COMPARATIVE STUDY OF MEDICAL NEGLIGENCE IN INDIA AND IRAN

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INTRODUCTION

Health is the most precious desirable item or quality of man. In fact, health is the only prominent desirable item or quality of man which is of the centre of all other activities. There is a Persian saying in support of this statement which indicates that: “Wisdom is the result of the health”. It means that the person who has not enjoyed health, he has not got benefit of wisdom. That is the reason why in many legal systems the contract made by the terminally ill person is null and void. And it is for the same reason where the contracts made by the minor are either invalid or voidable in different systems.

Risk is attached to health in the entire life of a human being, and we only should try to reduce and control this factor as much as possible based on medical science as well as the law1 and this is the gist of this study.2 Health is under the influences of complex and technological medical treatment which has an invasive character to the patient’s body, this method would cause two forms of injury, the first one may be caused inadvertently caused by the diagnosis or treatment of physician and the second is disappointment in patient’s expectations of amelioration of illness. Medical treatment is undertaken for a beneficial purpose involving the hope of obtaining a given benefit, ideally a cure, but the progress of a natural condition cannot be considered as injury, it will be harm where it is carries out from unlawful act or omission. So, the medical profession and society at large need to accept and recognize professional mistakes as unavoidable part of medical practice.

At the outset, discussions about malpractice often start with patient’s complaints about the system, which include the high cost of medical coverage and major injuries and the inefficiency of litigation as mechanism for resolving disputes. Each of these complaints finds an empirical basis in studies of malpractice claims and patients reasonably object that the current tort system is inflexible for many injured patients to access, takes an unreasonable amount of time and expense to deliver compensation,

2 World Medical Association Declaration on the Rights of the patient, http:// www.wma.net \e\policy\ 14.htm
and often results in different litigation outcomes for patients with similar injuries. The best estimates are that only very little number of patients injured by negligence file claims, only about half of claimants recover compensation, and litigation is resolved discordantly with the merit of the claim. Thus, from the perspectives of this study, evaluations of medical negligence will discuss the frequency of the claims which are brought, the compensation that plaintiffs receive, the litigation process, and the ways in which these factors accommodate into adequate legal system.

2. The subject matter of the study

The subject matter of this study is medical negligence. Study on medical negligence is rational and has become need of the day as scope of medical sector is widening and complaints of medical negligence are seen and heard with tremendous high speed.

Liability of medical professionals must be clearly demarcated so that they can perform their duties in good faith without any fear of legal sword. At the same time, justice must be done to the victims of medical negligence and a punitive deterrence must be adopted in deserving cases. Indian Supreme Court in a landmark case has beautifully said: “The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The Interest and welfare of the patients have to be paramount for the medical professionals.”\textsuperscript{3} The Court further held: “We should not be understood to have held that doctors can never be prosecuted for medical negligence. As long as the doctors have performed their duties and exercised an ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence. It is imperative that the doctors must be able to perform their professional duties with free mind.”\textsuperscript{4}

Iranian law requires medical practitioners to have a duty to inform patients about the side effects of the drugs prescribed and the treatment ought to be guided by the theory of Informed Consent and not in accordance with the traditional doctrine of

\textsuperscript{3} Jacob Mathew v. State of Punjab, 2005 AIR 3180 SC.
\textsuperscript{4} Ibid.
Professional Standard of Care. The principles of law regarding the starting of limitation in medical negligence case, burden of proof of medical negligence, causation necessary to hold doctor liable, duty of doctor towards patient, liability of clinic for doctor's negligence etc. have all been studied, analyzed and discussion in the thesis.

Likewise, Indian Supreme Court on almost all the occasions adopted a balanced approach in deciding with cases of medical negligence by keeping interest of society intact and also had given desired protection to the members of the medical profession.

The history of medical negligence in Indian law practice is not longer in comparison to Iran. Indian Consumer Protection Act, 1986 (CPA), has jurisdiction to hear complaints filed by persons feeling aggrieved against medical professionals for 'deficiency in service'. Indian Penal Code, 1860 in Sections 52, 80, 81, 83, 88, 90, 91, 92, 304-A, 337 and 338 contain the law of medical malpractice in India. The criminal complaints are being filed against doctors alleging commission of offences punishable under Sec. 304A or Sections 336/337/338 of the Indian Penal Code, 1860 (IPC) alleging rashness or negligence on the part of the doctors resulting in loss of life or injury of varying degree to the patient.

This comparative study of medical negligence statutes and experiences is expected to be beneficial in addressing the emerging and growing complications related to medical negligence in both countries Iran and India. The study has focused on negligence aspect with detailed analysis of laws of compensation with Indian and Iranian experiences. In this sense, this research has been an original study on the issue that has remained unexplored till this date.

The whole study has revolved around to find answer to the following two research problems:

i. What are the various causes that lead to medical negligence at the level of doctor/paramedical staff/hospital authorities in both countries Iran and India?

ii. Is both country Iran and India law adequate to address (control/govern)
those causes that lead to medical negligence?

This study has been conducted with the following main objectives:

1. To examine various causes that lead to medical negligence at the level of doctor/paramedical staff/hospital authorities in both countries Iran and India. To examine whether existing Iranian law on medical negligence is adequate in addressing the causes that lead to medical negligence and provide adequate opportunities for victims to ventilate their grievances. To analyze and evaluate the medical negligence decisions and judgments in both countries Iran and India in ensuring adequate compensation to the victims of medical negligence.

2. To examine Iran’s and India’s experiences in medical negligence sector from legal perspective. To recommend legal mechanism or system which can maintain perfect equilibrium between the conflicting interests of service providers and consumers of medical profession in both countries Iran and India in case if the existing law is found to be inadequate?

Negligence in medical care occurs in four avenues or at four levels of treatment viz-
(1) Medical negligence at the level of doctor/paramedical staff/hospital authorities. Liability for negligence may be fixed at individual level and/or jointly or vicariously where hospitals/nursing homes are involved, (2) Negligence at the level of manufacturers of drugs, equipment, etc. (3) Negligence at the level of patient himself or his attendants also known as contributory negligence and (4) Composite negligence, i.e., at more than one of the above three levels. This study focuses only one negligence at level (1) (i.e. Medical negligence at the level of doctor/paramedical staff (pharmacists and nurses)/ hospital authorities) both in Iran and India. Negligence at level (2), (3) and (4) has not been studied because it is found that each of them is an independent study. This, the rest three levels have been excluded. With respect to research, the study does include some aspect of health related laws. But the health law is a whole independent matter and the study is focused just on medical negligence.
4. **Scope of study:**

Negligence in medical care occurs in four avenues or in four levels of treatment viz-(1) Medical negligence at the level of doctor/paramedical staff/hospital authorities. Liability for negligence may be fixed at individual level and/or jointly or vicariously where hospitals/nursing homes are involved, (2) Negligence at the level of manufacturers of drugs, equipment, etc. and dispensers, (3) Negligence at the level of patient himself or his attendants also known as contributory negligence and (4) Composite negligence, i.e., at more than one of the above three levels. This study focuses only one negligence at level (1) (i.e. Medical negligence at the level of doctor/paramedical staff (pharmacists and nurses)/ hospital authorities) both in Iran and India. Negligence at level (2), (3) and (4) has not been studied because it found that each of them is an independent study. This is why rest three levels have been excluded. With respect to research, the study does include some aspect of health related laws. But the health law in is a whole independent matter and the study is focus just on medical negligence.

This study does not purport to cover the responses of all the branches of medical law or health law system towards negligence. Instead, it takes one branch of medical law i.e., medical negligence law, particularly the physicians misconduct law. The subject matter of this study is medical negligence. Study on medical negligence is rational and has become need of the day as scope of medical sector is widening and complaints of medical negligence are seen and heard with tremendous high speed.

5. **Focus of study:**

The focal point of this study is what is the scheme of Iranian and Indian system of law to the medical negligence concept? Before starting the comparative study of Medical Negligence in Iran and India it would be relevant to discuss the legal systems of both countries. The study has focused on negligence aspect with detail analysis of laws of compensation with Indian and Iranian experiences. In this sense this research has been an original study in the issue that has remained unexplored till the date.

6. **Objectives of study:**

The prime reason why medical negligence law is studied here is that, the maximum
The impact of medical negligence is a developing countries problem. Secondly, this is one area where the obligation law has matured with many national legal instruments on private law. Studying this branch of law and identifying its strengths and weaknesses would guide the adequacy or inadequacy of other branches of national law. Thirdly, medical care is one sector of health law that has developed substantially and has spread by many developed and developing countries.

This comparative study of medical negligence statutes and experiences of both Iran and India is expected to be beneficial in addressing the emerging and growing complications related to medical negligence in both countries.

The central object of this study is to assess the efficacy of medical negligence law in dealing with the challenges brought out in Iran and India to look for appropriate legal solutions. Keeping this aim in view, this study critically analyzes the legal frameworks contained in both countries and their effectiveness to regulate medical negligence law with special emphasis on global development on human health. The legal instruments relating to Obligation law and contract law are studied wherever they touch upon medical negligence law. Study on both national legal regimes is also looked at for the purpose of comparative study and identifying their adequacies or inadequacies in handling medical negligence.

The whole study has revolved around to find answers of the following two research problems:

i. What are the various causes that lead to medical negligence at the Level of doctor/paramedical staff/hospital authorities in both country Iran and India?

ii. Is both country Iran and India law adequate to address (control/govern) those causes that lead to medical negligence?

This study has been conducted with following main objectives:

1. To examine various causes that lead to medical negligence at the level of doctor/paramedical staff/hospital authorities in both country Iran and India.

2. To examine whether existing Nepalese law on medical negligence are adequate in addressing the causes that leads to medical negligence and provide adequate opportunities for victims to ventilate their grievances.
3. To analyze and evaluate the medical negligence decisions and judgments in both country Iran and India to ensure adequate compensation to the victims of medical negligence.

4. To examine both country Iran and India experiences in medical negligence sector from legal perspective.

5. To recommend legal mechanism or system which can maintain perfect equilibrium between the conflicting interests of service providers and consumers of medical profession in both country Iran and India in case if the existing law is found to be inadequate?

7. **Methodology:**
The study primarily follows doctrinal approach in the analysis, interpretation and Systematization of the primary and secondary source material. The methodology, which is to be adopted for purpose of the study, is a doctrinal method involving multi-disciplinary approach having descriptive and critical analysis. The various recourse materials and relevant articles provide ample opportunity and sufficient help to produce in-depth study in this topic. Majority of these materials were available in the faculty of Law, Delhi University library. However library of Indian Law Institute and the Indian Society of International Law (ISIL) is the other important resource for this thesis. Part of my thesis which talks about subsidies in Iran, material for this part was available in the official websites of Iranian parliament.

8. **Cauterization**
The present doctrinal work is divided into seven chapters which are preceded by an Introduction. The brief sketch of the chapters of the thesis is as follows:

Introduction

Chapter I – Medical Negligence in India

This chapter deals with the historical development of law relating to medical negligence in India. An attempt has been made at an in-depth analysis of definition of negligence with special reference to medical negligence, constituents of the tort of negligence, and test for determining medical negligence. Detailed case law rendered by English and Indian courts thereon has also been discussed incisively.
Chapter II – Medical Negligence in Iran

This chapter endeavors to study and analyse the law relating to medical negligence in Iran. The legal system of Iranian obligation law and compensation system which govern the adjudication of medical negligence complaints in Iran is discussed here.

Chapter III – Disciplinary Approach

In this chapter, various internal control mechanism provided by the Acts and Regulations enacted in India and Iran are discussed. The Medical Council Acts of the two countries and the code of conduct enacted there under for the regulation of conduct of profession by medical practitioners and the consequences of their violation has been discussed thread base in this chapter.

Chapter IV – Liability under the Consumer Protection Act

This chapter deals with the applicability of the Indian Consumer Protection Act 1986 and Iranian Consumer Protection Act 2008 to the medical profession. The redressal agencies provided by these Act for the redressal of consumer grievances have also been discussed here. Finally, the chapter concludes with an analysis and review of important judgments on this topic.

Chapter V – Criminal Liability of Medical Professionals

This chapter describes the general provisions of Indian and Iranian Criminal Law which are applicable to determining liability of physicians in cases of medical negligence. It also identifies the factors that tend to bring about criminal prosecution for medical negligence.
Chapter VI – Burden of Proof

The fact that the act of the defendant is the cause of the damage suffered by the plaintiff is must to establish liability for negligence. Tests for determining causation and remoteness of damages are discussed in this chapter.

The burden of proving negligence as cause of damage lies on the party who alleges it. Doctrine of res ipsa loquitur and the requirement of expert testimony in establishing cases of medical negligence have been discussed by reference to various case laws on the subject.

Chapter VII – Conclusion of Suggestions

This chapter has presented a brief of findings. It also sums up deficiencies/drawbacks as revealed from the critical analysis of the working of law in India and Iran. Accordingly, this chapter incorporates the remedial measures in the light thereof.

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