AN EMPIERICAL ANALYSIS ON MEDICAL NEGLIGENCE AND LIABILITY OF AN DOCTOR

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ABSTRACT
This analytical study helps in understanding the medical negligence in current period. After the enactment of Consumer protection Act 1986 many people filed an suit against many white collars after the enactment of such act. Public awareness regarding medical negligence is increased. Hospital which is more technologically updates uses more theoretical and diagnosis method on patients without proper recognition. Due to the many incident and cases many decisions are taken by the supreme court regarding such negligence act which was suffered by an aggrieved party. No human in the world is consider to be an perfect one the commission of crime in the form of negligence not only affect the aggrieved party but also the person who committed such crime. A doctor is consider to believable for such crime only he or she proves that the particular person is guilty of crime. The negligence can be both civil and criminal negligence. As per medical negligence is concerned the act can only consider as negligence only if it provided y a prescribed person. Providing of medical service by governmental organization or health services and nursing home can only consider as a service under section 2(1) of consumer protection Act 1986. The burden of proof regarding the complaint or the suit is lies with the complainant. National Consumer Disputes Redressal Commission held that the Doctor is not liable for all medical negligence. This research helps in analysis the various heinous activities regarding medical negligence in our country and also the comparative study of the negligence with other country.

Keywords: Breach of duty, Injured party, Damages, Negligence, Medical flaws

Medical negligence is consider to be the branch of medical law. It includes carelessness and rashness during the time of medical proceeding. There is no legal aspect to take care of the negligence as per legislation its depending upon the conduct of to act in a prescribed manner as per the negligence is concerned. According to Winfield negligence as per tort which is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff. An act involving the above ingredients is a negligent act.

Medical negligence is an failure or an wrongful act which was done by a medical practitioner during the medical period. Such an medical error may cause an harmful injury to the patient and sometimes may also result in death.

The main element as per the tort negligence is concerned they are
1) Duty of reasonable care
2) Breach of duty
3) Reasonable damages

Negligence is consider to be an breach of legal Duty towards a particular person. It is a failure of a Doctor or other medical pratitioner to take a proper care of a person or A injured party.

In the legal scenario The legal relationship between the parties comes into an existence when the physician accept to treat the patient. When the concept of acceptance comes into the play the physician is liable for the injuries which was happened to the patient during the time of medical proceeding. The aim of the study is to Analyze The Medical negligence an its liability for Doctor under Law of tort.

AIM OF STUDY:
1) To investigate the various Medical negligence which is happened in India.
2) To Understand the Comparison and in depth analysis of Medical negligence with other countries.
3) To Discuss the various availability of legal provisions as per medical negligence.
4) Whether medical negligence are called mainly due to language barriers.

1 Winfield, Tort, PG.NO 4, p2

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CHAPTER-1

**TO INVESTIGATE THE VARIOUS MEDICAL NEGLIGENCE WHICH IS HAPPENED IN AROUND US**

The following are consider to be an horrible medical practices which resulted in huge injury to the people.

1) **ALEXANDER BAEZ**

He was consider to be an bodybuilder so called as mrmexico and runner up of Mr universe. In 1999 he went to an cosmologist to get operated for an PEC IMPLANT. Due to lack of medical practice he was operated with Breast implant (C-cup) after during the time of investigation it was came into the light of people that the Doctor who was operated for the particular surgery was not posses with an proper certification. This incident shaked the whole part of Mexico and people residing their stopped visiting cosmologist and which created the necessity of taking proper action.

2) **DARYOUSS MAZAREI**

3) **bolam**

The are more than 1500 issues in US reported related to the medical negligence. The lack of proper medical facilities may lead to the internal bleeding among the people. Daryoush Mazarei is a commoner who was recently compliaed regarding the medical negligence. While he was doing the chest operation inside 10 inches long scissor was inserted into his body due to negligence which physically harmed him. This was happened in the University of Pittsburgh Medical Centre. First he was unaware about this matter. After a month realized when their was he of agonizing pain in his stomach.

3) **JESICA SANTILLAN**

Jesicasantillanwas a seventeen year recent lady who died after then fifteen days own heart and double-lung transplant was operated to her. Though their was always an operation regarding this and it was basically went wrong due to the lack of proper medical practinoer, She was given compensation for the act performed by the medical practinoer.

**MEDICAL NEGLIGENCE DEATH IN DIFFERENT AGE GROUP**

![Age at death in Hatfield Broad Oak, 1827-1832](image-url)
This diagram clearly explains about the medical negligence in various fields and the death of age 4 group due to medical negligence. The medical negligence on these piecharts clearly explain about the death of infants from the age of 0 to 9 which is mainly cause due to proper operation techniques by the medical practitioner. The medical negligence not only includes the lack of proper care but also includes the condition of infant body to accept such kind of operation procedures. Which creates difficulties among doctors to practice the various techniques. Towards the child. As the child is considered to be the sensitive creature which should be treated.

CHAPTER 2
TO ANALYSE THE COMPARISION OF MEDICAL NEGLIGENCE WITH OTHER COUNTRIES.

The medical technology is evolved all around the world. As the technology developed the mind of people also evolved. As India is considered to be an still a developing country, the country did not provide various critical treatment to people due to lack of many advanced facilities. Many people in India travel abroad for the requirement of proper medical facilities. As the medical side consider to be providing many positive vibes to the people and it also possesses with many negative aspects. Mainly the medical field also has many drawbacks in the form of medical negligence, lack of proper treatment, lack of facilities etc. The medical negligence exist all around the world. The lack of proper concentration and awareness the negligence is created and which results in various harmful effects on people. Through various research the injuries an heinous death of people are caused mainly in the countries like Germany and all parts of western countries. The religion which has large number of medical practice is Makkah region 500 medical malpractice cases are happened in such countries due to lack of proper medical practitioner. The medical negligence cases many physical injuries and psychological injuries on people. In the recent judgement on medical negligence supreme court awarded compensation of 11 crores to the victim for the medical malpractice negligence. The environmental negligence means “The act of failing to protect the patient by neglecting the thing which we ought to do to them. The negligence means “CARELESSNESS”. The carelessness to protect the patient affects the people. As the Medical field involves the White collar profession the practitioner should take proper care for the patients regarding the negligence.

In the famous supreme court case law Kusum Sharma & Ors vs. Batra Hospital and Medical Research the court held that the law of negligence will apply only according to the facts and circumstances of individual case. No one can ignore the law and as it is applicable to all people in this the affected party was injured due to the medical negligence of the doctor and the doctor is liable to pay compensation for such act.

Another important case is Jacob Mathew V. State of Punjab, the Supreme court held that the doctors of medical profession the doctors are equipped in certain situation but the negligence of such act creates the problem of medical negligence. Where they were problem between to make choices between a devil and the deep sea. Sometimes in certain conditions there are greater risk in the operation but also has an higher chances of success and in another move there would be lesser risk but higher chances of failure. So the decision, of the medical negligence can be made according to the time an circumstances of a particular case law.

A GRAPHICAL REPRESENTATION OF THE NEGLIGENCE IN OTHER COUNTRIES
CHAPTER 3
TO ANALYSIS THE VARIOUS AVAILABLE LEGISLATION AS PER MEDICAL NEGLIGENCE

Medical negligence can be governed under certain laws and legislations. The law of Torts, Criminal Law, and Consumer Protection Act, 1986 also deals with the legislation’s of the medical negligence. The medical negligence in simple language is that the lack of proper care by the medical practitioner and also consider to be the negligence in their process. The negligence is mainly created due to the lack of proper qualified medical practitioner in the medical field.

As per Moni v. State of Kerala. In the case of medical negligence, negligence means failures to perform his act by a man

1. It is considered to be the legal duty of the party to have reasonable care towards the other person. The main legal duty of the practitioner to have an reasonable care towards the another.

2. Breach of the legal duty

3. Consequential damages which was suffered by the legal practitioner

Our Indian society was created many awareness regarding the medical negligence. The reason is that the degrading standards of professional competence, facilities, and the appropriateness of their therapeutic and diagnostic methods. In earlier times, people were afraid of suing the doctor as they were considered as equal to God. But in present world, many doctors were sued due to the malpractices in the medical field.

The situation can be traced from certain cases like the above state one. The main aim of not suing the Doctor for various cases are not to breach the personnel relationship of doctor and patients.

In the law of Tort the negligence can be seen in various fields and professions professionals such as lawyers, architects, doctors and many others. These negligence mainly happen due to the lack of proper contribution towards their economy and their profession. As the job of the particular person cannot be done by the another one as he specialised in some other profession the People consider doctor as God and believe that he possess the requisite medical expertise. Thus this profession is consider to be the noblest profession as it is dealing with the life of the people and their life.

LEGISLATION AS PER UNITED KINGDOM

According to Bolam’s test “A doctor is considered to be the important person who deals with the human body and give an rebirth to women.”

After this Bolam’s test the following steps are considered to be an important things

- Whether the doctor acted with the negligence towards the patient
- If yes, whether the practice survived Bolitho judicial scrutiny as being responsible or logical.

Another important two-step in the analysis as explained in the case law French v. Thames Valley Strategic H.A. which was similar to the case law which was explained before.

POSITION IN INDIA

As the following are considered to be an important provision as per our Indian constitution

AS PER CONSTITUTION PROVISION

- **Fundamental Rights**
  - Article 21
  - Article 32

- **Directive Principle of State Policy**
  - Article 41
  - Article 42
  - Article 47

**AS PER INDIAN PENEL CODE**

- Section 52
- Section 80
- Section 81
- Section 88
- Section 90
- Section 92
- Section 304-A
- Section 337
The following are considered to be the important legislations in our Indian scenario.

CHAPTER 4
To investigate whether the medical negligence are caused due to language barriers

Communication Barriers Put Patients at Higher Risk for Medical

Most of the people are facing medical errors due to the language barriers and it was mainly caused due to the proper communication and interaction between the doctor and patients.

As referenced in the UC Berkeley study, healthcare report more than 45 percent of the population are finding more pressure and errors in the medical field due to the language barriers.

Furthermore, 12 persons lost their life in the UK due to the proper communication and interaction between the people. The Asian management in historical studies which is considered to be an important journal which explains about the lack of proper medical facilities in various cities and also makes us understand that many people had lost their life due to the nonproper performance of work and not giving proper attention towards their work. As per the 2008 survey the negligence are happened mainly during the time of surgery of the people. Lack of proper power facilities during the operation of may lead to the unnecessary death of a particular person. The following are considered to be an important delay created in the hospitals mainly:

- UA diagnosis delay
- A misdiagnosis
- An error in treatment

How to Minimize Your Risk Due to Language

The risk due to language barriers can be reduced only by making them understand your problem of areas. There are many operations which went wrong due to the lack of proper awareness during the medical practise to overcome this problem the following are the steps should be under:

- As the doctor are consider to be the God he should provide certain facilities
- All people should sign the agreement in hospital once they feel that it is correct in guiding the patients should go according to the

The doctors should provide with certain care towards the people and as they are the one hon is consider to be the God of the medical field.

SUGGESTION:

1) IMPROVING THE MEDICAL PRACTICES

The medical practices should be enhanced and the patients should be given proper care and attention. Many doctors fail to treat patients with care as they did not give proper attention to them. Many negligence happened in Canada recently because of the lack of proper qualified doctors.

2) PROPER QUALIFICATION

The doctors should have an proper qualification regarding his profession. Many negligence are happening mainly because of the lack of proper qualified doctors as a medical practitioner.

3) CONCENTRATION

The concentration is a vital role to achieve enormous things in our world. The work cannot be achieved until it possesses with an good concentration. The lack of concentration may lead to medical negligence. The surgical operation to the people are consider to be important which can be completed only if the people do with concentration.

CONCLUSION

Thus the medical negligence should be avoided to protect various innocent soul from various hazards. As these medical negligence happens in enormous count it can be consider to be the part of disaster. Thus medical negligence should be avoided to protect the people. The various innovation technique in the present world protects us from the various medical negligence. The government also help in appointing various qualified doctors in the government hospital to avoid the medical negligence. The patient should be consulted and problem of the patient should be clearly identified after analysing the problem the medical practitioner should give proper remedial measures which will avoid the problem of medical negligence. For example In Sweden a person who kidney was transplanted because of an injury due to an accident. The medical practiser operated the left one instead of right one. which created many problem and consider to be the part of medical negligence. Thus the medical negligence should be avoided by providing. Various facilities to the patient.