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MEDICAL NEGLIGENCE: CRIMINAL LIABILITY OF DOCTORS

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INTRODUCTION:-

Negligence is an important legal concept that plays a pivotal role in civil liability cases around the world. The Black's Law Dictionary defines negligence as "*The omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do or do something which a prudent and reasonable man would not do"*[2]. In light of this definition, negligence can be defined as the failure of an ordinary person to exercise reasonable care, guided by a prudent mind and considerations that a reasonable person would not do, usually resulting in harm or damage to another person or property. This concept emphasizes the importance of personal responsibility and accountability as it establishes a framework for determining when and in what circumstances a person can be liable for their negligence. There are various forms in which negligence can be committed, and a specific form in the medical field is known as medical negligence.

Medical negligence, a specialised subset under negligence, revolves around the provisions of negligence with respect to the healthcare sector. It occurs when a healthcare professional, such as a doctor, nurse, or healthcare institution, fails to meet the standard of care that can be reasonably expected from someone in their position, resulting in any kind of harm to a patient, which can be constituted as medical negligence. In layman's terms, Medical negligence means that a medical practitioner has failed to exercise the degree of skill and care that is expected of a reasonably competent practitioner in that particular branch of the profession.[3] The duty of care in this field is particularly high due to the critical nature of healthcare, and the potentially life-altering consequences errors or lapses of judgments can cause, and this, in turn, will lead to criminal liability.

In India, criminal liability for medical negligence is governed by certain provisions under the Indian Penal Code (IPC) and other related provisions under various laws. Legal, medical, and

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[2] 2nd Edition, Henry Campbell Black, Black's Law Dictionary, West Publishing Co.

[3] Castell v De Greef (1993) SA 501.

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ethical issues frequently interact in complicated ways in situations of medical malpractice in India. Medical boards often review cases to see if the healthcare provider's acts or inactions were, in fact, grossly negligent before deciding whether criminal culpability should be asserted. It's crucial to remember that not all instances of medical negligence end in criminal charges; instead, many are settled via civil action in which damages are sought.

In conclusion, medical negligence is a crucial legal term that deals with failing to use due care and can have both civil and criminal repercussions. Indian Penal Code 1875 offers a legal framework to hold medical personnel legally accountable for their carelessness when it results in a patient's death; however, such instances need a careful review of the evidence and expert views to prove criminal liability.

RESEARCH OBJECTIVES:-

1. To evaluate the Indian legal system's policy on medical malpractice.
2. To investigate medical practitioners' criminal liability cases in India.
3. To compare Indian healthcare laws with those of selected international jurisdictions.
4. To assess the ethical implications of criminalizing medical negligence.

The objective of this research endeavor is to examine medical malpractice from many angles within the context of Indian law. It includes an assessment of current medical malpractice policies in India, a thorough investigation of criminal liability cases involving medical professionals there, and a thorough comparison of Indian healthcare laws with those in force in a number of international jurisdictions. This research also aims to explore the complex ethical issues raised by the practice of criminalising medical malpractice. The study aims to give a comprehensive picture of how India negotiates the tricky terrain of medical malpractice within its legal and ethical framework by examining these many issues while gaining important knowledge from international healthcare law viewpoints.

INTERNATIONAL STANDARD ON MEDICAL NEGLIGENCE

Article 12, p. 1 of the "International Covenant on Economic, Social and Cultural Rights" provides that the signatories "shall recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health"[4] India has acceded to the same. Multiple conventions provide for protection of life by law,[5] equitable access to health care of

[4] See *supra* note 2

[5] Article 2 of European Convention on Human Rights

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appropriate quality,[6] fair compensation to any person who has suffered undue damage due to an intervention,[7] and much more.

To understand the international interpretation and understanding of these conventions and laws the case of Byrzykowski v. Poland[8] can be considered. In this case, the applicant's 27-year-old wife was admitted to a hospital at 8 a.m. and was to give birth to their child. Till 10 a.m. of the next day, there were no signs for birth and the unborn child showed symptoms of heart distress, therefore, it was decided to perform a caesarean section. Due to the administration of epidural anaesthesia, the wife went into coma and all the resuscitation efforts failed. The patient subsequently died a few days after, while receiving treatment in the intensive therapy unit. A child was born by the caesarean section and suffering from serious health issues of neurological character.

The applicant, a Polish national alleged that he had been denied a fair trial in a medical malpractice case before the "European Court of Human Rights" (ECtHR) under the right to fair trial described under Article 6 of the "European Convention on Human Rights" (ECHR). The ECtHR held that the proceedings had not been conducted fairly and impartially, and that there had been a violation of Article 6 of the ECHR. The court noted that the trial judge had been biased and had not allowed the plaintiff to present certain evidence. The ECtHR ordered Poland to pay the plaintiff compensation for the violation of his rights.

MEDICAL NEGLIGENCE: INTERNATIONAL SCENARIO

If a medical treatment results in adverse outcomes, it need not be due to medical negligence necessarily. There can be several factors behind an individual's demise during medical treatment, whether or not it amounts to medical negligence can only be determined after thorough investigation of each case. Medical negligence becomes medical malpractice when the medical professional's negligent treatment results in worsening of the patient's health.

But, there won't be a case of medical malpractice if the doctor's carelessness wasn't a foreseeably likely cause of the patient's harm or injury (causation) or if it didn't truly have a negative impact on the patient's state (injury or damage). The World Health Organization in

[6] Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology

[7] *Ibid.*

[8] Byrzykowski v. Poland, Application No. 11562/05, European Court of Human Rights, 27 June 2006.

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2019 reported that more than 138 million patients are injured annually due to medical errors.[9] Negligence committed during diagnosis, providing prescriptions, deciding treatment, and inappropriate use and administration of medicines are the prominent reasons for patients' suffering.[10]

- **THE UNITED STATES OF AMERICA**

In the USA, 2.5 million deaths occur due to medical negligence – the third-leading cause of mortality after heart diseases and cancer in the country.[11] Health services in the USA have been governed since 2010 by the "Patient Protection and Affordable Care Act (ACA) and the Health Care and Education Reconciliation Act (HCERA)". These laws organize, finance and deliver healthcare in the USA. One of the primary objectives of the ACA is to make healthcare affordable for anyone who cannot afford it.

The burden of proof in case of medical negligence lies on the injured patient in USA. He must show that the injury he endured during the course of treatment is due to his treating doctor acting negligently. There must be "(a) a legal obligation on the treating doctor to exercise reasonable care; (b) a breach of that obligation due to the treating doctor's lapse or failure to uphold the standards of the medical profession; (c) a causal link between the breach of duty and the patient's damage/injury; and (d) damage/injury for which the legal system can provide recourse."

To protect themselves in the event of carelessness or accidental harm to their patients, the majority of physicians and other medical professionals in the USA carry medical malpractice insurance. It is necessary to have mandatory insurance coverage in order to work for a certain medical group or hospital system. It has been discovered that medical malpractice lawsuits frequently result in "defensive medicine," whereby medical professionals begin acting in ways that are damaging or counterproductive in order to avoid legal action.[12]

- **EUROPEAN COUNTRIES**

In countries like Germany, Latvia, Poland and Ukraine, a crime has been committed through negligence if the patient's health has been seriously compromised or they have died as a result of medical negligence. Once this is established, there comes a question regarding the nature of criminal liability that is awarded. In Latvia and Ukraine, there are special provisions that provide for distinct liability for improper performance of duties by medical professionals.

[9] See *supra* note 3.
[10] See *supra* note 4.
[11] See *supra* note 3.
[12] *Ibid.*

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Germany and Poland, on the other hand, do not provide any specific rules nor do they recognise medical negligence as a separate kind of negligence. Here the punishment or liability is comparatively higher.

Long-term incarceration as a form of criminal punishment for medical negligence cannot objectively result in a decrease in the frequency commission of medical negligence and, consequently, an improvement in the protection of patients' lives and well-being. Instead, it will have a bad effect on both the operations of individual doctors and the health care system as a whole.

- **AUSTRALIA**

In Australia, medical negligence claims fall under the purview of common law, which is derived from court decisions rather than legislation. The Bolam test, which argues that a healthcare provider will not be considered negligent if their actions are in line with a responsible body of medical opinion, establishes the level of care required of healthcare professionals. The standard of care can also be determined by the Bolitho test, which requires that the responsible body of medical opinion must be based on logical and rational reasoning.

The principle of informed consent in medical negligence cases was established in Rogers v. Whitaker[13] where the plaintiff suffered a loss of vision due to a cataract surgery that was performed without proper informed consent. The court held that healthcare providers have a duty to disclose all material risks associated with a treatment, and that failure to do so constitutes medical negligence.

In Tabet v Gett,[14] the plaintiff suffered a permanent brain injury during a caesarean section. The court held that the defendant had breached their duty of care by failing to recognize and address signs of fetal distress, and awarded the plaintiff damages.

In Rosenburg v. Percival,[15] the plaintiff suffered a perforated bowel during a colonoscopy. The court held that the defendant had breached their duty of care by failing to recognize and address signs of a perforation, and awarded the plaintiff damages.

In Australia, medical malpractice is a severe problem that can have far-reaching effects on both patients and healthcare professionals. In order to avoid legal repercussions, healthcare professionals are required to adhere to a standard of care that is consistent with a reliable

[13]Rogers v Whitaker (1992) 175 CLR 479

[14] Tabet v Gett (2010) NSWCA 282

[15] Rosenberg v Percival (2001) 205 CLR 434

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body of medical opinion. Patients who have been harmed or injured as a result of medical malpractice may pursue damages in court.

MEDICAL NEGLIGENCE: INDIAN SCENARIO

The Medical Council of India is responsible for handling all matters involving medical errors, carelessness, and malpractice against certified medical practitioners as a result of the "Indian Medical Council Act, 1956". The "Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002" stipulate that medical personnel shall exhibit adherence to ethical medical practises. These Regulations include information on the specific tasks and obligations of doctors, medical ethics, professional conduct, medical knowledge and skills, proper service delivery methods, and more.

In India, patients who are the victims of medical malpractice or carelessness have a number of remedies available to them. The protection of any patient in the event that a right to life, bodily safety, or personal liberty is violated is covered by Part III of the Indian Constitution's fundamental rights provisions. (Article 21 of Indian Constitution)

The Indian Constitution provides extraordinary remedies that are used to uphold these rights. (Article 32 of Indian Constitution). When the complaints impacting the public at large are not adequately addressed, for the enforcement of Part-III rights, anyone may directly contact the High Court or the Supreme Court by submitting the necessary writ or Public Interest Litigation. (PIL).

Councils do not have the authority to compensate injured people financially, but they do have the authority to punish medical professionals who are judged to have been negligent or at fault. According to section 24 of the Act, IMC has the authority to have "the name of any person" listed on a state medical registry removed for professional misconduct. It lays out requirements for etiquette, professional conduct, and a code of ethics for medical professionals and the organisations that support them.

Under tort law, there is also a provision for bringing a civil lawsuit in a trial court to address medical malpractice complaints; an appeal from this decision would go to the apex court. If either party is not pleased with the ruling, they may appeal to the High Court, and then the Supreme Court may eventually determine the case based on constitutional principles and fundamental tort and contract law concepts. According to the severity of the patient's damage or injury as a result of the alleged medical negligence or malpractice, civil law remedies primarily offer financial compensation.

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The Patient or his/her family could file a complaint for a service deficiency under the Consumer Protection Act of 1986, which was interpreted to include it in the definition of "service" even though it wasn't specifically mentioned in the Act, in addition to filing a civil lawsuit.[16] After receiving the President of India's assent on August 9, 2019, the Consumer Protection Act that replaced this statute came into effect in 2019.

Prior to 2005, medical professionals were subject to both civil and criminal liability for carelessness.[17] After the Supreme Court of India's landmark decision in the case of "Jacob Mathew v. State of Punjab"[18] in 2005, the legal liability for medical negligence in India experienced substantial changes. In this decision, the Supreme Court established standards for the level of care that Indian hospitals and physicians should provide, as well as criteria for determining how much compensation should be given in cases of medical negligence. Here are a few significant adjustments made following this ruling:

1. The Supreme Court ruled that the quality of care demanded from physicians and hospitals in India should be based on what an appropriately cautious physician would do in the same situation, taking into account the resources available to the physician or hospital. The Bolam test is the name of this norm which was extensively debated in countries like Australia.
2. The Supreme Court ruled that physicians have a responsibility to fully disclose to patients the risks and advantages of any proposed treatment or surgery and to acquire their informed permission before moving forward. A kind of medical negligence is when informed consent isn't obtained.
3. In cases of medical malpractice, the Supreme Court established guidelines for determining compensation. The court ruled that damages must be based on the type and severity of the patient's harm and must take into account things like lost wages, the price of medical care, and pain and suffering.
4. Expert testimony: The Supreme Court ruled that in cases of medical negligence, expert testimony should be gathered to determine the standard of care and whether the doctor or hospital violated it.

[16] V.P. Shantha v. Indian Airlines Ltd. &Ors. (2014) 2 SCC 201

[17] Dr. Suresh Gupta v. Government of NCT of Delhi &Anr., 121 (2005) DLT 243.

[18] Jacob Mathew v. State of Punjab, (2005) 6 SCC 1

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Overall, the ruling in the Jacob Mathew case improved the consistency and clarity of the law in India regarding medical malpractice responsibility. Furthermore, it made it simpler for sufferers to pursue compensation.

However, the way that large compensation awards are calculated and given by Indian Courts in cases of medical negligence speaks volumes about the absurd, irrational, and unfair justice delivery system, regardless of the victim's injury or loss, and instead dependent upon his income and standard of living. The biggest compensation award, or Rs. 6.08 crores, was recently made in the case of Balram Prasad for the patient's death.

In a case involving the Nizam Institute of Medical Sciences v. Prashant S. Dhanaka[19], the Supreme Court of India awarded Rs. 1 crore in compensation but refused to pay the sum demanded for physiotherapy, nursing care, and litigation fees without providing any justifications.

In V. Kishan Rao v. Nikhil Super Speciality Hospital,[20] Rs. 2 lakhs in restitution for the husband's wife's passing due to negligent treatment for typhoid sickness rather than malaria disease was imposed.

Judges in medical malpractice cases appear to have total and unrestricted discretion when deciding how much compensation to provide. Since there is no legal requirement for mandated protection or insurance coverage, it appears that the medical professionals are turning to defensive medicine as a result of the excessive compensation awarded against them.

CONCLUSION

In conclusion, medical negligence is a serious issue affecting patients worldwide. This paper has compared the legal provisions for medical negligence and liability in India with those of the USA, Germany, Poland, Latvia, and Ukraine. The research shows that while the legal provisions vary among these countries, some common themes exist. For instance, in all of these countries, medical professionals have a duty of care to their patients, and they can be held liable if they breach this duty. Additionally, the courts in all of these countries consider a range of factors when determining whether medical negligence has occurred, including the standard of care, causation, and damages.

[19] Nizam Institute of Medical Sciences v. Prashant S. Dhanaka, (2010) 5 SCC 252.

[20] V Kishan Rao v. Nakhil Super Speciality Hospital, (2010) 5 SCC 513.

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The paper finds that the legal framework for medical negligence and liability in India has some similarities to those in other countries, but there are also some unique features. For example, in India, there is a statutory cap on compensation for medical negligence, whereas in other countries, such as the USA and Germany, there is no such cap. This paper argues that India could benefit from adopting some of the practices of other countries, such as creating specialized medical malpractice courts or allowing for punitive damages in cases of gross negligence.

Overall, this paper highlights the importance of having a robust legal framework for medical negligence and liability. By holding medical professionals accountable for their actions, patients can have more confidence in the healthcare system and receive the care they deserve. While there is no one-size-fits-all approach, by comparing the legal provisions in India with those of other countries, policymakers can identify best practices and implement them in a way that is tailored to the needs of their own healthcare system.

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