KeAi
CHINESE ROOTS
GLOBAL IMPACT

International Journal of Innovation Studies

HIPPOCRATIC OATH OR THE OATH OF A HIPPOCRATIC: AN IN-DEPTH ANALYSIS OF MEDICAL NEGLIGENCE IN INDIA

Raghav Singh Rawat[1], Stuti Vajpayi[1], Prof. (Dr.) Surya Rashmi Rawat[2]
[1]Symbiosis Law School, Pune, Symbiosis International University, Viman Nagar, Pune, Maharashtra – 411014
[2]HPKV Business School, Central University of Himachal Pradesh, Dharamshala (HP), PIN:176215
rawatraghavsingh@gmail.com / stutivaj26@gmail.com/ rawatsuryarashmi@hpcu.ac.in

"*Medical negligence is not just a failure of duty but a profound breach of trust that jeopardizes the sanctity of the doctor-patient relationship and undermines the very essence of healthcare.*"

- Anonymous

Abstract

Medical negligence is a critical issue at the intersection of healthcare and law, reflecting the delicate balance between medical autonomy and patients' rights. Various cases catch the attention of scholars and the masses calling for striking a balance between the rights of the two parties the patients and the doctors. The study in hand is an attempt to review various Bhartiya and foreign cases and case laws to explore the evolution of medical negligence and its current legal standing. The main objective behind the study of medical negligence is to find out the best way to offer protection to both parties.

Medical negligence deals with the consent of patients, it's about due care and following standard processes by the doctors, and it's about awareness among the masses. The doctors always take due care but there could be exceptional circumstances, but these exceptional circumstances may cost life to someone. Medical practitioners deal with human life, negligence could cost someone's life.

The paper at the end suggests measures to mitigate the instances of medical negligence in the country.

Key Words: Medical Negligence, Consent, Due Care, Infrastructure, Patients' and Doctors' Rights

Introduction

Medical negligence (hereinafter referred to as "**MN**") is a significant problem in India (that is Bharat), with a steep rise in the cases of medical malpractice and misconduct reported every year. The people have now felt that it is the call of the hour to fix the system and add **accountability for medical negligence** on the people practising medicine. The aim is also to make sure that the victims of medical malpractice are given adequate compensation. The famous **Hippocratic oath (hereinafter referred to as "the oath"**, emphasizes that it is the first and foremost duty of doctors to ensure that they do no harm. The oath has been the cornerstone of medical ethics for centuries. Despite this we have instances where doctors have been found in violation of this revered oath, thus causing serious harm to their patients which could have been avoided. By way of this paper, the authors seek to examine the issue of MN

in India. The authors intend to make it a solution-oriented paper by analysing the **legal framework and various checks in place for fixing liability** for medical negligence and also aim to provide insights into the various challenges and opportunities for improving the quality of healthcare delivery in India.

Research Questions

1. What is medical negligence, and how is it defined under Indian law?
2. What are the causes and consequences of medical negligence in India?
3. How can liability for medical negligence be fixed in India, and what are the challenges in doing so?

Objectives

The objectives behind the research in hand are to:

1. Comprehend MN and its legal implications in Bharat.
2. Analyse factors contributing to medical negligence in India, including issues of accountability and transparency in the healthcare system.
3. To examine the existing legal framework for fixing liability for medical negligence and identify areas for reform.
4. To recommend policy interventions that can improve the quality of healthcare delivery and reduce the incidence of medical negligence in India.

Judicial Pronouncements

At the outset approaching MN is a complex topic which involves issue involving various **legal, ethical, and professional considerations**. Over the many years, not only has the adjudication of MN shaped various legal doctrines but also acted as a mirror reflecting the ever-evolving society's expectations of care, responsibility, and ethical obligations within the medical profession. The world's sharpest legal minds by means of judicial pronouncements and opino jurists have slowly but steadily evolved and sculpted the legal architecture which surrounds medical malpractice. We will delve into some of the leading judgments across the globe and examine how the courts have interpreted the duty of care in many contexts; and also how they continue to inform the Indian legal landscape.

Judicial Pronouncements on Medical Negligence in Bharat

Several landmark judgments have very beautifully and intelligently sculpted the jurisprudence revolving around MN in Bharat. When we think of one of the earliest MN cases we are reminded of the ***Bolam Case***[1], which laid the founding stone of the principle of Standard of Care (hereinafter referred to as "**SoC**"). This principle postulates that as long as the doctors act in consonance with practice acceptable to the reasonable body of medical practitioners they shall not be deemed negligent. The landmark case of ***Samira Kohli***[2] was among the early landmark judgements applying the Bolam Test in the Indian context, especially in relation to informed consent and medical negligence.

[1] Bolam v. Friern Hospital Management Committee, [1957] 1 WLR 582 (Eng.)
[2] Samira Kohli v. Dr. Prabha Manchanda, AIR 2008 SC 1396 (India)

The Apex Court held that failure of doctor to seek informed consent of the patient beforehand will render him liable of MN. The jurisprudence further developed when the Supreme Court ruled that a medical practitioner shall not attract the charge of MN for not acquiring informed consent from the patient if the doctor can prove that the patient would have gone ahead with the procedure even if the consent had been obtained[3].

Thereafter, by way of ***Kusum Sharma's case,***[4] the Supreme Court was of the opinion that not providing a reasonable degree of skill and care by the doctors while performing a medical procedure shall attract the liability of MN. The court also made it clear that the patient can ask for the qualifications of the doctor performing the procedure as a matter of right.

Judicial Pronouncements on Medical Negligence Internationally

The issue of MN is a matter of global concern and has been the subject of judicial scrutiny across the world. This brings us to the landmark case of ***Helling v. Carey***[5] which holds immense significance in the realm of medical negligence where Washinton SC found a doctor failing to conduct routine tests to detect cancer guilty of MN. This laid the foundation for the principle of reasonable physical standard, which postulates that doctors not meeting the standard of care which a reasonably competent physician is expected to provide under reasonable similar circumstances shall be liable for MN.

A similar judgment holding great significance was pronounced by the Supreme Court of the UK which observed that a medical practitioner shall be liable for MN if they fail to provide information to the patient about the advantages and disadvantages of a medical procedure. Further reaffirming the fact patients have every right of being informed of the risks linked to a medical procedure and that it is the duty of the doctor to communicate this information in a manner comprehensible to the patient.

International Conventions & Laws Pertaining to Medical Negligence

1. **International Covenant on Civil and Political Rights(ICCPR)[6]**: Bharat being a signatory to the ICCPR, guarantees the right to life, liberty and security of persons. This covenant protects the right to life, which gets violated when medical professionals fail to provide adequate care.
2. **International Covenant on Economic, Social and Cultural Rights(ICESCR)[7]**: India being a signatory guarantees the right to health. This covenant is pertinent to medical negligence cases as it highlights the importance of access to healthcare services and the duties of the state to confirm the provision of healthcare services.
3. **Universal Declaration of Human Rights(UDHR)[8]**: India being a signatory to it guarantees the right to life, liberty, and security of persons. This declaration is relevant to medical negligence cases because it emphasizes the importance of the right to life, which may be violated in cases of medical negligence.

[3] Indian Medical Association v. V.P. Shantha, (1996) 6 SCC 651 (India)
[4] Kusum Sharma v. Batra Hospital and Medical Research Centre, (2010) 3 SCC 480 (India)
[5] Helling v. Carey, 519 P.2d 981 (Wash. 1974)
[6] International Covenant on Civil and Political Rights (ICCPR), Dec. 16, 1966, 999 U.N.T.S. 171
[7] International Covenant on Economic, Social and Cultural Rights (ICESCR), Dec. 16, 1966, 993 U.N.T.S. 3
[8] Universal Declaration of Human Rights (UDHR), G.A. Res. 217A (III), U.N. Doc A/810 (1948)

4. **United Nations Convention on the Rights of Persons with Disabilities(CRPD)**[9] : The ratification of CRPD by Bharat offers protection to the persons with disabilities. The convention emphasizes the need for accessible healthcare services and the duties of the state to ensure that persons with disabilities receive adequate healthcare.
5. **Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002**[10]: It chalks out the standards of professional behaviour, decorum, and ethical practice to be observed by medical professionals in India. They are relevant to medical negligence cases because they guide the standard of care that medical professionals are expected to provide.
6. **Consumer Protection Act, 2019**[11]: The act is relevant to medical negligence cases because it provides consumers with the right to file complaints against service providers, including healthcare providers, for deficiencies in services. The act also establishes consumer protection councils to address consumer grievances.
7. **Indian Penal Code, 1860**[12]**:** The Indian Penal Code is relevant to medical negligence cases because it provides for criminal liability for acts or omissions that cause harm to others. Medical professionals may be held criminally liable for being negligent in their duties which caused harm or death to their patients.

Comparative Analysis

Sr. No.	Country	Medical Negligence	Case	Particu
1	India	The primary legislation governing MN cases is the Consumer Protection Act of 1986, which provides compensation for patients who have suffered due to the negligence of medical professionals.	***Bolam v. Friern Hospital Management Committee***[13]	Establis this test negligе with a opinion
			Indian Medical Association v. V.P. Shantha[14]	Establis require that of practiti
2	United States of America		***Andrews v. United Airlines***[15]	Establis require

[9] United Nations Convention on the Rights of Persons with Disabilities (CRPD), Dec. 13, 2006, 2515 U.N.T.S. 3
[10] Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, notified in Gazette of India, Part III, Section 4 (No. MCI-211(2)/2002(Ethics/Regulations), dated 6th November, 2002)
[11] Consumer Protection Act, 2019, Act No. 35 of 2019 (India)
[12] Indian Penal Code, 1860, Act No. 45 of 1860 (India)
[13] Bolam v. Friern Hospital Management Committee, [1957] 1 WLR 582 (Eng.)
[14] Indian Medical Association v. V.P. Shantha, (1996) 6 SCC 651 (India)
[15] Andrews v. United Airlines, Inc., 24 Cal. 3d 629 (1979)

		The thumb rule is that MN cases shall be brought in as medical malpractice lawsuits.	***Canterbury v. Spence***[16]	Establis right t associa failure shall c cases.
3	United Kingdom	MN cases are generally treated as a civil suit	***Bolitho v. City and Hackney Health Authority***[17]	Establis not app reasona
			Montgomery v. Lanarkshire Health Board[18]	Establis informa risks a procedu
4	Australia	MN cases are generally brought as civil lawsuits.	***Rogers v. Whitaker***[19]	Establis informa the ri procedu
			Wallace v. Kam[20]	Establis their associa the risk
5	Canada	Here as well MN cases are typically brought as civil lawsuits.	***Reibl v. Hughes***[21]	Establis their p associa
			Hopp v. Lepp[22]	Establis a reaso consent patient.

pCritical Analysis

In Bharat, MN is no longer a once-in-a-blue-moon event but has rather become a rather frequent occurrence, many of which are not even reported. This is a wake-up call as it reflects a deeper fault line in our nation's healthcare and regulatory framework. This fiery rise in the statistics is further fueled by a persistent lack of accountability, inconsistent enforcement of ethical norms

[16] Canterbury v. Spence, 464 F.2d 772 (D.C. Cir. 1972)
[17] Bolitho v. City and Hackney Health Authority, [1998] AC 232 (UK)
[18] Montgomery v. Lanarkshire Health Board, [2015] UKSC 11
[19] Rogers v. Whitaker, (1992) 175 CLR 479 (Austl.)
[20] Wallace v. Kam, [2013] 2 SCR 649 (Can.)
[21] Reibl v. Hughes, [1980] 2 SCR 880 (Can.)
[22] Hopp v. Lepp, [1980] 2 SCR 192 (Can.)

and a regulatory framework that remains fragmented and under-resourced. Such lapses cannot be taken lightly since Mn represents a breach of the trust that a patient places in their doctor. This paper will undertake a critical examination of the concept of medical negligence in Bharat, throwing light upon various landmark cases to highlight the magnitude of the problem and to highlight the imperative need for structural reforms.

The sheer lack of accountability of medical professionals has become one of the primary reasons that contribute to MN in Bharat. This gets further aggravated by the lack of strict enforcement of the **IMC Regulations**[23] which provides guidelines for medical professionals. This further enforces the quote by anonymous "*Negligence in medicine does not always stem from malice, but often from a system that permits mediocrity to masquerade as care*"

A defining moment in the development of MN in Bharat was the case of Kunal Saha[24] wherein a Kolkata bases doctor and hospital attracted MN which stemmed from the tragic death of a patient under their care. The victim, suffering from a skin rash was administered an improper antibiotic which triggered severe adverse side effects which ultimately led to the patient's demise. The husband of the patient, also a doctor, pursued legal recourse and highlighted multiple breaches in the SoC. The Supreme Court recognising the lapse held the hospital and the doctor guilty of being medically negligent and accordingly awarded a compensation of INR 5.96 crore to the husband of the victim. Now, while financial compensation serves as a form of legal redress, it can never equate to the irreplaceable value of a human life lost due to clinical neglect.

Even if we, for argument, overlook the individual errors, the lack of proper medical facilities and equipment also plays a significant role in MN in Bharat. In many medical institutions, more so in rural and economically weak settings, medical practitioners are forced to use outdated and inadequate medical facilities. The Apex Court has made it clear that the inadequacy of infrastructure cannot serve as a shield against liability and that medical professional are duty-bound to provide the best possible case within their operational capacity[25].

Now coming to the third factor aggravating the problem "Inadequacy of Medical Education and Training". Although the National Medical Commission has been tasked with regulating and ensuring the standards of medical education, it has faced many criticisms for being corrupt and not being transparent. As a result sub-standard medical professionals, who do not have sufficient training or exposure to complex clinical scenarios which renders them ill-equipped to provide competent care and thereby increasing the risk of negligence, have slowly crept into the profession of medicine.

The Supreme Court has consistently maintained that medical professionals owe a legal obligation to employ reasonable care, expertise and thoroughness when treating their patients. Any breach of these obligations which results in harm to the patient will give rise to liability for negligence. The court also laid stress on the critical importance of informed and voluntary consent. The physicians must obtain consent by properly making their patients aware of all the

[23] Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, notified in Gazette of India, Part III, Section 4 (No. MCI-211(2)/2002(Ethics/Regulations), dated 6th November, 2002)
[24] Kunal Saha v. AMRI Hospital & Anr, (2011) 3 SCC 635 (India)
[25] Jacob Mathew v. State of Punjab, (2005) 6 SCC 1 (India)

disadvantages and benefits of the course of action, thereby empowering patients to make an informed decision[26].
Furthermore, the threshold of proof in MN cases in India is high, wherein the burden of proof lies on the patient that the doctor had indeed dishonoured their reasonable duty of care and that the breach resulted in harm or injury inflicted on the patient. This can be difficult, as there is often a lack of evidence and documentation in medical cases. To remedy this the Supreme Court has ruled that a medical professional shall incur liability for medical negligence even if there is no direct evidence of negligence if there is a strong suspicion of negligence based on the facts of the case[27].

Conclusion & Suggestions

In conclusion, medical negligence is a serious issue in India that requires urgent attention. The lack of proper regulation and accountability for medical professionals, inadequate training and education, and the threshold of burden of proof in MN cases are all contributing factors to the problem. However, there are also steps that can be taken to address these issues and improve the situation such as:

- **Establish** a strong regulatory framework that enforces ethical guidelines for medical professionals and ensures that they are held accountable for any negligence. This could involve strengthening the Indian Medical Council and increasing the resources and training available for medical professionals.
- **Improve** the quality of medical facilities and equipment in India, particularly in rural areas with limited healthcare facilities. This could involve increasing government investment in healthcare infrastructure and technology, as well as providing incentives for private sector investment in the healthcare sector.
- **Setting up** Independent MN tribunals with legal and medical experts will play a vital role in ensuring faster, and fairer decisions.
- **Introducing** mandatory medical indemnity insurance will come as a panacea for the doctors protecting them from legal liability due to mistakes, omission, or neglect during the course of practice covering their Legal expenses and the compensation to patients if any.
- **Increase** public awareness and education about medical negligence and patient rights. This could involve campaigns to educate patients on their rights, as well as increasing transparency and accountability in the healthcare sector.

To summarize, while the legal framework to address medical negligence does exist, in India and globally, there remains an urgent need to evolve towards a system which is more empathetic, led by experts and revolves around patient-centric justice. Strengthening institutional mechanisms, enforcing ethical accountability, and striking a careful balance between the rights of doctors and patients are essential steps toward rebuilding trust in the healthcare system. In the Indian context, we require a multi-point approach; which includes

[26] Samira Kohli v. Dr. Prabha Manchanda & Anr, AIR 2008 SC 1396 (India)
[27] Dr. Suresh Gupta v. Govt. of NCT of Delhi, (2004) 6 SCC 422 (India)

comprehensive regulatory reforms, extensive investment in healthcare infrastructure and widespread public awareness about the rights of patients. Only through these measures can we ensure that medical professionals uphold the highest standards of care and are held accountable when those standards are breached.

"*A life lost to negligence is not merely a medical failure; it is the silence of a voice that will never speak again, the rupture of trust where healing was promised. In such silence, justice must not whisper, it must thunder."*

- *Raghav Singh Rawat*References

CASES

Bolam v. Friern Hospital Management Committee, [1957] 1 WLR 582 (Eng. 3
Dr. Suresh Gupta v. Govt. of NCT of Delhi, (2004) 6 SCC 422 (India) 11
Helling v. Carey, 519 P.2d 981 (Wash. 1974)..... 4
Indian Medical Association v. V.P. Shantha, (1996) 6 SCC 651 (India..... 4
Jacob Mathew v. State of Punjab, (2005) 6 SCC 1 (India) 11
Kunal Saha v. AMRI Hospital & Anr, (2011) 3 SCC 635 (India) 10
Kusum Sharma v. Batra Hospital and Medical Research Centre, (2010) 3 SCC 480 (India)... 4
Rogers v. Whitaker, (1992) 175 CLR 479 (Austl.)..... 8
Samira Kohli v. Dr. Prabha Manchanda & Anr, AIR 2008 SC 1396 (India)..... 11
Samira Kohli v. Dr. Prabha Manchanda, AIR 2008 SC 1396 (India)..... 3
Wallace v. Kam, [2013] 2 SCR 649 (Can.)..... 9

STATUTES

Consumer Protection Act, 2019, Act No. 35 of 2019 (India)..... 6
Indian Penal Code, 1860, Act No. 45 of 1860 (India) 6

RULES

Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, notified in Gazette of India, Part III, Section 4 (No. MCI-211(2)/2002(Ethics/Regulations), dated 6th November, 2002) 5, 10

TREATISES

International Covenant on Civil and Political Rights (ICCPR), Dec. 16, 1966, 999 U.N.T.S. 171 5
International Covenant on Economic, Social and Cultural Rights (ICESCR), Dec. 16, 1966, 993 U.N.T.S. 3 5
United Nations Convention on the Rights of Persons with Disabilities (CRPD), Dec. 13, 2006, 2515 U.N.T.S. 3 5
Universal Declaration of Human Rights (UDHR), G.A. Res. 217A (III), U.N. Doc A/810 (1948 5