

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 8 | Issue 2

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2025

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# An Overview of the Law of Medical Negligence with special reference to Various Judicial Precedents in India

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## ABSTRACT

*The medical profession, which is known to be one of the noblest professions, has no immunity to negligence. Of late, Medical Negligence has emerged as one of the most crucial issues across the whole nation and keeps great impact in shaping the law of negligence. It is evidently a serious concern. According to statistics, around 52 lakhs of medical injuries are recorded every year in India and out of which 98,000 are of medical negligence, and around 11 people die every hour in this country due to this. Medical practitioners who are held liable for negligence or deficiency in service under The Consumer Protection Act, 1986, are not an exception to this rule. Medical negligence is also termed as medical malpractice that is an improper, unskilled, improper or negligent treatment of the patients by their physician, dentist, nurse or other health care professionals. In 1995, the Supreme Court brought the medical services within the ambit of “service” as defined in the Consumer Protection Act. This defined relationship between patients and medical professionals by giving contractual patients the power to sue doctors if they sustained injuries in the course of treatment in procedure free consumer protection courts for compensation. It is the duty of the doctor to take proper care and caution to avoid any mishap and any negligence which can have life-changing effects on the patients. The awareness among the public is increasing, and hospital management is facing complaints regarding the facilities, unprofessionalism of doctors, and the appropriateness of their therapeutic and diagnostic methods at an increasing rate.*

*This paper delves into various intricate dimensions of medical negligence and tries to explain the topic in the light of tort law jurisprudence.*

**Keywords:** Negligence, Liability, Doctor, Patient, Remedy.

## I. INTRODUCTION

*“Next to creating a life, the finest thing a man can do is save one”<sup>2</sup>*

The medical profession is a noble profession and the medical professionals have a great role to

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<sup>2</sup> Quote by Abraham Lincoln, available at <https://www.unitekemt.com/blog/inspirational-ems-quotes/>

pay in building individuals and communities and serving the people through their life-giving works.<sup>3</sup> Patients usually see the doctors as God as it is them who are going to treat their illness, health issues and in the end they will be cured and healed by them and we at least expect them to be careful while discharging their duties toward their patients. A person who holds himself out to give medical advice and treatment, implicitly undertakes that he possesses the skill and knowledge for the purpose of doing so. Such a person, when consulted by a patient, owes him certain measure duties. If a medical practitioner fails to measure duties up to that standard at any cost, it implies that he has been negligent and has to compensate the person harmed by him. The medical professional must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the highest, nor a very low degree of care and competence in this context is judged in the light of the particular circumstance of each case. A person would not be held liable of negligence because someone else of better skill and knowledge would have prescribed different treatments or operated in a different way.

The phrase “medical negligence” refers to the unlawful acts or omissions of medical practitioners while performing their duties and interacting with patients. There are three types of penalties for legally cognizable medical negligence—

- Criminal Culpability
- Monetary Liability
- Disciplinary Action

The professional conduct of medical practitioners or doctors is governed by the Indian Medical Council (IMC) (Professional Conduct, Etiquettes, and Ethics) Regulations, 2002, promulgated under the Indian Medical Council Act, 1956. The Medical Council of India (MCI) and the respective State Medical Councils are given the authority to conduct disciplinary action, which might result in the practitioner's name being permanently withdrawn or suspended.

## **II. NEGLIGENCE: AN OVERVIEW**

### **(A) Understanding the concept of Negligence**

As we all know, there are various definitions of negligence as it comes under the various aspects of laws such as contract, tort, crime etc. As in layman term we can define negligence as an omission to take proper care over something which results in damage. In other words, we can term it as irresponsibility, neglecters or say doing of something which a reasonable man would not do.

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<sup>3</sup> Dr. Pradeep Kumar, “Medical Negligence and Consumer Law”, (New Delhi: Regal Publication, 2016)

### **(B) Development of the concept of Negligence from leading Precedents**

The concept of negligence and negligence law emerged in a very famous case of *Donoghue v. Stevenson*.<sup>4</sup> Until this case, traditional view of negligence was that there were a number of relationships which would create particular duty including that of a doctor and patient, employer and employee. In another leading case named *King v. Phillips*<sup>5</sup> it was observed that a question of negligence arises only when there is a direct harm to the plaintiff by the misconduct and the harm should be foreseeable. Negligence is a breach of duty of care so it gives another person legal right which should be respected. According to Charles worth and Percy,<sup>6</sup> Negligence has three meanings. They are—

- A state of mind, in which it is opposed to intention
- Careless conduct
- Breach of duty to take care

### **III. ANALYSIS OF MEDICAL NEGLIGENCE WITH REFERENCE TO LEADING CASE LAWS**

Making mistakes is a part of human nature, but sometimes these mistakes cause damage to another person to such extent that sometimes it might cost even their lives. One of such negligence is “Medical Negligence.” Medical Negligence or Medical Malpractice is basically an improper, unskilled, improper or negligent treatment of the patients by their physician, dentist, nurse or other health care professionals.<sup>7</sup> The idea of negligence in medical profession overshadows its credibility. Since long the medical profession is highly respected, but today a decline in the standard of the medical profession can be attributed to increasing number of litigations against doctors for being negligent narrowing down to “medical negligence.”<sup>8</sup>

#### **(A) Types of Medical Negligence**

There are different ways in which medical negligence can occur, and it mainly occurs when a medical professional deviates from the standard of the care that is required. Some of the types of medical negligence are as follows—

1. **Misdiagnosis:** It occurs when a doctor fails to diagnose what condition a patient is

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<sup>4</sup> *Donoghue v. Stevenson*, [1932] UKHL 100.

<sup>5</sup> *King v. Phillips*, [1953] 1 QB 429.

<sup>6</sup> Charles worth & Percy, negligence - 559 (Christopher Walton, 14<sup>th</sup> ed., 2019).

<sup>7</sup> Supra note 6.

<sup>8</sup> Shounak Mitra, Supreme Court and Medical Negligence Necessary Protection, Feb.22,2008; Available at <https://www.legalserviceindia.com/article/1178-Medical-Negligence.html>

suffering from, and this may be because the patient has a different illness or because the health professionals do not notice their condition at all. The consequences of medical misdiagnosis may result in a condition-worsening and potentially life-changing experience to patients. It can also take place where there is a delay in identifying the condition.

2. **Delay in Diagnosis:** It is treated as medical negligence if it would have been reasonably diagnosed by another doctor at a correct time and without delay. Any delay in the diagnosis and treatment of the disease can reduce the chance of recovery for the patient and can also cause undue injury to the patient if the illness is left untreated.<sup>9</sup>
3. **Prescription and Medication Errors:** These mistakes may take the form of the wrong medication or dosage being given to the patient and giving medications to the patient without asking for their allergies or medical history. The repercussions of the wrong medication can be serious and can range from digestive problems to death.
4. **Surgical Negligence:** It includes foreign objects being left in patients or in the wrong area of the body being operated on. In some cases, due to the result of clerical mistakes, the surgery was operated in the wrong area of the body, and it can also take place where the patient did not fully consent.
5. **Errors in the administration of anaesthesia:** Anaesthesia is a risky part of any major surgery, and it requires an anaesthesiologist to administer and monitor its effect on the patient. The anaesthesiologist has to review the patient's history, condition, medications, age, etc. and has to determine the most suitable of all medicine of all the medicine to use before administering anaesthesia on the patient. This malpractice of anaesthesia can occur during the pre-operation medical review or during the procedure itself.
6. **Injuries during Pregnancy and Childbirth:** It encompasses any injury suffered by the mother or infant during or after the pregnancy. These ailments, including cerebral palsy, intestinal damage, and maternal diabetes, can have life-altering consequences for both mother and child. Negligence can also manifest itself in wrongful birth claims, such as when a vasectomy fails, or parents are not informed that their kid would be born with certain damage.
7. **Negligent Long-Term Therapy:** Some medical diseases need long-term treatment or care. This long-term neglect might be caused by a failure to follow up on therapy or by

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<sup>9</sup> Snyder-Wenner, Six Common Types of Medical Malpractice, SNYDER & WENNER TRIAL ATTORNEYS, available at <https://snyderwenner.com/six-common-types-of-medical-malpractice/>

the doctor's inability to appropriately monitor the effects of treatment.

8. **Pregnancy and Birth Injuries:** It includes any harm the mother or baby suffers either during or after the pregnancy. These injuries can have life-altering ramifications for both mother and child, for example - cerebral palsy, bowel trauma and maternal diabetes. The negligence can also take the form of wrongful birth cases, such as where a vasectomy failed, or parents were not warned that a child would have been born with a specific injury.
9. **Long-Term Negligent Treatment:** Some medical conditions need long-term treatment or care. This long-term negligence can be caused due to the failure to follow up with treatment or the doctor's failure to monitor the effects of treatment properly.
10. **Negligent Medical Advice:** Patients are meant to be advised on any risks, side effects or alternatives available by the medical professionals, and if they fail in giving advice to the patient and something subsequently goes wrong with the treatment, medical negligence may have taken place.

#### **IV. ESSENTIAL ELEMENTS OF MEDICAL NEGLIGENCE AND STANDARD OF CARE IN THE LIGHT OF LEADING PRECEDENTS**

Medical negligence is defined as any act or omission that a wise practitioner of average competence, knowledge, and experience would not do. Medical negligence fundamentals comprise the following essential ingredients. They are as follows—

- There is a responsibility to the patient from the doctor's end
- there is a failure in the duty to patients
- Such negligence leads harm to the patient or family, this may be a physical, mental, or financial loss.

The causal link between the breach and the harm is required for establishing negligence responsibility, and this cause must be “direct” or “proximate.” The causative relationship might be either direct or proximal, and in both circumstances, carelessness can be assigned. The finding of medical negligence cannot be avoided in the case where the patient received 50% of the burns and died 40 days after the date of a wrong blood type transfusion despite receiving substantial post-detection of error care; the causal relationship between the transfusion of wrong blood type and death was proximate.

The degree of care means the level of care a prudent health care professional would render in

similar circumstances in the same community. The doctor or medical practitioner is expected to possess a reasonable degree of skill, knowledge and a reasonable degree of care.<sup>10</sup> In the Jacob Mathew Case, the Hon'ble Supreme Court laid down certain guidelines to protect doctors from unjust prosecution, and it was further observed by the Court that these guidelines would hold good till the Government frames guidelines in consultation with the Indian Medical Association.<sup>11</sup>

in another case of Martin F. D' Souza, the Supreme Court reiterated the need for guidelines to strike a balance between the interests of the patients and that of doctors against unjust prosecution and the Court further laid down certain additional safeguards in this case.<sup>12</sup>

In the case of Kusum Sharma & Ors vs Batra Hospital & Med. Research Centre,<sup>13</sup> the Supreme Court observed that a doctor often adopts the procedure which involves a higher element of risk, but in doing so, he honestly believes that there will be greater chances of success for the patient. And if on the doctor's part there is a higher risk taken in good faith to redeem the patient's suffering and it did not work and yield the desired results, then this may not amount to medical negligence.

#### **(A) Burden of Proof**

The burden of proof in case of medical negligence lies with the complainant. A higher standard of evidence is required to support an allegation of medical negligence. The patient must establish his/her claim against the doctor and also has to prove that the act of the doctor was negligent. The burden of establishing carelessness and a flaw in the doctor's service was plainly on the complaint in one of the cases, according to the Court. In another instance, Kanhaiya Kumar Singh v. Park Medicare & Research Centre,<sup>14</sup> the Court stated that carelessness must be proven rather than assumed.

#### **(B) Shifting of Onus**

Normally, the burden of proof lies on the complainant but under some circumstances, when the conduct of the medical professional betrays proper management, the burden shifts on the doctor. The patient must prove a positive act of omission, but he/she need not produce evidence to establish the standard of care as the entire surgical procedure is carried out inside the operation theatre in the absence of the patient's attendants.

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<sup>10</sup> *Laxman Balkrishna Joshi (Dr.) v. Dr. Trimbak Babu Godbole*, AIR 1969 SC 128

<sup>11</sup> *Jacob Mathew v. State of Punjab*, AIR 2005 SC 3180

<sup>12</sup> *Martin F. D' Souza v. Mohd. Ishfaq*, (2003) 3 SCC 1

<sup>13</sup> *Kusum Sharma & Ors vs Batra Hospital & Med. Research Centre*, 2010 3 SCC 480

<sup>14</sup> *Kanhaiya Kumar Singh v. Park Medicare & Research Centre*, 1999 3 CPJ 9

The onus changes in English law when the adage “Res Ipsa Loquitur” is applied. This adage essentially implies that one's actions speak for themselves. It can only be used in circumstances where the harm was caused by an equipment malfunction or where the plaintiff was involved in a complicated operation. It is utilized when the plaintiff is unable to determine the specific nature of the carelessness that caused his damage, and there is no explanation of how the defendant inflicted the injury. The injury must be of such nature, which ‘does not normally happen’ in the circumstances unless there is some negligence.

## **V. CONSUMER PROTECTION ACT AND MEDICAL NEGLIGENCE**

Since 1990, there is a huge speculation and debate on whether medical services are explicitly or categorically included in the definition of “Services” as under section 2(1) of consumer protection Act. Deficiency of service means any fault, imperfection, shortcoming, or inadequacy in the quality, nature, or manner of performance that is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise about any service. The question that comes to mind is that where can a complaint be filed; the answer is that, a complaint can be filed in—

1. The District Forum if the value of services and compensation claimed is less than 20 lakh rupees,
2. Before the State Commission, if the value of the goods or services and the compensation claimed does not exceed more than 1 crore rupees, or
3. In the National Commission, if the value of the goods or services and the compensation exceeds more than 1 crore rupees.

### **(A) Complaint of Medical Negligence**

A complaint is an allegation made by the complainant in written form. There are some statements and some important facts included in it to establish a case that a customer has suffered loss or damage due to the deficiency of any service. There is a requirement of a minimal fee for filing a complaint before the district consumer redressal forum for medical negligence cases. When a complaint about medical negligence is filed, there is a notice sent to the opposite party to submit its version of the case within 30 days after admission of the complaint, and after this, there will be proper scrutiny of the complaint by the forum, then, the forum will ask either for filing an affidavit or for producing evidence in the form of judicial precedents, expert opinion, etc.

The procedures that are needed to be followed while filing a complaint about medical



negligence case—

- The complaint must be filed with the local police and the State Medical Council.
- In the case where it is filed by the police only, the report can be sent to the State Medical Council.
- If the Council finds the report serious, then it can send it to various other courts under the relevant sections.
- If the case is criminal in nature, then it will be against the state versus the health professional or the hospital.
- The doctor's license can also be suspended for a relevant period of time if it is found by the council that the case poses a serious danger to the life of the patient.
- Appropriate punishment will be provided to the doctor for negligence while taking into consideration all the facts and circumstances of the case.
- If there is no satisfaction on the patient's side with the judgement, he/she can make an appeal to the Medical Council of India.
- The consumer courts can also aid the patient in seeking monetary compensation. The Consumer Courts cannot punish the guilty; it can only provide compensation.
- If the complainant is still not satisfied with the decision of the Consumer Court, then he/she can approach the National Consumer Dispute Redressal Commission.

### **(B) Claim of Compensation**

Compensation in the cases of medical negligence is the civil liability in the form of damages. In case of breach of duty of hospital or doctor in operating or supervising, they are vicariously liable for the wrongs committed and are liable to pay damages in the form of compensation. For the wrong done by an employee of a hospital, the hospital shall be liable for causing harm to the patient by acting negligently.

In the case of *Mr M. Ramesh Reddy v. State of Andhra Pradesh*,<sup>15</sup> the Court held the hospital authorities to be negligent for not keeping the bathroom clean due to which an obstetrics patient fell in the bathroom and died therein. Rs. 1 lakh was awarded to the complainant as compensation against the hospital. All the medical facilities fall under the purview of the Consumer Protection Act, 1986. In the case of *Indian Medical Association v. V.P. Shantha*,<sup>16</sup>

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<sup>15</sup> *Mr M. Ramesh Reddy v. State of Andhra Pradesh*, 1975 36 STC 439 AP

<sup>16</sup> *Indian Medical Association v. V.P. Shantha*, AIR 1996 SC 550

the important question of whether a medical practitioner could be said to render services under Section 2 (1)(o) of the Consumer Protection Act, 1986 was discussed by the Court. For the first time, the Supreme Court brought the medical services within the ambit of "service" defined in the consumer protection act 1986. This defined relationship between patients and medical professionals by giving contractual patients the power to sue doctors if they sustained injuries in the course of treatment in 'procedure free' consumer protection.

## **VI. CONCLUSION**

A patient approaching a doctor expects medical treatment with all the knowledge and skill that the doctor possesses to bring relief to his medical problem. The relationship takes the shape of a contract retaining the essential elements of tort. Thus, it is not only the doctor who owes a duty to the patient but the hospital as a whole. When we talk about law related to medical negligence in India the burden of proof always lies on the plaintiff that is the patient to establish how the negligence actually happened. So even if a patient alleges negligence the law will require higher standard of evidence to prove it. Here, for an ordinary human or a patient, it becomes very difficult to determine the exact damage and the causal relation between the injury and the fault of the doctor. Resultantly, the patient is not able to prove doctor's fault beyond a reasonable doubt, since, the field of medicine is unexpected and unpredictable and anytime anything can happen in a human body and so, it reverts to the plaintiff. Therefore, it is high time that the laws dictating upon the medical negligence get changed so as to suit patients first. And the patients should be sensitized regarding their rights against medical malpractices by civil societies through a proper education channel.

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