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Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

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Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

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Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.



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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

NEGLIGENCE AND MENTAL HARM

AUTHORED BY - ADITYA GOSWAMI

1st year Law student

IILM University, Greater Noida

Introduction

The general definition of negligence is the inability to behave with a certain level of care that a prudent individual would otherwise exercise. It may also mean carelessness that is the failure to exercise the degree of care needed. This degree of care varies from case to case. In the law of torts negligence is defined as the failure to exercise the standard of care that a reasonable person would exercise under similar circumstances, resulting in harm or injury. In the landmark case of *Donoghue v. Stevenson (1932)*¹ the modern law of negligence, duty of care and fault theory were established. The facts of the case are such that there was a lady who consumed a bottle of ginger beer which had a decomposed snail in it resulting in harm to her. This case laid the groundwork for the principle that negligence is essentially a breach of legal duty to take care, resulting in damage. Therefore, it is understood that negligence has under its ambit both action and omission.

Mental harm refers to psychological or psychiatric harm or injury caused by a certain traumatic event or other harmful actions. This basic definition includes a broad phrase that is “other harmful actions”. It is important to understand and classify the various kinds of harmful actions and categorize them as to which actions fall under the law of torts and especially the tort of negligence. The relation between mental harm and negligence needs to be assessed by the *Pigeonhole Theory*² propounded by Salmond. This theory helps classify different actions under specific tortious wrongs. However, considering the nature of the concept of mental harm, it wouldn't be right to classify harmful actions under specific torts as it would limit the ambit of the tort of negligence. Such an expansion of tort law beyond pre-established concepts and categories was discussed and upheld in the landmark case of *Rylands v. Fletcher (1868)*³.

¹ Donoghue v. Stevenson 1932 UKHL 100

² Pigeonhole Theory, Salmond

³ Rylands v. Fletcher 1868 LR 3 HL 330

Negligence and Law

Negligence is a cornerstone principle of tort law that imposes a liability on a person who has failed to exercise the standard duty of care in the concerned circumstances. Negligence is usually non contractual in nature as it arises from a breach of duty of care which was owed by one party to another. Some examples of the same can be a driver who has a duty to drive safely regardless of the existence of a contract or a doctor who must exercise due diligence while treating and operating them even if they are not a contractual client. However, when a contractor fails to exercise reasonable care in fulfilling his contractual obligations there is a contract that exists between the parties and negligence is a part of it. Therefore, negligence is a legal abstraction as there must be a duty of care and the damage caused must arise from the breach of this duty of care, this means the damage must be caused without the level of care that the law enjoins in a particular situation.

The concept of negligence helps understand the distinction between “Love thy neighbour” and “Do not harm thy neighbor”. The former is a moral obligation, and the latter is a legal obligation. “Love thy neighbour” is a key principle in both Jewish and Christian traditions encouraging empathy, compassion and kindness. “Do not harm thy neighbour” is a cornerstone legal principle related to the law of civil wrongs that covers acts as well as omissions and imposes legal consequences. It has a wide ambit including including traffic accidents, medical malpractice, product liability, and workplace safety.

In the landmark case of *Donoghue v. Stevenson (1932)*⁴ wherein Mrs Donoghue fell ill after consuming a bottle of ginger beer containing a decomposed snail. The House of Lords ruled that Mr Stevenson owed a duty of care towards Mrs Donoghue even when she was not directly in a contractual relationship with him. Lord Atkin articulated the “neighbour principle” which states that a person owes a duty of care towards their “neighbours”, defined as those who are so closely and directly affected by their actions that they ought to reasonably be in contemplation with those affected. Therefore, the elements of negligence are duty of care, breach of the duty of care, causation and damages.

As the concept of negligence is based on the concept of what a prudent man would do, it establishes that wherever there has been a failure to exercise the degree of care that is expected

⁴ Donoghue v. Stevenson 1932 UKHL 100

out of a reasonable man, there is negligence. Ordinary negligence can be understood by the “prudent man rule” which operates in financial management and dictates that individual affairs must be managed with the same care and skill that a person of average intelligence would use in managing their own affairs. This rule was recognised and applied in the leading case of *Harvard College v. Amory (1830)*⁵. It was held that while managing assets one must exercise the same skill, care and prudence that a reasonably prudent man would exercise in his case.

Mental Harm and Law

Law clubs mental harm with negligence by requiring that such harms be medically recognised and caused by a sudden event, and by setting specific criteria for claims related to emotional distress. In order to prevent exaggerated and frivolous claims, the law requires that mental harm, or psychiatric harm, must be a medically recognised condition that can be treated. The Mental Healthcare Act, 2017⁶ outlines that mental illness shall be determined in accordance with nationally or internationally accepted medical standards. This does not conform with the moral, social, cultural, work or political values prevailing in a person’s community. Past treatment or hospitalisation in a mental health establishment though relevant, shall not by itself justify any present or future determination of a person’s mental illness. The *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV)* each of the mental disorders is considered clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress.

In law, the status of mental harm, be it psychiatric or psychological, is evolving, with courts increasingly recognising claims for pure mental harm, which is mental harm without physical injury, as compensable, provided the harm is a recognised psychiatric illness and the defendant owed a duty of care. The current law provides that if a person suffers mental harm consequential on physical harm, damages for the mental harm may be recovered regardless of whether the mental harm amounts to a recognised psychiatric illness, provided the defendant owed to the plaintiff the duty to take care and avoid causing physical harm.

In international law, mental harm or the right to mental health, is considered a fundamental human right, linked to the broader right to health, encompassing the highest standard of

⁵ *Harvard College v. Amory (1830)* 26 Mass (9 Pick) 446

⁶ Mental Healthcare Act (Act 10 of 2017)

physical, mental and social well-being. The United Nations Office of The High Commissioner for Human Rights also emphasizes the role of mental health as a key component of the right to health. The World Health Organisation (WHO) recognizes mental health as a universal human right, meaning everyone, regardless of their location, occupation, or identity, is entitled to achieve the highest attainable level of mental well-being⁷. The International Covenant on Economic Social and Cultural Rights, which is a treaty of which India is a part of, also recognises the importance of mental harm in the right to health⁸.

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) outlines key principles of mental health systems, including equitable access, cultural safety, a skilled workforce, and partnership with people with live experiences. Everyone with mental illnesses has the right to live, work, and receive treatment in the community, as far as possible. Mental health care should be based on internationally accepted ethical standards.

Negligence and Mental Harm

According to Austin, negligence is a breach of duty to take care, resulting in harm or damage, where a person fails to act with the level of care that a reasonable and prudent person would have exercised under similar circumstances. Negligence can cause mental harm legally when someone's careless actions, where a duty of care was owed, resulted in a person suffering emotional distress or mental injury, even without physical harm, and the harm was foreseeable. Some jurisdictions recognize claims for only mental harm, suggesting that physical harm is not necessary to constitute mental harm, particularly when the plaintiff was in a zone of danger and suffered a recognized psychiatric injury as a foreseeable consequence of the defendant's negligence. The defendant's negligence must be a proximate cause of the injury, this means that the psychiatric harm must be a reasonably foreseeable consequence of the defendant's acts. The plaintiff must be of ordinary robustness and normal fortitude to have suffered mental injury due to the acts of the defendant. For example, a person returning home and seeing his house ablaze due to the defendant's negligence could be foreseen to suffer from a recognized psychiatric injury.

In the Australian negligence case of **Jaensch v. Coffey** (1984)⁹, the court established a

⁷ "Mental Health, Human Rights and Legislation: Guidance" publication by OHCHR and WHO

⁸ Art 12 of ICESCR

⁹ Jaensch v. Coffey 1984 HCA 52

proximity test to determine if the mental harm caused by negligence was sufficiently close to the person harmed. This means that for any mental harm to be recoverable, the cause must be sufficiently proximate to the plaintiff. This case established three types of proximity, that is physical, circumstantial and causal, thereby broadening liability to extend beyond the immediate location of the accident if circumstantial proximity existed.

In the landmark case of **Dulieu v White (1901)**¹⁰, the court established that nervous shock, accompanied by definite physical illness, constitutes a physical injury, paving the way for claims based on negligence even without immediate physical impact. This permitted a claim arising from mental injury caused by what the plaintiff saw, rather than just impact injury.

In the case of **Wilkinson v. Downton (1897)**¹¹, the defendant falsely told the plaintiff that her husband was injured in an accident, as part of a prank, this caused her severe nervous shock and illness and the court held the defendant liable for the same.

These landmark cases have shaped the legal understanding of nervous shock, allowing for recovery when nervous shock leads to physical illness and defining the circumstances under which individuals can claim damages for mental distress caused by another's negligence or intentional actions.

There are discrepancies in how different nations perceive and address negligence causing mental harm. This is typically due to the varying legal frameworks, cultural norms and level of societal understanding. Some key areas where discrepancies exist are as follows –

1. Legal framework and liability – some jurisdictions have strict requirements for proving a link between negligence and mental harm, often requiring a recognisable mental injury to constitute liability. The extent to which individuals or institutions are expected to take reasonable care to prevent mental harm may also vary. Some legal systems may consider a defendant's mental state when determining liability for negligence whereas, some may not do so. The types and amount of compensation available for mental harm, including non-economic damages may differ greatly.

¹⁰ Dulieu v. White 2 KB 669

¹¹ Wilkinson v. Downton 1897 EWHC 1 (QB)

2. Cultural and societal factors – cultural attitudes towards mental health and the stigma regarding mental illness across different communities influence liability. The strength of patient advocacy groups and the level of public awareness regarding mental health also influence its admissibility. The level of trust in healthcare institutions may also vary not only from region to region but also between households.

Some examples of these discrepancies include medical negligence, wherein some countries recognise it to a large extent whereas some don't. Other examples include psychiatric harm in workplace accidents wherein the extent to which the employers are held liable for psychiatric harm caused to employees may vary significantly. Lastly, in civil litigations, some countries have specific legal provisions for compensating individuals who suffer mental harm as a result of negligence in civil cases, while other countries may rely on more general tort laws. The key considerations in this respect are the tussles between objective and subjective standards as some legal systems may focus upon the objective standards of care that is what a reasonable and prudent person would do, whereas, some legal systems focus on subjective standards which include the mental state of the defendant. Further, proving a causal link between the negligent act and the mental harm can be challenging and the legal standards for establishing causation may vary. The role of experts such as psychologists and psychiatrists in evaluating claims of mental harm and establishing causation may vary significantly.

Later, cases like **McLoughlin v. O'Brian (1901)**¹² broadened the scope of mental harm in the courts by including situations where a person suffered psychiatric illness from witnessing the immediate aftermath of an accident of loved ones, even if they were not injured themselves, this case highlighted the judiciary's growing awareness regarding mental harm. In the very same case, Justice Lord Wilberforce emphasized the importance of foreseeability to determine liability for psychiatric injury. Cases like *Page v. Smith (1996)* and *Alcock v. Chief Constable of South Yorkshire Police* further refined the categories of victims, primary victims are those who are directly involved in the incident and are in the zone of damage. Whereas, secondary victims are those who witness the event or its immediate aftermath. The law often applies different tests of foreseeability and proximity depending on this distinction.

¹² *McLoughlin v. O'Brian (1901)* 1 AC 410

Mental harm as a broad legal concept

Mental harm is a broad legal concept as it is involved particularly in areas of tort and criminal law. It encompasses a wide range of psychological distress and emotional suffering caused by various actions or events. The concept extends beyond simply recognising the concept of “nervous shock” and now includes a broader spectrum of mental and emotional injuries, including conditions like PTSD, Bipolar disorder, Schizophrenia and other recognised illnesses. The law also increasingly acknowledges the impact of mental harm on the ability of a person to make decisions and participate in legal processes.

Mental harm is specifically considered a broad legal concept due to its varied manifestations as it can manifest in a variety of ways including anxiety, depression, and other mental disorders and illnesses. Mental harm is often subjective, meaning that its impact and severity can vary greatly from person to person. What might be a mild inconvenience for one person could be a serious mental injury for another, this creates a lot of discrepancy.

Further, the concept of legal harm is used in varied legal contexts including tort law which involves negligence and duty of care, breach of contract leading to emotional harm or instability and also involved in cases of assault, murder, abuse, domestic violence, etc. Proving mental harm can be challenging because it often involves subjective experiences and may require expert testimony from mental health professionals to establish the link between the event and the psychological injury.

Although there was a rich tradition of legal system in Ancient India, the present judicial system of the country derives largely from the British system and is based on English Common Law, a system of law based on recorded judicial precedents. Earlier legislations in respect of mental health were primarily concerned with custodial aspects of persons with mental illness and protection of the society. Indian laws are also concerned with determination of competency, diminished responsibility and/or welfare of the society. United Nations Convention for Rights of Persons with Disabilities (UNCRPD)¹³ was adopted in 2006, which marks a paradigm shift in respect of disabilities (including disability due to mental illness) from a social welfare concern to a human right issue. The new paradigm is based on presumption of legal capacity, equality and dignity. Following ratification of the convention by India in 2008, it became

¹³ United Nations Convention for Rights of Persons with Disabilities (UNCRPD), 2006

obligatory to revise all the disability laws to bring them in harmony with the UNCRPD. Therefore, the Mental Health Act – 1987 and Persons with Disability Act – 1995 are under process of revision and draft bills have been prepared. Human right activists groups are pressing for provisions for legal capacity for persons with mental illness in absolute terms, whereas the psychiatrists are in favour of retaining provisions for involuntary hospitalization in special circumstances.

Negligence, Mental harm and AI

AI has a complex and multifaceted relationship with negligence. Negligence, in the legal context, refers to a failure to act with reasonable care, causing harm to another. In the realm of AI, negligence can manifest in various ways, from the development and deployment of systems to their misuse by users. Understanding these nuances is crucial for establishing liability when AI-related harms occur.

Developers' duty of care - Negligence can arise during the design and testing phases of AI systems. Developers have a duty of care to ensure that AI systems are safe and reliable, but if they fail to adequately test or design the system properly, leading to unforeseen errors, they may be liable for negligence. The "black box" nature of some AI systems, where the decision-making process is opaque, can make it difficult to determine the root cause of errors or failures. This lack of transparency can make it challenging to establish negligence in cases where AI systems cause harm.

If a duty of care was owed, courts will then need to determine whether that duty was breached. This may involve considering whether the AI system was properly designed, tested, and deployed, and whether the user took reasonable steps to avoid harm. Courts will need to establish a causal link between the breach of duty and the harm suffered by the injured party. This may involve considering whether the AI system was the direct cause of the harm, or whether other factors were involved.

Some examples include –

Autonomous Vehicles: If an autonomous vehicle causes an accident due to a software bug or a failure to perceive its surroundings, the manufacturer or user may be held liable for negligence.

Medical AI: If a medical AI system misdiagnoses a patient or provides incorrect treatment recommendations, the developer or user may be held liable for negligence.

AI-Driven Financial Systems: If an AI-driven financial system makes a mistake that results in financial losses for a user, the developer or user may be held liable for negligence.

Facial recognition software misidentifies certain races, leading to false arrests.

Job recommendation algorithms favour one racial group over another. **AI-driven diagnostic tools** for skin cancer are less accurate for individuals with dark skin due to non-diverse training datasets.

This refers to a fault based regime under which the owners and developers of AI tools may be held liable for any mental harm or any other kind of physical harm that is caused to the plaintiff due to an error on the part of the AI tool, error on part of the owner or even an algorithm bias.

Conclusion

The study of negligence and mental harm within the framework of tort law reveals a complex, evolving legal landscape that attempts to balance individual rights, societal norms, and legal precedents. Negligence, traditionally understood as a failure to exercise reasonable care, has grown beyond its historical limitations to encompass not only physical harm but also the more intangible and nuanced concept of mental harm. Through an analysis of landmark cases, legislative provisions, and theoretical frameworks, in spite of legal developments in these aspects, there still remain challenges as to the implementation of these complex concepts in a uniform manner across jurisdictions.

At its core, negligence rests on the foundational elements of duty of care, breach of that duty, causation, and resultant harm. The landmark case of **Donoghue v. Stevenson (1932)** laid down the principles for modern negligence law, introducing the “neighbour principle” that established a legal duty of care extending to those who might be foreseeably affected by one’s actions. This principle not only formalized the legal expectation of reasonable conduct but also marked a shift towards a more empathetic legal system that recognizes the rights of individuals to safety and protection, even in the absence of contractual relationships. This conceptual framework has been critical in shaping legal interpretations of mental harm. Unlike physical harm, mental harm, or psychiatric injury, is often invisible, subjective, and harder to quantify.

It can range from transient emotional distress to long-term psychiatric disorders such as PTSD, depression, or anxiety. Law, which traditionally relied on tangible evidence of physical injury, has gradually evolved to accept claims of pure mental harm, albeit with caution to prevent frivolous or exaggerated claims. Courts have generally required mental harm to be a medically recognized condition, as outlined in many legislative frameworks.

The complexity of mental harm lies in its inherently subjective nature. What might constitute serious psychological injury for one individual could be inconsequential for another. This subjectivity challenges the courts to balance the need for justice and accountability with the risk of overextending legal liability. The “zone of danger” and proximity tests, as developed in cases like *Jaensch v. Coffey* (1984) and *McLoughlin v. O’Brian* (1982), have sought to address this by setting parameters around foreseeability and the relational proximity between the victim and the defendant. This ensures that liability for mental harm remains tied to reasonably foreseeable consequences of negligent actions.

The gradual acceptance of mental harm claims in tort law is closely linked to cultural, societal, and jurisdictional factors. Different nations approach mental health through distinct legal lenses shaped by cultural stigmas, healthcare infrastructure, and public awareness. While some jurisdictions have incorporated extensive provisions for psychiatric harm under tort law, others still adhere to conservative interpretations, particularly where causation is difficult to establish or where mental illness is socially marginalized. Discrepancies in recognizing claims for workplace-related psychiatric injuries, medical negligence, and secondary victim claims reflect these varied legal and cultural ecosystems.

Another area of divergence lies in the legal treatment of objective versus subjective standards. Some jurisdictions emphasize an objective standard, that is, how a reasonable person would have acted in similar circumstances, while others, in certain cases, consider the defendant’s mental state, intention, or awareness of the potential harm. This ongoing debate complicates the establishment of duty and breach in mental harm claims, where emotional suffering is deeply personal, and its causation less straightforward than physical harm. In addition to this, the emergence of AI introduces new complexities in attributing negligence and addressing mental harm. As AI systems increasingly perform tasks once exclusively managed by humans, from autonomous driving and medical diagnosis to financial advising and employment decisions, questions about legal liability and the duty of care become more pressing. Traditional

negligence principles require a duty of care, foreseeability of harm, breach, and causation, but the “black box” nature of AI complicates the attribution of fault. Determining whether harm results from a developer’s oversight, a deployment error, or an AI system’s inherent bias poses significant legal challenges. Moreover, AI’s capacity to cause mental harm is not limited to physical injury scenarios. AI-driven systems, can perpetuate biases or produce discriminatory outcomes, resulting in psychological harm or emotional distress to affected individuals. Instances of AI misidentifying individuals, unfairly denying opportunities, or propagating harmful stereotypes can lead to anxiety, depression, or social exclusion. The difficulty lies in proving causation and foreseeability, essential components of negligence, particularly when harm manifests gradually or is intertwined with broader systemic issues. Therefore, a fault-based liability regime for AI, where developers, owners, or operators are held responsible for harm caused by AI tools, offers a practical starting point. Such a framework would place a duty of care on AI developers to design, test, and maintain systems with due regard for potential risks, including mental harm. However, the legal system must also grapple with questions of foreseeability, proximate cause, and reasonable care in a context where machine learning systems evolve unpredictably over time.

AI-related negligence cases highlight the need for robust regulatory frameworks, transparency in algorithmic decision-making, and mechanisms for human oversight. Courts will increasingly rely on expert testimony from mental health professionals, technologists, and ethicists to evaluate claims and establish causal links between AI-driven actions and mental harm. Additionally, concepts like algorithmic bias and systemic discrimination must be legally addressed to ensure that AI systems do not disproportionately affect vulnerable or marginalized communities.

Internationally, human rights instruments and mental health conventions recognize mental well-being as a fundamental right. The United Nations and the World Health Organization advocate for equitable, culturally sensitive mental health care systems, emphasizing the interdependence of mental and physical health. These global principles should inform domestic legal reforms, ensuring that negligence laws remain responsive to evolving understandings of mental harm and the realities of a digital, AI-integrated society.