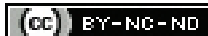


Medical Negligence with Special Reference to Act of Commission and Omission: A Narrative Review

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ABSTRACT

A doctor's failure to uphold the standards of his profession, causing the death of a patient whom the doctor hoped to save, is known as medical negligence. The most embarrassing act one can commit is medical negligence, which usually results in the patient's death. Legally, medical negligence is a breach of the duty of care leading to harm. Lack of clinical competence can be interpreted as negligence. Indian courts decide cases of medical negligence based on the Bolam test. According to Black's Law Dictionary, negligence is defined as "conduct, action, or omission, which may be declared as negligence without any argument or proof as it violates the dictates of common prudence". The three cardinal elements in negligence are duty of care failure, failure to exercise duty of care (Dereliction), and causation of damage to the patient on account of dereliction. References to medical negligence can be found in classical texts such as *Manusmriti*, *Kotilya Arthashastra*, *Charaka Samhita*, *Sushruta Samhita*, and others. To mitigate medical negligence, various measures can be taken, such as improved communication, strengthening training and education, emphasising quality assurance, and legal reforms. The rapid development of medical science and technology has proven to be a powerful tool for doctors to better diagnose and treat patients, but it has also become a tool to exploit people for profit. Accurate information about negligence and its laws is needed as there is not enough data in this regard. To avoid medical negligence, practitioners should show strict adherence to modern surgical ethics, which also include concepts like the importance of informed consent, doctor-doctor relationship, doctor-patient relationship, doctor-state relationship, doctor-attendant relationship, attendant-patient relationship, and patient autonomy.

Keywords: Act of omission, Bolam test, Clinical competence, Dereliction, Informed consent

INTRODUCTION

Medical negligence is defined as incorrect, careless, or negligent treatment of a patient by a medical professional [1]. The most embarrassing act one can commit is medical negligence, which usually results in the patient's death. Legally, medical negligence is a breach of the duty of care leading to harm. Lack of clinical competence can be interpreted as negligence. Indian courts decide cases of medical negligence based on the Bolam test [2]. According to Black Law's dictionary, negligence is defined as any act or omission which, in the absence of argument or evidence, can be declared negligent as being contrary to the principle of common prudence [3].

Most of the time, a diseased person chooses a physician or health facility primarily based on their popularity. A diseased person's expectations are two-fold. It is expected that hospitals and doctors will offer clinical treatment with all their understanding and skill, and secondly, they should ensure no harm to the patient in any manner due to the negligence, carelessness, or recklessness of the medical staff [4,5]. A doctor is obliged to apply his or her specific knowledge and talents in the best way possible while keeping the patient's best interests in mind, even though he or she might not always be able to save a patient's life. Consequently, it is typical for a doctor to conduct the required research or request a report from the patient. Additionally, unless in an emergency, the doctor always obtains the patient's informed consent before commencing any significant treatments, surgeries, or even intrusive investigations. It is largely a tort when a health facility and physician fail to fulfill this obligation. A tort is a civil wrong in the assessment of a contractual obligation that constitutes a breach calling for financial repayment from the court [6].

The right of a patient to receive medical treatment from hospitals and doctors is therefore essentially a civil right. The relationship

comes close to being a contract while still maintaining key tort characteristics, thanks to informed consent, fee payment, and the provision of surgery or treatment, among other things. Negligence can be interpreted as a lack of clinical skill. Failure to act in accordance with 'Standards of reasonably competent physicians of the day, which may not be the highest expert skill, is the definition of negligence on this test' [7].

A tort is a form of misconduct that can take various forms such as collateral, continuing, criminal, dangerous, active, or passive, intentional or reckless. Negligence is defined as 'an act, act, or omission, which can be deemed negligent without argument or proof because it violates the principles of ordinary prudence,' according to Black's Law Dictionary [3].

Legally, medical negligence is a breach of duty of care leading to harm. Indian courts use the Bolam test to decide cases of medical negligence. Lack of clinical competence can be interpreted as negligence that could be dangerous, whether it is active or passive, planned or unplanned.

Every day, a total of 700 individuals die in Asian countries due to Medical Negligence [8]. According to the World Health Organisation, Medical Error is the 10th leading cause of death in the world. There have been only three significant cases of medical compensation since 2010. In Asian countries, there is one doctor available as a healthcare provider per 1674 voters; however, the World Health Organisation norm is 1:1000. India has 84% of hospitals with a capacity of less than 30 beds [8].

Medicolegal Negligence in Ancient Times

References to medical negligence can be found in classical texts such as *Manusmriti*, *Kautilya's Arthashastra*, *Charaka Samhita*, and *Sushruta Samhita* [9].

During the time of *Manu Smriti*, punishments were imposed to ensure the common people's security against irresponsible and reckless physicians. The penalties given by the sovereign to physicians in cases of negligence depended on the severity of the physician's misconduct and the relevant circumstances [10]. According to *Yajnavalkya Smriti* and *Vishnu Smriti*, penalties were prescribed for inappropriate and incorrect treatment by doctors. The severity of the penalties also varied based on the social class of the victim, with higher penalties imposed for victims belonging to superior social classes. However, in *Manu Smriti*, the punishment was not influenced by the victim's social class. When a person had a life-threatening disease, the physician was required to inform the authorities [11]. In *Charaka Samhita*, direct references to negligence are not mentioned. However, it emphasises the qualities of a skilled physician, including possessing theoretical knowledge, clear interpretation, right application, practical experience, and understanding the aetiology, symptomatology, therapeutics, and prophylaxis of diseases [12,13]. The knowledge and practical training of physicians were considered essential for their qualification and practice. Practical training was provided using various objects to prevent experimentation on human bodies. According to the *Sushruta Samhita*, it was obligatory for physicians to obtain permission from the king before commencing medical practice, known as *Raja-anugya* [14].

The *Sushruta Samhita* further specifies that physicians must sit down and conduct *Trividh* and *Shadvidh Pariksha* to accurately diagnose and treat their patients if the disease is within their curative capabilities. However, in the case of incurable diseases, surgeons are required to explicitly communicate the disease's prognosis to the patient and their relatives before initiating treatment, referred to as '*Pratyakhyan*' or informed consent [15,16].

MATERIALS AND METHODS

The method involved a critical analysis of various types of research articles related to medical ethics, surgical procedures, and ethical textbooks.

Observation

Due to a lack of reasonable care, negligence on the part of a doctor that may lead to harm to the patient is called medical negligence. The harm may be physical, mental, or financial. In physical harm, it may relate to the death of the patient or delayed recovery, and in mental harm, it may relate to mental tension or anxiety. According to Lord Baron Alderson, medicolegal negligence is defined as an act of omission, which is not doing what a reasonable person would do, or an act of commission, which is doing what a reasonable person would not [17].

Types of Medicolegal Negligence

Depending on the court to which the case of medicolegal negligence is presented, it is of two types:

- 1) Civil medicolegal negligence.
- 2) Criminal medicolegal negligence.

1) Civil medicolegal negligence: When a patient or a relative sues a doctor for negligence and seeks compensation for the patient's harm in civil court, this is referred to as civil medicolegal negligence [18]. The case of Michael Jackson's death in 2009 stands out as a notable example of civil medicolegal negligence. The legendary pop singer's passing was attributed to acute propofol and benzodiazepine intoxication. Dr. Conrad Murray, Jackson's personal physician at the time, was convicted of involuntary manslaughter in 2011 [19].

An example of a contractual obligation failure:

Failure to fulfill a contractual obligation such as continuing to treat the patient with consent until stable, using utmost care and knowledge, providing a second opinion when necessary, and maintaining professional confidentiality.

Dr. Smith, a renowned orthopaedic surgeon, enters into a contractual agreement with Mr. Johnson, a patient suffering from a severe knee injury. The agreement stipulates that Dr. Smith will perform a knee replacement surgery on Mr. Johnson, using the best available medical practices and his expertise. In return, Mr. Johnson agrees to pay the agreed-upon fee for the surgery and follow the postoperative instructions provided by Dr. Smith. However, during the surgery, Dr. Smith makes a critical error by improperly positioning the artificial knee joint, resulting in misalignment and instability. Despite recognising the mistake, Dr. Smith fails to rectify the problem or inform Mr. Johnson about it. As a consequence, Mr. Johnson experiences persistent pain, limited mobility, and is unable to resume his daily activities as he expected after the surgery. He seeks a second opinion from another orthopaedic surgeon, who diagnosis the misalignment issue and recommends corrective surgery to fix it. In this example, Dr. Smith's failure to properly position the artificial knee joint and his subsequent lack of disclosure constitute a failure to fulfill his contractual obligation to provide competent and appropriate medical care to Mr. Johnson. This breach of the contractual obligation has resulted in harm, physical suffering, and the need for additional medical intervention for Mr. Johnson [20].

The absence of a proper investigation, an unnecessary investigation, a biopsy when necessary, or an X-ray in a suspected bone case. One example is Patient A, who had been experiencing persistent headaches and dizziness for several months. Concerned about these symptoms, they decided to visit their primary care physician, Dr. B. Patient A explained their symptoms to Dr. B, emphasising the frequency and intensity of the headaches. Instead of conducting a thorough investigation into the root cause of the symptoms, Dr. B dismissed the concerns, attributing the headaches to stress and recommending over-the-counter painkillers. Despite the patient's insistence that the headaches were affecting their daily life and requesting further examination, Dr. B did not pursue any additional tests or refer the patient to a specialist.

Months went by, and Patient A's symptoms worsened. They started experiencing episodes of blurred vision and occasional loss of balance. Concerned, they sought a second opinion from another doctor, Dr. C. Dr. C immediately recognised the severity of the situation and ordered a comprehensive examination, including an MRI scan. The results of the MRI revealed a brain tumour, which was causing the persistent headaches, dizziness, and other neurological symptoms. Due to the delay in diagnosis caused by Dr. B's failure to conduct a proper investigation, the tumour had grown larger and required more aggressive treatment.

In this example, the absence of a proper investigation by Dr. B led to a delayed diagnosis and an exacerbation of the patient's condition. Proper examination, including tests and referrals to specialists, could have potentially identified the brain tumour earlier, allowing for timely intervention and a better prognosis for Patient A [21].

C-Diagnosis-incorrect diagnosis and investigation interpretation.

The case of Dr. Farooq Abdullah, who misdiagnosed a patient with a serious neurological condition. In 2012, a young boy named Mohammed Saad was admitted to the All India Institute of Medical Sciences (AIIMS) in Delhi. Dr. Farooq Abdullah, a senior neurologist at AIIMS, examined the boy and concluded that he was suffering from a rare and incurable neurological disorder called Niemann-Pick disease. Based on this diagnosis, the family was devastated as there was no known cure for the disease. However, the boy's condition continued to worsen, and the family decided to seek a second opinion from doctors at the National Institute of Mental Health and Neurosciences (NIMHANS) in Bengaluru. At NIMHANS, the doctors reviewed the case and conducted further tests. To their surprise, they discovered that the boy's symptoms were not consistent with Niemann-Pick disease. After conducting additional

investigations, the doctors correctly diagnosed him with a treatable condition called Wilson's disease, which affects copper metabolism in the body. The family was relieved to learn that their son's condition was treatable with medication, and he started showing significant improvement after the correct diagnosis. The case of Mohammed Saad highlighted the importance of obtaining second opinions and the potential consequences of misdiagnosis by even experienced doctors [22].

D-treatment-treatment that isn't needed, treatment that takes too long, treatment that makes things worse.

One of the examples is; Dr. Farid Fata was an oncologist based in Michigan, USA, who was found guilty in 2014 for intentionally misdiagnosing patients and administering unnecessary chemotherapy treatments to patients who did not have cancer [23].

- **E-operation-operation without consent:** An example of an operation without consent in India is the case of Dr. Upendra Kaul, a renowned cardiologist. In 2001, Dr. Kaul performed an angioplasty procedure on a patient named Anuradha Saha without obtaining proper consent. The procedure resulted in severe complications, and Anuradha Saha eventually passed away due to medical negligence. Anuradha Saha's husband, Dr. Kunal Saha, who is also a physician, filed a case against Dr. Upendra Kaul and the hospital where the procedure took place. The case received significant media attention and highlighted the issue of medical negligence and lack of informed consent in India's healthcare system. The Supreme Court of India later ruled in favour of Dr. Kunal Saha and awarded him compensation of around Rs 11 crore (approximately 1.5 million USD) in 2013. The case played a crucial role in raising awareness about patient rights, medical ethics, and the importance of obtaining informed consent before performing medical procedures in India [24].

2) Criminal medicolegal negligence: It refers to professional negligence in which a patient or a relative brings a case against a doctor in a criminal court and demands that the doctor be punished [25]. One notable example of criminal medicolegal negligence in India is the case commonly known as the "Bhopal Gas Tragedy." While it may not directly involve a medical professional, it had significant medicolegal implications [26].

For example, criminal abortion, criminal operation, lack of care during the selection of a patient, lack of care during the examination of a patient, lack of care during the investigation of a patient, lack of care during the diagnosis of a patient, lack of care during the treatment of a patient, lack of care during the operation of a patient, lack of care during postoperative follow-up of a patient, operation without consent, death during the operation, anaesthesia in the wrong dose, anaesthesia in the wrong route, giving the wrong blood.

Cardinal Elements in Negligence

Duty of care failure: A person who declares that he is prepared to provide medical advice and treatment implicitly acknowledges that he possesses the necessary knowledge and skills. In order for a patient to sue a doctor for negligence, the doctor must have a duty of care. For instance, a doctor has a 'duty of care' if they treat a haemorrhoids patient in the operation theatre [26]. However, there is no duty of care if a doctor gives first aid to a similar patient in a roadside accident. Additionally, there is no duty of care in the medical-legal examination for issuing a disability medical certificate [27].

Failure to exercise duty of care (Dereliction): A doctor failing to fulfill a patient's obligation is the definition of this. Omission or commission constitutes this kind of breach of duty, with the latter carrying more severe penalties. On the other hand, critics contend that omission can also be intentional and unethical [27,28].

a) Act of omission: As the name suggests, it occurs when something goes wrong, is missed, or you forget to do something like failing to get a blood pressure test before having anorectal surgery, failing to get temperature before panchakarma procedure like Swedan (fomentation), failing to get a written second opinion before having a destructive procedure like an orchidectomy. A crime of omission occurs when an individual fails to act when required to do so; it is their obligation [29].

Ex: Neglect of children, not participating in jury duty, a medical oversight that raises the risk of disease-related adverse events brought on by inadequate treatment (under treatment) in an unjustified manner. Blunders of exclusion incorporate quality issues like delayed diagnosis, prescription doses that are not helpful, and medications that aren't recommended.

b) Act of commission: In independent India, the first Law Commission was established in 1955 for a three-year term. Twenty-one additional Commissions have been established since then. In 2013, Supreme Court Judge DK Jain served as chairman of the 20th Law Commission. It was set to serve until 2015. The act of commission means knowing when to do something wrong, like injecting anti-VEGF medication into the wrong eye and removing a lens that did not have cataracts. A person commits a crime of commission when they violate the law, such as theft, murder, etc. An unacceptable increase in the risk of iatrogenic adverse events from receiving excessive or hazardous treatment (overuse or misuse) is a medical error. Quality issues like administering inadvertently the wrong medication, administering excessive doses of medications that are contraindicated, or iatrogenic risk from interventions that were not required are examples of commission errors [29].

Causation of damage to the patient on account of dereliction: This takes place if it is shown that breach of duty was the real cause of damage [27].

Example: Endophthalmitis in the normal eye resulted from an anti-vascular Endothelial Growth Factor (VEGF) injection. Negligence cannot be attributed to defective treatment unless supportive, positive evidence, including expert opinion, is presented.

Bolam Test

In the 1957 case Bolam v. Friern hospital management committee, Mr. John Hector Bolam, the plaintiff, acknowledged that he required treatment for depression at the Friern hospital. Bolam test was developed as a result of this. The plaintiff filed a lawsuit against the hospital, claiming that the physician hired to treat him did not provide him with a medication to relax his muscles. The plaintiff claimed that the doctor was negligent in his duties and that he fractured both of his hips as a result. Additionally, the plaintiff argued that he would not have undergone therapy if he had known about the risks and that medical professionals were negligent in their duties [30].

The court did not hold the defendant accountable in this instance. The court decided that doctors rarely informed patients about the procedure's risks. Additionally, the court relied on the testimony of experts whose perspectives on the use of muscle relaxants were divergent. The court came to the conclusion that the nurses and doctors who treated Mr. Bolam were not negligent because the majority of the experts were of the opinion that they would not have administered such muscle relaxants [31].

Medical Adverse Event

An injury or medical issue, errors of omission or commission in proper care, such as recognising an intervention's complications or a patient's underlying disease, can result in adverse events [32,33].

- 1) A negative event brought on by a medical condition (also referred to as a disease complication). Despite receiving the

appropriate treatment, a disease can cause adverse events or mistakes (such as not using the appropriate medical interventions).

- 2) The outcome of a patient with respiratory failure is the same whether they are injected with morphine, taken off a ventilator, or denied ventilation.
- 3) The British Medical Association (BMA) holds the same opinion: There is no ethical distinction between initially refusing treatment and withdrawing from a treatment that has been shown to be ineffective.

Intention: When morphine is injected, death is always the goal, and if necessary, a second injection will ensure that. Death is also certain if water is stopped. When ventilation is stopped or withheld, some patients survive unexpectedly. Depending on the patient's outlook, that may or may not please the doctor. As a result of management, death is anticipated in all three scenarios. In two instances, intentions are less certain when something is left to chance [30].

Act: There is a positive physical act when morphine is injected or ventilation is stopped, but this is not the case when ventilation is stopped. However, treatment is really the sum of actions and inactions. There is little moral difference between throwing a small child into a shallow pond and watching him deliberately drown. Both the action and the inaction have positive outcomes. Because there is a continuum between the bystander above and the non swimmer who declines to assist by jumping into a raging torrent, the law must punish action more severely than inaction. To say that in acts of commission, the doctor is the agent of death, but in the other two, the disease is the agent. This is a point of contention everything the doctor does or doesn't do for the patient is his or her responsibility.

Effect: The true difference between the three methods of killing a patient to help him is not how it affects the patient directly, but rather how it affects everyone else. Numerous negative effects of medical negligence include adding expenses, running out of insurance, lengthy legal proceedings that worsen the situation, causing traumas that last a lifetime, and unnecessary medical interventions [34].

DISCUSSION

Despite rapid advancements in medical science and technology enabling doctors to better diagnose and treat patients, they have also become instruments for patient exploitation for profit. Medical law is undergoing significant transformation. The laws on professional misconduct and negligence have yet to develop to a satisfactory level, as they are insufficient and do not cover all aspects of medical negligence. Developing a rapport with a patient through effective communication is extremely beneficial. Cases of medicolegal negligence are handled by consumer courts, civil courts, or criminal courts. Punishment in civil and consumer courts involves compensation the patient, while in criminal court, it includes fines and imprisonment for the doctor [35].

Doctors should adhere to the following guidelines to avoid malpractice lawsuits: proper patient counseling, setting realistic expectations, ethics-based professionalism, maintaining an open and honest communication channel in the event of mishaps, daily documentation during follow-up in the event of complications, record-keeping for future reference, early recognition, and implementing corrective strategies for a dissatisfied patients are all crucial aspects of any successful practice [36,37].

The Indian judiciary still follows Bolam test, which is outdated and vague despite the well-established concept of medical negligence in India. As a result, the Indian judiciary must implement fresh approaches to determine medical negligence [38].

The Indian judiciary must adopt new approaches to deliver justice in medical negligence cases, thereby preventing atleast one person's

suffering in court. Those found guilty of medical negligence must receive severe punishments from the court, along with hospitals that employ such negligent professionals [15].

The medical profession is considered a sacred calling, and doctors are often revered as equivalent to deities. It is the duty of doctors to care for their patients and provide them with proper guidance, as stated in ancient literature [39]. Various ancient texts emphasise the offensiveness of medical negligence. Both the *Charak Samhita* and *Ashtang Samhita* describe the qualities and attributes expected of a physician. In the present scenario, it is crucial for physicians to possess sufficient competence to fulfill their duties, given the escalating cases of medical negligence and malpractice [40].

However, when it comes to Ayurveda, there is a lack of explicit elucidation on medical negligence and the accompanying information. Therefore, there is a pressing need for more comprehensive insights into this topic.

Nowadays, a consent is obtained before performing any procedure, including *Panchakarma* [41]. This involves informing the patient about the benefits and potential complications associated with the procedure. It is crucial for patients to be well-informed about the specific procedure being performed on them. They should be aware of both the benefits and potential complications. In some cases, complications such as nausea, vomiting, bloating, fever, and others may arise. To prevent these complications, it is essential to provide detailed information to patients regarding the procedure and its associated risks. If a patient undergoing *Swedan* (sudation therapy) experiences a burn, it may be considered a case of medical negligence by a healthcare professional. However, if a *Waman* (medically induced vomiting) patient experiences nausea, it may not be classified as medical negligence. Conducting a thorough routine assessment of the patient is necessary to minimise complications. This routine assessment includes *Asthtawidh Parikshan* (eight-fold examination), *Strotas Parikshan* (assessment of bodily channels), and *Prakruti Parikshan* (assessment of individual constitution). These assessments can help reduce the occurrence of complications [42].

To mitigate medical negligence, various measures can be taken:

- 1) **Improved communication:** Enhancing communication among healthcare professionals, patients, and medical staff can reduce errors and enhance patient safety [43].
- 2) **Strengthening training and education:** Continual professional development and ongoing training for healthcare providers can improve skills, knowledge, and awareness of potential risks [44].
- 3) **Emphasising quality assurance:** Implementing robust quality assurance programs, including regular audits, incident reporting systems, and feedback mechanisms, can help identify and rectify potential sources of negligence [45].
- 4) **Legal reforms:** Governments can consider reviewing and updating existing medical negligence laws to ensure fair compensation for victims and hold healthcare professionals accountable for their actions [46].

CONCLUSION(S)

Medical negligence, the gravest form of professional misconduct by healthcare professionals, undermines patient trust and often leads to suffering and deterioration of health. To combat this issue in India, the government and medical community must enhance medical practitioners' education and prioritise professional conduct training. This proactive approach is crucial for fostering a healthcare system that prioritises patient well-being, minimises errors, and ensures a safer environment. Addressing the root causes of medical negligence is essential for building a healthcare system that consistently improves and prioritises patient safety. Modern surgical

ethics, which emphasise the significance of informed consent, the doctor-patient relationship, the doctor-state relationship, the doctor-attendant relationship, the attendant-patient relationship, and patient autonomy, should be strictly adhered to by practitioners to avoid medical negligence.

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