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## MEDICAL CONCERNS WITH TRADITIONAL AND MODERN SCIENCE

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### ABSTRACT

The medical profession is frequently regarded as an important objective. The interdependence of medical ethics and the law is arguably nowhere clearer than in the context of medical negligence. The previous decade has witnessed an expansion in healthcare facilities throughout the world; unfortunately, this has resulted in many medical error lawsuits that the courts have heard. Negligence is an example of a breach of duty and care. Even though medical negligence is a serious issue with potentially disastrous implications for both the patient and the medical professional. Ethical and legal behaviour and practices frequently coexist; nevertheless, in circumstances of medical malpractice, ethical standards and therapeutic risk considerations can collide. These factors make research into medical misconduct necessary in order to better understand its causes, prevalence, and current practises as well as to provide solutions for improved practise. With a critical assessment of the legal system, ethical framework, the implications of the medical malpractice system's failure for the health system, and case studies from an Indian perspective, the literature review will specifically consider the Legal and Ethical aspects of Medical Malpractice in India and in general. Further, the research is attempting to develop answers to this scourge to ensure that patients receive better care, reduce the occurrence of medical malpractice, and avoid neglect.

**Keywords: Malpractice, Negligence, Surgery, Patient-safety, Ethics, Ayurveda**

## INTRODUCTION

"Always pray for the wellbeing of all creatures and fullest efforts should be tried to cure the sick throughout the day and night. In India, It is believed that the bond between a doctor and patient is holy. The medical profession is often viewed as an important objective, but it is increasingly under scrutiny due to reports of medical negligence. This is a particularly worrisome issue, not just in our country, but across the world. The primary reason for this is the existence of cases where a medical professional with inadequate qualifications has been allowed to practice. This has resulted in the delivery of substandard medical treatment, and has thus caused harm to the patient. Medical malpractice is a significant issue. that should be addressed. To ensure the patients get the best possible care, it is essential to put in place stringent regulations that govern the qualifications and credentials of medical professionals. Furthermore, it is important to ensure that medical professionals are held accountable for their actions, so that incidents of negligence are avoided. Only then can we be sure that medical care will be delivered in the most appropriate manner, and that patients will receive the best possible treatment. Negligence is a form of breach of duty and care and can be defined as failing to take

adequate precautions to shield a third party from foreseeable risks of damage." Although Medical malpractice is a serious issue and can have devastating consequences for both the patient and the medical provider. It is described as a medical professional's, typically a doctor, negligent act. Negligence can result from either doing something a medical professional of ordinary skill wouldn't have done or failing to do something a medical professional would have done, leading to serious injury or death. This carelessness can result from either doing something failing to act in a way that a medical professional of ordinary skill would have acted or doing something that a medical expert of ordinary skill would not have done, which causes serious injury or death [1].

Medical negligence is among very complicated and burning subject, since every patient's body can react differently to the same drugs and treatments, there is always a little chance that anything could go wrong during medical therapy. In India, doctors and other healthcare workers with less experience are often unaware of the various laws and regulations pertaining to medical practice.

A doctor may have Medical Malpractice Stress Syndrome if a malpractice claim is brought against them. Experiencing a distressing reaction, the term "medical

malpractice stress syndrome" refers to a condition that has an impact on the provider's mental and occasionally bodily health. Medical malpractice stress syndrome affects the provider's health and patient safety both during and after litigation [2-4]. This issue is very worrying because newly licensed medical professionals may not be aware of information that could affect their entire career. Physicians who are dealing with the stress brought on by medical malpractice lawsuits can benefit from learning about the procedure for filing a claim.

#### **The Physician's anticipated behavior**

Medical care sellers are supposed to behave differently from merchants because it is a commodity for which the producing activity and the product are the same. Because the consumer is unable to evaluate the product before using it, the medical market is reliable.

#### **Ethics in Ayurveda**

" To the best of his ability and using all available methods, a sensible student who wants to become a doctor should endeavour to advance his proficiency in all areas [5].

The High Ideals of Medical Profession-

" The gift of life is superior to all other gifts.".  
 "All other doctors are subordinate to him because he just cares for his patients out of compassion and doesn't want anything in return, including money or personal gain.

Those who use their medical expertise for personal gain can be compared to people who are gathering a mountain of dust instead of actual gold [6]."

#### **The Four Great Ethical Principles**

" The four ethical standards of a doctor are: friendship, pity for the sick, interest in cases according to one's talents, and no attachment to the patient after his or her recovery." [7]

The distinction between malpractice and negligence [8-9] are elaborated with two separate ideas.

#### **Negligence**

It's a synonym for carelessness. The Latin word "Negligentia" from which the English word "negligence" was derived, means "to fail to pick up," and it alludes to willful carelessness. It is a widely held belief that under the legal doctrine of negligence, when someone negligently causes harm to another person and fails to take the reasonable precautions that should have been taken under the circumstances to avoid or prevent that harm intentionally, they are liable for the harm. The three main types of medical negligence include Criminal type, in this imprisonment would be given mostly in view of negligence done, the different clauses under criminal variety includes section 336 IPC if no injury occurred but the doctor endangered patient's life, under section 337 IPC if hurt

was caused, IPC 338 if grievous hurt was caused and 304 A, of IPC if the death occurs. The second variety is of civil type in which, compensatory fine to be paid and for monetary compensation from doctor the complainant under tort law may approach to civil court generally, if treatment was free whereas they may approach to consumer forum under the 1986 Consumer Protection Act if the fee was paid and third one is dealing with issues pertaining to license. The four components of medical negligence are the duty of care, the violation of the obligation, the real cause, and damages.

### Malpractice

The Latin words "malus" and "practice," which mean "bad" and "to practice," respectively, are the source of the English word "malpractice". A professional who violates their duty of care to a client commits the tort known as malpractice. Most frequently, allegations of malpractice are made against doctors. Like intentional wrongdoing, carelessness or malpractice has four elements: a legal obligation, a violation of that duty, a causal connection between the breach and the injury produced, and quantifiable harm because of the injury caused.

### DIFFERENT ENTITIES OF MEDICAL MALPRACTICE [10]

1. Misdiagnosis of conditions and diseases is one of the most common types of medical claims in malpractice lawsuits. Only if the physician does not provide the patient with the same caliber of care and competency that another doctor would have under comparable circumstances, leading to the patient's injuries and accompanying losses, would misdiagnosis be regarded as malpractice. Taking incision in *apakwa awastha* of *vrana*, *acharya shushrut* referred to that physician as "*taskar*" (*burglar*).

#### 2-Delayed Diagnosis

When a diagnosis is delayed, the patient must show that the doctor should have done more to evaluate and diagnose the patient's condition earlier.

#### 3-Drug Prescription

Patients around the world may experience life-threatening consequences as a result of incorrect medications written by quacks.

#### 4-Negligent failure to treat

It is negligent failure to treat when a patient who has been accurately diagnosed does not receive the necessary care. It could involve a patient being released from the hospital too soon, or the doctor could forget to suggest the patient see a specialist or receive the necessary follow-up care.

#### Surgical malpractice [11]

The patient's quality of life may suffer

because of surgical errors and can cause permanent injuries. Sometimes there is a problem with communication, and frequently the surgeon neglects to obtain a full medical history of the patient. Complications may occur during the surgical procedure for which the surgeon may be held accountable and can be sued for malpractice. Many kinds of surgical mistakes may be considered medical malpractice, including the following:

- Incorrect site surgery.
- A faulty patient underwent surgery.
- Using the incorrect surgical technique
- Using the wrong surgical technique
- Harming nerves, tissues, or organs
- Performing unnecessary surgery
- Using unsterilized instruments
- Leaving objects inside the patient
- Administering excessive or insufficient anesthesia
- Failing to provide adequate follow-up care.
- Birth injury malpractice
- Faulty medical equipment

#### **RIGHT TO COMPENSATION- WHEN AND WHY**

According to a recent study, 1 out of every 112,000 surgical procedures is thought to involve a surgical error. The Limitation Act of 1980 states that you only have three years to file a negligence claim. This time frame starts

to run once the surgical error occurred or you became aware of it. When a person is receiving care while still a minor (under the age of 18), the three-year window begins when that person turns 18 years old. A sensible individual would always try to refute surgical negligence accusations since bringing a claim for surgical error is about more than simply getting money for your pain and suffering; it's also about getting justice and seeking redress. You must file a claim to be compensated for the physical suffering and likely emotional anguish you have experienced.

#### **Tort LAW [12]**

A branch of law that handles civil wrongs unrelated to contractual commitments and offers remedies is known as tort law. Torts can be divided into three categories: strict responsibility, deliberate, and negligent.

When the injured party's acts were disproportionately dangerous, negligent torts occurred. Intentional torts are those wrongs that the injured party intended to happen by his actions or inactions or should have known they would. Strict responsibility wrongs are established when a specific action results in damage rather than on the level of care taken by the injured party. Medical malpractice cases are categorized as negligent torts under Indian law. Tort liability serves two main

purposes. First, by paying money and serving as an insurance provider. Second, by punishing those who are shown to be negligent.

### **Which section [13]**

Section 304-A of the Indian Penal Code (IPC), 1860, which allows a complaint against a medical professional for alleged criminal medical negligence to be registered, is the relevant provision for imputing liability to doctors and related medical professionals.

The Indian Penal Code's several sections that address the criminalization of medical misconduct in India are

Section 52. "Good faith"- Nothing that is done or believed without due care and attention may be claimed to have been done or believed in "good faith."

Section 80. "Accident in doing a lawful act" - Nothing that is done by mistake or misfortune and without any criminal intent constitutes a crime.

Section 81, "Act likely to cause harm, but done without criminal intent, and to prevent other harm," states that nothing constitutes an offence simply because it is done in the knowledge that it is likely to cause harm if it is done in good faith to avoid or prevent other harm to people.

Section 88. "Act not intended to cause death, done with consent and in good faith for

another person's benefit: Nothing that is not intended to cause death is unlawful because it could harm another person or because the act's perpetrator knew or should have known that harm would likely occur.

Section 90. "Consent known to have been granted under misperception or fear.

Section 304-A. "Causing death by negligence": Anyone found guilty of culpable homicide that does not constitute murder faces a sentence of up to two years in jail, a fine, or both.

Section 337, "Causing Great Harm by Endangering the Life or Personal Safety of Others,"

Section 338, "Causing Hurt by Endangering the Life or Personal Liberty of Others," both apply.

### **Pitfalls**

#### **❖ Asymmetry Communication**

Numerous scientific and technical developments during the past several decades have decreased mortality and morbidity and improved quality of life in general. The standard of medical care is declining, ethical standards are eroding, patient management practices are becoming more commercialized, and there are other undesirable changes happening at the same time. These modifications have had a big impact on the

doctor-patient relationship, which was built on trust. Due to the current state of this connection, doctors are now covered by the Consumer Protection Act. Because a medical team including doctors, nurses,

❖ **Uncertainty**

However, the doctor provides the best possible care. Success is not guaranteed to be 100 percent. There are issues with causation, in that it is important to consider how differently and surprisingly the human body might respond to various treatments. As a result, a doctor cannot always promise that his treatments will be effective and should not be held accountable for every unsuccessful or inadequate treatment outcome.

❖ **Lack of funding and tradeoffs in likely-based therapies**

❖ **Poor public relations for patient rights and a willingness to ignore them.**

❖ **Very few nations can cover all the costs of modern medicine for all its inhabitants.**

❖ **Corruption**

**RESEARCHING POSSIBLE MEANS TO IMPROVE THE SYSTEM'S EFFICIENCY**

The social, economic, and technological landscape in India is currently undergoing fast

assistants, and others works together to treat patients in hospitals, it is challenging to identify who, if anyone, engaged in the misconduct and to what extent.

transition. Concerns about the quality of healthcare are raised by these changes. The hospital is a crucial component of the health care system. The most effective strategy for raising the caliber of services provided by hospitals would be accreditation. A national system of hospital accreditation ensures that all hospitals—public or private, domestic, or foreign—perform the required duties in the national health system. patient safety, high-quality care, and respect for and preservation of patient rights, and routine assessments of patient satisfaction are all advantages of certification for patients. It offers accreditation to hospitals without making any distinctions based on the ownership, legal status, size, or level of independence of the hospitals. Numerous health systems have put in place communication and resolution programmers, or CRPs. The fundamental components of a CRP are that healthcare organization's and clinicians: (1) Be forthright and truthful with patients about dangers and negative effects; (2) Create strategies to prevent the recurrence of negative outcomes brought on by system

failure or human error; (3) support the patient's, families, and care team's emotional needs; and (4) Adverse events caused by unsolved errors should be promptly disclosed to patients, and they should be given both financial and non-financial settlement options [14, 15].

**Key Policy Principles:**

**Equity:** Reducing inequality also entails taking affirmative action to help the most disadvantaged people and reducing disparities due to a variety of social exclusions, including gender, caste, poverty, handicap, and regional restrictions.

**Patient-centered care and high-quality treatment:** All facilities across all sectors would be evaluated, certified, and encouraged to maintain high-quality treatment, and healthcare services would be effective, safe, and practical and administered with respect and discretion.

**Accountability:** It would be crucial to eliminate corruption in the public and private health care sectors, as well as in financial accountability and decision-making processes.

Health professionals and managers must do their duties and utilizing the highest levels of professionalism, trust, and integrity while being backed by a framework and set of rules that make this possible.

**Responsive and Understanding System:** By taking lessons from the populations, they serve; healthcare organizations are dynamically improved.

**DISCUSSION**

An ancient literature of Indian health medicine (ayurveda) contains an unparalleled description of ethics regarding healthy doctor-patient relationships. A competent doctor must be a skilled professional who is also pleasant and empathetic, and who understands how to tailor communication to each patient and his or her family. Despite all the shortcomings in the healthcare organisation where he works, he will never lose sight of his objective. Saving lives and not taking them is the goal of medical practise, which also does not kill any living thing. A great doctor dedicates themselves to saving every living thing with great compassion. Diagnostics, treatment, and communication are the three pillars that make up the safe medical profession. Weakening in any of these pillars will lead danger to the safety of medical profession. We cannot select an appropriate course of treatment without obtaining a reliable diagnosis, everyone will agree. Nevertheless, even with the best diagnosis and therapy, doctors might still fail if they are unable to clearly and effectively convey their information to the patient and if they do not modify their behaviour in

accordance with the patients' beliefs and expectations. So, in order to get desired results, a medical expert should constantly consider all aspects of any action. In developing and improving surgical materials and procedures [16-18].

## CONCLUSION

From the age of ancient Indian medicine this thought Patients who are in agony seek medical attention from doctors in the expectation that they may heal quickly. However, there are circumstances when the course of therapy does not go as expected; this could be because of the patient's fault or the doctor's negligence. One thing to keep in mind is that even they are fallible human beings who can make mistakes. Doctors should be familiar with the legal process and, if they are sued, establish an honest, open, and cooperative relationship with their attorney. These actions will benefit patient safety and the personal and professional wellbeing of doctors in addition to improving patient safety. However, any harm caused by the doctor's negligence or that of the medical staff will make them liable because it might have a detrimental impact on both the patient and the doctor in every way.

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