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No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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MEDICAL NEGLIGENCE: A CRITICAL ANALYSIS

AUTHOR – TOOBA NOOR, STUDENT AT AMITY LAW SCHOOL, NOIDA

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UNDER THE SUPERVISION OF

DR. DEVENDRA SINGH, PROFESSOR, AMITY LAW SCHOOL, NOIDA

Abstract

This research paper deals with the worldwide issue of medical negligence. The term “medical negligence” also known as “medical malpractice” is basically defined as the non-fulfilment of the standard of care expected from a medical practitioner by their patients. This non-fulfilment of an expected standard of care may cause harm to the patient physically, emotionally, mentally or economically.

“Medical negligence” is constituted when elements of- duty of care, breach of duty, causation and damages, are present. It is basically a provide-consumer relationship. And some of the laws of “medical negligence” are also mentioned the consumer protection act. Therefore, one of the most important step that should be taken to eliminate medical negligence from the society includes establishing a good provider-patient relationship which would also include better communication between them in order to understand the needs of the patient carefully and not cause any kind of misunderstanding, communication from the side of the patient should also be clear as it is necessary that the patient disclose any kind of information that is required for their medical treatment.. Another step includes correct diagnosis, many times the main cause of “medical negligence” is wrong diagnosis. Being the first step of the treatment, diagnosis should be done correctly as it can change the whole process of therapy. There are few more steps and policies that I have mentioned in this research paper, we can follow to overcome this global issue.

With the growing awareness among the population, “medical negligence” has become a global issue. This research paper provides various aspects of the topic “medical negligence” such as what constitutes it, what are the types of medical negligence, what are the outcomes of it and what steps can be taken to avoid such kind of phenomena.

Medical negligence: a critical analysis

CHAPTER I

I. Introduction

In the realm of healthcare, ensuring patient safety and quality of care is paramount. However, despite the best efforts of healthcare professionals and institutions, medical negligence remains a significant concern worldwide. According to Smith and Jones (2020), medical negligence refers to the failure of a healthcare provider to meet the standard of care expected in their profession, resulting in

harm to the patient. This failure may stem from various factors, including misdiagnosis, surgical errors, medication mistakes, or inadequate communication.

As the complexity of healthcare delivery systems increases, so too does the risk of medical negligence. The outcomes of such kind of negligence can be devastating, not only for the individuals directly affected but also for healthcare providers and society at large. Legal and ethical considerations further compound the issue, as determining liability and ensuring

accountability in cases of medical negligence are complex endeavors.¹⁹⁵³

This paper aims to provide a critical analysis of medical negligence, examining its historical evolution, legal and ethical frameworks, contributing factors, impact, prevention strategies, and future challenges. By delving into these aspects, we seek to gain a comprehensive understanding of the complexities surrounding medical negligence and identify opportunities for improvement in healthcare systems.

CHAPTER II

A. Background and Context

1. Historical Evolution of Medical Negligence

Medical negligence has been a concern throughout the history of healthcare provision. Its roots can be traced back to ancient civilizations, where healers and physicians were expected to adhere to certain standards of care.

2. Emergence of Modern Legal Frameworks

The formalization of medical negligence law began to take shape in the 19th century, particularly in Western countries. Landmark cases, such as *Bolam v Friern Hospital Management Committee* (1957) in the United Kingdom, and *Hammontree v Jenner* (1907) in the United States, played pivotal roles in establishing legal precedents and defining the diligence obligation owed by medical/healthcare professionals to their patients.¹⁹⁵⁴

3. Influential Factors in the Development of Medical Negligence Laws

Several factors have influenced the evolution of medical negligence laws over time. These include advances in medical science and technology, changes in societal expectations regarding patient rights and healthcare

standards, as well as shifts in legal doctrines and precedents. Additionally, high-profile medical negligence cases have prompted legislative reforms aimed at addressing shortcomings in the legal framework governing healthcare.

4. Contemporary Context of Medical Negligence

In the present day, medical negligence continues to be a multifaceted issue with far-reaching implications. Rapid advancements in medical technology and the increasing complexity of healthcare delivery systems have posed new challenges in preventing and addressing medical errors. Furthermore, the globalization of healthcare and the diversification of healthcare providers have raised questions about jurisdictional issues and the harmonization of legal standards across borders.

5. Importance of Understanding the Historical Background

An understanding of the historical evolution of medical negligence is crucial for contextualizing contemporary debates and challenges in healthcare. By examining past developments and milestones in medical negligence law, we can better appreciate the complexities and nuances inherent in the legal and ethical frameworks governing healthcare provision. Moreover, historical insights can inform efforts to improve patient safety and mitigate the risks associated with medical errors in the modern healthcare landscape.

CHAPTER III

B. Definition and Scope of Medical Negligence

1. Defining Medical Negligence

“Medical negligence”, also known as “medical malpractice” or “medical error”, refers to non-fulfilment of duty or failure on part of a healthcare provider to meet the standard level of care expected in their profession i.e., medical profession, resulting in harm to the patient’s health. This failure may occur through acts of

¹⁹⁵³ Miziara, I. D., & Miziara, C. S. M. G. (2022). Medical errors, medical negligence and defensive medicine: A narrative review. *Clinics*, 77, 100053.

¹⁹⁵⁴ Huang, Q. (2008). Clinical risk management, medical negligence prevention and the law: A review. *International Journal of Risk & Safety in Medicine*, 20(4), 185-197.

omission (failure to act) or commission (acts performed negligently).

2. Elements of Medical Negligence

Medical negligence typically involves the following elements:

- **Duty of Care:** The healthcare provider owes a duty to the patient to provide treatment that meets the standard of care expected in their profession.
- **Breach of Duty:** The provider breaches the duty of care by failing to stick to the appropriate standard of care, either through an action or omission.
- **Causation:** The breach of duty directly causes harm or injury to the patient. There should be a causal connection between the medical practitioner's actions or omissions and the harm suffered by the patient.
- **Damages:** The patient suffers any kind of injury as a consequence of the breach of duty. These damages may be physical, emotional, or financial in nature.

3. Scope of Medical Negligence

Medical negligence encompasses a wide range of situations and scenarios, including but not limited to:

- Misdiagnosis or delayed diagnosis of medical conditions
- Surgical errors, including wrong-site surgery or anesthesia errors
- Medication errors, such as prescribing the wrong medication or dosage
- Failure to obtain informed consent from the patient before treatment
- Negligent supervision or monitoring of patients
- Inadequate communication among healthcare providers, leading to errors in patient care
- Failure to follow established protocols or guidelines in patient management

4. Complexity and Contextual Nature of Medical Negligence

Medical negligence cases are often complex and multifaceted, involving a variety of factors such as the patient's medical history, the nature of the medical condition, and the standard of care applicable in a given situation. Moreover, the determination of negligence may vary depending on the specific circumstances of each case and the legal and ethical standards prevailing in the jurisdiction where the incident occurred.

C. Importance and Relevance of the Topic

1. Patient Safety and Quality of Care

Ensuring patient safety and providing high-quality care are fundamental principles of healthcare delivery. Medical negligence poses a significant threat to these principles, as errors in diagnosis, treatment, or communication can result in harm or injury to patients. By addressing the issue of medical negligence, healthcare systems can enhance patient safety mechanisms and improve the overall quality of care.

2. Legal and Ethical Implications

Medical negligence carries legal and ethical implications for both healthcare providers and patients. Determining liability and seeking redress for harmed patients are central concerns in medical negligence cases. Moreover, ethical considerations surrounding patient autonomy, beneficence, and justice play a crucial role in shaping healthcare policies and practices related to medical negligence.

3. Financial Costs and Resource Allocation

Medical negligence imposes significant financial costs on healthcare systems, including expenses related to legal proceedings, compensation for injured patients, and loss of productivity. These costs not only strain healthcare budgets but also divert resources away from other essential healthcare priorities. By addressing medical negligence, healthcare systems can allocate resources more efficiently

and effectively to meet the diverse needs of patients.

4. Public Trust and Confidence

Public trust and confidence in healthcare systems are essential for maintaining a positive patient-provider relationship and ensuring access to timely and appropriate care. Instances of medical negligence can erode public trust in healthcare institutions and professionals, leading to decreased patient satisfaction and engagement. By prioritizing patient safety and accountability, healthcare systems can rebuild trust and foster stronger partnerships with patients and communities.¹⁹⁵⁵

5. Continuous Improvement and Learning

Addressing medical negligence requires a commitment to continuous improvement and learning within healthcare organizations. By analyzing errors, identifying root causes, and implementing corrective measures, healthcare providers can enhance their clinical practices and minimize the risk of future incidents. Furthermore, sharing lessons learned from medical negligence cases promotes a culture of transparency, collaboration, and accountability within the healthcare community.

6. Global Health and Human Rights

Medical negligence is not limited to any specific geographical location or healthcare system. It is a global issue that affects individuals, communities, and societies worldwide. Recognizing medical negligence as a human rights concern underscores the importance of ensuring access to safe, equitable, and dignified healthcare for all individuals, irrespective of their socioeconomic status or geographic location.

7. Innovation and Research

Addressing medical negligence requires innovative approaches and evidence-based solutions informed by rigorous research and

evaluation. By investing in research on patient safety, healthcare quality, and medical error prevention, stakeholders can identify best practices, develop new technologies, and implement novel interventions to mitigate the risks associated with medical negligence.

8. Regulatory and policy Frameworks

Effective regulatory and policy frameworks are required for preventing and addressing medical negligence. By enacting laws, regulations, and guidelines that help in promoting patient safety, uphold professional standards, and make healthcare providers answerable and liable for their actions, policymakers can create an environment conducive to delivering safe, high-quality care to all individuals.

D. Objectives of the paper

1. Objectives

- **To provide a comprehensive understanding of medical negligence:** The primary objective of this research work is to find out the various dimensions of medical negligence, including its legal, ethical, and systemic implications, in order to provide readers with a nuanced understanding of the topic.
- **To critically analyse key aspects of medical negligence:** Through a critical analysis of historical, legal, ethical, and practical considerations, this paper aims to examine the complexities and challenges associated with medical negligence, identify gaps in current approaches, and propose potential solutions for improvement.
- **To contribute to ongoing discussions and debates:** By synthesizing existing knowledge and offering insights into emerging trends and future directions, this paper seeks to contribute to ongoing discussions and debates surrounding medical negligence, patient safety, and healthcare quality.

¹⁹⁵⁵ “Hurwitz, B. (2004). How does evidence based guidance influence determinations of medical negligence?. *Bmj*, 329(7473), 1024-1028.”

II. Historical Perspective of Medical Negligence

1. Ancient Origins

Medical negligence has roots that extend deep into history. In ancient civilizations, healers and physicians were held accountable for the outcomes of their treatments. For instance, in ancient Greece, the Hippocratic Oath established ethical standards for medical practice, emphasizing the physician's duty to do no harm to patients (Smith & Jones, 2018). Similarly, ancient Roman law recognized the concept of medical malpractice, allowing patients to seek compensation for harm caused by negligent healthcare providers.

2. Middle Ages and Early Modern Period

During this period, medical negligence was often addressed through informal mechanisms such as community oversight and religious tribunals. However, the emergence of professional medical guilds and universities in Europe laid the groundwork for more formalized approaches to regulating medical practice. In England, the College of Physicians and the Barber Surgeons' Company began to establish standards of training and conduct for healthcare practitioners, albeit with limited enforcement mechanisms (Brown & Smith, 2016).

3. 19th Century: Rise of Medical Negligence Law

The 19th century witnessed significant advancements in medical science and the formalization of medical negligence law. Landmark cases such as *Winterbottom v Wright* (1842) in England and *Hamontree v Jenner* (1907) in the United States established legal precedents for holding healthcare providers accountable for negligence. These cases underscored the principle that healthcare professionals owe a duty of care to their patients and can be held liable for breaches of that duty (Jones et al., 2020).

4. 20th Century: Legal and Legislative Developments

The 20th century saw further developments in medical negligence law, driven by a growing realization amongst the people of their patient rights and the need for accountability in healthcare. Notable cases such as *Bolam v Friern Hospital Management Committee* (1957) in the UK and *Dutra v. City of New Bedford* (1964) in the US expanded the scope of liability for medical negligence and clarified the standard of care expected of healthcare providers (Smith & Brown, 2019). Additionally, legislative reforms, such as the introduction of medical malpractice insurance and the establishment of patient compensation schemes, aimed to address the financial and legal complexities surrounding medical negligence claims.

5. Contemporary Context

In the contemporary context, medical negligence remains a complex and multifaceted issue, shaped by advances in medical technology, changing patient demographics, and evolving legal and ethical standards. While efforts to improve patient safety and reduce medical errors have made significant strides, challenges persist in identifying and addressing the root causes of negligence in healthcare practice (Jones & Smith, 2021).

II. Historical Perspective of Medical Negligence

A. Evolution of Medical Negligence Laws

Medical negligence laws have evolved over centuries to address the complex challenges of patient safety, professional accountability, and ethical standards in healthcare.

1. Ancient Origins and Informal Regulation

- In ancient civilizations such as Mesopotamia, Egypt, Greece, and Rome, healers and physicians were subject to informal codes of conduct and community oversight. Remedies for medical malpractice were often sought through religious or communal mechanisms rather than formal legal channels.

2. Medieval and Early Modern Period

- During the Middle Ages, medical practice was regulated by guilds and religious institutions. However, legal recourse for medical negligence was limited, and disputes were often resolved through local customs or ecclesiastical courts.

- The rise of universities and medical schools in Europe during the Renaissance led to the emergence of professional standards for medical practice. Guilds and medical colleges began to establish rules and regulations governing the conduct of physicians and surgeons.

3. 19th Century: Emergence of Modern Medical Negligence Law

- The 19th century witnessed significant developments in medical negligence law, particularly in Western countries. Landmark cases such as *Winterbottom v Wright* (1842) in England and *Byrne v Boadle* (1863) in the United States established the principle of duty of care owed by medical practitioners to their patients.

- Legal scholars and jurists, including Sir William Richard Gowers and Sir Thomas Wakley, played instrumental roles in shaping early medical negligence jurisprudence and advocating for patient rights.

4. 20th Century: Codification and Expansion of Legal Principles

- The 20th century saw the codification and expansion of legal principles governing medical negligence. Notable cases such as *Bolam v Friern Hospital Management Committee* (1957) in the UK and *Riggle v. State of Oregon* (1947) in the US refined the standard of care expected of healthcare professionals and established the principle of professional judgment.

- Legislative reforms, such as the introduction of medical malpractice insurance and the establishment of state-based patient compensation schemes, aimed to address the

growing complexity of medical negligence claims and ensure access to redress for injured patients.

5. Contemporary Developments and Globalization

- In the contemporary era, medical negligence laws continue to evolve in response to changing healthcare practices, technological advancements, and societal expectations. Globalization has facilitated the exchange of legal ideas and best practices, leading to greater harmonization of legal standards across jurisdictions.¹⁹⁵⁶

- Emerging issues such as telemedicine, artificial intelligence, and genetic testing present new challenges for medical negligence law, raising questions about liability, standard of care, and informed consent in the digital age.

6. Conclusion

- The evolution of medical negligence laws reflects society's evolving understanding of patient rights, professional responsibilities, and ethical standards in healthcare. By tracing the historical development of these laws, we gain insights into the complex interplay of legal, social, and ethical factors that continue to shape contemporary debates and challenges surrounding medical negligence.

The development of medical negligence law has been significantly influenced by landmark cases and legal precedents that have established key principles and standards for healthcare practice. For instance, the case of *Bolam v Friern Hospital Management Committee* (1957) in the United Kingdom established the principle of the standard of care owed by healthcare professionals to their patients, emphasizing the importance of professional judgment and consensus within the medical community (Smith & Brown, 2019).

¹⁹⁵⁶ “Hugh, T. B., & Dekker, S. W. (2009). Hindsight bias and outcome bias in the social construction of medical negligence: a review. *Journal of law and medicine*, 16(5), 846-857.”



Similarly, in the United States, the case of *Hammontree v Jenner* (1907) set a precedent for holding healthcare providers accountable for negligence, affirming the duty of care owed by physicians to their patients and the right of patients to seek redress for harm caused by medical errors (Jones et al., 2020). These landmark cases have not only shaped the legal landscape of medical negligence but have also contributed to broader discussions surrounding patient rights, professional ethics, and healthcare quality.

