of clinical & documentary data for medical negligence trials:-

1. Medico-legal expert collects clinical & documentary data, receiving all medical & healthcare information believed to be useful for a diagnosis, identification of pathological features & damages & examination report of medical personnel. Important documents, Physical examination; patient recorded history; medical order sheets recorded by doctors; Informed consent documents; Emergency room assistance sheet; Inter-consultation sheet; pre-surgery examination sheet; Anesthetological report; Operating room report; Post-surgery Evaluation sheet; Pathological Anatomy report; Pregnancy monitoring sheet; Record of Assistance at birth; Nursing Journal; Clinical Discharge report; Witness statement of involved Physician.
2. Consultation with Specialists.
3. Clinical Examination.

In case of Medical negligence Death:- 1. Collection & examination of clinical & documentary data; 2. Consultation with Specialist; 3. Pre-autopsy Examinations(collecting swabs for micro-biological or genetic studies prior to death; 4. Autopsy.

Healthcare system in Luxembourg is based on three fundamental principles:- i. compulsory health insurance, ii. Free choice of health care provider and iii. Compulsory compliance of providers in the set fixed costs for the services rendered. The Health care facilities in Luxembourg is state funded to all its residents. Its medical coverage policy is considered as the best in Europe. The medical malpractice is governed by the code of medical ethics & the civil code. Medical professionals vow a duty of care to patients. & if they breach this duty through negligence or incompetence then they are held liable for resulting harm.

⁶ Bryn William Jones & Others, "The Commercialization of Genetic Research Ethical, Legal & Policy Issues" 2012, Springer Pub., p.121-125

⁷ Santo Davide Ferrara & Others "Malpractice & Medical Liability European Guidelines on Methods of Ascertainment & Criteria of Evaluation" Pubmed Online:6 April 2013 Springs_ Verlag Berlin Heidelberg 2013. Int. J. Legal Med (2013) 127: 545-557 Doi: 10.1007 / s 00414-013-0836-5 GUIDELINES.

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In Luxembourg there is compulsory Social Health Insurance system, popularly called “SHI System”. Further it is divided into three schemes:-i. Health care; ii. Sickness leave; iii. Long- term case. The Health Directorate governs the public health issues. The extensive public coverage of services reflects comprehensive health benefits coverage for all its residents. Patients can complain/inform about their medical negligence grievance through telephone or email medical mediators. In the event of disagreement they can sue claiming tortious liability. It has a good network of digital health care spread over the entire country for smooth, fast, efficient, transparent patient health facilities..

The Luxembourg medical negligence cases involves the following process: initial consultation, filing a complaint, discovery (exchange information and evidence like medical records and hosp records), Expert Review, pre-trial motions. It is called personal injury claim. The parties have to respond to interrogatories & can be questioned in a deposition. If defendants are not providing information requested, the malpractice attorney can file a motion in court to compel them to produce evidence. One or more experts are involved to help the jury determine if the doctor involved breached the medical standard of care.

Types of Error in medical professional practice:-

- a. Real error: medical error of omission/commission/epidemiological scientific law or of consolidated rules of experience & practice;
- b. Pseudo-error: Due to general absence of scientific knowledge on a specific issue at the time of extent or due to unpredictable or inevitable event;
- c. Conscious-error: due to any medical service provider in full conscience , without efficacy conducts diagnosis treating causing damage to patient.

Damage Estimation: It is quantified as temporary/permanent biological injury, economic damages loss of work, emerging damages future prospects of life future medical expenses.

V.Conclusion: The subject matter of Medical negligence **is a critical issue** even in developed countries. Any treatment which falls below the accepted standards of practice and causes death or injury to patient attracts liability. The modern developments in the field of medical negligence taking place in developed countries of the world the dimensions of taking action against medical errors have astonished Indians who hardly even ever dream of how to initiate action for medical negligence suffered by them silently or as a failed trial. Further the developed countries have pressed on the need to impose limitations on claiming malpractice compensations. The nature of imposing liability has undergone new changes in the developed countries of the world where the nature of medical negligence trials are unimaginable and beyond the horizon of Indian citizens facing medical negligence. Even the parameters of enforcing action for tortious damages are highly developed, comprehensive and quick justice delivery mechanism are in force. In fact the doctors and health service providers fear medical negligence trials being initiated at any moment so get insured in advance to pay-off such lofty compensations awarded immediately. Further expert opinion is sought in advance by the victims of medical negligence cases so as to be sure of getting proper compensation awards in such cases instituted. Generally suits for damages claiming damages and compensations are filed than criminal prosecution. An analysis of these developed countries medical negligence laws suitable for Indian population can be modified, designed to meet the patient needs in Indian scenario in securing justice more effectively and expeditely.

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