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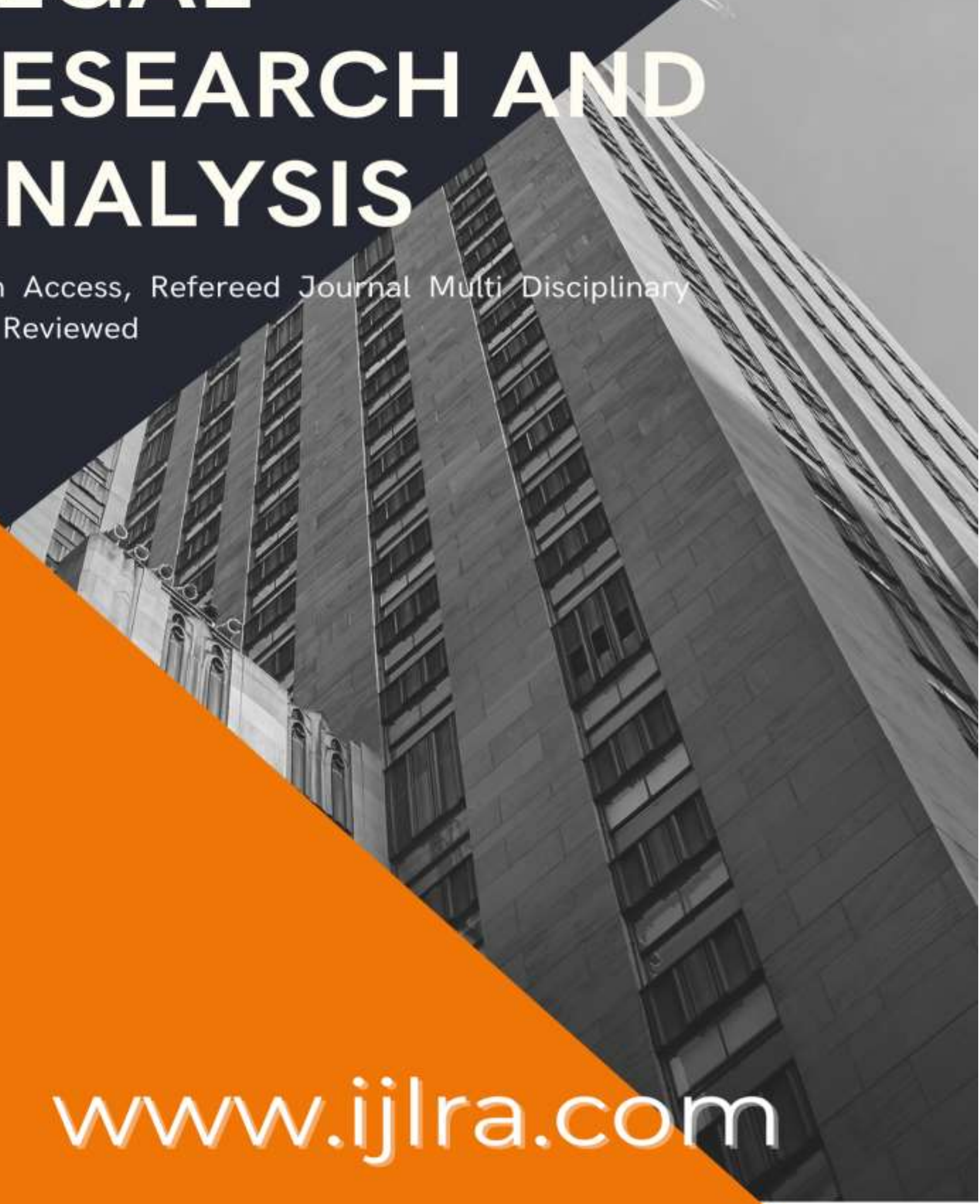

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LEGAL AND ETHICAL ISSUES IN GENETIC TESTING UNDER TORT LAW

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ABSTRACT AND INTRODUCTION

Through genetic testing modern medicine gains essential information about hereditary diseases which leads to customized therapeutic choices and reproductive choices. Genetic testing produces benefits yet it introduces substantial legal and ethical problems specifically according to the principles of tort law. Issues such as medical negligence, wrongful birth and wrongful life claims, breaches of confidentiality, and genetic discrimination present complex legal dilemmas.

The document investigates how genetic testing influences tort law and its associated fundamental ethical and legal challenges. The legal system addresses genetic misdiagnosis negligence claims together with matters about wrongful birth and life litigation and breach of confidentiality and genetic discrimination issues. The analysis examines legal responses toward genetic testing disputes which follow ethical foundations of autonomy and privacy and equity principles.

Advantages and disadvantages of genetic information

People who receive their genetic information can achieve several advantages.
Genetic information often reveals details about diseases together with illnesses and health status in a person.

Genetic information leads individuals to develop increased awareness about their health condition.

A person has the ability to discover information about their ancestors together with their distant family members through genetic data.

Individuals have the opportunity for their private details to serve medical study purposes.

Early discovery of a medical illness enables patients to take better preventive approaches for treatment. “¹”[1]

Genetic Testing and Tort Law

Through tort law individuals can obtain formal relief from damages suffered in cases of medical malpractice alongside negligence and breaches of privacy. The role of tort law in genetic testing is essential to handle the following conditions:

Healthcare professionals make errors in both testing genetic materials as well as analyzing test results.

Medical practitioners deliver incorrect or unfinished genetic test information to patients and prospective parents.

Genetic information that is classified as sensitive gets released to unauthorized entities.

A. Medical Negligence in Genetic Testing

As healthcare providers fail to deliver appropriate standard of care during genetic testing they become responsible for medical negligence scenarios. Proof of negligence requires four essential components which must be established.

1. As a medical professional the provider maintained responsibility towards patient care.
2. Genetic test results suffered from an unacceptable breach of professional responsibility during execution or analysis or transmission to patients.
3. The patient endured damage because of this breach.
4. The patient experienced damages because of the violation that occurred. “²”[2]

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[1] Aslam, Mohd Aqib. "Genetic Privacy in India and Its Present Status." *Legal Service India*,

[2] John Murphy, *Street on Torts* (14th).

1. Duty of Care in Genetic Testing

Healthcare providers are required to operate genetic tests with precision and deliver test outcomes with clear understanding to their patients. Healthcare providers might need to extend their duty of care from patients to their family members who face genetic risks of developing inherited conditions.

According to "*ABC v St George's Healthcare NHS Trust [2020] QB 148,*" the Court of Appeal evaluated whether medical professionals needed to reveal genetic test results to patients 'daughters who faced Huntington's disease risk risks but were unaware. Healthcare providers possess the duty to warn potentially affected relatives under specific situations according to court decisions.³[3]

2. Breach of Duty and Causation in Genetic Testing

Professional medical misconduct takes place when healthcare personnel deliver inadequately performed medical care which includes:

- Misinterpreting genetic test results.
- Provision of inadequate genetic counseling stands as one of the main medical errors.

Medical professionals must maintain the practice of not concealing vital genetic risk details.

In *Molloy v Meier* 679 NW 2d 711 (Minn. 2004) The court in upheld a legal liability charge against a geneticist who did not detect a genetic issue in a child during diagnosis. The incorrect diagnosis prevented the parents from making important decisions about their childbearing which led to successful negligence proceedings. "⁴"[4]

B. Wrongful Birth and Wrongful Life Claims

The delivery of an affected child with a serious genetic condition results from improper genetic testing or counseling practices by physicians.

Wrongful Birth becomes a claim when medical negligence prevents parents from deciding about reproduction. "⁵"[5]

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[3] ABC v St George's Healthcare NHS Trust [2020] QB 148.

[4] *Molloy v Meier* 679 NW 2d 711 (Minn. 2004).

[5] Emily Jackson, *Medical Law: Text, Cases, and Materials* (5th edn, Oxford University Press 2019) 278.

When genetic counselors fail to perform adequately children can claim birth with life-threatening conditions which could have been prevented through appropriate genetic counseling. “⁶”[6]

In “Harriton v Stephens (2006) 226 CLR 52”’ the Australian High Court dismissed wrongful life claims because judges could not establish proper value comparisons between life with severe disabilities and non-existence “⁷”[7]. Parents successfully obtained compensation for child expenses after a health board provided incorrect sterilization instruction in “*McFarlane v Tayside Health Board [2000] 2 AC 59*.” “⁸”[8]

C. Breach of Confidentiality and Privacy in Genetic Testing

The disclosure of genetic information without authorization leads to three major consequences which include discrimination and also causes psychological problems and financial damages. Genetic testing breaches of confidentiality create liability under statutes of the tort law.

1. Doctor-Patient Confidentiality in Genetic Testing

The ethical need for medical practitioner confidentiality meets its match through the distinctive problems genetic information presents. Do physicians have the responsibility to inform relatives of risk when patients deny such notification?

According to “*Tarasoff v Regents of the University of California (1976) 17 Cal. 3d 425”* the courts established a professional standard that requires healthcare providers to warn about foreseeable threats affecting third parties. The psychiatric origins of this ruling now shape discussions about medical providers revealing genetic risks to blood relatives. “⁹”[9]

2. Genetic Discrimination and Liability

When genetic data gets released without consent it enables discrimination to occur throughout employment situations and insurance policies and healthcare systems. The U.S. Genetic Information Nondiscrimination Act (GINA) exists to stop genetic discrimination in response to discrimination concerns. “¹⁰”[10]

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[6] Ibid.

[7] *Harriton v Stephens* (2006) 226 CLR 52.

[8] McFarlane v Tayside Health Board [2000] 2 AC 59.

[9] Tarasoff v Regents of the University of California (1976) 17 Cal.3d 425.

[10] Genetic Information Nondiscrimination Act (GINA) 2008.

The court evaluated if Mutual of Omaha Insurance Company rightfully discriminated against policyholders through denial of coverage based on genetic history at “*Doe v Mutual of Omaha Insurance Co. 179 F. 557 (7th Cir. 1999)*.” This particular case showed how genetic information could be misused by those in control of it. “¹¹”[11]

Ethical Issues in Genetic Testing and Tort Law

The practice of genetic testing generates multiple ethical concerns about autonomy alongside privacy issues as well as justice-related problems.

A. Autonomy and Informed Consent

Genetic testing requires patients to receive adequate knowledge for making proper decisions. The requirement for valid consent depends on the complete explanation of the following three elements:

- The purpose and limitations of genetic tests.
- The risks of false positives or negatives.
- Possible consequences of test results.

According to the court in *Canterbury v (1972) 464 F.2d 772* patients need to receive comprehensive information about medical dangers before making decisions about genetic testing. “¹²”[12]

B. Equity and Access to Genetic Testing

The accessibility of genetic testing must be available to everyone despite the existence of healthcare system inequalities. Some individuals are barred from getting genetic services by social economic conditions which leads to ethical dilemmas about healthcare justice.

The healthcare system of the University of California faced ethical scrutiny in “*Moore v. Regents of the University of California (1990) 51 Cal.3d 120”* because patients

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[11] Doe v Mutual of Omaha Insurance Co. 179 F.3d 557 (7th Cir. 1999).

[12] 11 Canterbury v Spence (1972) 464 F.2d 772.

questioned their rights to their genetic information when it was commercialized. " ¹³"[13]

C. **Confidentiality vs. Duty to Warn**

Clients face an ethical problem when doctors decide between maintaining patient privacy or contacting familial members who might be at risk. The judicial system experiences difficulties when seeking solutions to merge opposing economic and ethical considerations.

Courts determined the outcome of privacy rights against foreseeable harm prevention in the case "*ABC v St George's Healthcare NHS Trust.*" "¹⁴"[14]

Conclusion

Under the law of torts genetic testing creates diverse moral and legal issues which must be addressed. Patients who experience unjust births or lives because of genetic counseling errors may file negligence suits while individuals whose privacy is breached because of this negligence usually seek compensation for financial and emotional distresses. Lawyers face an ongoing decision process between keeping patient information private and taking actions to warn family members about potential dangers related to genetics.

Historic and ethical principles need advancement in legal frameworks which will manage developing concerns and maintain principles of autonomy and confidentiality as well as justice. Since genetic science meets with tort law the development of better informed consent systems combined with privacy and service access protection stands essential for navigating this area.

References

1. Aslam, Mohd Aqib. "Genetic Privacy in India and Its Present Status." *Legal Service India*,
2. John Murphy, *Street on Torts* (14th).
3. *ABC v St George's Healthcare NHS Trust* [2020] QB 148.
4. *Molloy v Meier* 679 NW 2d 711 (Minn. 2004).

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[13] Moore v Regents of the University of California (1990) 51 Cal.3d 120.
[14] ABC v St George's Healthcare NHS Trust [2020] QB 148.

5. Emily Jackson, *Medical Law: Text, Cases, and Materials* (5th edn, Oxford University Press 2019) 278.
6. Ibid.
7. *Harriton v Stephens* (2006) 226 CLR 52.
8. *McFarlane v Tayside Health Board* [2000] 2 AC 59.
9. *Tarasoff v Regents of the University of California* (1976) 17 Cal.3d 425.
10. Genetic Information Nondiscrimination Act (GINA) 2008.
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13. *Moore v Regents of the University of California* (1990) 51 Cal.3d 120.
14. *ABC v St George’s Healthcare NHS Trust* [2020] QB 148.