

**CONCEPT OF MEDICAL NEGLIGENCE IN AYUEVEDA AND MODERN ASPECTS****Rashmi Choudhary^{*1}, Kirti Sharma², Dr. S. R. Inchulkar³ and Dr. Prafulla⁴**¹M.D. Scholar, ²M.D. Scholar, ³Professor, ⁴Reader,
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ABSTRACT

Negligency is an issue of serious human right concern that directly affects right of life and right to health care. Healthcare practice has increased so much that the public expectation regarding safety is racing ahead. But frustrating situation is being revealed where public trust is completely lost on, as the function of the hospital has slowly changed from a venue for treatment to a provider of treatment. Negligence law has evolved over the past 30 years in addition, the past decade has seen the expansion of Medicare Fraud and Abuse law such that it now represents an increasingly high risk area for every medical service provider. So it's a need for physician to be aware of the law that governs his or her behavior to avoid both civil and criminal liability. In ancient India the system of medicine was indigenous (called *Ayurvedic Chikitsa*). The concept of medicine and medical practices was prevalent in ancient India too. *Ayurveda* also has great emphasis been given on ethics, duties to serve the suffering humanity, getting consent, to develop the virtues of integrity, compassion and self effacement, to maintain good relation with co-professionals.

KEYWORDS: Negligence, Medical Negligence, Standard Care, Breach, Ethics etc.**INTRODUCTION**

Negligence literally means carelessness. Ordinary human behavior is rife with careless actions, most of which cause no harm or do so little harm will be easily forgiven. Medical Negligence literally means an omission to do something which a reasonable man is expected to do or doing something which a reasonable prudent man under the circumstances would not do (act of commission). Medical negligence is the **absence of standard care and skill** or willful negligence of a medical practitioner in the treatment of a patient, which causes injury or death of the patient.^[1]

4'D' of Negligence^[2,3]

The elements of a cause of action in tort of negligence are: (1) a duty to use ordinary care (2) breach of that duty (3) approximate causal connection between the negligent conduct and the resulting injury and (4) resulting damage.

Duty

Duty is the thread that binds humans to one another in community. As soon as doctor agrees to treat the patient he owe's a duty towards him.

Breach of Duty

The second element that the patient has to prove is that the doctor was careless the doctor has breached his or her legal duty of care towards the patient.

Direct Causation

The damage caused to the patient must have been due to the direct effect of negligence by the treating doctor and without which injury would not have been occurred.

Damage

Unless there is a visible damage (physical or mental) to the patient due to negligence he cannot claim for compensation.

AIMS AND OBJECTS

1. Definition of negligency and how conduct of physician influence over negligency.
2. This Article is mainly based on analysis of the existing laws and policies relating to medical services
3. To make the health professionals aware of such laws, which will be beneficial to the patients and doctors and as well as the whole society.
4. Highlight the description about negligency in *Ayurveda*.

Historical background and importance of medical ethics and negligence

There are some ethical principle mentioned in *Ayurveda* which guide our profession and whose breach may be considered as negligence. They are:-

Autonomy - Patient should have a right to know what treatment is going to be done. *Dalhana* has commented that if surgery is done without obtaining consent then surgeon is liable to be punished by death sentence.^[4]

Sympathy and Beneficence - The physician should have the quality of understanding the suffering of the patient and should attend the patient as early as possible to relieve the pain. *Sushruta* has also mentioned that physician should protect the patient like his own son.^[5] In the reference of *Vranashopha Sushruta* has said that a surgeon should well versed with the clinical feature of various stages of *Shopha* so that he can drain the *pus* at appropriate time when it is well suppured and *pus* has formed.^[6]

Competence - First and the foremost requirement in ethical surgical practice is the competence practice should be done only by the competent and qualified person who acts with total integrity and impartiality. One should not enter in the horizon of other speciality and patient should be referred to concerned specialist. In the context of *Gulma*, *Charak* has clearly been advised to refer the patient to the specialist (surgeon) who is skilled to manage the same.^[7]

Integrity - Patients need to be given appropriate and accurate information about their condition and the reasons of surgery, any complication that may occur. In the context of urinary calculus (*Ashmari Chikitsa Prakarana*) and *Mooda-Garbha Chikitsa* (treatment of dead foetus), reference of prior consent of the king or patient well wishers /relatives.^[8,9]

Moral Ethics - The ethical approach of *Ayurveda* deals with upliftment of moral character of the surgeon. He should avoid sitting together with women, residing with them, cutting jokes with them, accepting anything given by them except food.^[10]

Professionalism - *Charak Samhita* four basic qualities of the physician have been described viz. *Maitri* (friendship), *Karuna* (compassion), *Harsha* (cheerfulness), *Upeksha* (indifference and calmness). The physician should be devoted to these virtues.^[11]

Confidentiality - It is clearly mentioned in *Ayurvedic* texts that the physician should not disclose the private matters of the patient to anyone else.^[12]

Historical review on professional skill its negligence and punishments

Ancient *Dharmasastra* literature also we get the references of medical negligence. The one who indulge

in unethical practices undergo punishment by the king through civil and criminal law.

Manusmriti lay down comprehensive measures for the protection of human being from irresponsible Physicians. He told that a quack is to be fined heavily. The penalties provided by the king in the cases of negligence of the physicians varied as per the severity of the lapse on the part of the physician and taking into account all other accompanying circumstances.^[13]

In both **the Yajnavalkya Smriti and the Vihsnu Smriti** fines were prescribed for the improper treatment by the physicians. The penalties imposed depended on whether a human or animal suffered. A physician guilty of malpractice should be fined the lowest fine in the case of animals, the middle in the case of humans, and the highest in the case of royal official (*YDh* 2.242).

In Kautilya arthashastra – *Kautilya* work depicts a splendid picture of the legal duties and liabilities in medical profession. A *chikitsak* is advised not to treat a wounded man in secret without informing the authorities.^[14] If a physician while treating a person found that the disease is dangerous to the life of a diseased person then the matter should be informed to the higher authorities if not he will be punished with lowest fine. If death occurred due to any mistake on the part of the physician a medium rate fine will be prescribed by the king. If he died due to the lack of skillful care of the physician, the highest punishment would be inflicted.^[15] It was considered that the person treating a patient whether human or animal, he need to give his best service. Before giving any medicine to king from pharmacy, a physician should test the drug through tasting it and also other organoleptic features should be performed to test its purity.^[16]

Charak stated that one should not enter in the horizon of other speciality and patient should be referred to concerned specialist In the context of *Pakva Gulma*, it has clearly been advised to refer the patient to the specialist (surgeon) who is skilled to manage the same.^[17,18] In 15th chapter named as *Upkalpaniya Adhyaya Charak* has mentioned *Yogya, Ayogya* person, to whom *Panchkarma* treatment should be given. The physician should keep this in mind while providing *Panchkarma* treatment otherwise any complications regarding therapy may be sued under negligent act.

Sushrut Samhita states that for a physician it was mandatory to obtain permission from the king before starting medical practice (*Raja-anugya*).^[19] *Sushruta Samhita* says that the physician has to sit down and then examine his patient by *Trividh* and *Shadvidh Pariksha* for proper diagnosis and treatment, if the disease is curable by him. In case of incurable diseases, surgeon has to clearly tell the prognosis of the disease to the patient and relatives before starting the treatment i.e. 'Pratyakhyan' (informed consent).^[20,21] On the other hand

a physician should be well versed in his pathy, otherwise he will be condemned as a quack, and deserves capital punishment from the king.^[22]

Vagbhatta has quoted to seek the permission prior to surgical intervention.^[23]

In Ras Tarangani- Acharya Sadanand Sharma clearly mentioned in his 24th *tarang*, that *vishupvisha dravyas* properly purified, if not it will lead to many health hazards so one should know its standard operating procedure otherwise patient can sue the doctor for negligence.

Medical Negligence: In Modern Era.

Types of Negligence^[24,25,26]

1. Doctors negligency
 - a) Civil negligency
 - b) Criminal negligency
2. Patient negligency
3. Contributory negligency
4. Composite negligency
5. Corporate negligency

1. Doctor's Negligency

a. Civil Negligency: When patient demands monetary compensation for the damage that has occurred due to the doctor's negligency. Not only the patient, an even doctor can also bring a civil suit against the patient to recover his fee. The case for negligence either goes to civil court or to consumer forum.

b. Criminal Negligency: When patient complain to police regarding the misconduct or negligence of the doctor, and police register a case against the doctor. The burden of proof should be beyond the reasonable doubt i.e. gross or of a very high degree. There should be more than 80% chances of the doctor being negligent in his conduct. Sec. 304-A IPC deals with criminal negligence; whoever causes the death of any person by doing any rash or negligent act, not amounting to culpable homicide, is punished with imprisonment upto 2 years and with/without fine.

2. Patient Negligence: Patient negligence is outright negligence by the patient only. The doctor is not negligent. Patient does not give correct history, start an alternative form of treatment without informing doctor, does not follow doctor instructions, discontinues treatment.

3. Contributory Negligence: Any unreasonable conduct, or absence of ordinary care on part of the patient or his attendant, which combined with doctor's negligence contributed to the injury complained of, as a direct cause and without which the injury would not have occurred.

4. Composite Negligence: Injury is caused to the person as a result of the combined effect of the negligence of two or more persons. In such a case, each one of them jointly and severally liable for payment of the entire damages, and the injured person has the choice of proceeding against all or any of them.

5. Corporate Negligence: It is the failure of those in hospital administration/management who are responsible for providing the treatment, accommodation and facilities necessary to carry out the purpose of the institution, to follow the established standard of conduct

Laws and defences against negligence^[27,28]

Informed consent It is voluntary agreement, permission or approval without any compulsion, given freely, willingly and truly. A physician must explain the proposed treatment to the patient, the risks involved, and the possibility of any alternative treatment and ensure that appropriate consent is obtained. He must ensure that all necessary information and explanations have been given, before the procedure, the patient must be given clear pre-operative and post-operative instructions in writing and written consent must be obtained to avoid the risks of medical negligence.

Res judicata/ Doctrine of double jeopardy means 'the things have been decided' i.e. legally a person cannot be sued twice for the same crime(section 300 Cr.P.C.).

Law of Limitation: The case against the doctor should be filed within 2 years from the date of alleged negligence.

Volenti non fit injuria (Latin, 'to a willing person, injury is not done') is a defense to an action in negligence. If plaintiff (patient), with his full knowledge, voluntarily gives consent for the risk of injury, he can't take any action legally.

Doctrine of Res ipsa loquitur which means 'the thing or fact speaks for itself'. Error is so self-evident that the patient's lawyer need not prove the doctor's guilt with medical evidence. The doctor has to prove his innocence.

Examples Wrong-site surgery, surgery on the wrong person, wrong organ or limb, or wrong vertebral level, or wrong-procedure, leaving a pair of scissors in abdomen, failure to remove swabs during operation causing complications/death. Its simple and non technical name is **Doctrine of Common Knowledge**.

Vicarious liability An employer is responsible not only for his own negligent act, but also for the negligent act of his employees by the principle of 'respondeat superior' (Latin, 'let the master answer').

Calculated Risk Doctrine The doctrine is that, Res Ipsa Loquitur should not be applied when the injury complained is of type that may occur even though reasonable care has been taken.

Novus Actus Interveniens (“Act of God”) means unrelated intervening action i.e. a situation where doctor was negligent, but something completely unexpected happened which further worsened the patient’s condition. A *novus actus* is something which ‘breaks the chain of causation.

DISCUSSION

Each and every step of life, one or the other way person will be messed up with so many mistakes, like will be in medical profession. It is every individual’s duty to avoid errors and foresee the potential for mistake. In the health profession mistakes would result in serious consequences for the patient and, in turn, lead to the doctor being answerable. So the professionals should carefully decide that what line of treatment is to be adopted, should explain the patient about the risks involved, should keep records, including history, chart notes, radiographs, photographs records which must be signed and dated. Adequate medical education is a light that will extend the horizon of one’s vision and re-fine ones native talent. *Ashtanga Samagraha* indicated that an efficient doctor is friendly towards all, compassionate to the patients, happy when he sees healthy people, and unhappy when he finds that his patient is un-likely to be saved. Finally the advice given by *Charaka* which is pertinent for the doctors even today, that the physicians who trade their medical skill for livelihood; leaving heap of gold aside collect a pile of dust.

CONCLUSION

Moral values of *Ayurveda* are milestones to guide the physicians of modern times. It is vital to understand the legal and professional importance of medical ethics and to practice the same at all the levels of medical care.

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