



## Legal Framework of Medical Negligence in perspective of Human Rights in India: A Critical Appraisal

Sonika<sup>a,\*</sup>,

Dr. Ramesh Kumar<sup>b,</sup>



<sup>a</sup>LL.M., School of Law, Lovley Professional university, Punjab, India (India).

<sup>b</sup>Assistant Professor & Research Coordinator in Law School of Law, Lovely Professional University, Phagwara, Kapurthala, Punjab-144411, (India).

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### ABSTRACT

In today's context, medical negligence has emerged as a significant concern in India, despite the esteemed status of the medical profession in the country. In India, medical negligence is regarded as both a criminal offense according to the Criminal Procedure Code and a civil liability under Tort Law. The right to health is acknowledged as a fundamental human right. Awareness among the public regarding medical negligence in India is increasing, leading to a better understanding of medical rights. Medical negligence typically results from actions or oversights by healthcare practitioners, often stemming from their limited knowledge or the inadequate availability of medical facilities in hospitals. Consequently, it is imperative for professionals to stay updated on the principles of medical negligence and consumer protection laws, including any relevant amendments, to ensure legal compliance. This paper seeks to explore the concept of medical negligence in depth.

### Introduction

Medical negligence, when medical personnel fail to provide a standard of care that calls for a specific level of expertise, it is known legally as medical malpractice. This failure could be caused by the actions or inaction of healthcare staff (Sah). It's crucial to keep in mind that not all poor treatment outcomes are the consequence of medical negligence as medical therapy is intrinsically erroneous. Medical negligence must be established by demonstrating that the healthcare provider's duty of care was broken by not treating the patient to the

necessary standard. Medical personnel have a duty to provide treatment that meets the required standards to prevent medical negligence, which is a serious issue that can result in serious consequences for patients. Patients retain the right to pursue legal recourse and seek compensation for damages in cases of medical malpractice.

### Legal Frame Work of Medical Negligence in India

The legal structure in India governing the medical profession and its operations, aimed at preventing

### Corresponding author

\*E-mail: [sonikaazad.351@gmail.com](mailto:sonikaazad.351@gmail.com) (Sonika).

\*E-mail: [jmsdrameshkumar@gmail.com](mailto:jmsdrameshkumar@gmail.com) (Dr. Ramesh Kumar).

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<https://orcid.org/0009-0006-0234-7966>

<https://orcid.org/0000-0003-2771-7274>



malpractices, occupies a significant position.<sup>1</sup> Within the Indian legal framework, medical negligence falls into three categories: Criminal negligence, civil negligence, and negligence under the Consumer Protection Act. Each law specifies distinct provisions regarding remedies in the form of punishment and compensation. The Indian Constitution states in Article 21 that every person has the right to live a life of dignity.<sup>2</sup>

### **Kinds of Medical Negligence**

Medical negligence can take many different forms in the healthcare sector. These are a few of the most typical kinds: **Diagnosis error:** Patient harm or injury may result from a healthcare provider's improper diagnosis of a patient's disease, or from their inaccurate or delayed diagnosis. **Surgical Mistakes:** Errors that fall under this category include leaving surgical equipment inside the body of the patient, operating on the incorrect body part, and other similar mistakes. **Medications Mistakes:** These include giving the wrong prescription or dosage, not taking possible drug interactions into consideration, or giving medication improperly. **Not Getting Informed Consent:** When a medical practitioner does a procedure without first getting the patient's informed consent.

### **Inadequate Provision of Follow-Up Care:**

Healthcare providers have an obligation to keep an eye on their patients' condition and offer the proper follow-up care following a medical operation or therapy. The patient may suffer danger or injury if this isn't done. **Birth Trauma:** Negligence during childbirth can cause significant harm, including brain damage and paralysis, for both the mother and the child. **Anaesthesia Mistakes:** Errors related

to anaesthesia can arise when a medical practitioner applies an excessive or insufficient amount of anaesthesia, or neglects to keep an eye throughout the process, monitor the patient's vital signs. Remember that every case is different and that the best line of action will depend on the particulars of the medical negligence.

### **The Fundamentals of Medical Malpractice**

Medical negligence must be established in accordance with a few key components. Among these necessities are: **Medical personnel** are required to owe their patients a duty of care. This indicates that they were required by law to give treatment that was up to the required level of care. **Breach of Duty:** By neglecting to administer care that complied with the necessary standard, it must be the case that the medical practitioner neglected their duty of care. This obligation violation could have been the consequence of a conduct act or an omission. **Causation:** The patient must suffer injury or damage as a result of the obligation that was violated. The harm or damage must be demonstrated to have been brought on by the medical professional's negligence. **Damage:** The healthcare provider's duty violation must have caused the patient to suffer harm or injury. There might be damage or injury to the body, mind, or finances.

### **The Obstacles Medical Negligence Faces in India**

In their quest for justice and compensation, victims of medical negligence in India face a plethora of challenges. Among the principal difficulties is: **Absence of understanding:** It's possible that many Indians are unaware of their legal rights in the

event of medical malpractice or maybe do not know how to begin a case. Exorbitant expense of court cases: In India, the cost of legal proceeding can be substantial, making it difficult for victims to pay for court fees and legal counsel. Protracted legal process: Victims of medical negligence may have to endure an emotionally and financially taxing legal process in India. Restricted access to medical records: It may be difficult for victims to get hold of the medical records they need to prove medical negligence. Lack of evidence: It can be difficult to prove medical negligence, and victim may find it difficult to obtain enough proof to back up their claims. Related Indian Laws/Provisions Regarding Medical Negligence. Section 304A of the "Indian Penal Code addresses death caused by negligence, if found guilty, it states that a medical professional could spend up to two years in prison, pay a fine, or both. Under Section 337, which addresses endangering someone's life or safety, the punishment could be a fine, up to six months in jail, or both. Other than that, significant injury that endangers life or safety is covered under Section 338, which has penalties akin to those in Section 304A.

Furthermore, the Consumer Protection Act of 1986 grants patients the authority to lodge complaints against medical practitioners and claim compensation for instances of medical negligence".

### **Medical Negligence and Human Rights India**

The medical industry is well-functioning and subject to a small number of laws and regulations. These are the laws that forbid negligence or malpractice in the medical field and protect patients' rights. Laws that help guard against

medical malpractice.

### **Laws Under Which Victim of Medical Negligence Can Seek Redressal**

Consumer Protection Act, 2019 "The consumer protection Act, 1986 was replaced by Consumer Protection Act, 2019 by President's assent. This act came into force for providing legal aid to the suffering consumer with an effective administration. Consumer protection act safeguards and protects the consumer in the matters of unfair practice they have dealt with". The crime of causing death by negligence is covered by Section 304A of the Indian Penal Code. A medical worker faces a fine, two years in jail, or both if their carelessness causes a patient to pass away. Inflicting harm on someone by endangering their life or personal safety is covered by Section 337 of the Indian Penal Code. When a doctor's negligence endangers a patient's life or well-being, they can be punished with a fine, a maximum six-month jail sentence, or both. Part 338 of the Indian Penal Code states: Acts that seriously endanger someone's life or personal safety are included in this section. Doctors who are negligent and seriously hurt their patients risk fines, up to two years in jail, or both.

### **International Perspectives of Medical Negligence and Human Rights**

The Rules of Professional Conduct for Dental and Medical Practitioners are one of the numerous interconnected pieces of legislation, along with the Criminal Code Act of 2004, the Nigeria Medical and Dental Practitioners Act of 2004, the National Health Act of 2014, and the Compulsory Treatment and Care for Victims of Gunshot Act of 2017 rules,

and policies that currently govern medical practice in Nigeria and beyond<sup>3</sup>. Supporting institutional structures that regulate medical practice exist in addition to legislative systems. Under the Medical and Dental Practitioners Act, 2004 doctors in Nigeria and other countries are mandated to possess an academic medical degree from their training institution, within the framework of the rules and legislation that already control the practice of medicine. Future physicians would complete a residency program or post-university supervised clinical training in addition to their academic studies and training (Medical and Dental Practitioners Act, 2004). Medical and Dental Practitioners Act, 2004 states that a physician who passes all pertinent exams and completes other required procedures is eligible to become a licensed independent practitioner and be considered to be competent to practice medicine in Nigeria. Legal perspective in general, negligence is defined as either doing something that a prudent and reasonable person would not do or failing to take action that a reasonable man, guided by the factors that typically govern human conduct<sup>4</sup>. Men are not automatically responsible for negligence since the tort of negligence is used to explain situations in which a defendant causes legal harm to a third party by breaching their duty of care under the law. Consequently, the following criteria must be met in order for a claimant to successfully argue negligence in court: The claimant is entitled to a legal duty of care from the defendant in the particular situation. That responsibility has been violated by the defendant. The claimant has experienced suffering or loss as a result of the

defendant's negligence, which is directly related to or results from the defendant's negligence and not too far from the source of the negligence. Legal actions-As with other legal domains, the typical initiator of legal proceedings for redress or doctor sanctions is a patient who has been wronged by medical negligence. When a patient is a juvenile, however, the minor's proxy or filing a complaint on behalf of a child as their next friend may be done by a parent or legal guardian acting as a surrogate. It is possible for a doctor to be the target of both civil and criminal litigation, and they can be brought directly by a patient who feels wronged or through any of the authorized proxies. In cases where the alleged negligent act qualifies as gross or criminal carelessness under applicable statutes, criminal action will be brought. Medical negligence essentially gives rise to both civil and criminal litigation. Any of the following alternatives or legal proceedings may be chosen by a wounded patient or proxy through legal counsel in order to bring civil and criminal charges for medical negligence: Sending the doctor or his employer a letter outlining your concerns and asking for compensation for the medical malpractice incident. Sections 1, 3, 15, and 16 of the Medical and Dental Practitioners Act allow for the filing of a formal complaint with the Medical and Dental Council of Nigeria in order to obtain appropriate remedies. When a claimed negligent act is thought to be criminal, one must make a police report in order to pursue criminal charges. The likelihood of this happening increases when a doctor's actions result in the patient's death or serious physical harm (Iyioha, 2015).

## **In United Kingdom**

To guarantee that your rights and health are protected during medical treatment, there exist laws and charts in the UK. This law will ensure that your confidentiality is protected, that consent is obtained before receiving treatment, and that medical personnel are not permitted to perform operations on you without the necessary care. Consequently, medical personnel who break the law may be held accountable in both criminal and civil courts. The impact of medical legislation and its implementation on society's perceptions of ethics. The law changes in step with the moral ideals of the community. As an illustration, the 1967 abortion laws were passed when it was widely acknowledged that abortions were necessary for the preservation of the lives of women. Medical law's consistent application is impacted by similar ethical changes. Few decades ago, euthanasia issues were unheard of, but British culture is now continuously considering them for the courts. It is therefore possible to work in medical law and ethics as a professional, researcher, policy maker, or academic. Applicants and attorneys in the UK are available for legal assistance with medical matters. Members of the Welsh and English bars or the legal society comprise these professionals in Wales and England. They are participants in the Scottish Law Society. These people are governed by the Northern Ireland Law Society. A bachelor's degree, post-graduate certification, and two years of training under a qualified practitioner are normally requirements for each person practicing medical law. There are other, longer routes than academic

ones that lead to the practice of medicine.

## **Conclusion and Findings**

In the practice of medicine, treatment outcomes are not very significant for the uncertain. When determining the parameters of accountability, two conflicting interests, each equally vital as the other, must be weighed equally: First, there is the issue of a professional's right to make their own decisions. The other victims aim solely to stop the medical profession from acting carelessly and abusing their discretion. Indian courts are noticeably biased, if not unjustifiably, in favour of doctors in their efforts to strike a balance. Judges do not try to impose their own knowledge on clients, nor does the law want to unnecessarily encroach on the space that only medical specialists are entitled. The judicial system does not adopt a passive approach; instead, it closely examines the conduct of medical professionals and attempts to penalize those who don't meet the minimum standard. The criteria used to determine the minimum standard is also greatly impacted by the body of knowledge that is currently available as well as common medical practices and opinions as of the relevant date. The criteria are not unduly strict, and in certain cases, accountability is reinforced to ensure that no one is immune from scrutiny. In that regard, the legislation fervently defends the liberty of medical professionals and acknowledges that unduly high prescription criteria may result in an undesirable chill, but it also works to safeguard and preserve a patient's interests by anticipating a minimal level of care.

## **Suggestions**

The first step in creating new legislation is to start from scratch, considering the past experiences of all parties involved as well as scientific and technological breakthroughs in medicine. Several doctrines have been formed by courts in the lack of a defined legal framework; Thus, it is necessary to provide legal weight to such theories. In the case of "medical negligence," for example, a precise rule should be passed outlining doctors' responsibilities and guaranteeing that patients receive the barest minimum of equitable treatment during trials. Establishing regional tribunals is the second recommendation. Judges have not been able to resolve matters in a timely way due to the incredibly slow civil court workload. Situations such as these involving medical malpractice require specific and timely attention because these treatments can be costly in many cases, and many people cannot afford additional care that may be required due to the negligence unless they receive compensation. Consequently, tribunals established expressly for this purpose ought to handle cases of this kind. Practically saying Even doctors can make mistakes because human beings are fallible,

especially when it comes to the most complex species on the earth the human being. Nevertheless, it shouldn't be disregarded because it could be fatal and lead to their passing. Physicians should therefore be punished in order to encourage them to practice medicine with greater integrity and to abstain from malpractice. Of course, in the most extreme circumstances, they are made hastily, but these circumstances should be identified apart from the ones covered above, and laws should be passed to explicitly address them.

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<sup>1</sup>Medical Negligence and Law in India - An Analysis: <https://blog.ipleaders.in/medical-negligence-law-india-analysis/>, Published: 18th July 2016, Last seen: 25th Dec. 2023.

<sup>2</sup>Maneka Gandhi v. Union of India, AIR 1978 Sc 597

<sup>3</sup>Medical Negligence and Its Litigation in Nigeria:

<https://doi.org/10.4236/blr.2023.142058> retrieved 2024, 2 January

<sup>4</sup> Blyth v. Birmingham Waterworks, 1856

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