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Medical Negligence: A Critical Analysis on Various Indian Legislation

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***Abstract*---**One of the most pressing issues in India today is medical malpractice. As a result of our own experience, we believe that medicine is one of the most honourable professions. We expect doctors to treat their patients with care, since they are the ones who will ultimately cure and heal them of whatever ailment or health condition they may have, and patients often see them as gods. A medical malpractice case is one in which a doctor, dentist, nurse or other health care practitioner mistreats a patient in a manner that is incompetent, incompetent, or negligent. The Supreme Court of India's ruling in Indian Medical Association v. V.P. Shanta& Ors1 in 1995 expanded the definition of "service" under the 1986 Consumer Protection Act to include medical services. By enabling contractual patients to sue physicians in 'procedure-free' consumer protection courts for payment if they were harmed during treatment, this created a relationship between patients and medical providers. In India, the frequency of medical malpractice claims has increased while the quality of treatment has decreased. Examining individual instances of medical negligence may reveal the elements that lead to medical carelessness, as well as the role of the doctor-patient interaction.. Studying medical negligence from the Supreme Court of India's perspective is a necessary step in understanding the concept.

***Keywords*---**negligence, medical negligence, consumer protection, civil liability, dorts, damage.

Introduction

"No doctor has all of the answers. "Practicing" medicine has a very specific meaning. Let's start with a definition of negligence, which may be found in many different areas of law, including contract, tort, and criminal law, among others. Negligence may be defined in layman's terms as the failure to take proper care of something, resulting in harm. To put it another way, we may call it carelessness, negligence, or doing something that a normal person would not do. Failure to take proper care of anything that results in damages can be described as a legal term of art in the legal sense. Until the Donoghue v. Stevenson decision, the traditional position was that a doctor and patient, as well as an employer and employee, all had a duty of care that could be pursued under negligence law. A issue of negligence arises only if the plaintiff suffers a direct loss as a result of the misbehaviour and the harm is reasonably foreseeable, as in King v. Phillips. It is therefore clear that damage is negligence in its basic form. When someone fails to exercise due care, they have a legal right to do so, which should be acknowledged. There are three types of negligence, according to a recent forensic speech by Charles Worth and Percy. They are

- The condition of mind where it opposes the intent.
- Inconsiderate behaviour
- Neglecting one's responsibilities

Medical Negligence is a type of human error that can have a devastating effect on another person's health, even resulting in the death of that person. Patients sometimes see their physicians as gods since it is they who are responsible for treating and ultimately curing and healing their illnesses, and as a result, we expect them to tread cautiously when performing their obligations toward their patients. But, as the saying goes, even God makes mistakes, and physicians are just human, and no person is flawless. As a result, their errors sometimes result in serious injuries or even death for their patients. A medical malpractice case is one in which a doctor, dentist, nurse or other health care practitioner disrespects a patient in a manner that is incompetent, incompetent, or negligent. English law does not distinguish between physicians and other professions when it comes to medical malpractice. All three cases were handled with using the same rationale: In the case of R v. Prentice and Sulleman They handled two instances each of medical manslaughter by gross negligence and a case involving an electrician at the same time.. Medical malpractice has evolved from a criminal offence to a civil one throughout the course of history. If a patient died during an operation in an earlier civilisation, such as the Babylonian code of Hammurabi, the doctor's hands were chopped off. Manusmriti, charaka samita, and other works address the problem of medical negligence. Because of this, it was treated as a criminal rather than a wrongful act. Even However, with the rapid development of civilization, this perspective has changed so that victims might receive damages from the justice. As a result of numerous court rulings, the law on medical malpractice has changed.The Bolam exam, which is widely recognised in India and provides an additional viewpoint on medical practitioners' carelessness, provides an additional perspective.The renowned Mc Nair made the comment: “A doctor is not guilty of negligence if he has acted in accordance with a practice accepted by a responsible body of medical men skilled in that particular art.”

Analysis of both English and Indian cases led to the conclusion that this method had been approved in India in Jacob Mathew v. Punjab8:“A lawyer does not tell his client that the client shall win the case in all circumstances. A physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practicing and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence.”

Medical Negligence – Laws in India

According to Indian law, there are three basic forms of medical negligence.:

- Criminal negligence
- Civil negligence
- Negligence under consumer protection Act

These three sections of the law deal with punishment and compensation in various ways. (A) Medical Negligence and Criminal Law The Indian Penal Code differentiates between medical practitioners and the general public. It is stated in Section 304A of the old IPC that "whoever causes the death of a person by an unplanned or negligent conduct not amounting to culpable murder shall be punished with two years of imprisonment or a fine or both." Sections 304A of the old IPC explains this further:” Patients who die as a result of poor anaesthesia treatment during surgery may be held criminally liable if there was deliberate intent or gross negligence on the part of the doctor. Indian Penal Code (IPC) Sections 80 and 88 are exceptions to the rights of patients and provide defences for physicians. Section 80 of the Penal Code states that no crime can be committed by accident, misfortune, or criminal knowledge while an approved act is carried out. To avoid prosecution, anyone acting in good faith for the benefit of another and not attempting to do injury notwithstanding the likelihood that they will is exempt from prosecution under Section 88. That's what was declared in the case of Kurban Hussein Mohammedali and State of Maharashtra when it came to dealing with the Indian Penal Code (1860) “To impose criminal liability under Section 304-A, it is necessary that the death should have been the direct result of rash and negligent act of the accused, without other person’s intervention”. Medical Negligence and Civil Liability in Civil Law The area of civil law that deals with carelessness is crucial because it encompasses so many different factors. Even if a medical professional provides free services, this principle is nonetheless applicable in tort law or civil law cases. When the Consumer Protection Act expires, tort law often takes over. For services performed by doctors and hospitals that are not covered under the Comprehensive Protection Act, tort law can be utilised by patients to seek compensation (CPA). When a patient files a malpractice claim, it is their responsibility to show that the doctor or hospital was at fault for the damage. Supreme Court ruled that doctors "must act with a reasonable degree of prudence and expertise" in State of Haryana v. Smt. Santra.If a patient can prove that a doctor made an error that no other doctor with the same level of training and experience would have made if operating with

reasonable care, the doctor might be held liable for negligence. For example, negligence could not be blamed on Kanhaiya Kumar in the case of Park Medicare and Research Centre v. Kumar. Other than malpractice insurance for healthcare providers and consumer protection laws, Consumer Protection Act Section 2(1) has sparked much debate and discussion since 1990 over whether medical services are explicitly or categorically included by the Act. To be considered a deficiency of service is any flaw in the performance that is needed to be maintained by or under any legislation that is in effect at the time, or that has been undertaken as part of an agreement or otherwise in relation to any service. In response to the obvious issue of where one may submit a grievance, these are several locations where one might do so: For services and compensation claims totaling less than 20 lakh rupees, the District Forum should be contacted.Any claim for compensation that does not surpass 1 crore rupees in value or that does exceed that amount will be heard by the National Commission, which will also hear claims for compensation that do not exceed that amount.. The good news is that bringing a complaint to the District's consumer redress forums only costs a few dollars. When the Supreme Court of India decided in 1995 that medical services were a "service" under the 1986 Consumer Protection Act, it paved the way for the inclusion of medical services under that definition. 'Procedure free' consumer protection gave contractual patients the right to sue doctors for injuries experienced during treatment, defining the relationship between patients and medical providers for the first time ever.

Comparative Study

There are several examples of how developed countries track medical negligence and medical blunders while doing research on the topic. Tracking the occurrence allows authorities to investigate why such things happen. It is possible to implement steps to lessen the severity of the error, which often results in serious harm and damages, and in some cases even permanent disability and death, after the problem has been identified. Compared to the previous year, the number of claims lodged with the UK's National Health Service Litigation Authority (NHSLA) increased from 9,143 to 10,129 between April 2012 and March 2013. It is the NHSLA's responsibility to provide an annual fact sheet describing the contents of claim cases on behalf of the NHS, which includes both clinical and non-clinical negligence. There has been a significant decrease in the time it takes for claims to be resolved by an average of 1.25 years, according to the National Health Service Legal Authority. As a result, the authority keeps tabs on the length of time it takes to handle a claim. There is a breakdown of claims cases by speciality in its yearly information sheet as well as a breakdown of claims cases by specialty that received the highest payout. In addition, Health Secretary Jeremy Hunt revealed in June of this year that the NHS was responsible for 500,000 injuries and 3,000 deaths per year as a result of safety failings. Aside from the 161 patients who had swabs or surgical equipment left in their bodies, 70 patients had surgery performed on the wrong spot, and 41 patients had erroneous implants or prosthesis placed in them, he said that examples of mistake had been recorded. Press coverage of this was extensive. There are no records of medical carelessness or errors in Delhi, let alone the whole country. In the United States of America: Between 80,000 and 160,000 individuals die each year as a result of diagnostic errors, according to a Johns Hopkins University research published in the British

Medical Journal Quality and Safety in April 2013. Medical malpractice is the third leading cause of death in the United States, according to JAMA, the journal of the American Medical Association. According to a Harvard Medical Practice Study, only one in eight or two percent of patients who were injured as a result of medical malpractice actually sought compensation. Many people in the United States have the impression, without any proof, that a large portion of the country's litigation is pointless. More than 1,400 closed medical negligence lawsuits were reviewed by Harvard School of Public Health researchers, who determined that 97 percent of the claims were legitimate and that around 80 percent involved death or severe harm. Medical malpractice compensation only accounts for 0.3 percent of the nation's total healthcare costs, according to a study conducted in 2006. One thousand and seventy-one private sector and one thousand one hundred and thirty public sector claims were submitted by Australians during 2011 and 2012, respectively. An average of two years elapsed between the time of the incident and the opening of the claim, and three to four years occurred from the time of the occurrence and the closing of the claim. The vast majority of cases were settled within five years. Some 2978 public and private sector claimants paid out over $54 million in total claims. Of them, 25% paid out between $10 and $100 thousand dollars; 16% paid out between $100 thousand dollars and $500,000; and 5% paid out above $500,000. The Australian Institute for Health and Family Welfare (AIHFW) made these findings available to the public (AIHFW). According to the research, the corporate sector have a wide range of claims submitted, as well as how much average compensation was given, how long it took to settle claims, and so on. Why can't India follow their lead if these countries can? When it comes to examining and recording doctors' mistakes, why are they so frightened? In light of the public's need for a more responsible healthcare delivery system, why is the government disregarding it? The answers to these questions are critical and must be provided as soon as possible. One of the most well-known and greatest medical malpractice is the case of the woman who received the largest award in medical malpractice annals. Kunal Saha v. AMRI Hospital (a medical research facility of the highest quality) filed a medical malpractice lawsuit against three AMRI Hospital doctors in Kolkata in 1998, known as the Anuradha Shaha case. In this case, the plaintiff's wife had a drug allergy, and the doctors failed to take proper precautions when prescribing medication, resulting in the patient's death. Just to summarise, the Supreme Court on October 24th, 2013, handed down its final judgement in this case and awarded the husband $6.08 million in damages for the death of his wife. The question is whether or not it will be enough to fill the void left by her death. No amount of money would bring her back, and physicians' incompetence was the cause of her death. When anything goes wrong, even the smallest amount of carelessness can have serious consequences. Because of them, many patients have died. It is their responsibility to serve their patients appropriately. Deputy Director of the Malaria Department, Krishna Rao, filed a complaint against Nikhil Super Speciality Facility alleging that the hospital was negligent in the treatment of his wife. By administering typhoid fever medication to his wife instead of malaria medication, the hospital misdiagnosed her.. As a result, Rao was granted Rs 2 lakhs in compensation. The "Res Ipsa Loquitor" principle, which means "thing speak for itself," was used in this case, and the plaintiff was compensated. Only an amount of 2 lakh rupees is not enough to alleviate the patient's emotional and physical anguish and disruption. Obviously, if typhoid therapy has

been administered, so have the drugs, which have their own negative effects, as well. As well as how they can be so careless while entrusted with the exclusive responsibility of caring for a patient. These are the only issues worth addressing. For example, the National Commission for India's landmark decision in the matter of Pravat Kumar Mukherjee vs. Ruby General Hospital and ors shows that the compensation for an accident victim is based on ethical ideals connected to humanitarian principles. The parents of a second-year B.A. student called Samanate Mukherjee were the ones to file a complaint in this case.. A Calcutta bus struck the youngster, and he was airlifted to a hospital 1 kilometre away. Hospital staff began treating the boy, relying on the boy's medical insurance card, which stated that the insurance company would pay the boy Rs.65000 in the event of an accident. However, after providing some early care, the hospital requested Rs15000, and the kid was taken to another hospital in the way by which he died. The National Commission found Ruby Hospital accountable in this case and awarded the parents Rs.10 lakhs in compensation. As a result, the complaint was given compensation by the court on a humanitarian grounds. As an insured patient, the hospital could have treated him, but he wouldn't pay his copay, therefore he wasn't allowed to go in. What happened to the court's compassion? As any event, they should have taken care of those concerned, not merely given them 10 lakhs in compensation. Is he going to return? No

Conclusion

We spoke about the origins of the idea of carelessness and how it was first introduced. After that, we debated medical negligence and how it differs only slightly from plain old carelessness. If other nations can, why can't India? When discussing medical negligence outside of India, the rules and regulations are far stricter than they are in India. Why can't strong standards be put in place to ensure that no more lives are lost due to a single lapse in judgement? In India, the plaintiff, or patient, bears the onus of proving that negligence occurred when it comes to medical malpractice legislation. A patient's claim of negligence must be shown by a higher level of proof, even if the patient alleges it. Patients and the general public have no way of knowing how much damage has been done or how it connects to the doctor's negligence. Because the area of medicine is so unpredictable and unforeseeable, it is extremely difficult for a patient to prove beyond a reasonable doubt that a doctor was reckless in a medical negligence lawsuit. Because of this, medical malpractice laws must be updated to put patients' needs first. Patients should be made aware of their legal rights in the event of medical malpractice through non-profit organisations that serve their interests. Without political will to improve the healthcare system, low investment, lack of human resources, large disparities between urban and rural healthcare as a whole, and all of the above it would be prudent to implement no-fault liability in the public health sector, as well as caps on types of compensation that are permitted. Before it's too late, the government ought to take action and invest in health care. All of the above-mentioned remedies must be implemented in order for India to completely remodel its current medical malpractice response system.

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