

# A Critical Study on School Ethics, Duty and School Negligence



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## Abstract

Childhood means simplicity. Look at the world with the child's eye - it is very beautiful.

-Kailash Satyarth<sup>1</sup>

Negligence is the breach of a duty of care. Even after the impressive efforts of legal scholars, judges and advocates to define negligence and to clarify a relation between negligence and other human conduct, the position of negligence liability still not completely recognized. Particularly in medical negligence and school negligence, the position is worst. In this research paper I am doing a very close examination of the negligence standard of school authority towards their students. It is very far from being an accurate liability in tort and crime when we are unsatisfied with the alternatives, the negligence standard is often flawed even in the ordinary cases involving liability for physical damage that are at its core. In day to day life we found man cases of school negligence towards their students. These same flaws render negligence an even less appropriate standard in most cases involving intangible loss, where at least until now it has been employed only in exceptional cases. After the coming into force of the consumer protection Act, speedy justice to child and ward is dream for them.

**Keywords:** Negligence, Tort, School, Speedy Justice, Consumer, Duty to Care, Standard of Care.

## Introduction

Civil and Criminal Negligence is becoming more prevalent in all the sphere of our society and education is no exception to the negligence. Professionals including teachers are being held more responsible for their duties and actions. Especially Parents and students must be more aware of their rights and the means for the safety of their child. The awareness among parents and student about their rights would seem by the increase in litigation. It would also encourage parents to pursue their rights through the process of litigation to recover compensation. Legal action can be arises in many cases of negligence of school authority. Legal action may follow the breach of any law relating to education or safety of children, an emerging area of educational negligence or educational malpractice, negligence, and breach of contract, defamation, assault. Civil and Criminal Negligence in terms of physical/mental injury suffered by a student's is only one aspect of legal action, which a teacher or school authority may face. Legal action alone is not the solution of the problem but fear in the mind of the teachers and school authority of legal action is a solution. Teachers and school authority must act as a responsible person while dealing with the students. It is therefore very importance that the teachers and the school authorities are aware of how the law of civil and criminal negligence operates and what practice is prohibited by the law.<sup>2</sup>

The ultimate aim of the law of negligence is to provide compensation to the plaintiff. Negligence comes under the category of civil law. In case of negligence ne party, plaintiff suffer due to the fault of the defendant. Educational negligence or educational malpractice is an emerging area of litigation in the Great Britain, USA and India. To distinguish this area of litigation from negligence where a physical injury is suffered by a student educational malpractice refers to a claim by a student that a school/teacher has failed to facilitate learning.<sup>3</sup>

In case of negligence at least one party is at fault. The wrongful act of one party causes the tort of negligence. Due care is expected in tort of negligence. If one party does not take due care, he would be liable for negligence. Defendant may take defense on the ground that he is not responsible for the conduct, or by establishing that even though the conduct was careless, one had no reason to be careful. Is it possible that

one cannot ever be responsible for careless conduct? It would follow that the concept of negligence has no application (in the world—it may have applications in fiction, etc.). Given that negligence law allocates risk of liability for damages, much writing about negligence law, and there is not much discussion of negligence outside the law, is concerned with the efficiency or fairness of the distribution. But negligence law allocates risk of liability in a special way: by holding people responsible for negligently bringing about certain harms. Other parts of the law distribute risk of liability without attributing responsibility.<sup>4</sup>

#### **Aim of the Study**

The aim of this study is to determine the role of liability of school towards school authority and teacher's liability for negligence. It also aims to analysis the incident relating to college negligence. It also suggest access to justice to parents.

#### **Some Important Cases of School Negligence**

Bus conductor Ashok Kumar was arrested by Gurugram Police within hour after news about murder of Pradyum Thakur a child of seven year old of Ryan International School. A confession of murder by Ashok Kumar was claimed by the police in this case. Police claimed that the discovery of weapon was made on the confession of the accused. Police also claim that the accused lead to police to the murder weapon his bail application has also been denied on the ground that the offence is of serious nature and accused fail to prove any possibility of innocent. His confession is a ground of his rejection of bail. His family is planning to appeal in high court for bail because in criminal case no one is punished unless proved beyond doubt. Supreme court in many cases like Modi Ram v. State of MP held that the bail is the right and jail is the exception.<sup>5</sup>

In one other important case of Uttar Pradesh, a fifth class student of a convent school in Gorakhpur Uttar Pradesh commit suicide by consuming poison after allegedly being punished by a teacher. The boy dies at BRD medical college where he was under treatment. The boy also left a suicide note against the authority. All he writes in the suicide note was against the school authority. He blame that he was harassment by school teachers. According to parents school authority is responsible for the death. Some parents hurled stones at the school building and try to show their anger. They Also damage glass, window and vehicles. In a fight between police and school staff, both side suffer loss.<sup>6</sup>

In a another case of Navneet Prakash of St Anthony Convent School in Railway Dairy Colony, Navneet Prakash had told his parents that one of his teachers made him stand on a table for three hours over some issue. He wrote In his suicide note which was addressed to his father that **Aaj 15-09-17 mera pehla exam tha. Meri class teacher ne mujhe 9.15 tak rulaya, khada rakha isliye kyunki woh chaapluson ki baat maanti hai** (*Today, September 15, it was my first examination. My class teacher harassed me and kept me standing. I cried till 9.15 am. She punished me as she always listen to sycophants*). Navneet asked his father not to believe his class teacher and added that she kept him

standing for three periods on September 14. "Aaj maine soch liya hai ki main marne wala hoon. Meri aakhri iksha meri ma'am ko kisi bachhe ko itni badi saza na dene ko kahein (*Today I have decide to end my life. It's my last wish that please tell my teacher not to give such a punishment to any other student*)," he said in the suicide note. This type of indecent behavior and fevouisim is really not good from the side of a teacher. Somewhere system is failure, teacher as well as the school authority and affiliation authority also equally liable and should get real sanction from law. This is a big negligent not just like an incident which come in news we read and forget. It takes long year struggle to grow a child.<sup>7</sup>

In a hilarious incident of an eight-year-old Class I student of Government Primary School, Phullanwal. In this incident he died at the Civil Hospital. According to his parents he schoolteachers mercilessly thrashed him. The name of the student was Bindu Ram alias Guddu of Passi Nagar. He told the incident to parents. He alleged the "torture" at school. After coming from school, On Saturday, he first told his incident to his grandfather. He said that his schoolteacher had repeatedly slapped him. They slapped on the face and ear. There was swelling on his one hand and ear. He had refused to go to school but was cajoled into doing so," said a family member. Guddu's condition worsened overnight and he was rushed to hospital where he died this morning. An eight-year-old Class I student of Government Primary School, Phullanwal, died at the Civil Hospital this morning. His family alleged he was mercilessly thrashed by his schoolteacher.<sup>8</sup>

There are many other incident s of school negligence. A 10-year-old boy died, allegedly after "falling down", at G D Goenka Public School in Indirapuram. The family said they received a call from the school around the same time that Gulshan reached home. Alleging "complete negligence" by the school, Arman's mother said, "We were not informed at the time of the incident, but only later, when they told us they were taking my child to the hospital... They say he fell and urinated on himself. But I am certain there was some water on the floor and he slipped. The school is hiding this. His class teacher came into the picture after repeated requests. She told us Arman fell in front of her. But I do not believe her. My son was not so weak. I am sure that there was water there. I have seen the body and his clothes were completely wet. He slipped," she alleged.<sup>9</sup>

There is some important eye opener cases of Ryan International case, Guddu case, and Navneet Prakash case. In most of these cases, teachers was negligent either by slping to stundet of in any other form of torturer. In this case one Pradyumna Thakur, a child of eight year old. It a most important question what should be the liability of the school authority in case of suicide committed b student nside the scjool campu. Schoo; has a moral as well as legal duty to take care of child n school. The parents of the children are having trust on the authority of the school. This trst shod be maintan by the school authority. Any breach shouls be a tort of

negligence. The school authority must do every needful efforts for the students safety in the school premises.<sup>10</sup>

#### **Judicial Decided Cases**

*Watson v. Haines*<sup>11</sup>-The negligence of school authorities. Negligence of school authorities may arise where the grounds or equipment are unsafe and a student is injured. School authorities have a nondelegable duty to students to ensure that reasonable care is taken for the safety of children at school.

*Richards v. State of Victoria*<sup>12</sup>- there is another important case of negligence and wrongful conduct. Although it is expected from a school teacher that he should take reasonable care to the safety of his students but it is just a mural duty no law particularly define this duty clearly. it is also not possible to watch each child all the day in school. Insurance company also not expected to take care of child before harm is caused. But on the other hand, an immature child need to receive care by teachers, school authority and nsurence company during school hours and when he is out of sight of his paents. He need to recive care from the act of other or his own at. Reasonable care and protection from injury is very necessary for a child in school. The schoolmaster should take care of him in school hour.<sup>13</sup>

#### **Secretery, B.N.M. Educational ... vs Kum Akshatha**<sup>14</sup>

This is important case in this line. In this case a 14 year old child was a student of B.N.M High Court Banglore. He was in class nine. During mid December 2006, the school organizes a school tour to north India including Delhi. The complainant accompanied with some teachers and some other student was part of this tour. On 24<sup>th</sup> December they reached to Delhi and complainant child got fever immediately after they reached to Delhi. She intimated the illness to his classmates and to his teachers. Her health been become deteriorate due to not receiving proper medical help. On 26<sup>th</sup> December the tour visited Ranthambhore National Park. During this visit, she still suffers fever, vomiting and more than twice she became unconscious. But no medical help was providing to her. The teachers who were in hotel tour did not take reasonable care to make medical arrangement for her. Twice, she became unconscious, firstly at 5 a.m. and then at 9.30 a.m. and she also vomited, due to high fever. This was second time when after fever and illness she could not get medical help. It was a long journey from ranthambor to Delhi. The return to Delhi in between her was unconscious many times. a tablet of Crosin was given to her. But that was not sufficient. According to him, she did not receive any medical checkups during a bus traveling from Ranthambore to Delhi. Due to high fever she bite her tongue many time and bleeding started due to which she lost her sense. Even till 31<sup>st</sup> December she was not taken to hospital and she suffer illness. She become unconscious several times when they went to airport in Delhi, airport authority did not allow her to take flight on account of her illness. Airport authority suggests taking her to hospital. She was admitted to

Fortis Hospital. After that the teachers call to her parents and inform about her health. Doctors of the hospital said that she might cure earlier if she comes early in the hospital. The doctors report Meningo E ncephalitis viral fever. it is very dangerous.<sup>15</sup>

The parents of complainant shifted her to max hospital. She remains in ICU for 23 days. She remains in hospital for 53 days. She was unconscious during her treatment in max hospital. More than 1 test and other checkups were conducted. Complainant's parents did stay in hotel and hospitals during the treatment. After 53 days she was not getting expected result in her health. The parents decided to shift her to hospital in Bangalore. The reason was obvious; complainant was not recovering even best efforts by the side of parents. Parents book ambulance flight from Delhi to Bangalore. The complainant shifted to Malya Hospital Bangalore. she provide many treatment and put her on ventilator. Complainant receives high treatment including steroids and medicines. After long treatment doctors decide to discharge her on the treatment at outdoor best possible treatment. Doctors were not getting good result in Indore treatment. Doctors suggested a treatment at home under the care of mother. She was in Malya hospital for more than 74 days. Her parent admitted her to several other hospitals like St. marthas hospital, NIMHANS Hospitals. Finally they shifted her to All India Institute of Speech and Hearing at Mysore for Cognitive Retrieving Therapy. She was there in this hospital for more than three months. During her hospitalization period, her parents was in hotels for her care and concern in the hospital.<sup>16</sup>

Despite extensive medical treatment provided to the complainant by her parents, her mental condition and IQ is said to be the level of a 21 months old child, though at the time of filing of the complaint she was aged about 16 years. She is said to be a bright and intelligent child who, besides securing distinctions in her studies, was also excelling in sports and cultural activities. She is stated to be bedridden and requiring constant care of others with no indication as to what would happen to her future life. Her movements have been severely restricted and she does not have sufficient strength in her truck and lower limbs. After that her condition was not good. She was not able to recognize her parents. Complainant cognitive faculty was disordered. Her condition was so worse that even her parents were not able facing her. She was bedridden. Her parents spend more than 35 lakhs in her treatment including all expenses. Her parents are middleman. They sell all their property and belonging for her treatment. his father spend everything in her treatment. at the time of filing this complain her parents was almost lost everything in her treatment.<sup>17</sup>

The suit was decided in favor of the complainant by the District forum. It was directed to the college to pay Rs. 8873798/- to her as expenses and compensation. Interest @9% was also attached with the amount. The amount is payable from the date of filing of the complaint. The school authority contended that they were taken due care but teachers did not take due care. Thus teachers made liable in

place of school. But this contention of the school authority was rejected by court. Supreme Court made it clear that the school authority is liable as an authority. The parents send their ward to school not to teachers care. Thus school negligent in taking care of her.<sup>18</sup>

In *M.S. Grewal & Anr. Vs. Deep Chand Sood & Ors.*<sup>19</sup>, a group of students, studying in standard 4th, 5th and 6th of a school were brought for a picnic on the bank of river Beas. Two teachers were deputed for escorting and taking due care of the students. The picnic was organized as a part of the extra-curricular activities of the students. In the post-lunch session, 14 students accompanying by two teachers went down the river for a considerable distance when the teachers suddenly discovered a deep Dibber. The teachers as well as the students fell into a great danger. The teachers could save themselves but the children got drowned in the river. On enquiry it was found that the students were allowed to stray downstream and enter into unchartered water. It was also found that the students had been instigated to race to the bushes on the western river bank downstream before they entered into the water of dibber and got drowned on account of the depth of the water exceeding their average height. The High Court having awarded compensation to the parents of the students who got drowned in the incident, the matter was taken to the Hon'ble Supreme Court, by way of a Special Leave. Dealing with what constitutes negligence, the Hon'ble Supreme Court, inter-alia observed as under:

The existence of law of a duty of care situation, i.e. one in which the law attaches liability to carelessness. There has to be recognition by law that the careless infliction of the kind of damage in suit on the class of person to which the claimant belongs by the class of person to which the defendant belongs is actionable; Breach of the duty of care by the defendant, i.e. that it failed to measure up to the standard set by law; A casual connection between the defendants careless conduct and the damage; That the particular kind of damage to the particular claimant is not so unforeseeable as to be too remote.<sup>20</sup>

*Ricketts Vs. Erith Borough Council and Another*,<sup>21</sup> held by Tucker J. teachers in school is equal as parents in home. He is expected the same care and concern as the parents. He is expected to take care of physical security of the child. Teacher is expected to due care during the child is under his charge.<sup>22</sup>

*Prince & Anr. Vs. Gregory and Anr.*<sup>23</sup> The minor child needs some extra special care than adult. It is really a matter of fact that some due care in special form should be taken while dealing with minor child. Strict care must be given to minor child. The liability in tort is strict in nature. It is a new form of negligence and a new tort for the child.<sup>24</sup>

In all these cases, it may be said that the master has not authorized the act. It is true, he has not authorized the particular act but he has put the agent in his place to do that class of acts and he must be answerable for the manner in which the agent has conducted himself in doing the business which it was

the act of his master to place him in. the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the masters benefit, though no express command or privity of the master be proved". In view of the above referred legal proposition approved and laid down by the Hon'ble Supreme Court, it can be safely said that the teachers accompanying the complainant and the other children, were negligent in performance of their duty and the appellants, they being the employers of those teachers, are vicariously liable for the loss, resulting from the said negligence and therefore, are liable to compensate the complainant.<sup>25</sup>

#### **Suggestions and Conclusion**

Negligent is a tort of not performing act which is expected to perform. Less care, breach of duty and harm is the essential of not performing act. In the course of school education, performing act of due care towards the child is most essential. In the course of employment the due care is clear. School authority is like master and teacher is like servant. Thus school authority is liable for the negligence of teacher. If a teacher appoint a student as classincharge any act of the student under the supervision of the teacher if found negligent, liability goes to school as vicariously liability. The main reason is that the school is primarily responsible for negligence of any type in school or under the authority of school. Thus, school is responsible for all compensation.

Negligence is a tort as well as a crime. It become more dangerous when it relates to child, particularly, when the school authority by neglect conduct of their staff cause harm to a child. The school authority would, thus, be liable in these faults of its servant for all compensations, expenses and all sums. Most of the cases highlighted above are connected with private schools but it does not excuse for state. States by heaving direct or indirect control over private school have a responsibility to check all the activities of private schools. The teachers and other staff of private schools should provide training for safety of children's.

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