



## Medical Negligence: A Conceptual Analysis

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<b>CC License</b> CC-BY-NC-SA 4.0	<p style="text-align: center;"><b>Abstract</b></p> <p>The concept of medical negligence refers to the malpractice of a medical professional who fails to meet the standards of his/her profession, which results in the death of a patient who was expecting the medical professional to save her/her life. Medical negligence is the most shameful act a medical professional can conduct because this negligence most of the time results in the death of the patient. The concept of medical negligence is well established in India however the Indian judiciary still follows Bolam's test which is outdated and vague and therefore new methods to determine medical negligence must be adopted by the Indian judiciary. To deliver justice in cases of medical negligence, the Indian judiciary must adopt new approaches so that at least the sufferings of a person in courts can be prevented. The court must award heavy punishments for those found guilty of medical negligence and impose heavy fines on hospitals that have employed such negligent professionals.</p> <p><b>Keywords:</b> Medical Negligence, Patient's Right, Consumer Justice, Doctors' Rights</p>
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### 1. Introduction:

Medical Negligence and malpractices by doctors are grey areas in health care where legal issues arise. Medical Negligence is not new concept but it has its existence in the society since long. Researcher divided this notion in to two parts. First part related to conceptual analysis and second part provides historical evolution of punishment for medical negligence. The researcher has studied the concept of Medical Negligence and punishment awarded for it from ancient period to current scenario. For this purpose, researcher has divided the period in to three era, i.e. Ancient and medieval period, Pre Constitutional period and post- Constitutional period. We tried to analyse concept of profession, professional Negligence, Medical Negligence. this Research is also focused on various concepts relating to Medical Negligence such as interlink between Right to Health Care and medical negligence, difference between medical negligence and medical malpractice ,and various kind of Negligence.

Medical negligence is a serious legal concept that arises when a medical professional breaches their duty of care towards a patient, resulting in harm. This analysis will delve into the key aspects of medical negligence, exploring its core elements and the legal framework surrounding it.

Healthcare professionals who neglect to exercise a reasonable degree of care are considered to have engaged in medical or clinical negligence.<sup>4</sup> Medical professionals are considered to have committed malpractice or been medically negligent when they fail to carry out their duties honestly and with the utmost care, causing significant harm or even death in some situations. While all medical carelessness is regarded as medical malpractice, not every medical malpractice is regarded as medical negligence. This is the distinction between medical negligence and medical malpractice. Healthcare negligence can be linked to a person's general carelessness or sluggishness. Still, it can also take a more serious form when the person's death is the consequence of negligence or carelessness with their body. The Code of Hammurabi, a comprehensive legal text from ancient Mesopotamia, is considered the first legal document in the world and the source of medical negligence law or "legal punishment" for medical malpractice. According to the Hammurabi Code, a doctor must chop off his hands if he treats an individual with a bronze lancet and causes that individual to die or if he opens an eye abscess for a man with a bronze lancet and causes the man to lose his eye.<sup>5</sup> There were legal citations for medical malpractice law from the ancient Romans as well.

The most important health-related problem facing a nation like India today is medical carelessness, particularly in light of the world's rapid technical improvement. The number of medical negligence lawsuits filed each year has been rising, particularly since the Consumer Protection Act of 1986 was enacted.<sup>6</sup> Given the increased emphasis that Indian forums are placing possibly rightfully on the value of human life and suffering, there is a greater need than ever for such knowledge.<sup>7</sup> This research paper's major goal is to educate readers on common medical negligence procedures that are now in place, as well as terms like the 4Ds of medical

<sup>4</sup> Medical Negligence and law in India, Duties, Responsibilities, Rights : Tapas Kumar Koley

<sup>5</sup> The Hammurabi Code of Laws

<sup>6</sup> Consumer Protection Act , 1986

<sup>7</sup> Amit Agarwal, Medical Negligence: Indian Legal Perspective, US National Library of Medicine National Institutes of Health

negligence and associated instances, Indian legal perspectives on medical negligence, and the Bolam test.<sup>8</sup>

## 2. Medical Negligence: Conceptual Analysis

Some concepts are interlinked with the term medical negligence. Following some concepts are necessary to analysis for better understanding of medical negligence concept.

### Negligence: Meaning and Definition

The word „negligence“ has been derived from a Latin word “Negligentia” which is synonymous to carelessness, heedlessness, neglecter oversight. For a lay man, failure in following expected duties with care and responsibility is the meaning of the said word negligence. The carelessness on the part of a concerned individual is intentional or non intentional. We could come across shades of the use of this word in different context like active Negligence, comparative Negligence, passive Negligence, Gross Negligence, Criminal Negligence, Wilful or reckless Negligence.

The meaning of the word “Negligence” in the light of legal context it is nothing but some sort of carelessness or rash act resulting into breach of legal duty, which may amount to recklessness or indifference. On the same footing the Supreme Court observed that the essential components of negligence are „duty“, „breach“ and „resulting damage“.<sup>9</sup>

- **Duty of Care:** Doctors, nurses, and other healthcare providers have a legal and ethical obligation to provide a certain standard of care to their patients. This standard is based on what a reasonably competent professional in the same field would do under similar circumstances.
- **Breach of Duty:** The medical professional must have deviated from the accepted standard of care. This could involve misdiagnosis, improper treatment, medication errors, surgical mistakes, or failures to properly obtain informed consent.
- **Causation:** The breach of duty must have directly caused the patient to suffer harm. This can be

physical injury, illness, or even psychological distress.

- **Damages:** The patient must have suffered some form of compensable loss as a result of the breach and causation.

<sup>8</sup> <https://ijirl.com/wp-content/uploads/2022/06/AN-ANALYSIS-OF-MEDICAL-NEGLIGENCE.pdf>  
Visited on 06/06/2024.

<sup>9</sup> Jacob Mathew v. State of Punjab, AIR2005 SC 3180.

### 3. Legal Framework:

The legal framework for medical negligence varies depending on jurisdiction. Commonly, medical negligence falls under the umbrella of tort law, specifically professional negligence. Here are some key aspects to consider:

- **Burden of Proof:** The burden of proof typically lies with the patient to demonstrate all the elements of negligence. This often requires expert medical testimony to establish the standard of care and the breach of that standard.
- **Standards of Care:** The specific standard of care can be influenced by factors like the specific medical specialty, the location, and the prevailing medical practices. In some jurisdictions, the Bolam Test is used, which considers whether the action or inaction fell outside the acceptable range of practices of a reasonable body of medical professionals
- **Informed Consent:** Patients must be informed of the risks, benefits, and alternatives to a proposed treatment. Failure to obtain informed consent can constitute negligence.
- **Res Ipsa Loquitur:** This doctrine allows for the presumption of negligence when the harm would not have occurred in the absence of negligence.
- **Statute of Limitations:** Legal actions for medical negligence must be initiated within a specific timeframe.
- **Damages:** If a successful claim is made, courts may award damages to compensate for medical expenses, lost wages, pain and suffering, and other losses.

### 4. Definition of Profession, Medical Profession and Professional Negligence:

A professional is a person involved in providing some kind of services to the other people on the basis of the qualifications and knowledge he has acquired.<sup>10</sup> It is expected from a professional to provide best possible services against the charges paid to him with absolute responsibility, accountability and ethics. The nature of work performed by professionals is extremely specialized, and it requires more mental effort as compare to physical.<sup>11</sup>

Generally medical service includes the service rendered by the hospitals (both government and private), nursing homes, health centres, clinics medical practitioners (physicians, surgeons, and

<sup>10</sup> The word profession has been derived from the Latin word Professional or Profession which means, a solemn declaration or an occupation which one professes to be skilled in,, or a body of persons engaged in some occupation

<sup>11</sup> It has been defined by the Oxford Advanced Learner's Dictionary as a paid occupation, especially one that requires advanced education and training.

these practitioners like Ayurveda, homeopathic or any other systems of medicine or surgery), chemist, diagnostic centres, paramedical staff, nursing, staff and other allied staff. According to the New International Webster's Comprehensive Dictionary of the English language, doctor means a qualified practitioner of medicine or surgery in any of its branches and patient means a person undergoing treatment for disease or injury.

Professional negligence is a breach of the duty of care between professionals and their clients. The duty of care is a common law understanding where the client expects a level of professionalism and standards commonly held by those in the profession. A charge of medical negligence under medical practitioner is a very serious matter and is very different from other charges of Professional negligence.

### 5. Right to Health Care and Medical Negligence

The widely acceptable definition of health is that given by the WHO in the preamble<sup>12</sup> of its

constitution.<sup>13</sup> The Constitution of India does not provide for the right to health as a fundamental right. The Constitution directs the state to take measures to improve the condition of health care of the people. WHO has radically expanded the scope of health and by extension, the role and responsibility of health professionals also increase. The right to health care requires the establishment of the health facilities, goods medical services, such as hospitals, doctors and drugs, that are of good quality and available to all, on an equal basis. They must be affordable to everyone. These facilities must provide preventive, creative, palliative and rehabilitative health services, including regular screening programs, appropriate treatment of prevalent diseases, illnesses, injuries and disabilities, both physical and mental, and all necessary medications.<sup>14</sup> If doctor does not treat the patient with due care and negligent in his service then ultimately it affect the Right to Health of said person. Deficiency in health care service is amounts to violation of human right in particular Right to Health.<sup>15</sup>

## 6. Medical Negligence and Nature of Its punishment

<sup>12</sup> Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19–22 June 1946; signed on 22 July 1947 by the representatives of 61 States and entered into force on 7 April 1948.

<sup>13</sup> According to World Health Organization, "Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease.",

<sup>14</sup> U.N. Committee on Economic, Social and Cultural Rights(CESCR), General Comment 14 (GC 14), Par 12.

<sup>15</sup> International Organization for Consumer Union (IOCU) and the Unified Nation Guidelines on Consumer Protection.

History of medicine has its own importance. Any object or subject has a history and to understand it correctly, one must study its history, everything existing has a past and to understand its present, one must delve deep into its past, Moore says: The study of history is worth pursuing when the consideration of the past can be made useful to us in the present<sup>16</sup>. Knowledge of history is useful in many ways. It guides us in the right directions by showing the positive and negative aspects of the subject in hand. Historical study of a subject gives in nutshell the wisdom of the past without undergoing the hardships the ancients had to suffer to find out the truth<sup>17</sup>

## 7. Interpretation of Indian Constitutional Provisions relating to Right to Health Care by Judiciary

As far as judiciary is concern, it has considered various aspects of Medical Negligence and widened the meaning of it. The constitutional scheme for the protection of health contained a serious lacuna, which was later removed by judicial creativity. Supreme Court of India expanded the scope of Article 21 of the Constitution of India to sub serve the Right to health and Medicare in it. The Supreme Court has attempted to interpret the right to life so as to safeguard the interests of the common man for their health care. This attempt of the Supreme Court facilitates the citizen to lead life with dignity, with good quality along with all human needs including food, clothing, shelter, safe drinking water, education and health care.<sup>18</sup> The Supreme Court has interpreted the right to life as embracing the right to live with human dignity, which included the quality of life along with all the basic human needs such as food, clothing, shelter, safe drinking water, education and health care. Further, it has also been held that the right to health is integral to the right to life and the government has a constitutional obligation to provide health facilities. Public Interest Litigation has been filed under Article 21 of constitution of India against the violation of right to health. Further, Supreme Court has held that

<sup>16</sup>G.N.Mukhopadhyaya, *History of Indian Medicine*, Vol.,I,p.44.(Calcutta University, 1926).

<sup>17</sup> Ibid

<sup>18</sup> The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of

drugs which are injurious to health. Similarly Article 48A of the constitution of India provides that, State shall Endeavour to protect and impose the pollution free environment for good health” the right to live with human dignity, enshrined in Article 21, is derived from the Directive Principles of State Policy and therefore includes protection of health.<sup>19</sup>

In *Vincent Pani Kurlnagarav. Union of India*<sup>20</sup> the Supreme Court observed:

“Maintenance and improvement of public health have to rank high because these are essential to the subsistence of the society and on the betterment of these the building of the society depends, which the constitution makers envisaged. Therefore, Attending to public health is of high priority perhaps the one at the top. Therefore the court stressed the need for provision of medical facilities in order to improve the general standard of health of people of the labour class along to maintain harmony with human dignity and right to life and personality. The Court has repeatedly stated very clearly that right to health is the most fundamental human right to any workman.<sup>21</sup>In the *Consumer Education and Research Centre v. Union of India*<sup>22</sup>The Supreme Court of India has also supported the same. This matter was regarding adequate provision of the medical help and health care of the labour. The Court stated that as per the Article 38 proper healthcare facilities must be provided to the workmen. Right to health and medical aid is clearly stated in the Article 21 read with Article 39 (c), 41 and 43 of the Constitution in order to provide dignified life to the worker class as well. For any individual, to be able to live with dignity it is necessary for a person to get adequate health care and quality medical help.

In *State of Punjab v. Mohinder Singh Chawla*<sup>23</sup>the court stated that since right to health is inseparable part of Right to life and hence it is the prime duty of the State Government to provide facilities for health care. Similarly in another case of *Mr. 'X' v. Hospital 'Z'*<sup>24</sup>the Supreme Court declared that right to life is possible with right to lead healthy life to enjoy life to its fullest. It was stated that right to life includes right to food, water, adequate environment, education and medical care.<sup>25</sup>

The Supreme Court of India examined the issue of medical help which is Constitutional Right under Art.21, 41 and 47 of the Constitution of India, in the *State of Punjab v. Ram Lubhaya*

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<sup>19</sup>Bandhua Mukti Morcha v. Union of India ,AIR 1984 SC 802.

<sup>20</sup> AIR 1987 SC 990

<sup>21</sup> C.E.S.C. Limited v. Subhash Chandra Bose, AIR 1992 SC 573.

<sup>22</sup> (2010) 15 SCC 699.

<sup>23</sup> SCC 2005.

<sup>24</sup> (1998) 8 SCC 296.

<sup>25</sup>*Chameli Singh v. State of UP*, 1995 Supp(6) SCR 827.

*Bagga*<sup>26</sup> and the Court further stated that right of one person is linked with the duty of the other person, may it be employer of any government or higher authority. Right to live as per Article 21 is an obligation on the part of the State Government. The same obligation has been repeatedly supported in the Article 47 as the primary duty. While widening the scope of Article 21 and governments responsibility to provide medical aid to every person in the country held that Article 21 very clearly and emphatically recognises the responsibility of the state to protect the right to life of every person. Protection and preservation of human life is of utmost importance. With this it is a prime duty of the Government hospitals to provide medical help and all kind of assistance to protect and preserve human life. In case there is lack of such duty on the part of the a government hospital to providing timely medical assistance it is treated as violation of human Right to life guaranteed under Article 21to all citizens. A patient may be paid appropriate compensation for the breach of such duty on the part of the medical professionals under Article 21 of the Constitution. In this present case a patient was paid a compensation of Rs. 25,000.<sup>27</sup>

In all these cases Supreme Court imposed duties on Government. It not provides directly any specific duty of medical practitioner. In *Paramanand Katara v.Union of India*<sup>28</sup> Supreme Court imposed certain duties on medical practitioners. Supreme Court has declared that right to medical aid is an integral part of right to life. It is an obligation on the state to preserve life by extending required medical assistance.It has been observed that this case created a new right i.e. right to get medical help. Right to medical help must be a part of right to life under Article 21 of the constitution. The court laid, down the following guidelines for doctors, when an injured person approaches him:

**i. Duty of a doctor when an injured person approaches him:**

When a Medical Professional is approached for help by a patient in need for any disease or injury, it is his duty to provide them all possible medical assistance in his capacity. In case the sickness of the patient is beyond his capacity of knowledge and experience then he must see to it that the patient gets best possible help from the expert.

**ii. Legal protection to Medical practitioners:**

<sup>26</sup> (1998) 1SCR 1120.

<sup>27</sup> Paschim Bangal Khet Mazdoor Samity & Others v. State of West Bengal & Another 1996 SCC(4)37.

<sup>28</sup> AIR 1989 SC 2039.

A person in the medical profession is always willing to treat the patient that comes to him in the best possible way. The doctors even carry out the legal formalities as a part of their duty if required. There are cases in the court where the dispute between doctors and the police are also resolved but in spite of this fact the doctors discharge their duty well and with complete responsibility. The legal formalities or investigations do not become prior to the duty of the doctors.

**iii. No obstacle on medical practitioners from attending injured persons:**

It is the duty of the medical professionals and legally bound to attend to his patient in case of any emergency and in all normal circumstances they perform their duty with utmost responsibility. But it is also a fact that it is not the duty of the doctors alone but of police, or individuals involved in the case or even those who happen to know about the mishap.

**iv. Prevent harassment of doctors:**

There are very clear instructions to the police not to interfere the activities of the doctors by the reasons of investigation of the case or cross examination or statement of the patient. In no way it should delay the treatment or create obstacle in the medical treatment and the ultimate sufferers are the patients.

In Bolam case, the plaintiff, Mr. Bolam, underwent electroconvulsive therapy (ECT) without being restrained or receiving muscle relaxants, resulting in injuries. The court held that the hospital was not negligent, as the practice followed was accepted by a responsible body of medical professionals. This case established the Bolam test, which assesses whether the provider's actions were in line with accepted medical practice.<sup>29</sup>

In other case<sup>30</sup> involved Mrs. Montgomery, who was not informed of the risks associated with vaginal delivery for diabetic mothers. Her child suffered severe disabilities as a result of shoulder dystocia during delivery. The UK Supreme Court ruled in favor of Mrs. Montgomery, emphasizing the importance of informed consent and patient autonomy. This landmark case shifted the focus from the Bolam test to patient-centered care, highlighting the need for providers to disclose material risks and respect patient decisions.

<sup>29</sup> Bolam v. Friern Hospital Management Committee (1957)

<sup>30</sup> Montgomery v. Lanarkshire Health Board (2015)

In this case<sup>31</sup>, the plaintiffs, Mr. Roe and Mr. Woof, were paralyzed after being administered contaminated spinal anesthetic. The court ruled that the hospital was not negligent, as the contamination risk was not foreseeable at the time. This case underscored the evolving nature of medical standards and the importance of contemporary practices in assessing negligence.

In *R.D. Sharma V. Union of India*<sup>32</sup> the court issued directions to reserve a coupe for medical facilities along with a team of doctors and make wide publicity of the medical facilities available. The Supreme Court stated that the negligence on the part of the doctors at the eye camp arranged by the Lions club proved a mishap while providing services to mankind. Though the intention of the camp was noble, it proved disastrous for almost 84 patients who lost their vision because of the mistake on the part of the doctors. The court ordered compensation to the patients in some form or the other.<sup>33</sup> The Himachal Pradesh High Court in the case of *Smt. Kalavati v. State of Himachal*<sup>34</sup> Pradesh ordered interim compensation to the dependents of the deceased since the Medical Negligence on the part of the staff of the hospital was the reason for the death of the patient.

The judicial observation from In the case of *Vincent Pani kurlangara*<sup>35</sup> to *Pashima Bangal Khet Mazdoor Samity*<sup>36</sup> the judiciary very clearly stated that having access to medical treatment is the most crucial part of Article 21 of the constitution. And according to passage of time judiciary widen the scope of Right to Health and made available speedy and cheap redressal mechanism if this right is violated because of any reason including medical negligence by doctors.

In the very landmark judgment *Indian Medical Association v. V.P. Shanta*<sup>37</sup> case the Supreme Court defined the parameters of rights and obligations of professionals of allopathic and homeopathic systems of medicine and ruled that the Consumer Protection Act, 1986 is applicable to persons engaged in medical profession either as a private practitioner or as a Government doctor working in hospitals or Government. Even though judiciary expand the scope of Right to

<sup>31</sup> *Roe v. Minister of Health* (1954)

<sup>32</sup> AIR 1968 SCC 1138

<sup>33</sup> *A.S. Mittal v. State of UP* 1989 SCR (3) 241. AIR 1987 SC 990

<sup>34</sup> AIR 1989 HP 5.

<sup>35</sup> AIR 1987 SC990

<sup>36</sup> 1996 SCC(4) 37.

<sup>37</sup> AIR 1996(SC) 550

Health and made available new remedies for protection of interest of victims, simultaneously judiciary also protect interest of doctors by imposing greater burden of proof on patient.<sup>38</sup>

The Supreme Court of India ruled that negligence in the context of medical profession necessarily calls for a treatment with a difference. It emphasized the need for a balance between the need to hold medical professionals accountable for their actions and the need to protect them from frivolous or vexatious litigation.<sup>39</sup>

Judicial decisions play a pivotal role in interpreting and applying the principles of medical negligence. Courts often rely on past rulings to determine the standard of care and assess breaches. Key cases, such as *Roe v. Minister of Health* and *Montgomery v. Lanarkshire Health Board*, have significantly influenced the legal landscape of medical negligence.

In a general sense, Constitutional Provisions applicable when right of public at large violated. And it is available against Government. No doubt in exceptional circumstances it is applied by individual and even against individual person also. Apart from Constitutional provisions other legal measures also available to the individual to seek justice against health care provider if their rights are violated.

The judicial approach to the right to health and medical negligence is critical in ensuring that patients receive quality healthcare and that healthcare providers are held accountable for their actions. Through key legal principles, landmark cases, and balanced adjudication, courts play a pivotal role in safeguarding patients' rights while protecting healthcare providers from undue legal pressures. Continuous improvements in legal frameworks, judicial training, and patient education are essential to enhance the effectiveness of judicial approaches and ensure justice in medical negligence cases. By fostering a culture of accountability, transparency, and patient-centred care, the judicial system can contribute significantly to the realization of the right to health and the reduction of medical negligence.

## 8. Conclusion

<sup>38</sup> S.V. Joga Rao *Medical negligence liability under the consumer protection act: A review of judicial perspective*, Jul-Sep; 25(3) Indian Journal of Urology, p.361–371. 2009 available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2779962/> last seen on 17-3-2024.

<sup>39</sup> *Jacob Mathew v. State of Punjab* (2005)

Right to Health is a magnitude for every phase of legal system. From ancient period to current era Legislature as well judiciary are concerned for protection of rights of patient against physician. They impose duties on physician towards patients. If physician breach their duties they are responsible for penalty or punishment. From to passage of time, form of penalty is changed. It is significant to study what is the current picture of doctor patient relationship, what are the duties of medical practitioner and patient, which act consider as wrong or offence, what are the penalty or punishment for it. Concurrently it is

equally important to analysis the International scenario regarding provision of medical negligence. Medical negligence is a complex issue that intersects with legal, ethical, and professional domains. Understanding its components and implications is essential for improving patient safety and ensuring justice for affected individuals. By fostering a culture of accountability, continuous learning, and open communication, the healthcare system can reduce the incidence of medical negligence and enhance the overall quality of care. This comprehensive approach requires collaboration among healthcare providers, legal professionals, policymakers, and patients to create an environment where medical excellence and patient safety are prioritized. Through ongoing education, robust risk management, and systemic reforms, the healthcare community can work towards minimizing the occurrence of medical negligence and building a more reliable and trustworthy healthcare system.