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Medical negligence and liability; A perspective from violation of international human rights law

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Abstract

In the present world, there has been a great amount of improvement in medical services through technology and science. Developed methods and treatments are invented, and thousands of lives are also saved. Day by day, new doors of innovation and inventions are being opened in this sector. But in spite of these developments, there is also a black dot in that improvement which is adding to the health issues of the population, called "Medical Negligence". It's the breach of "duty of care" standard on part of the medical personnel in charge, having liability to fulfil the standard and eventually leading to the occurrence of "medical negligence". The determination of liability in cases of "medical negligence", is a complex one. In this regard, this paper opts to discuss the determination of the liability of the medical personnel in question of medical negligence as well as the legal consequence of such medical negligence as violation of basic human rights under International Human Rights Law.

Keywords: Medical negligence; Determination; Standard; Duty of care; Violation; Human rights

1. Introduction

The phrase that springs to mind while considering the critical problem of medical negligence is "Negligence." It simply denotes carelessness in carrying out tasks or obligations, resulting in a breach of a duty that is obligated to be carried out on the side of the individual or institution in question. "Negligence" is an important part of tort law, according to a scholarly definition, when the term "negligence" is used in tort law, it typically denotes "more than mere carelessness"[1]. Any action or omission by a doctor when a patient is under their care that deviates from accepted medical practice norms and harms the patient is referred to as medical negligence[2]. It's a branch of tort law concerned with professional negligence. Tort law is a branch of law that creates and offers remedies for civil wrongs that are separate from contractual responsibilities or criminal wrongs [3]. In tort law, "negligence" is often described as conduct that falls short of a standard; the most commonly used standard is that of a "reasonable person." The legal fiction known as the "reasonable person standard" was created in order for the law to have a reference point for the sort of rational action that a person in the same situation would do, or not do, in order to protect another person from an unavoidably damaging threat [4].

Medical negligence refers to the legal cause of action when a medical personnel or medical service proficient, through a careless demonstration or oversight, strays from principles in their profession, subsequently making injury or passing of a patient. When a patient comes to a doctor or medical personnel, then their relationship takes form of a contract retaining the essential elements of tort [5].

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There are certain duties and obligations on the part of the doctor which have to be fulfilled and breach of which can lead to a cause of action of medical negligence against the doctor or concerned medical personnel. For a wider concern, apart from these tortious liabilities, the concerned medical personnel has also the obligation to uphold the basic human rights of the patients and medical negligence eventually give rise to breach of these rights which go beyond mere tortious liability breach and fall under the sphere of international human rights law. It's a clear violation of several fundamental human rights by a professional group who are actually on duty to protect when emergency strikes and the health rights are under threat [6].

This paper aims at discussing the duty of care standard which if not maintained by the personnel concerned gives rise to medical negligence and liability. The objective of this study to detect the breach of certain human rights by medical negligence, from a perspective from violation of International Human Rights Instruments. At the end of the discussion, this paper presents some recommendations which can effectively improve the overall scenario of human rights in this regard.

2. Materials and methods

The method of approach used in this study is normative and juridical approach. It's also referred as doctrinal method of research. This study is conducted taking into account the secondary sources such as existing legal documents, International human rights conventions, scholarly articles and data published in different books and journals, different organization reports and websites. This study has been conducted through studying various international legal instruments in order to scrutinize the human rights and the concept of medical negligence and duty of care discussed by different scholarly articles and ultimately finding out the human rights which are breached.

3. Result and discussion

3.1. Determination of liability in context of medical negligence

Clinical negligence is relied on the tortious principle of negligence as propounded by lord Atkin in 1932 instance of *Donoghue V. Stevenson*[7]. Medical practice often entails a variety of actions that, if not managed competently, might result in liabilities on the side of the medical practitioner [8]. These liabilities may arise in tortious claims and in some other cases, may go beyond the realm of civil liabilities to criminal liabilities [8]. It comprises an act or omission by a clinical professional which falls beneath the standard of care coming leading to injury or demise of the patient [9]. The said case laid out an overall obligation to take reasonable care to stay away from predictable injury to another. Hence, to lay out a case in negligence, it should be shown that a duty of care was owed; there had been a breach of that duty; and that harm or injury was endured as an immediate consequence of a breach of the duty owed. It must be demonstrated by the wounded patient that the physician was negligent in providing care and that this conduct of the physician resulted in damage. In order to do so, four legal components must be established:

- A professional duty of care owed to the patient;
- A violation of that duty;
- Injury caused by the breach; and
- Consequent damages(Supra note 4).

Inherent in doctor-patient relationship that is largely contractual is an implied term that the doctor will exercise reasonable skill and care in the treatment of patients [10]. A duty of care is essentially suggested when a patient is enrolled and being treated in a clinic. The view has been communicated that, care of clinical specialists should not to be restricted exclusively to the patients under their immediate administration however to be stretched out to any persistent whom they come across in their expert climate and thusly, a clinical professional owes the obligation to really focus on each quiet found inside the clinic premises whether he is in the supervisory group of such persistent or not [11].

Medical negligence is generally not considered to be a form of strict liability because it is a fault-based form of liability. As a matter of principle, medical responsibility is predicated on the basis of fault of a health care professional [12]. However, in some cases, certain aspects of medical practice may be subject to strict liability[12].

For example, in some jurisdictions, product liability laws may apply to medical devices or drugs that cause harm to patients, regardless of whether the manufacturer or healthcare provider was negligent. In such cases, the injured party may not need to prove that the healthcare provider was negligent, but instead must prove that the product was defective or unreasonably dangerous. Another example may be the liability of blood banks for the transmission of infectious

diseases such as HIV or hepatitis through contaminated blood products. In some cases, blood banks may be held strictly liable for such injuries, even if they followed all applicable safety protocols.

Overall, while medical negligence is not typically considered to be a form of strict liability, there may be certain circumstances in which strict liability principles apply to certain aspects of medical practice. However, the specific legal requirements and standards for establishing strict liability in these cases can vary depending on the jurisdiction and the particular facts of the case.

3.2. Worldwide concerns of the criminal Liability of medical negligence:

There have been a lot of researches as to applying criminal liability on part of the medical personnel for medical negligence. Foreign researchers from all over the world, notably Europe, focused more on the legal ramifications of medical malpractice. For example, Italian experts are considering imposing criminal culpability solely for extreme medical negligence [13]. Whereas Indian academics examine the concept of clinical negligence and the problem of proportionate punishment for it on a regular basis[4]. The prosecution for clinical negligence has been a source of widespread concern, however the criminal prosecution of medical service providers for clinical negligence is not unusual under Taiwanese law [14]. After much research in this field, British academics are still looking for the appropriate way to hold doctors accountable for medical malpractice while neither defending nor criticizing the current system of gross medical negligence: "there is no underlying reason why culpable gross negligence causing serious harm should not also be subject to criminal sanction" [15]. Other nations have also given this subject careful consideration: in Germany, at least two researchers have produced dissertations on it ;Theresa Riegger [16] and Marc Stauch [17] have conducted studies in this field, and Slovenia [18] and Japan [19] frequently use the results of these studies. For instance, in Canada, the topic of criminal medical negligence is examined by experts other than lawyers [20]. Such cases are discussed in the public media in Lithuania [21]. In Indonesia, According to the equality principle before the law, any doctor who commits an illegal or negligent conduct may face criminal punishment [22]. The criminal conduct, however, may not be sufficient to decide whether the physician is legally culpable. The act should be performed with the aim to damage or injure the sufferer. Criminal law is used by Indonesian courts to resolve issues relating to medical negligence. The approach has helped to ensure that doctors are held accountable for their actions, but it has also caused dread among medical professionals[22].

3.3. Medical negligence giving rise to violation of international human rights law:

Medical negligence is an issue of serious human rights concern that straightforwardly affects right to life and right to health and right to proper medical services. Liability for clinical mistake or negligence may likewise truly emerge as a breach of a patient's fundamental human rights. The relevant basic human rights of a patient should be borne as a main priority and securely protected, in course of the medical treatment and therapy by clinical experts. The patient's independence ought to likewise not be ignored by the doctors. The right of the patient to make final and conclusive decision about his medical care is very much perceived under the principle of patient's autonomy and also cherished in the fundamental human rights of people [23,24,25]

The right to individual freedom and self-determination may likewise be suggested in a few clinical cases to brace autonomy. The utilization of a right-based way to deal with manage issues in clinical practice isn't to "look for someone else to take the blame" or to punish erring people but primarily to form a basis, essentially to frame a reason for responsibility with respect to government and medical services suppliers in the arrangement of medical care administrations to residents. This will bring about protected, useful and compelling medical services frameworks [26] The right to health has been generally deciphered to include the right to make choices for issues relating to one's health freely and to approach data on one's medical problems and accessible medical treatment [27].

Inability to give data on all suitable treatment choices may in this manner lead to liability to negligence and breach of the patients' right to health. An obligation is owed by the clinical expert to inform a patient for instance regarding the new information on hazard of products that could be harmful [28]. The right to protection has been held by the courts to incorporate the right of an experienced grown-up to reject treatment that might draw out his life despite the fact that such refusal might appear to be impulsive, silly or unwise to other people [29].

3.4. Violation of International Human Rights Instruments as a legal consequence of clinical negligence:

Medical negligence as it violates different human rights existing out of the radius of contractual or tortuous liability; it violates several International Human Rights Law Instruments including Universal Declaration of Human Rights, ICCPR, ICESCR and others. Medical negligence can violate several international human rights instruments in different ways. They can be mentioned as follows:

3.4.1. Right to life

The right to life is recognized by several international human rights instruments, including the Universal Declaration of Human Rights (article 3) [30] and the International Covenant on Civil and Political Rights (article 6)[31]. Medical negligence can violate this right if it results in the death of a patient who would have otherwise survived if proper medical care had been provided.

3.4.2. Right to health

The right to health is recognized by the International Covenant on Economic, Social and Cultural Rights (article 12)[25]. Medical negligence can violate this right if it results in the denial of necessary medical treatment or care to a patient, leading to avoidable illness or suffering. Medical negligence is an evident infringement of the right to health by a professional group that is supposed to safeguard when an emergency occurs and health rights are threatened[6].

3.4.3. Right to be free from torture or cruel, inhuman, or degrading treatment

The prohibition against torture and other forms of ill-treatment is recognized by several international human rights instruments, including the Universal Declaration of Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 35) [32]. Medical negligence can violate this right if it causes a patient to suffer unnecessarily or leads to permanent disability or disfigurement.

3.4.4. Right to information

The right to information is recognized by several international human rights instruments, including the International Covenant on Civil and Political Rights. And the United Nation Convention on the Rights of the Child (article 17) [33]. Medical negligence can violate this right if healthcare providers fail to provide patients with adequate information about their medical condition, treatment options, and potential risks and benefits of different courses of action.

3.4.5. Right to an effective remedy

The right to an effective remedy is recognized by several international human rights instruments, including the International Covenant on Civil and Political Rights (article 2) [31]. and the Universal Declaration of Human Rights (article 13)[30]. Other instruments similarly require that effective remedies be available[34]. Medical negligence can violate this right if patients are denied access to justice or redress for harms suffered as a result of medical malpractice.

3.4.6. Right to self-determination

Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights include the right to self-determination in article 1 [35]. Article 3 of the Declaration on the Rights of Indigenous Peoples also includes this right [35]. Medical negligence can violate the right to self-determination by denying patients the right to make informed decisions about their own medical treatment, coercing patients into accepting medical treatment, failing to respect patients' cultural, religious, and personal values, and violating patients' privacy and confidentiality.

3.4.7. Right to privacy

As stated in Article 12 of the Universal Declaration of Human Rights[30], no one shall be subjected to arbitrary or unlawful interference with his or her right to private, family, home, or communication, nor to unlawful attacks on his or her honor or character and Article 17 of the International Covenant on Civil and Political Rights [31]. Medical negligence can violate right to privacy if through this the privacy of the patient is not respected and uphold. It can violate the right to privacy by disclosing confidential medical information, invading a patient's personal space without their consent, engaging in inappropriate surveillance, and failing to implement adequate data security measures.

3.4.8. Principle of autonomy

In medical practice, autonomy is typically seen as the ability of capable adults to make their own educated decisions on their own medical care [36]. The principle of respecting patient autonomy is perhaps the one in medical ethics that receives the least attention. Respect for the informed decisions made by adult patients is also the cornerstone of medical regulation. Medical negligence can violate the principle of autonomy by failing to obtain informed consent, coercing or manipulating patients, failing to respect patient preferences, and failing to provide adequate information.

In summary, medical negligence can violate several international human rights instruments by depriving patients of their right to life, health, freedom from torture or ill-treatment, information, effective remedies and others.

Recommendations

Human rights are the rights that are guaranteed by international instruments and have to be upheld always. If violations are taking place, it's the responsibility of the authority concerned to take immediate and essential steps to stop the violation and to ensure the fundamental human rights. After all these discussion, this paper presents the following recommendations:

- Enactment of strong uniform legislations, which would codify all the scattered laws regarding medical negligence and complement the existing legal framework in this regard in the states.
- Strengthening the legal system and establishing a more effective and active administration of providing healthcare and health service. Obligating the administration for accountability of their acts.
- Increasing responsibility and accountability of the medical professionals on their behalf and maintaining the standard of care, not becoming reckless.
- Providing the patients with the latest healthcare treatment based on the present procedure as far as possible to minimize the loss of life and health. For serving this purpose, making health care products and services accessible for all citizens.

4. Conclusion

Medical negligence is defined as the failure of medical practitioners or doctors to provide adequate care and to implement appropriate safeguards or procedures, leading in a breach of their duty that harms patients. It arises as a result of patients receiving ineffective, inept, or negligent care. Every medical practitioner or doctor has a duty of care to their patients, and when they break this duty of care, it causes harm to the patients and provides the patients the right to sue for negligence. Medical carelessness is punishable by civil responsibility, criminal culpability, and disciplinary punishment. When an incident of medical negligence takes place, it not only violates the constitutional rights recognized by the states, not only breaches the tortious and contractual liabilities but also in the very first instance, violates the Human rights. Therefore, the incidents of medical negligence go beyond to the international level crossing the boundary of national legislation. A lot of people die just because of lack of professionalism and care when between death and life there remains the noble profession of medical science. It takes a great toll over the life of the individuals who trust the proficiency of the medical personnel after the Almighty. In such situation, it's the physicians who have the liability to do Justice to the Hippocratic Oath they take to serve the mankind. There may not be accountability in the system, but if the accountability in own conscience is gone, that's a threat to the society. Thusly, the awful chain needs to be cut off from a specific point, and that is responsibility. A more noteworthy sense of responsibility, won't just energize public trust upon medical profession, but also eventually improve the overall situation of health care services all over the world.

Compliance with ethical standards

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Hereby, all the authors declare no conflicts of interest.

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