



## MEDICAL NEGLIGENCE IN ANCIENT SCIENCE: A SYSTEMIC REVIEW

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### ABSTRACT

*Ayurveda* is an ancient science. Regarding the negligence we are getting reference in *Manu Smriti*, *Koutilya Arthashastra*, *Charaka Samhita*, *Sushruta Samhita*, *Astanga Sangraha* etc. In present scenario what constitutes the medical negligence, when a patient approaching a doctor, expects doctor will do medical treatment with all knowledge and skill to bring relief to his/her medical problem. This makes a type of contract between the doctor and patient, it is an essential element of misconduct. A doctor is having certain duties towards his or her patient, if doctor is responsible for breach of any of these duties then that is the main cause of negligence against doctor. For this purpose doctor should take written consent prior to start the diagnostic tests and therapeutic management. Related to the any medical negligence like civil, criminal or contributory negligence are comes under provisions of the Consumer Protection Act, 1986 and patient can look for redressal of grievances from the Consumer Courts. So, an attempt has been made to search what *Ayurveda* and modern science says regarding medical negligence

**KEYWORDS :** Negligence, Consumer Protection Act, Misconduct

### Introduction

Medical Profession is defined as a noble profession because it defend, prevent the life or health and well being of individuals. Our sages believe that life is given by God. Thus, doctor is treating as next to God. Usually patient approaches doctor/hospital after hearing the good will and good image of the concern hospital and physician and patient will have believe on doctor knowledge and skills. Patient approaches the hospital always expects two things- firstly, doctors and hospital should give material treatment with full knowledge and skills, secondly they will not harm the patients in any aspect like negligence, carelessness, or reckless attitude. Even though doctor may not save his/her life always but it is always expected from doctor that by using his special knowledge and skill by keeping in his mind the interest of the patient who has entrusted his life to him. So, it is always necessary that before starting treatment doctor should have a skillful and practical knowledge of the concern disease to give a fruitful result to the suffering patient. Therefore, it is expected that a doctor carry out necessary investigation or request necessary report from the patient. Furthermore, unless it is an emergency, it is always obligatory to obtain informed consent of the patient before scheduled or performing any major treatment, surgical operation, or even invasive investigation. Failure of a doctor and hospital for not taking informed consent is essentially a legal responsibility. A tort is a civil wrong as against a contractual obligation – a breach that attracts judicial intervention by way of awarding damages. Thus, a patient's right to obtain medical consideration from doctors and hospitals is essentially a civil right. The relationship takes the shape of a contract to some extent because of informed consent, payment of fee, and performance of surgery/providing treatment, etc.<sup>1</sup> while retaining essential elements of tort. Medical negligence falls under section- Sec 304A IPC, 312 IPC, 351 IPC.

### MATERIAL AND METHODS

Material related to medical negligence is collected from *ancient* books and modern books. The index, non-index medical journals has also referred to collect information of relevant topic.

### LITERATURE REVIEW

#### Medical negligence<sup>2</sup> –

Negligence is defined as simply the failure to exercise due care. The three ingredients of negligence are as follows:

1. The defendant owes a duty of care to the plaintiff.
2. The defendant has breached this duty of care.
3. The plaintiff has suffered an injury due to this breach.

### Types of Negligence

**Civil negligence-** The following conditions should be satisfied to prove negligence

**Duty of care-** The legal liability of a defendant to a plaintiff is based on the defendant's failure to fulfill a responsibility, recognized by law, of which the plaintiff is the intended beneficiary. The first step in determining the existence of a legally recognized responsibility is the concept of an obligation or duty. In the tort of negligence the term used is duty of care<sup>3</sup>.

**Breach of duty-** Once it is established that the defendant owed a duty to the plaintiff/claimant, the matter of whether or not that duty was breached must be settled. The test is both subjective and objective. The defendant who knowingly (subjective) exposes the plaintiff/claimant to a substantial risk of loss, breaches that duty. The defendant who fails to realize the substantial risk of loss to the plaintiff/claimant, which any reasonable person [objective] in the same situation would clearly have realized, also breaches that duty.<sup>4</sup>

**Direct Cause-** For a defendant to be held liable, it must be shown that the particular acts or omissions were the cause of the loss or damage sustained<sup>5</sup>.

**Criminal negligence –** It occurs when the doctor shows gross lack of competency, gross inattention, criminal indifference to the patient safety, or negligence in the selection and application of remedies. It is practically limited to the cases in which patient died. Section 304 IPC deals with the criminal negligence

### Medical negligence in Ancient science

Our classics quoted the reference of medical negligence since *Manusmriti*, *Koutilya Arthashastra*, *Charaka Samhita*, *Sushruta Samhita* etc. During *Manu Smriti* there were some punishments in the form of fine for the security of the common people from irresponsible and reckless Physicians. Penalties granted by the sovereign to physician in case of negligence will depend on severity of the drift on the part of the physician and relevant circumstances. According to *Yajnavalkya Smriti* and *Vishnu Smriti* fines were prescribed for inappropriate and wrong treatment by the doctor. Penalties also depended on the category of the victim; superior the social class, higher the penalty. But in *Manu smriti* punishment was not concern with class of the victim. *Chanakya* has dealt in detail in *Arthashastra* that devoid of informing consent to the sovereign if doctor treats patient who is having worsened situation and if patient died in between treatment then doctor will get punish with *Sahasa danda*. If death occur due to fault in treatment then doctor get *Madhyam*

*sahasa danda*. If patient's body part is injured by the treatment and if doctor did wrong operation then doctor will be punished by *Danda parusham*. When a person is having some disease which is dangerous to life, then physician should inform to the authorities.

In *Charaka Samhita*, direct references regarding the negligence were not mentioned. But we get the characteristics of physician that is who possess the fourfold accomplishment consisting of theoretical knowledge, clear interpretation, right application and practical experience and also having the knowledge of etiology, symptomatology, therapeutics and prophylaxis of disease, is considered as best physician<sup>6</sup>. And in other context *Charaka Acharya* also quoted *pranaabhisar vadhya laxashna* i.e who is good learner, put his full efforts to understand the *shastra* and to get practical knowledge<sup>7</sup>. *Sushrut samhita* states that the physician should gain the acquiescence of the sovereign before starting any management for treatment. Physician was considered unqualified for practice without practical training or knowledge<sup>8</sup>. During ancient time practical training was given on various objects for learning so that the scholar did not experiment on human bodies<sup>9</sup>. In *Astanga Sangraha* also having some reference regarding this like if a *vaidya* is not having sufficient equipment or instrument then that physician is not eligible for practice<sup>10</sup>. Like wise after considering all the aspect of treatment physician should treat the patient and after approaching a doctor patient should obey all the instruction given by doctor. If there is any mistake from any side then that can lead to negligence or medical negligence.

## CONCLUSION

Medical negligence is not only limited to the theoretical aspect but in present era also, it is important to have the knowledge of negligence for both the patient and doctor.

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