

CONVERGENCE OF HEALTH

Exploring Legal and Medical Perspectives

Editor

Prof. Naseem Ahmed

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WHEN CARE HARMS: RETHINKING MEDICAL MALPRACTICE, RIGHTS & REFORM

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Mrs. Swati Joshi²

ABSTRACT

Medical negligence poses an ongoing issue at the nexus of law, ethics, and healthcare policy. This chapter embarks on critical appraisal of medical negligence from a legal and comparative perspective, examining how modern jurisprudence protects patient rights and enhances accountability in medical practice. Based on doctrinal, legislative, and case law materials, it analyzes core legal principles – duty of care, informed consent, and vicarious liability – considering alternative legal frameworks in courts of the United States, United Kingdom, India, and Australia. The research also questions systemic hurdles in malpractice claims, such as access to justice, expert evidence, and judicial delays, as well as new challenges arising from digital medicine and telemedicine. Real-life case studies, up-to-date news developments, and statistical information are woven in to enrich the analysis. Lastly, it provides evidence-based policy reform recommendations as well as strengthened patient protection, making a case for an equitable legal architecture that promotes both medical professionalism and patient autonomy.

Keywords: Comparative Medical Law, Digital Health Law, Healthcare Liability, Informed Consent, Medical Negligence, Patient Rights, Tort Reform.

1. INTRODUCTION

“Negligence is the rust of the soul that corrodes through all her best resolves.”

- Owen Feltham

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The trust between patients and medical professionals is fundamental to healthcare but is sometimes broken by negligence, misjudgment, or systemic failures, resulting in medical malpractice. Defined as professional negligence causing patient harm, malpractice includes surgical errors, misdiagnoses, lack of informed consent, and improper treatment, with devastating physical, emotional, and financial consequences. Globally, medical negligence poses a severe problem. In the United States, Johns Hopkins University reports over 250,000 annual deaths from medical errors, making it the third leading cause of death after heart disease and cancer (Makary & Daniel, 2016). In India, the National Consumer Disputes Redressal Commission (NCDRC) recorded a sharp rise in complaints, with over 10,000 cases pending as of 2021 (NCDRC, 2021). Research published by the National Library of Medicine in 2022 estimates up to 5.2 million annual malpractice incidents in India (Surabhi G. Singh, 2024). According to the Indian Journal of Medical Ethics, just 46% of healthcare practitioners follow ethical principles (Surabhi G. Singh, 2024). The World Health Organization highlights 134 million adverse events yearly in low- and middle-income countries, causing 2.6 million deaths (WHO, 2018).

India's judiciary has been active in medical malpractice law. The landmark *Indian Medical Association v. V. P. Shantha* (1995) included medical professionals under consumer protection laws, easing patient redress. The *Samira Kohli v. Dr. Prabha Manchanda* (2008) case highlighted informed consent and patient autonomy and expanded definitions of negligence. Media accounts, for example, a 2020 Gurugram case over the death of a child caused by presumed hospital mismanagement and overbilling, highlight malpractice concerns (Hindustan Times, 2020). Legal frameworks aside, issues persist, such as underreporting, judicial delays, limited expert witnesses, and unequal legal access. Telemedicine's emergence complicates liability and jurisdiction.

2. DEFINITIONS AND GENERAL UNDERSTANDING

If a healthcare provider fails to meet accepted standards which causes harm or death, it is called medical malpractice. The AMA considers it to be when a health professional fails to meet the standard of care and this leads to harm to their patient, according to AMA, 2020. It says in the Oxford Dictionary of Law (2017) that medical negligence is "error or carelessness on the part of a doctor." Neither definition is complete without mentioning negligence and incompetence. Courts depend on these as necessary criteria for finding liability.