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MEDCAL NEGLIGENCE: LEGAL AND ETHICAL ANALYSIS

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ABSTRACT

The topic of medical negligence has become a crucial one in terms of law, ethics, and healthcare delivery. The problem emerges if a healthcare practitioner does not deliver the necessary level of care within the scope of his/her specialty and as a result the patient suffers an injury or some form of harm. This research will analyze the concept of medical negligence from two angles legal and ethical. Legally, to prove negligence there needs to be evidence of duty of care, breach of that duty, causation and damage caused.

From an ethical perspective, medical negligence raises questions about some of the basic tenets of the practice of medicine, including those of beneficence, non-maleficence, respect for autonomy, and justice. Not abiding by these tenets not only affects patients' trust in the field of medicine but also erodes the integrity of the health profession as well. In addition to discussing the aspects of consent and communication that can aid in avoiding medical negligence, this paper also sheds light on some other contributing factors, such as the shortage of health care facilities, overwork, and lack of regulation.

In conclusion, this research highlights the importance of maintaining a balance between securing the rights of patients and giving due justice to healthcare professionals. It is important to improve laws and ethics in order to build a trustworthy and empathic healthcare system.

Keywords: Medical, Negligence, Law, Ethics, Healthcare

INTRODUCTION

Medical negligence stands out as one of the key points of interaction between the legal, ethical, and health-care delivery frameworks. It occurs when a health-care practitioner is negligent in the discharge of his duties leading to injury or damage to a patient. With the advancement and specialization in the field of medicine, the concept of medical negligence has become more complicated.

The notion of medical negligence is founded upon the wider legal theory of negligence in tort law. This is premised on the belief that each practitioner must exercise reasonable care for the benefit of his client/patient. In the health care sector, this duty takes an even higher degree of importance considering the vulnerability of patients and their reliance on health care practitioners. This duty, combined with damage to the patient, forms the grounds for negligence. The case of *Bolam v. Friern Hospital Management Committee* created the “Bolam Test,” whereby if the actions of the doctor were in conformity with the standards of practice recognized by a responsible group of medical practitioners, he would not be considered negligent. The laws relating to medical negligence have undergone a drastic change in India.¹ The courts have played an important role in determining liability in cases of medical negligence. A landmark case in this regard was the enactment of the Consumer Protection Act, 1986 whereby medical services were covered within the ambit of this legislation. As a result, the consumer can now take action against any deficiency in such medical services.³ *Indian Medical Association v. V.P. Shantha*⁴ decided that medical practitioners could be considered consumers under consumer protection legislation.

Definition of Medical Negligence

Medical negligence constitutes an important aspect of health care law. This refers to negligence committed by a medical practitioner which causes injury to a patient. Medical negligence falls within the ambit of professional negligence. It is a component of civil liability in tort law, but it may also be regarded as a crime in some aggravated circumstances. The development of the theory of medical negligence can be traced through cases, statutes, and ethics, particularly in the context of India.

¹ **Consumer Protection Act, 1986** → Consumer Protection Act, 1986 (Act No. 68 of 1986).
Indian Medical Association v V.P. Shantha → *Indian Medical Association v V.P. Shantha*, (1995) 6 SCC 651.
Bolam v Friern Hospital Management Committee → *Bolam v Friern Hospital Management Committee*, [1957] 1 WLR 582 (QB).

Medical negligence could be explained as “the lack of due care by a physician in providing services to a patient as would normally be exercised by a reasonably prudent physician. The level of care required from the doctor is not that of a supreme expert, but rather, that of a reasonably skilled physician exercising reasonable competence. This principle has been established in *Bolam v Friern Hospital Management Committee*, which states that a doctor is not negligent when the care he provides is considered acceptable by a responsible body of medical men.⁴ In India, this principle has been accepted and modified accordingly.

Negligence is made up of three important components from the standpoint of the law:

1. Duty of Care – There is a duty of care on the part of the physician in regard to the patient once the doctor-patient relationship is set into motion. This is the responsibility of properly diagnosing, treating, advising, and caring for the patient.

2. Breach of Duty – If the doctor violates the standard care expected, then there will be a breach of duty. This can happen by either doing nothing when he is supposed to do something, such as failing to carry out tests that should have been done, administering drugs improperly, or lacking the requisite skills to perform surgery.

3. Damages (Causation) – The third element of negligence requires that the plaintiff prove that there was an actual harm or injury caused by the breach of duty. In the absence of damages, mere negligence does not constitute any action.

Medical negligence can take different forms, among which include misdiagnosis, delayed diagnosis, surgical mistakes, wrong anesthesia, incorrect prescribing of drugs, lack of consent, or failing to treat the patient in time. The idea of informed consent has become very important in medical negligence.²

LEGAL ASPECTS OF MEDICAL NEGLIGENCE IN INDIA

In India, medical negligence is subject to laws and regulations that fall under civil law and criminal law. Recently, there have been some changes to the legal aspects of medical negligence, following the amendment of the Indian Penal Code (IPC) and Criminal Procedure Code (CrPC).

1. Tort Law

Conventionally, the issue of medical malpractice falls under tort law as a breach of civil law.

² *Bolam v Friern Hospital Management Committee* →
Bolam v Friern Hospital Management Committee, [1957] 1 WLR 582 (QB).

The main course of action for an injured individual is to receive compensation. The intention is not to punish the doctor but to compensate the individual for his/her suffering. It has been acknowledged by Indian courts that patients have the right to claim damages from medical malpractice.

2. Consumer Protection Act, 2019

Another important development concerning medical negligence is the classification of medical services as consumer law. The Consumer Protection Act of 2019 recognizes patients as “consumers” while healthcare professionals are regarded as “service providers.”⁵ Patients can make claims under consumer fora for “deficiency in service.”

In the landmark case of *Indian Medical Association v V.P. Shantha*, it has been held that medical services fall under consumer law.⁶ Furthermore, the provisions related to product liability, mediation, and consumer rights have been added in the 2019 Act.

3. Criminal Liability: IPC vs BNS & BNSS

In the case of serious negligence, criminal liability may be imposed on medical professionals. Previously, criminal liability was under the provisions of the Indian Penal Code of 1860. In recent years, as part of the reforms implemented in 2023.

2024, the IPC has been replaced by the Bharatiya Nyaya Sanhita of 2023 (BNS) while the procedure is governed by Bharatiya Nagarik Suraksha Sanhita of 2023 (BNSS).⁷ The previous Indian Penal Code had Section 304A for culpable homicide through negligence, along with Sections 337 and 338 for causing hurt and grievous hurt negligently respectively.³

- **Criminal liability for causing death** through negligence falls within the ambit of the BNS, which covers negligent acts causing death.
- **Criminal liability for causing injury** or grievous injury through rash or negligent acts remains within the purview of the BNS.

Indian Medical Council (Professional Conduct) Regulations, 2002

These regulations outline ethical behavior and professional conduct of doctors. Violations can result in sanctions.

³ **Consumer Protection Act, 2019** → Consumer Protection Act, 2019 (Act No. 35 of 2019).

Indian Medical Association v V.P. Shantha → *Indian Medical Association v V.P. Shantha*, (1995) 6 SCC 651.
Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023 → Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023.

Judicial Approach and Leading Doctrines

Indian courts have been instrumental in the development of the legal framework governing medical negligence.

Standard of Care: The Bolam Test

The “Bolam Test” is frequently employed to ascertain medical negligence. This test posits that if the conduct of a physician conforms to a practice considered appropriate by a body of responsible medical practitioners, then the physician cannot be considered negligent. However, in India, the courts have modified this doctrine so that the opinion of professionals is both reasonable and logical.

Informed Consent

The courts have stressed the need for informed consent. The patient should be fully aware of the risk, alternatives, and ramifications associated with the treatment. Lack of informed consent can lead to negligence.

Difference between Error of Judgment and Negligence

The courts are aware that not all medical mistakes qualify as negligence. An error in judgment does not warrant punishment unless the standard of care has been violated.

Medical Negligence – Ethical Aspects

1. Beneficence Principle

Under the principle of beneficence, a physician is obligated to act in the best interest of the patient by ensuring that he/she remains healthy or receives proper medical care. Negligence violates the principle of beneficence, since it causes injury instead of fostering wellness. A physician who does not identify a disease condition correctly or delays giving medical attention neglects his/her ethical duty.

2. Principle of Non-Maleficence

The principle of non-maleficence, which states, “do no harm,” is one of the key principles in medical ethics. Any form of medical negligence, whether active or passive in nature, goes against this core principle. For example, providing patients with the wrong drugs or surgery, when the doctor lacks enough competence, may result in grave consequences.⁴

⁴ **Samira Kohli v Dr. Prabha Manchanda** → *Samira Kohli v Dr. Prabha Manchanda*, (2008) 2 SCC 1.

3. Patient Autonomy

Patient autonomy focuses on the individual's right to be well-informed about their healthcare choices. This necessitates that the physician must furnish all relevant details regarding the diagnosis, risk factors, and possible modes of treatment. In cases where negligence is involved, it could be due to poor communication or lack of obtaining informed consent. The failure to do so would not only violate ethical principles but could constitute a criminal offense too.

4. Justice

The concept of justice implies that there should be equality and fairness in providing health care services. Medical malpractice can often lead to injustice for disadvantaged groups, which includes poor economic classes, rural people, and those who do not have knowledge about their legal rights. The idea of ethical justice involves making sure that all people get equal access to good health care.

Cause of Medical Negligence

Medical negligence comes as a result of a range of both system failures and personal issues. It is important to note some causes that will help identify possible ways to prevent medical negligence.

- **Overworked Medical Professionals:**

This is a common cause especially in countries such as India due to the high doctor-patient ratio resulting in an overloaded workload.

- **Poorly Equipped Hospitals:**

Poor equipment in hospitals makes the staff unable to provide quality services and end up being careless in their work.

- **Poor Skills or Training:**

Professionals without proper training and education can end up committing mistakes that would be considered medical negligence.

- **Poor Communication:**

Inadequate communication between physicians and their patients, or even amongst the healthcare providers, is one of the main factors behind healthcare mistakes. In case important information is not communicated properly, patients could receive inappropriate treatment.

Bharatiya Nyaya Sanhita, 2023 → Bharatiya Nyaya Sanhita, 2023 (Act replacing IPC provisions on criminal negligence).

- **Medical Care Commercialization:**

With growing commercialization of the healthcare industry, more focus is being placed on making profits than on caring for the patient's health.

- **Exhaustion and Stress:**

Healthcare employees suffer from exhaustion because of excessive stress at work.

The factors described above clearly indicate that negligence does not occur intentionally most of the time.

Effects of Medical Negligence

1. Effects on the Patient

Negligence by physicians can have disastrous effects on the patient and the family of the patient. It could lead to injuries, disability, or even loss of life. Besides physical injuries, the patient can experience emotional and mental stress. Further, the expenses incurred in rectifying the mistake and the subsequent legal process may be too much to bear, especially for those who are economically disadvantaged.

2. Effect on Healthcare Practitioners

For medical practitioners, claims of negligence can bring about dire repercussions for both their career and their personal lives. These repercussions include damage to their reputation, revocation or suspension of their medical license, and criminal punishment according to the Bharatiya Nyaya Sanhita, 2023.⁵

3. Effects on the Healthcare System

Systemically, medical malpractice creates a lack of faith in the healthcare system. The more cases of malpractice that occur, the more legal cases there are, adding another strain on the judicial system. Another effect is the practice of "defensive medicine," in which doctors order tests and procedures not for the benefit of their patients but to protect themselves from legal consequences.

Defensive Medicine and Consequences

Defensive medicine is a practice whereby physicians and healthcare providers change their clinical practices mainly to protect themselves from the possibility of litigation. It is an important issue that has become increasingly prevalent owing to an increase in medical

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1. ⁵ **Bharatiya Nyaya Sanhita, 2023** → Bharatiya Nyaya Sanhita, 2023 (Act replacing IPC provisions on criminal negligence).
 2. **Bharatiya Nagarik Suraksha Sanhita, 2023** → Bharatiya Nagarik Suraksha Sanhita, 2023 (Act replacing Code of Criminal Procedure, 1973).

negligence suits coupled with greater patient awareness of legal options. In most cases, doctors may end up ordering too many tests or referring patients for unnecessary procedures out of fear of litigation.

Defensive medicine, although offering a shield against legal challenges to health-care professionals, has certain disadvantages. Firstly, it brings about increased costs associated with medical treatment that are detrimental both for the individual and the health-care system as a whole. Secondly, it involves subjecting a patient to unnecessary procedures, which also pose dangers on their own. Thirdly, it destroys the foundation of trust between a doctor and a patient and replaces a concern for the latter's wellbeing with self-protection.

OBJECTIVES OF THE STUDY

This study is intended to understand the various dimensions of medical negligence from legal and ethical standpoints. The objectives include:

1. Understand the definition and ambit of medical negligence.
2. Understand the legal perspective towards medical negligence.
3. Study ethics in medicine
4. Study the contribution made by healthcare facilities and professionals towards prevention of medical negligence
5. Measures to minimize medical negligence

Statement of the Problem

Negligence in the field of medicine is a critical issue in the realm of health care that poses many legal and ethical dilemmas. Even though the profession of medicine is one of honor, cases of negligence, either by failure to provide due diligence or skillful practice, have caused great suffering among patients. This problem affects not just the health of the patients but their psyche as well.

In terms of the law, proving medical negligence can be a difficult process. There are issues such as proving breach of duty, causation, and harm that require a thorough understanding of the medical procedures, which are not necessarily always available or easy to understand.² The difference between the knowledge and expertise of physicians and those of their patients is another barrier to seeking justice. There are even legal tests that have been found to favor physicians over patients, such as the Bolam test.

LITERATURE REVIEW

Ghosh, S. (2017)

Ghosh analyzes the relationship between medical negligence and consumer law in India. This research paper focuses on the role of the Consumer Protection Act in allowing patients to pursue redressal for inadequate medical care. The study outlines various judicial interpretations that have established the responsibility of healthcare providers. Moreover, the paper brings up issues such as delayed justice, absence of medical knowledge in consumer courts, and increasing commodification in the healthcare sector.⁶

Arvind, K. (2015)

This work examines the ethical issues concerning the interaction between doctors and their patients and the relation of these ethical concerns to medical negligence. The paper stresses the significance of such ethical principles as trustworthiness, confidentiality, and informed consent in medical practice. It is emphasized that unethical conduct usually gives rise to legal conflicts and undermines patients' trust. The author considers how professional ethics can prevent negligence.

Das, S., & Sengupta, A. (2019)

Das and Sengupta provide insight into the ethical perspective of medical negligence in the Indian context. The article brings to light several concerns including professional malpractice, absence of accountability, and commercialization of medicine. They stress the significance of ethical practices and regulatory authorities for ensuring quality services. According to Das and Sengupta, it is crucial for healthcare workers to be ethically aware to avoid medical negligence.

Basu, S. (2020)

In this paper, Basu explores the criminal responsibility of doctors for cases of medical negligence in India. He analyses provisions within the Indian Penal Code regarding criminal negligence and its interpretation by the courts. He emphasizes the importance of separating criminal liability from civil liability to prevent unnecessary harassment of doctors. This paper is very important in the context of increasing instances of doctors being criminally prosecuted.

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1. ⁶ **Bolam v Friern Hospital Management Committee** → *Bolam v Friern Hospital Management Committee*, [1957] 1 WLR 582 (QB).
 2. **Dr. Laxman Balkrishna Joshi v Dr. Trimbak Babu Godbole** → *Dr. Laxman Balkrishna Joshi v Dr. Trimbak Babu Godbole*, AIR 1969 SC 128.
 3. **Achutrao Haribhau Khodwa v State of Maharashtra** → *Achutrao Haribhau Khodwa v State of Maharashtra*, (1996) 2 SCC 634.

Chatterjee, P. (2021)

In this article, Chatterjee explores the significance of informed consent in relation to medical negligence. The article looks into the obligations and ethics related to the acquisition of valid informed consent. There is an illustration of how neglecting the issue of obtaining informed consent can result in legal liabilities. In his conclusion, Chatterjee posits that the process of obtaining informed consent should not be viewed as a legal process only; it is a patient's basic right.

Methodology

Research Design:

This study employs a doctrinal research design where the examination of existing laws, judicial decisions, and moral philosophy concerning medical negligence will be carried out. Unlike other methods such as the field survey and interview approach, this type of research design focuses on secondary sources of information.

Sources of Data

This research will depend on secondary sources of data. They include:

Legislative provisions like the Consumer Protection Act, 2019 and Bharatiya Nyaya Sanhita, 2023.

Judicial decisions made by the apex court and High courts like those of the cases Bolam v. Friern Hospital Management Committee and Jacob Mathew v. State of Punjab.

Academic discussions and scholarly articles that analyze the legal and moral issues associated with medical negligence.

Analytical Framework

The research methodology will be anchored in the following framework:

Legal Perspective –

Review of relevant legislation, doctrine of informed consent, and judicial interpretation of the Bolam test.

Moral Perspective –

Ethical standards expected of medical practitioners.

These will ensure that the researcher explores both the legal liabilities and ethical responsibilities of medical practitioners.

Research Methodology

The current research uses qualitative analysis which is interpretive in nature. Each piece of case law and legislation is analyzed comprehensively, and implications are drawn in light of ethical standards. The method is designed in such a way that clarity and coherence are given importance while conducting the legal analysis.

HYPOTHESIS:

The hypotheses on which the research is being conducted are the following:

1. H1: A significant disparity between the legal standards and medical practice exists, which increases negligence.
2. H2: Negligence by medical practitioners due to non-observance of ethics is significant.

Scope and Limitations

Scope of the Study

The current research revolves around the idea of medical negligence in the context of the legal and ethical systems prevailing in India. The analysis of responsibilities and duties of doctors shall be done taking into account judicial rulings, statutory rules, and ethics in relation to medical practice.

In the case at hand, the scope of study shall be restricted to the laws which are operational in India and are governed by certain statutes including the Consumer Protection Act, the Indian Penal Code, and other directives issued by the regulating authorities for the healthcare profession, such as the National Medical Commission. Judicial decisions made in the Indian Supreme Court and High Courts shall also form an integral part of the study.⁷

Study Limitations

Even though the study has taken a thorough doctrinal approach, some limitations of the study include:

1. Limited to Indian Legal System

This study focuses solely on the Indian legal system. It does not conduct any comparative study of any other legal systems, for instance, UK or USA. Hence, global

⁷ *Paschim Banga Khet Mazdoor Samity v State of West Bengal* → *Paschim Banga Khet Mazdoor Samity v State of West Bengal*, (1996) 4 SCC 37. (Recognized the right to emergency medical treatment as part of Article 21.)

Indian Medical Association v V.P. Shantha → *Indian Medical Association v V.P. Shantha*, (1995) 6 SCC 651. (Established that medical services fall under consumer protection law.)

insights into the issue of medical negligence have not been considered in this study.

2. Secondary Data-Based Study

This study is based only on secondary data. This includes books, judgments, law journals, and reports but no primary data which might consist of an interview with a medical practitioner, patient or lawyer.

3. Lack of Empirical Study

This study fails to utilize any empirical approach in the form of questionnaires, fieldwork, or statistics. Hence, there is a lack of empirical data that could have provided quantitative evidence regarding the incidence or impact of medical negligence cases in India.

4. Dynamism of the Law

There is an ongoing development in the law of medical negligence in the light of judicial interpretations and statutory amendments.

5. Subjective Ethics

Sometimes ethical considerations in the practice of medicine may be subjective depending on the situation at hand. The perception of ethical breaches may vary among different individuals, limiting the universality of the conclusions in this paper.

Types of Medical Negligence

Medical negligence may be subdivided into several groups according to the nature, severity, and impact of the breach. These include:

Civil Negligence

Civil negligence pertains to an act of negligence committed by a healthcare practitioner, which leads to injury of the patient. In this case, the victim is allowed to sue for compensation.

Under Indian law, civil negligence cases are usually dealt with consumer laws, whereby patients become consumers, and the services provided by them fall under service provision. An important case in this respect is Indian Medical Association vs. V.P. Shantha, wherein it was decided that medical services fall under consumer laws.

The four elements that should be established for civil negligence are as follows:

- Duty of Care
- Breach of duty of care
- Cause in Fact
- Harm suffered

The test is based on the concept of "Reasonable Medical Practitioner" under the Bolam Test.⁸

Criminal Negligence

Criminal negligence refers to a situation where a doctor's actions are so reckless and highly negligent that he commits an act worthy of criminal charges. Criminal negligence is covered in laws such as section 304A of the Indian Penal Code relating to deaths caused by negligence. The Supreme Court, in *Jacob Mathew v. State of Punjab*, has ruled that for criminal negligence to exist, there must be a high level of negligence. It must not merely be an error in judgment or lack of diligence.

Criminal negligence includes:

- High level of negligence
- Recklessness or disregard for the safety of life
- Proximate cause of injury or death

Punishments include jail, fine, or both.

Gross Negligence

Gross negligence is a highly irresponsible act of negligence that indicates an outrageous indifference toward the safety and life of the patient. This type of negligence is far more serious than regular negligence and constitutes a gross breach of duty.

Gross negligence may occur in the following situations:

- Conducting surgery while intoxicated with alcohol
- Forgetting to remove surgical tools from the patient's body after performing surgery
- Failing to recognize life-threatening symptoms, resulting in the death of the patient

Contributory Negligence⁹

When the victim himself is responsible for his injury through his own negligence or not following the medical instructions, it is referred to as contributory negligence.

⁸ **Indian Medical Association v V.P. Shantha** → *Indian Medical Association v V.P. Shantha*, (1995) 6 SCC 651. (Landmark case holding medical services within the ambit of consumer law.)

Bolam v Friern Hospital Management Committee → *Bolam v Friern Hospital Management Committee*, [1957] 1 WLR 582 (QB). (Introduced the "reasonable medical practitioner" test.)

⁹ **Indian Penal Code, 1860 – Section 304A** → Indian Penal Code, 1860, § 304A. (Provision dealing with causing death by negligence.)

Jacob Mathew v State of Punjab → *Jacob Mathew v State of Punjab*, (2005) 6 SCC 1. (Supreme Court ruling that criminal negligence requires a high degree of negligence, not mere error of judgment.)

Examples:

- Non-compliance with prescribed drugs
- Hiding his/her medical background
- Non-compliance with post-surgical instructions

Here, the liability of the doctor will be diminished in proportion. Contributory negligence is accepted by Indian courts as a defense.

Comparative Knowledge

Type of Negligence	Nature of Liability	Key Feature
Civil Negligence	Compensation	Breach of duty, causing harm
Criminal Negligence	Punishment	Reckless or Gross Behavior
Gross Negligence	Civil & Criminal	Extreme lack of care
Contributory Negligence	Shared Liability	Patient partly responsible

PATIENT RIGHTS VS. AUTONOMY OF THE DOCTOR

One of the crucial aspects of negligence laws that governs the relationship between physicians and patients pertains to the need to strike a balance between the rights of the former and the autonomy of the latter. While it is essential to ensure that patients have the right to obtain quality medical services, it is equally important for physicians to be free from excessive fear of repercussions when making their clinical decisions.

The possibility of too much litigation and criminality in medical mistakes can result in a “chilling effect” on the field of medicine, where doctors may become reluctant to perform complicated and lifesaving surgeries. Such a phenomenon is especially applicable within the context of the Bharatiya Nyaya Sanhita, where negligent behavior leading to harm or fatality remains punishable. However, it requires meticulous judicial discretion to differentiate between gross negligence and an honest mistake of judgment. At the same time, the provisions of the Bharatiya Nagarik Suraksha Sanhita, serve to guarantee justice in investigation and prosecution of medical personnel.¹⁰

¹⁰ **Spring Meadows Hospital v Harjot Ahluwalia** →
Spring Meadows Hospital v Harjot Ahluwalia, (1998) 4 SCC 39.

COMPARATIVE APPROACH

In highly advanced legal regimes like the USA and UK, laws dealing with medical negligence have better structure and institutional backing. In such nations, there exists a sound mechanism of medical malpractice insurance that not only safeguards healthcare professionals from being driven into bankruptcy but also guarantees compensation to the victims. Furthermore, the matter is usually entrusted to specialized courts and tribunals, resulting in faster and more efficient resolution.

Clinical guidelines and protocols are essential components of such medical negligence systems. For example, following the clinical treatment guidelines may help prove that appropriate care was provided. In addition, alternative dispute resolution procedures, including mediation and arbitration, are often used to resolve disputes quickly and effectively.

PROTECTIVE METHODS AND SUGGESTIONS

1. Enhancement of Medical Training

The process of constant training and education for medical practitioners is crucial to ensuring that all the professionals stay up-to-date with the most recent information on medical science. The inclusion of legal and moral knowledge in medical studies can assist professionals in realizing their obligations and prevent negligence.

2. Upgrading of Health Care Facilities

Often, medical negligence is caused by factors other than human mistakes; these include poor hospital management and equipment, lack of trained personnel, and other problems.

3. Encouraging Ethical Sensitivity¹¹

Medical ethics ought to form the bedrock of medical practice. Doctors may use the principles of beneficence, non-maleficence, autonomy, and justice when making decisions that benefit their patients. The hospital's ethical committee could also come in handy.

4. Good Communication

Doctors should ensure effective communication to avoid disputes and misunderstandings. Informed consent, risk assessment, and good doctor-patient

¹¹ **Bharatiya Nyaya Sanhita, 2023** →
Bharatiya Nyaya Sanhita, 2023 (Act replacing IPC provisions on criminal negligence).

relations can help minimize negligence claims. Many malpractice lawsuits stem not only from medical mistakes but also from poor communication skills.

Reform in Law

The rising number of medical negligence cases and the increased complexity of the present-day health-care systems calls for adequate legal reforms that will guarantee swift justice, proper determination of liability, and protection of all concerned parties. In India, some of the new legislative initiatives include the enactment of Bharatiya Nyaya Sanhita, 2023 and Bharatiya Nagarik Suraksha Sanhita, 2023 which have substituted the old colonial-era criminal law.

Among the most important proposed reforms is the formation of tribunals for dealing with matters relating to medicine. Medical negligence cases are often replete with intricate and technical issues, which may be hard for ordinary courts to understand and decide upon effectively. Tribunals consisting of judges and experts from the medical field will help resolve such disputes efficiently. It will also take away some of the work of civil courts and ensure that the case is decided not only legally but also medically. This issue has been addressed by the Supreme Court in its verdict of *Jacob Mathew v State of Punjab*, where it stressed the significance of medical opinion in deciding criminal negligence.

Accountability and Transparency

Accountability and transparency are essential for any effective and ethical healthcare system. Healthcare facilities need to establish systematic processes for monitoring, recording, and analyzing medical errors. In addition to helping patients stay safe, such processes enable facilities to learn from their mistakes and prevent future errors.

One of the main actions needed to achieve this goal is to introduce error reporting procedures in healthcare facilities. They should allow healthcare workers to report their mistakes without being punished for them. This helps create an open environment at the facility. Anonymous reporting can further contribute to increasing participation and improving accuracy.

Analysis of Medical Negligence

Medical negligence happens where a health practitioner fails to offer his/her patients the proper standard of care that is normally expected of him/her and as a result, his/her patients suffer any form of harm. Simply put, medical negligence is where the doctor or hospital does not offer the care that would be offered by an average doctor in the same situation.

The ambit of medical negligence is wide. It encompasses not only surgical accidents,

incorrect prescription, and malpractice but also includes diagnostic errors, delay in treating the patient, lack of informed consent, poor documentation, or even negligence resulting from systemic failures such as staff shortages or equipment failure.

Legally, medical negligence typically requires that three main elements be established:

- **Duty of Care:** There existed a duty on the part of the healthcare provider towards the patient.
- **Breach of Duty:** There was a failure on the part of the healthcare provider to fulfill their duty.
- **Causation and Damage:** Such failure resulted in damage to the patient.

Beneficence: The moral obligation to do good to benefit patients. Not meeting this consideration could be due to neglect or faulty judgment.

Autonomy: Patient right to make fully informed choices in relation to their health care. Violation could occur if there are inadequate explanations and informed consent issues.

Justice: Each patient deserves equitable treatment. Malpractice and negligence can lead to an inequitable outcome.

- Some reasons due to which medical negligence may occur are as follows:
 - Crowded healthcare facilities coupled with workload resulting in stress and lack of concentration.
 - Shortage of skilled personnel, which could cause errors in treatment of a patient.
 - Lack of appropriate training or knowledge about new medical techniques.
 - Systematic reasons such as poor documentation, outdated equipment, or lack of oversight.

Certainly, there are legal and ethical mechanisms that ensure medical personnel will be held accountable. There are civil law and criminal law as well as laws protecting consumers that allow patients to get redress. There are also ethical standards encouraging doctors to prioritize their patients' health. Nevertheless, these mechanisms have their shortcomings:

- Legal process tends to be long and complex, not mentioning its high costs.
- Medical negligence is hard to prove.
- Health facilities can lack regulation.

Case Laws :

1. Bolam v. Friern Hospital Management Committee

Facts of the Case

Mr. Bolam, a mental health patient, underwent electroconvulsive therapy (ECT). The doctor did not administer muscle relaxants or use restraints during the procedure. As a result, the patient suffered serious fractures and filed a claim for medical negligence.

Issue

Whether the doctor was negligent for not taking precautionary measures during the treatment.

Judgment

The court held that the doctor was not negligent, as his actions were in accordance with a practice accepted by a responsible body of medical professionals.

Legal Principle (Bolam Test)

A medical practitioner is not negligent if their conduct aligns with a recognized and accepted medical practice.

The existence of differing medical opinions does not automatically establish negligence.

Significance

Established the standard of care in medical negligence cases.

Widely applied in India with certain modifications.

2. Jacob Mathew v. State of Punjab

Facts of the Case

A patient died in a hospital allegedly due to the non-availability of an oxygen cylinder. The doctors on duty were accused of causing death by negligence and were prosecuted under criminal law.

Issue

Whether the doctors could be held criminally liable for negligence leading to the patient's death.

Judgment

The Supreme Court held that the doctors were not criminally liable unless there was proof of gross negligence. The Court emphasized the need for caution before prosecuting medical professionals.

Legal Principle

Criminal negligence requires a very high degree of negligence (gross negligence).
Mere lack of care, error of judgment, or accident does not amount to criminal liability.
Courts must obtain independent medical expert opinion before initiating prosecution.

Significance

Differentiates between civil and criminal negligence.
Protects doctors from unnecessary harassment.
Ensures a balance between patient rights and medical autonomy.

Discussion

The matter of medical negligence is a very significant one because it falls between the areas of law, ethics, and medical practice. It poses several important concerns regarding liability, patient safety, and the effectiveness of the current laws and institutions. According to law, a case of negligence happens when there was not enough care and skill put forth by a medical professional compared to what a competent practitioner would have used in the situation.

The courts have an important part to play in assessing cases of medical negligence based¹² on well-established tests of law. These tests include consideration of whether there was any duty of care, whether this duty was breached, and whether there was a cause-and-effect relationship between the breach and the resulting damage. The courts of many countries, including India, tend to give great weight to the medical experts' opinion on whether the doctor has committed any act which has diverged from professional standards.

The ethical angle indicates that negligence within the context of the medical field involves a major breach of the ethical foundation of medicine. The non-maleficence principle demands that the healthcare professionals ensure that no harm is inflicted on patients. Non-maleficence is breached in situations of negligence since the patients are harmed. Additionally, the

¹² **Consumer Protection Act, 1986** →
Consumer Protection Act, 1986 (Act No. 68 of 1986).
Bolam v Friern Hospital Management Committee →
Bolam v Friern Hospital Management Committee, [1957] 1 WLR 582 (QB).

beneficence principle mandates the healthcare professionals to conduct themselves in a manner that promotes the well-being of the patients.

Observation/Findings

The research on medical negligence brings up several important observations which shed light on both growing problems and the critical need for changes within the medical and legal sectors.

1. Increase in Number of Medical Negligence Cases

One of the key observations made during the research on medical negligence is an increase in the number of reported cases of medical negligence. There could be many reasons for the increase in the number of negligence cases including better patient awareness regarding their rights, availability of legal assistance, as well as media attention to such cases. Today, patients are more aware and ready to fight back against medical malpractice, hence more number of medical negligence cases being reported. 3. Many Cases of Negligence Involve Ethical Misconduct.

A great number of cases of medical negligence have been reported to be associated with breaches of ethical requirements. Such problems are linked to such violations as lack of consent, failure to make a diagnosis correctly, failure to make a correct diagnosis in time, prescribing incorrect treatment, and lack of proper follow-up care. It is clear that the importance of ethics in medical practice must be emphasized. problem with the quality of healthcare services provided.

2. Absence of Standardized Practices

Another significant point that needs attention is the fact that there are no standardized practices of medical services among different health care institutions. The differences between infrastructures, resource availability, and professional competence lead to inconsistent levels of medical treatment services provided.

3. The Problem of Delayed Justice and Complicated Legal Procedure

It is common practice for the process of resolving disputes related to medical malpractice to be long and convoluted. It can be hard for the victims to collect necessary evidence and find an expert witness, which complicates their work and discourages them from filing a lawsuit,

leading to injustice. Therefore, special courts are required to deal with cases like this one.¹³

4. Necessity of Prevention

It should be noted that the findings have highlighted the significance of preventive measures to decrease the number of instances of malpractice. These involve better medical training for healthcare workers, implementation of standardized treatment guidelines, improved infrastructure of medical facilities, and increased cooperation between physicians and their patients.

Conclusion

Medical negligence is an intricate problem that consists of legal and moral aspects. Whereas law serves to provide a system of justice for patients and their families through compensation, ethics dictate medical practitioners' behavior and help avoid any negative consequences. The growing frequency of medical negligence cases requires a compromise between the two approaches.

The law in India has undergone tremendous changes, especially when considering the enforcement of consumer protection legislation in the field of medical services. Yet, problems arise in implementing these laws and achieving justice and ethical practice in medicine.

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¹³ **Canterbury v Spence** →

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