



LEGAL, ETHICAL
AND
PROFESSIONAL CHALLENGES
IN
INDIAN MEDICAL
PRACTICE AND HEALTHCARE

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The Evolving Landscape of Medical Negligence and Accountability: Fortifying Patients' Rights in a Changing Healthcare Paradigm

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Abstract

This chapter investigates the developing field of medical malpractice and accountability in India, triggered by technological advancement, altering patient expectations, and regulatory changes. It analyzes the challenges in defining and proving negligence, the impact of technology like Electronic Health Records and Artificial Intelligence, and the expanding emphasis on patient autonomy and informed consent. The chapter further examines the intricacies of balancing responsibility with the need to support health care professionals and the potential role of insurance and alternative compensation mechanisms. Ultimately, it suggests a multi-pronged approach that fortifies patients' rights through en-

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hanced education, robust grievance resolution systems, a culture of patient safety, and a flexible legal framework. Navigating this evolving paradigm is essential for ensuring a healthcare system that is both technologically advanced and deeply dedicated to patient well-being and equity within the Indian context.

1. Introduction

Rapid improvements in healthcare, rising patient awareness, and changing legal frameworks are all contributing to a major shift in India's medical negligence and responsibility environment. Strict accountability procedures are now essential to protecting patients' rights as the healthcare industry expands and new technology and treatments are introduced. This development is a reflection of how society is changing, with patients becoming more knowledgeable and outspoken about their health care choices and calling for justice and transparency in malpractice cases.

The inability of a healthcare provider to adhere to the recognized standard of care is known as medical negligence, and it can have catastrophic effects for patients. The case of medical malpractice in India has drawn additional attention, underscoring the pressing need for stronger ethical and legal standards. The legal system has responded to complaints, and a number of significant cases have established a framework for accountability. However, there are still issues, especially with regard to prompt resolution and ensuring the application of current legislation.

Accountability in healthcare is not just about punitive measures but also encompasses systemic improvements aimed at enhancing patient safety. In the Indian context, this involves fostering a culture of responsibility among healthcare professionals, thereby encouraging them to adhere to established protocols and standards. Additionally, empowering patients through education about their rights and the mechanisms available for redressal, is crucial in creating an informed citizenry that can advocate for itself.

The role of regulatory bodies, such as the Medical Council of India and various state medical councils, has also transformed in recent years. These organizations are increasingly focusing on developing clear guidelines for medical practice, ethical conduct, and patient engagement. Moreover, the integration of technology in healthcare has prompted discussions on its implications for accountability, particularly concerning telemedicine and digital health records.

As India navigates this evolving landscape, it is essential to consider the interplay of various factors influencing medical negligence and accountability. This entails an exploration of legal reforms, educational initiatives for healthcare professionals, and the establishment of patient advocacy mechanisms. Ultimately, safeguarding patients' rights in the face of medical negligence requires a multi-faceted approach that balances accountability with compassion and transparency, ensuring that healthcare remains a fundamental right accessible to all.

Medical negligence, in essence, happens when a healthcare professional deviates from the accepted standard of care, leading to harm to a patient. It's not just a poor outcome, but instead a failure to act with the reasonable skill and diligence expected of a competent practitioner in comparable circumstances. To establish medical negligence, four key elements must generally be proven:

- 1. Duty of Care:** A doctor or healthcare institution has a professional responsibility to provide care to a patient. This duty arises once a doctor-patient relationship is established.
- 2. Breach of Duty:** There must be a demonstrable failure on the part of the healthcare provider to meet the required standard of care. This could involve an act of omission (not doing something that should have been done) or commission (doing something that shouldn't have been done).
- 3. Causation:** A direct causal link must be established between the breach of duty and the harm endured by the patient. It needs to be shown that negligence was a direct and proximate cause of the injury.
- 4. Damages:** The patient must have endured actual harm or loss as a result of negligence. This could include physical injury, financial loss, mental anguish, or even death.

Medical negligence can appear in diverse forms. Diagnostic mistakes involve misdiagnosis, postponed diagnosis, or failing to diagnose a condition. Surgical errors encompass mistakes during surgical procedures, like incorrect-site surgery or leaving foreign objects inside the body. Medication errors include prescribing the incorrect drug, the wrong dosage, or neglecting to account for drug interactions. Lastly, a lack of informed consent constitutes negligence when a patient isn't adequately informed about the risks, benefits, and alternatives of a proposed treatment, hindering their capacity to make an autonomous decision.

Basic patient rights are closely linked to preventing and addressing medical negligence. The right to informed consent confirms that patients are active in their health decisions, shielding them from procedures they haven't approved. The right to quality care signifies that patients are entitled to receive services that meet professional standards and are delivered with competence, directly lessening the chance of negligence. The right to privacy and

confidentiality fosters trust and encourages candid communication, which is crucial for accurate diagnosis and treatment. The right to access medical records empowers patients to understand their care and pinpoint potential errors. Finally, the right to seek redress through complaints offers a method for patients to address cases of negligence and seek justice.

Essentially, upholding patients' rights serves as a defense against medical negligence. When patients are well-informed, treated with difference, and possess avenues for redress, it builds a healthcare setting that is more accountable and less prone to mistakes. Conversely, a disregard for patients' rights can often be a precursor to or a result of negligent practice. Reinforcing the awareness and enforcement of these rights is vital for ensuring a just and safe healthcare system for all in India.

2. The Historical Trajectory of Medical Negligence and Accountability in India

The context of medical negligence and accountability in India has changed substantially over the years, molded by cultural perceptions, legal structures, and key judicial precedents. The trajectory can be traced through early ideas of medical error, the rise of legal frameworks, landmark cases influencing the interpretation of negligence, and changes in legal burdens of proof.

2.1 Early Concepts

In India's past, knowledge of medical errors was restricted and firmly anchored in conventional notions of health and sickness. The Sushruta Samhita and other ancient Indian writings provided valuable insights into the practice of medicine, highlighting the importance of practitioners' expertise and understanding. But there was a lack of clarity surrounding the idea of holding medical professionals responsible for mistakes. Because societal perspectives frequently ascribed health consequences to fate or divine will rather than human error, accountability was unclear in this cultural setting.

The introduction of contemporary legal systems with the advent of British colonial control started to influence how medical negligence was viewed. Indian jurisprudence was founded on early legal precedents from British courts. The "Bolam Test," which was developed in the famous English case of *Bolam v. Friern Hospital Management Committee*(1), evaluates negligence by determining whether a clinician's actions were in line with the norms recognized by a respectable body of medical opinion. The common law system's adoption in India was influenced by this case, which had a significant impact on how medical negligence was understood.

1. 1957 1 WLR 582.

3. The Rise of Legal Frameworks

As India's legal landscape matured post-independence, the necessity for strong legal structures to address medical negligence surfaced. The development of tort law, especially the law of negligence, was crucial. The Indian Contract Act of 1872, although chiefly centered on contracts, indirectly dealt with issues of medical malpractice by detailing obligations stemming from professional relationships. The Consumer Protection Act of 1986 indicated a significant shift in handling medical negligence. This law empowered patients to pursue solutions for infringements of their rights and presented a clear structure for assessing grievances against healthcare professionals. The Act expanded the scope of accountability, shifting from a strictly tort-based method to one that involved consumer rights, indicating a change toward safeguarding patients in the healthcare environment.

3.1 Landmark Cases and Legal Precedents

The boundaries of medical negligence law in India have been established by a number of seminal decisions. The Supreme Court stressed the need for a comprehensive evaluation of the evidence to prove negligence in one of the most important judgments, *Jacob Mathew v. State of Punjab*⁽²⁾. The court decided that without demonstrating a lack of due care, the simple fact that a negative medical consequence occurred was insufficient to prove culpability. The significance of expert testimony and professional standards in deciding medical malpractice cases was highlighted by this case. *Laxman Balkrishna Joshi v. Narhari Ballal*⁽³⁾ was another important case in which the Supreme Court found a doctor negligent when basic treatment went wrong and caused major problems. The decision made it clear that doctors have a duty of care, and that if they fail to uphold this responsibility and cause harm to a patient, they may be held liable.

3.2 Shifting Burdens of Proof and Legal Interpretations

In Indian courts, the meaning of carelessness and the burden of proof have changed significantly over time. At first, it was mostly the complainant's responsibility to prove fault. However, the burden of proof has gradually changed as a result of growing patient rights awareness and advocacy. The intricacies of medical practice and the reality faced by healthcare providers are now more readily taken into account by courts. This change has made it easier to evaluate negligence claims in a more equal manner, highlighting patients' rights to competent and reasonable treatment. Furthermore, the assessment of negligence claims has improved with the introduction of expert testimony and multidisciplinary panels in courts. A more nuanced understanding of what constitutes negligence has resulted from courts frequently seeking the opinions of medical practitioners in order to better grasp the

2. AIR 2005 SC 3180.

3. AIR 1969 SC 128.

complexities of medical treatments. Furthermore, the assessment of negligence claims improved with the introduction of expert testimony and multidisciplinary panels in courts. A more nuanced understanding of what constitutes negligence has resulted from courts frequently seeking the opinions of medical practitioners in order to better grasp the complexities of medical treatments.

A dynamic interaction between judicial interpretation, legal development, and cultural values is seen in India's historical trajectory of medical negligence and accountability. The necessity for strong accountability systems that put patient rights first while also taking into account the difficulties faced by medical professionals is becoming more widely acknowledged as the healthcare environment changes. In order to guarantee a fair and just approach to medical practice in India, this continuous evolution emphasises the need for continual discussion, instruction, and reform in the legal and healthcare systems. Technological developments, changing patient expectations, changing regulatory frameworks, and the growing interconnection of global healthcare are all having an impact on the rapidly changing Indian healthcare ecosystem. Together, these elements are changing the way that medical negligence is viewed, dealt with, and avoided while also raising patient rights knowledge and advocacy.

4. Technological Advancements

When it comes to medical care, technology has two sides. Although they promise improved data analysis, accessibility, and documentation, electronic health records (EHRs) also create new opportunities for mistakes. Inaccurate patient data can occur from system errors, data entry errors, and poor interoperability across various EHR systems, which may lead to a misdiagnosis or inappropriate course of therapy. Concerns regarding data integrity and possible manipulation in cases of medical negligence are also raised by the ease with which digital records can be altered.

There is a lot of promise for increasing precision and effectiveness in the rapidly developing field of Artificial Intelligence (AI) in diagnosis and treatment. Large datasets can be analysed by AI algorithms to find trends that can help with early disease identification or individualised treatment regimens. But the incorporation of AI also brings up difficult accountability issues. Who bears responsibility if a mistake is made by an AI-powered diagnostic tool that causes harm to patients? The healthcare facility, the developer, or the doctor who depends on the AI's results. To handle these new issues, precise legal and moral frameworks are still developing.

Increased access to healthcare, especially in underprivileged places, is made possible by telemedicine and remote care, which have been made possible by the recent pandemic and growing internet penetration. The traditional doctor-patient relationship and guaranteeing the same degree of attention and physical inspection as in-person appointments are particularly

larly difficult to create with them. In the context of possible negligence claims, identifying the duty of care, guaranteeing patient identification and data protection, and resolving any communication gaps in distant settings are crucial factors to take into account.

5. Changing Patient Expectations and Awareness

Patients now have unparalleled access to medical information thanks to the digital era. People who have higher levels of health literacy are more equipped to understand their diseases, available treatments, and any hazards. Naturally, this increased awareness causes them to examine the medical care they get more closely and to be less tolerant of mistakes or what they consider to be subpar treatment. Patients are more prone to demand thorough explanations, challenge diagnosis, and seek second opinions.

Patient autonomy and collaborative decision-making are becoming increasingly important. Patients now actively participate in decisions that impact their health rather than being passive beneficiaries of care. Because of this change, healthcare professionals must communicate clearly and thoroughly with patients so they may make educational decisions by understanding the advantages and disadvantages of suggested treatments. Medical malpractice is becoming more often acknowledged as a result of improper informed consent. A major factor in elevating patient voices and increasing awareness of medical negligence and patient rights is the growth of patient advocacy organizations and internet forums. These forums give patients a place to talk about their experiences, find out about their legal options, and band together to push for systemic reforms. Additionally, social media can swiftly spread information about suspected neglect, changing public opinion and applying pressure to medical facilities.

6. Regulatory and Policy Changes

Legislative and policy initiatives to enhance patient safety and accountability have increased in India. For example, healthcare services are specifically covered by the Consumer Protection Act of 2019, giving patients a legal way to complain about subpar services, including medical malpractice. The legal framework is influenced by a number of court rulings and advice published by professional medical associations, even if particular national legislation addressing medical negligence is still developing.

Setting ethical standards and standards of professional conduct for medical negligence is a critical function of professional medical organizations such as the Medical Council of India (now the National Medical Commission, or NMC). Their rules and disciplinary procedures have an impact on what constitutes appropriate medical practice and can serve as standards in cases of carelessness. The significance of high-quality, patient-centered treatment is subtly emphasized by Government programs like the National Health Policy and the drive

for universal health coverage. Although not specifically addressing negligence, these programs seek to improve the healthcare system's accountability and responsiveness to patient requirements, which obliquely helps to prevent negligence.

7. Globalization and Cross-Border Healthcare

Determining jurisdiction and accountability in cases of alleged medical negligence become more difficult as a result of the growing trend of medical tourism and the participation of foreign healthcare providers in India. It can be difficult to decide which nation's rules and regulations will apply in the event of a disagreement when a patient travels to India seeking treatment from a foreign-trained physician or at an internationally recognized facility. Addressing medical negligence claims that involve cross-border features requires international cooperation. To safeguard the rights of patients who seek medical care outside of their country, it is becoming more and more crucial to set up explicit procedures for information exchange, legal jurisdiction, and the enforcement of rulings in other nations. Addressing medical negligence claims that involve cross-border features requires international cooperation. To safeguard the rights of patients who seek medical care outside of their country, it is becoming more and more crucial to set up explicit procedures for information exchange, legal jurisdiction, and the enforcement of rulings in other nations. Technological improvements, changing patient expectations, legislative changes, and the growing globalization of healthcare are all having a dynamic impact on India's medical negligence and patient rights scene. A multifaceted strategy is needed to navigate this changing landscape, including strong legal frameworks, ethical standards, increased patient knowledge, and healthcare practitioners' dedication to maintaining the highest levels of care and respect for patient autonomy. Ensuring a healthcare system that is both sophisticated and responsible requires addressing the difficulties and seizing the opportunities brought about by these motivating forces.

8. Strengthening Accountability Mechanisms in Indian Healthcare

Technological improvements, changing patient expectations, legislative changes, and the growing globalization of healthcare are all having a dynamic impact on India's medical negligence and patient rights scene. A multifaceted strategy is needed to navigate this changing landscape, including strong legal frameworks, ethical standards, increased patient knowledge, and healthcare practitioners' dedication to maintaining the highest levels of care and respect for patient autonomy. Ensuring a healthcare system that is both sophisticated and responsible requires addressing the difficulties and seizing the opportunities brought about by these motivating forces.

9. Legal Recourse and Litigation

One of the main ways that patients can seek justice in situations of medical malpractice is through civil litigation. Patients can protest against healthcare providers using the legal

frameworks created by the earlier Consumer Protection Act, 1986 which gives the courts the authority to step in. Patients may get compensatory damages as a result of successful lawsuit, which encourages medical personnel to exercise greater caution and thoroughness in their work. But there are a lot of obstacles in the way of this strategy. Many patients might not have the money to fight protracted legal fights, which would deter them from pursuing justice. Claimants may be further deterred by the intricacy of legal proceedings as well as possible delays brought on by court backlogs. Furthermore, the need for expert testimony frequently puts an undue burden on patients to prove negligence, which can result in instances when legitimate complaints are rejected for lack of proof.

9.1 Alternative Dispute Resolution (ADR)

Alternative dispute resolution (ADR) has become a feasible method for settling medical negligence claims in India in order to overcome the drawbacks of traditional litigation. Patients can seek relief more quickly, cheaply, and amicably through mediation and arbitration. In mediation, the patient and healthcare professionals have conversations facilitated by an impartial third party, which promotes cooperative problem-solving. In contrast, arbitration entails an arbitrator rendering a legally binding ruling based on the evidence that was provided. ADR has disadvantages in addition to its benefits, which include shorter turnaround times and cheaper expenses. Patients may believe that arbitration can restrict the scope of appeals, which puts them at a disadvantage, and mediation lacks the formality necessary to handle major issues. Furthermore, ADR might not be enough to discourage negligence if healthcare providers are not dedicated to open resolutions.

9.2 Medical Boards and Professional Discipline

In order to maintain standards and responsibility within the profession, regulatory organizations like the Medical Council of India and State medical councils are essential. By looking into complaints made against practitioners, these boards provide a methodical examination of alleged carelessness. Sanctions may include reprimand, suspension, or even deregistration if investigations confirm allegations. However, doubts over the impartiality and thoroughness of investigations frequently cast doubt on these bodies' effectiveness. Effective disciplinary action can also be hampered by strong medical lobbies and institutional inertia, which can give the impression that careless practitioners are getting away with it.

9.3 Hospital and Institutional Accountability

It is crucial for healthcare organizations to make sure that systemic flaws don't jeopardize patient safety. Hospitals can be held responsible for the careless acts of their employees, especially when those acts take place while the employee is on the job, according to theories like vicarious responsibility and corporate negligence. This accountability emphasizes how important it is for healthcare institutions to have a transparent and safe culture. How-

ever, it is still difficult to enforce this responsibility. Institutions may adopt defensive stances that place reputational concerns ahead of patient care because they are reluctant to acknowledge their mistakes. Furthermore, medical organizations hierarchies can obfuscate responsibility, making it difficult to pinpoint areas of clinical practice that need improvement.

9.4 Transparency and Reporting Mechanisms

Lastly, open and honest reporting of adverse occurrences and medical mistakes is essential to enhancing healthcare procedures. Learning chances to avoid future harm can be facilitated by a culture that supports disclosing errors without fear of punishment. Systematic data collecting and analysis is encouraged by programs like the National Patient Safety Campaign, which may be helpful in spotting patterns and creating safety procedures. Strong procedures that promote reporting while guaranteeing healthcare practitioners' anonymity are still required in India. By putting in place standardized reporting procedures and offering sufficient training, an atmosphere may be established where learning from errors is a regular occurrence. In order to promote confidence and guarantee patient safety and rights, the Indian healthcare system must strengthen its accountability procedures. Addressing these limits and encouraging cooperation among stakeholders is crucial, even while legal redress, alternative dispute resolution (ADR), regulatory measures, institutional accountability, and open reporting all have significant roles to play. In the end, a thorough dedication to accountability will result in better patient outcomes and a safer medical setting.

Protecting patients' rights in the ever-changing Indian healthcare system necessitates a coordinated effort on many fronts. Proactive steps are necessary to guarantee that the fundamental rights of people seeking medical care are safeguarded and maintained as technology develops, patient awareness increases, and rules change. One of the pillars of moral and lawful medical practice is still encouraging informed consent. This calls for a change from a process that only follows procedures to one that actually empowers patients. Patients must be given accurate, thorough, and objective information regarding their diagnosis, suggested therapies, possible risks and advantages, and accessible options. The patient should be able to ask questions and make their own judgments without being forced to do so if this information is presented in a language they can understand. Healthcare workers need ongoing education and training on how to communicate effectively and the subtleties of informed consent.

Improving health literacy and patient education are equally important. Giving patients the information and abilities they need to navigate the healthcare system and comprehend their rights gives them the ability to speak up for themselves. Information regarding patient rights, complaint procedures, and channels for redress can be widely distributed through public health campaigns, easily accessible internet resources, and patient support groups. Patients are more equipped to seek high-quality care and contest possible negligence when they are informed of their rights. The development of a patient safety culture is systemically required. This means

creating a medical environment where patients' health is prioritized and open communication about errors is encouraged without worrying about reprisals. Establishing robust protocols for reporting errors, looking into the root causes of negative events, and placing a strong emphasis on continuous quality improvement are all crucial components. A culture of safety also involves sponsoring employee training, promoting teamwork, and putting best practices into action in order to eliminate preventable injuries. There are many chances to support patients' rights and empower them through technology. Through patient portals, patients can safely access medical records, examine their health data, and spot any inconsistencies. By facilitating simpler communication between patients and healthcare providers, telehealth technologies enable prompt clarifications and remote problem-solving. Medication reminders, educational materials, and tools for monitoring symptoms and treatment outcomes can all be found in mobile health applications. Secure online platforms can also make it easier to report grievances and give informed consent, increasing their accessibility and transparency.

A multifaceted strategy is needed to protect patients' rights in the changing Indian healthcare environment. India can move towards a healthcare system that is not only technologically advanced but also firmly committed to upholding the rights and well-being of every patient by emphasizing strong informed consent procedures, improving patient education, fortifying grievance procedures, cultivating a culture of patient safety, and utilizing technology. In India, navigating the complex landscape of medical negligence and patient rights poses a special set of difficulties, but it also suggests possible avenues for future development.

Establishing a direct and unambiguous causal connection between a medical error and the patient's harm is one of the main obstacles in proving medical negligence. Due to the complexity of medical research, a patient's disease may have several underlying causes. It takes careful research, professional medical opinion, and a deep comprehension of medical procedures to prove that the healthcare provider's acts or inactions were the direct and immediate cause of the unfavourable outcome. Significant obstacles in this procedure may include the availability of comprehensive medical records and the readiness of medical experts to offer objective expert testimony. The claimant bears the majority of the burden of proof and frequently lacks the medical expertise necessary to support their position.

Balancing accountability with the need to draw in and keep healthcare professionals is another vital matter. Though it is vital to hold negligent practitioners answerable to ensure patient safety, undue or groundless litigation can generate a climate of fear and defensiveness among healthcare professionals. This could potentially lead to "defensive medicine," where physicians order unnecessary tests and procedures to protect themselves from lawsuits, escalating healthcare costs. Moreover, the stress and worry connected to the hazard of litigation might dissuade skilled individuals from entering or remaining in the medical vocation, especially in specialized areas where the danger of intricate cases and potential complications is greater. Detecting an equitable and just balance that warrants accountabil-

ity without unduly hampering the healthcare workforce is important for the long term health of the system.

In India, the function of insurance and compensation plans is changing. In the case of negligence claims, medical malpractice insurance can offer healthcare providers and organizations a financial safety net. Nonetheless, such insurance is still not very common in India. Examining the possibilities of no-fault compensation schemes might provide a different strategy for dealing with medical injuries. Regardless of whether the fault is proven, the goal of such schemes is to give patients who have been harmed during medical care fair compensation. These solutions raise concerns about accountability and the avoidance of mistakes in the future, even though they may lessen litigation and provide quicker relief.

Considering future trends, various developments are probable to mould the legal and ethical arena of medical negligence and patient rights in India. Increased awareness and activism among patients, spurred by expanded access to information and technology, will possibly result in a stronger demand for accountability and transparency in healthcare. The incorporation of AI and digital health technologies will require the creation of clear legal structures for accountability in cases concerning these tools. We could see greater stress on alternative dispute resolution methods, like mediation and conciliation, to settle medical negligence claims more effectively and amicably. Moreover, there is a growing need for standardized protocols, clinical guidelines, and robust quality assurance procedures across healthcare institutions to prevent medical errors and advance a culture of patient safety. The legal framework might also develop to offer clearer definitions of medical negligence in the context of emerging technologies and changing standards of care. Essentially, the future will probably witness a greater emphasis on both securing patient rights and cultivating a supportive setting for healthcare professionals to deliver quality care.

10. Conclusion

In conclusion, the evolving landscape of Indian healthcare, driven by technological advancements, changing patient expectations, and regulatory shifts, necessitates a heightened focus on safeguarding patients' rights and addressing medical negligence effectively. While technology offers solutions for better documentation and diagnosis, it also presents new challenges in accountability. Increased patient awareness demands greater transparency and shared decision-making.

The journey towards a more equitable healthcare system requires continuous efforts in promoting informed consent, enhancing patient education, strengthening grievance mechanisms, and fostering a culture of patient safety. Addressing the complexities of proving negligence and balancing accountability with the well-being of healthcare professionals

remains crucial. Exploring innovative solutions like robust insurance schemes and no-fault compensation systems could offer alternative pathways for redress.

Ultimately, ensuring that patients' rights remain central to the evolving healthcare narrative is paramount. A robust legal and ethical framework, coupled with a commitment to patient-centric care, is essential for building a healthcare system in India that is both technologically advanced and deeply respectful of the rights and dignity of every individual seeking medical assistance.

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