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An Integrative Study on Liabilities of Health Centers in Cases of Medical Negligence

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Abstract

Negligence acts still exist in the world because medical practitioners fail to perform their legal duty. In earlier periods the medical profession is most trusted by people so the concept of negligence is not identified. But at present the legislative body established the punishable instruments for medical practitioners under various grounds like Torts, Indian penal code 1860, Indian contract Act, 1872 and Consumer Protection Act, 1986. The concept of negligence are diversified in civil and criminal law. Thus in civil case burden of proof is lies upon plaintiff (patients) to prove the negligence of medical practitioners results in severe injuries or death and in criminal case the defendant held liable to prove on before court thus negligence act occurred in natural manner with substantive evidence. Hence, the court will declare the person in guilt based on facts with relevant evidence of the case. So based on circumstances of the case the court entails to give punishment for the convicted person. The main object of the study is to analyze the legal aspects of medical negligence in India, to find out the common errors occurs by medical professionals, to examine the concept of medical negligence in civil and criminal law, and also to create awareness for people (consumer) about negligence act done by medical practitioners. The type of research is empirical study, convenient sampling method used, sample size is 1554. The study was entitled to analyse the remedies for negligence of medical practitioner is effective based on current status.

Keywords

Legislature, Legal Duty, Burden of Proof, Medical Negligence, Awareness.

INTRODUCTION

The literal meaning of negligence (L. Kumar and Bastia 2011) is "breach of a legal duty of care" and liability is the responsibility of a person for his acts of commission and omission. Hence the duty of all medical practitioners like doctors, nurses and other health care providers are solely responsible for health of their patients. (Schumaker 1979) Unfortunately, medical practitioners fails to perform their duties to their patients. There are 12 types of medical negligence are occurred by medical practitioners:-(Yadav 2015) Active negligence, Passive negligence, Collateral negligence, Comparative negligence, Concurrent negligence, Continued negligence, Criminal negligence, Gross

negligence, Hazardous negligence, Wilful negligence, Reckless negligence and Negligence Per Se. Medical negligence is punishable under various ground like Torts, Indian penal code 1860, Indian contract Act, 1872 and Consumer Protection Act, 1986. (&na; 1957) **Negligence as a tort:-**(Joga Rao 2009) Juris Ratanlal and Dhirajlal defined the term negligence in a precise form with the help of three constituents: - A legal duty to exercise due care , breach of the duty and consequential damages. Thus claimant satisfies the court with the help of evidence and also follow above elements hence, the defendant held liable to pay compensation.

Generally medical negligence comes under three grounds:-(Koley 2010)

1. Civil law
2. Criminal law
3. Negligence under consumer protection act

Civil law in medical negligence:-(P. Smith 2012) Hence in civil case burden of proof is lies upon plaintiff (patients) to prove the negligence of medical practitioners results in severe injuries or death The plaintiff have to fulfil the following essential elements: person committed an act of omission or commission, breach of the legal duty, resulted injuries are should be proved with the help of evidence (medical science , expert opinion).

In the case of the State of Haryana v. Smt Santra, the Supreme Court held that every doctor "has a duty to act with a reasonable degree of care and skill manner."

Criminal law in medical negligence:-(Pandit and Pandit 2009) Under IPC, 1860 expressed the punishments for negligence act occurred by medical practitioners in India. In section 269 deals about negligent act by which an infection spread results in dangerous disease to life of a person, section 270 deals about malignant act by which an infection spread results in dangerous disease to life of a person, section 274 deals about adulteration of drugs, section 275 deals with sale of adulterated drugs, section 276 deals about the sale of drug as a different drug or preparation, section 284 dealt with negligent conduct of doctors regarding poisonous substance, section 287 deals with negligent conduct in respect of operation of machinery, section 304A is based on negligence resulted death of a person, section 312 specifies the negligence resulted miscarriage, section 313 deals about negligence of miscarriage without woman's consent, section 314 dealing the death of the plaintiff when the doctor was miscarrying a baby and section 315 deals about punishment for the person intent to kill unborn child or try to kill after birth.(Ormerod 2011)

Hence the defendant held liable to prove on before court thus negligence act occurred in natural manner with substantive evidence.("Negligence: Hospitals: Liability for Negligence of Servants" 1910) **In case of Andrews v Director of Public Prosecutions** stated that lack of care are reasonable in civil liability and is not justifiable under criminal liability. (Nelson-Jones and Burton 1990)

In case of Syad Akbar v State of Karnataka dealt with the effect of evidence between civil and criminal proceedings. (Singh and Bhushan 2004)

In case of Indian Medical Association v. VP Shantha (1995), the Supreme Court included the term medical profession in definition of services under section 2(1)(o) of the Consumer Protection Act, 1986.(Gupta 2015) Based on the definition pointed out the relationship between patients and medical practitioners is a contract for a personal service but it is not a master and servant relationship. Thus medical practitioners occur injuries to patients during the course of treatment so the patients has the power to claim compensation from doctors by filing a suit under consumer protection courts / tribunals.(Arora et al. 2017)

A complaint can be filed before 3 tier system of CPA, 1986

- **District forum:-** If the value of services and compensation claimed is less than 20 lakhs can file a suit in the district council.

- **State commission:-** If the value of services and compensation claimed does not exceed more than 1 crore can file a suit in the state council.
- **National commission:-** If the value of services and compensation exceeds more than 1 crore can file a suit in the national council.(Joga Rao 2009)

The major aim of the research is to study the liabilities of hospitals in cases of medical negligence and to fulfil the above objectives:- 1. To analyze the legal aspects of medical negligence in India 2. To find out the common errors of medical professionals and to create awareness for people about negligence act done by medical practitioners.

Hypothesis

Ho:-The compensation for medical negligence is not sufficient.

Ha:- The compensation for medical negligence is sufficient.

REVIEW OF LITERATURE

1. Medical negligence: civil vs criminal issue settles - DR. B.D. Gupta:(Kale 2015)

The study deals with analysing negligence act are punishable under different laws. The paper dealt with finding out the common errors of doctors in course of treatment and our legislative body has enacted many provisions to protect the health and safety of patients. For ex:- negligence as Torts, negligence by medical professionals in civil and criminal and consumer protection act, 1986 etc. The study concludes that medical practitioners held liable to prove on before the court act is not done in a criminal manner.

2. Measure of liability in Medical Negligence:A hospital based study-Naveen Kumar Edulla1, K. Ramesh, Yadaiah Alugonda, Jyothinath Kothapalli and Ambreesha K Goud:

The study deals with the role of liability of hospitals in case of medical negligence.The author has examined the percentage of medical negligence occurs between male and female in hospitals. Thus study concludes women pregnancy are the common matter of negligence and most of medical negligence occurs on major health problems because of lack of facilities, carelessness, standards of medical practitioners etc.(J. W. Smith 2017)

3. Medical negligence in India : A critical study- Dayar ShankarTiwari :

The study deals with analysing the negligence act occurs by two person ex:- doctor and staff. In certain situation there may be a possibility of negligence both doctor and staff. Hence, most of the cases there will be a joint and several liability so both doctor and hospital are held liable to pay compensation for patients (consumers). The study concludes that defendant are held liable to prove on before court thus negligence act occurs in accident with relevant evidence.(Tiwari 2013)

4. Medical negligence and the law - K K S R Murthy :

The study deals with analyzing the public awareness related to medical negligence in India. The article was explicit about the effectiveness of the consumer protection act, 1986 because people came forward to file cases against doctors, nurses and other medical services etc. In earlier days the hospital faced problems regarding the facilities, standard of professional doctors and appropriateness of their therapeutic and diagnostic methods. But today's scenario is a negligence act constituted by medical practitioners due to carelessness so recklessness happens to the patients in hospitals. The study concludes that under section 304A of IPC, 1860 deals with any person commits negligence act resulted death of a person are punishable with imprisonment for two years or fine or both.(Mahalwar 1991)

5. Medical negligence : Hospital's responsibility- Sweta S. Agarwal & Swapnil S. Agarwal:-

The study deals with comparative analysis of functions in hospitals between earlier and present scenario. Therefore public awareness of medical negligence are growing in India.

Generally the liability given by the hospitals to the injured party based on the circumstances of the case. The study concludes that court discretion is the medical practitioners have to pay compensation to the patients (consumer).(S. Kumar 1998)

METHODOLOGY

The research is based on the conveyance sampling method, 1554 responses are collected. The researcher conducted the study based on a qualitative method. The object of the study is focussed on finding out the common errors of medical practitioners in hospitals and collected information has been limited to primary sources like e-books, newspapers and secondary sources like journals and websites.

**Data Analysis
Frequency Table:**

		AGE			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Below 18yrs	504	32.4	32.4	32.4
	19 - 30 yrs	632	40.7	40.7	73.1
	31 - 50 yrs	371	23.9	23.9	97.0
	Above 50 yrs	47	3.0	3.0	100.0
	Total	1554	100.0	100.0	

The combination of correlation is dependent and independent variables. Thus the above table represents age and has independent variables. Thus cumulative percentages are 32.4 for below 18, 73.1for under the category of 19-30, 97.0 for under the category of 31-50 and 100. 0 for under the category for above 50. Hence, totally 1554 people are done my survey

CROSS TAB:-

Crosstab				
Count				
		Q. Have you ever faced medical negligence?		Total
		Yes	No	
AGE	Below 18yrs	432	72	504
	19 - 30 yrs	355	277	632
	31 - 50 yrs	141	230	371
	Above 50 yrs	18	29	47

Total	946	608	1554
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The combination of correlation is dependent and independent variables. Thus the above table represents age has independent variables and the people faced through medical negligence are considered to have dependent variables. Hence, 946 people are accepted they faced medical negligence and 608 people are not faced medical negligence in hospitals. So totally 1554 people are done my survey.

Chi Square

Chi-Square Tests			
	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	227.963 ^a	3	.000
Likelihood Ratio	244.998	3	.000
Linear-by-Linear Association	211.296	1	.000
N of Valid Cases	1554		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 18.39.

In this report I have proved that my value on chi- square is below 0.05 so it is considered has alternative hypothesis. Hence it is proved that people are aware of the negligence act by medical practitioners existing in hospitals and accept also that they faced medical negligence during the course of treatment. However, the chi-square test was used for my empirical research analysis.

DISCUSSION

The chi- square value is 0.00 so the alternative hypothesis is accepted, there is an association between two variables. The data collected information were summarised and formed in to a standard deviation method (SD). However, the chi-square test was used for my empirical research analysis. The combination of correlation is dependent and independent variables. Hence, the study is analyzed on categories of age that are considered as independent variables and the people faced through medical negligence are considered as dependent variables. Thus the majority is 432 people under the category of 18 yrs by comparing other categories (19-30, 31- 50, above 50 yrs) and the majority is 277 people who are rejected under the category of 19- 30 yrs. Hence, 946 people are accepted they faced medical negligence and 608 people are not faced any medical negligence occurs in hospitals. So a total of 1554 people did my survey. Therefore it is proved that people are aware of medical negligence acts exhibited in

hospitals and it reveals to the world that people are being exploited by medical practitioners during the course of treatment. The study concludes that people can claim compensation from doctors or other medical services etc and also they have to be aware of the activities that exist in hospitals.

SUGGESTIONS AND CONCLUSION

The paper has clearly stated that medical practitioners fail to perform their legal duty and hospitals failed to take appropriate action towards its stakeholders. The study is based on collecting information from the public opinion and pointed out that at present people are aware that medical negligence exists in hospitals. So the people filed a suit in court regarding compensation from the medical services (doctors, nurses, related to medical profession etc.) The combination of correlation is dependent and independent variables. So the ages represented in tabulation are independent variables and the people undergone difficulties because of medical negligence are considered as dependent variables. Hence, 946 people have accepted that they faced medical negligence and 608 people have not faced medical negligence in hospitals. Therefore 790 people are accepted, they are being exploited by hospitals and 764 people are not faced exploitation during the course of treatment. So a total of 1554 people have responded to my questionnaire prepared solely for this research purpose. However chi square value is above 0.05 so it is considered to have a null hypothesis. Hence it is proved that people are being exploited by medical practitioners during the course of treatment and concludes that negligence acts are existing in hospitals.

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ABSTRACT: Negligence act still exist in the world because of medical practitioners fails to perform his legal duty. In earlier periods the medical profession is most trusted by people as the concept of negligence act are not identified. But at present the legislative body established the punishable instruments for medical practitioners under various grounds like Torts, Indian penal code 1860, Indian contract Act, 1872 and Consumer Protection Act, 1986. The concept of negligence are diversified in civil and criminal law. Thus, in civil case burden of proof is lies upon plaintiff (patients) to prove that negligence of medical practitioners results in serious injuries or death and in criminal case the defendant held liable to prove on before court this negligence act occurred in natural manner with substantive evidence. Hence, the court will declare the person in guilt based on facts with relevant evidence of the case. So based on circumstances of the case the court entails to give punishment for the convicted person. The main object of the study is to analyze the legal aspects of medical negligence in India, to find out the common errors occurs by medical professionals, to examine the concept of medical negligence in civil and criminal law, and also to create awareness for people (consumer) about negligence act done by medical practitioners. The type of research is empirical study, convenient sampling method used, sample size is 1354. The study was entitled to analyse the remedies for negligence of medical practitioners is effective based on current status. Key words: legislature, legal duty, medical negligence, burden of proof, awareness. **INTRODUCTION:** The literal meaning of negligence(L. Kumar and Sasthi 2011) is "breach of a legal duty of care" and liability is the responsibility of a person for his acts of commission and omission. Hence the duty of all medical practitioners like doctors, nurses and other health care providers are solely responsible for health of their patients.(Dattamakar 1979) Unfortunately, medical practitioners fails to perform their duties to their patients. There are 12 types of medical negligence are occurred by medical practitioners:-(Yadav 2015) Active negligence, Passive negligence, Collateral negligence, Comparative negligence, Concurrent negligence, Contributed negligence, Criminal negligence, Gross negligence, Hazardous negligence, Willful negligence, Reckless negligence and Negligence Per Se. Medical negligence is punishable under various grounds like Torts, Indian penal code 1860, Indian contract Act, 1872 and Consumer Protection Act, 1986. (Gua; 1957) Negligence as a tort:-(Doga Rao 2009) Juris Katarani and Dhirajal defined the term negligence in a precise form with the help of three constituents:-- A legal duty to exercise due care, breach of the duty and consequential damages. This claimant satisfies the court with the help of evidence and also follow above elements hence, the defendant held liable to pay compensation. Generally medical negligence comes under three grounds:-(Koley 2010) 1. Civil law 2. Criminal law 3. Negligence under consumer protection act Civil law in medical negligence:-(P. Smith 2012) Hence in civil case burden of proof is lies upon plaintiff (patients) to prove the negligence of medical practitioners results in severe injuries or death The plaintiff have to fulfil the following essential elements:-- person committed an act of omission or commission, breach of the legal duty, resulted injuries are should be proved with the help of evidence (medical science, expert opinion). **In the case of the State of Mysore v. Smt. Santra, the Supreme Court held that every doctor has a duty to act with a reasonable degree of care and skill.** In another instance in the state of Maharashtra (25) in this case <https://www.lawstudies.com/articles/medical-negligence-law-india-articles/>

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Sources	Similarity
<p>Medical Negligence And Law In India - An Analysis - (ReadersCompare text in the case of the state of haryana v. smt sarfa,(21) the supreme court held that every doctor "has a duty to act with a reasonable degree of care and skill." In Surjan, Hussain v. the state of maharashtra,(25) in the case concerning section 304 (a) of i.p.c., 1960, it was stated that</p> <p>https://img.1readers.com/medical-negligence-law-India-analysis/</p>	4%
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