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# Challenges in Medical Negligence Litigation in India: A Legal Perspective

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## ABSTRACT

*Medical negligence litigation has emerged as a critical area of concern in India's healthcare system, particularly in light of the increasing number of malpractice cases. Despite the legal framework established under the Consumer Protection Act, 1986, and the Medical Council of India regulations, the pursuit of justice for victims of medical negligence remains fraught with challenges. This paper examines the multifaceted challenges faced in medical negligence litigation in India, encompassing legal, procedural, and societal dimensions.*

*The concept of medical negligence and the legal guidelines that regulate it are covered in the first section of the paper. It goes into further detail on how difficult it is to establish negligence, which calls for a sophisticated knowledge of medical norms and procedures. A critical analysis of medical experts' roles and testimony is presented, emphasising how challenging it may be to get unbiased expert conclusions. The report also addresses the protracted and frequently difficult legal procedures that victims have to go through, such as the dearth of specialised tribunals and the backlog of cases in the court system.*

*The article also discusses how the stigma associated with medical malpractice lawsuits deters victims from pursuing justice. It also emphasises the possibility for prejudice in the legal system as well as the power of the medical community. In order to speed justice for victims of medical negligence, the report ends with proposals to improve public understanding of the law, shorten the litigation procedure, and create specialised tribunals. By promoting changes that guarantee responsibility within the healthcare system and safeguard patients' rights, this research seeks to further the current conversation on enhancing the medical negligence litigation environment in India.*

**Keywords:** *Medical negligence, litigation, India, healthcare, consumer protection, legal challenges, patient rights.*

## I. INTRODUCTION

In India, medical negligence is becoming a big concern in the legal and medical fields. Medical

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mistakes and the ensuing malpractice lawsuits are becoming more common as a result of scientific advances in medicine and rising patient expectations. Medical negligence is the term used to describe when a healthcare practitioner violates their duty of care and causes injury to a patient. For victims seeking justice, the difficulties in establishing fault, the drawn-out nature of the judicial system, and the lengthy litigation procedure have presented several obstacles.

When medical personnel violate the level of care required in their profession and cause injury to patients, it is referred to as medical negligence, and it is a complicated legal matter. Strong legal frameworks are required in India to safeguard patients' rights, as evidenced by the rising number of incidents that have been recorded. Prior to the passage of the Consumer Protection Act in 1986, victims had no clearer route for pursuing legal action for medical malpractice; instead, they were subject to the Indian Penal Code.

A component of tort law known as medical negligence is the harm that a healthcare professional does to a patient by not exercising the anticipated standard of care. The Indian Penal Code (IPC), the Consumer Protection Act (CPA) of 1986, and court rulings are the main sources of law governing medical negligence in India. Medical negligence was traditionally handled under criminal law in India, which discouraged patients from bringing legal action against their physicians for fear of being prosecuted and because of the shame associated with such claims.

*Jacob Mathew v. State of Punjab* (2005) established that medical negligence must pass the "Bolam test," which states that a doctor can only be held accountable for negligence if it can be shown that no reasonable doctor would have behaved in a similar way under similar circumstances. This case marked the beginning of the evolution of medical negligence law in India. This ruling was a major change in the law that recognised patients' rights to seek compensation while also shielding medical personnel from unwarranted lawsuits.

When it came to medical negligence in the past, the Indian judiciary applied the rules of English law. The concepts were progressively modified to fit the Indian environment, leading to the creation of laws protecting consumer rights. The Consumer Protection Act, which was passed in 1986, increased the scope of compensation claims made by patients and made the legal framework for instances involving medical negligence more approachable. The Act imposes a higher duty of care by emphasising that healthcare practitioners are legally considered service providers.

Notwithstanding these developments, the legal system pertaining to medical negligence is frequently criticised for its shortcomings, which gives rise to a variety of legal difficulties. Patients and legal professionals alike are further confused by the uncertain definitions of

negligence, the burden of proof, and procedural intricacies that have led to conflicting judgements across many jurisdictions.

It is imperative for all parties to tackle the obstacles associated with medical negligence lawsuits in India. The option for patients to pursue legal action for medical negligence serves as a deterrent against subpar medical practices in addition to compensating for damages. Due to distrust of the legal system, ignorance of their rights, or fear of retaliation, patients frequently refuse to pursue claims. This study intends to empower patients by shedding light on the difficulties and providing information about their legal options and rights.

Fostering an accountability culture and enhancing patient care requires healthcare practitioners to comprehend the subtleties of medical negligence lawsuits. Many medical professionals take defensive measures that might lower the standard of treatment out of worry that they will be sued for any unfavourable result. These worries can be allayed by a clear legal framework that specifies the standards of care that physicians must meet. This will allow physicians to concentrate on the wellbeing of their patients rather than worrying about potential legal ramifications.

It is important to comprehend the difficulties involved in medical negligence lawsuits for a number of reasons. Navigating the judicial system may be difficult for victims and frequently results in a delay in receiving justice. Improving patient care requires healthcare workers to be aware of their legal responsibilities and possible liabilities. Furthermore, by carefully analysing these issues, policymakers and legal professionals can learn what changes are required to improve the efficacy and efficiency of the legal system.

## **II. THE STATUTES CONTROLLING MEDICAL MALPRACTICE**

Medical negligence is defined as the failure of healthcare practitioners to provide the standard of care that a reasonably competent practitioner would offer, resulting in injury to the patient. In India, the legal framework governing medical negligence is largely based on the Consumer Protection Act of 1986, as well as rules issued by the Medical Council of India and interpretations of judicial decisions.

### **(A) Consumer Protection Act, 1986**

The Consumer Protection Act of 1986 is critical to combating medical malpractice in India. Under this Act, a patient is considered a “consumer” of medical services, which gives them certain rights and channels for remedy in the event of malpractice.

**Defined Terms of Service:** Provision of medical treatment is included in the definition of

"service" under Section 2(1)(o) of the CPA, which holds healthcare practitioners accountable for negligence. The Act makes it clear that healthcare providers must provide care that satisfies the standards required by their industry.

**Accountability and Remedies:** Patients who are harmed by a healthcare provider's carelessness may submit a complaint with the District Consumer Disputes Redressal Forum in accordance with Sections 2(1)(g) and 2(1)(h). Patients' ability to pursue financial recompense for their injuries highlights the necessity for healthcare providers to uphold a high level of service.

**The Function of Expert Opinion:** The Act also acknowledges that, because medical procedures frequently entail intricate clinical judgements, expert opinion is required to demonstrate negligence. According to court rulings, a medical professional must use reasonable care and skill; any departure from this standard may constitute negligence.

#### **(B) Rules established by the Medical Council of India (MCI)**

To guarantee the provision of high-quality healthcare, the Medical Council of India (MCI) sets standards and directives for healthcare professionals. Regulations of the MCI have a big impact on cases of negligence:

**Guidelines for Conduct:** Medical practitioners are required to abide by the professional behaviour norms outlined in the MCI Code of Ethics. Discipline against the practitioner may result from negligence or other violations of these ethical norms.

**CME, or continuing medical education:** Doctors must take part in CME programs in order to comply with regulations and stay up to speed on the newest medical procedures. Because it shows a lack of dedication to maintaining competence, updating knowledge might be taken into consideration for evaluating negligence.

**Actions for Discipline:** The MCI has the power to discipline practitioners who are determined to have engaged in professional misconduct. The practitioner's capacity to practise may be impacted by these measures, which might include suspension or expulsion from the medical register.

#### **(C) Provisions in the Bhartiya Nyaya Sanhita 2023**

Although there have been a number of amendments made to the Bhartiya Nyaya Sanhita 2023, the following parts are pertinent to medical negligence:

**Section 34:** Defines Causing Hurt: If a patient suffers bodily injury as a consequence of medical carelessness, this section may be used.

**Section 35:** Addresses Grievous Hurt: If carelessness results in a serious damage or long-term impairment, this clause may be used.

**Section 43:** Regards Criminal Medical Negligence: It may be used to penalise medical practitioners who, by their negligence, cause death or severe harm.

#### **(D) Interpretation by Judges**

Indian courts' understanding of medical negligence legislation has greatly developed, affecting the landscape of medical malpractice proceedings.

**Norm of Care:** Courts have developed the "Bolam Test" as a standard, based on the English case *Bolam v. Friern Hospital Management Committee*. According to this test, a medical practitioner is not responsible for negligence if they follow a practice approved by a fairly competent body of medical opinion.

**Landmark decision:** The 2005 *Jacob Mathew v. State of Punjab* decision made clear that in order to establish medical negligence, it is necessary to demonstrate that the practitioner did not provide the level of care that is considered acceptable in the medical community. This decision highlighted the need for expert testimony in order to prove carelessness.

**Standards That Are Changing:** Advances in medical knowledge and technology may bring about changes in the standards of treatment, as seen by recent court rulings that have shifted towards a more patient-centric mindset. Healthcare providers must adjust to new practices and standards, which is shown in this evolution and the rising awareness of patient rights.

The Consumer Protection Act, Medical Council of India standards, and constantly changing court interpretations are all part of the complex legal structure that governs medical negligence in India. When combined, these components guarantee that patients receive the level of care to which they are entitled and offer a way to hold negligent parties accountable. The significance of upholding high standards of practice in the healthcare industry is shown by the continual evolution of this regulatory framework.

#### **(E) Medical Malpractice Cases: The Onus of Proof**

The burden of proof in medical negligence cases is a major obstacle that the patient or complainant must overcome. Most of the time, demonstrating carelessness calls for showing the following:

**Duty of care:** The healthcare professional had a duty of care to the patient.

**Breach of duty:** The provider failed to provide the standard of care required under the circumstances.

**Causation:** The violation directly resulted in injury or harm to the patient.

**Damages:** The patient sustained quantifiable injury as a result of the negligent actions.

Because medical treatments are technological, the bar of proof in medical negligence claims is greater than in other types of negligence cases. Courts frequently seek expert evidence to determine whether the healthcare provider operated in accordance with professional standards. However, access to reputable medical professionals is difficult, especially in rural regions.

Further complicating matters is the Bolam Test, which Indian courts have adopted. According to the standard, which was developed in the UK case of *Bolam v. Friern Hospital Management Committee* (1957), a physician is not considered negligent if their actions followed a protocol that has been approved by an accountable group of medical professionals. Because doctors might claim that their activities were in keeping with conventional medical practices, even if they were not the most effective, this defence makes it difficult for plaintiffs to show negligence.

#### **(F) Difficulties Raised by Professional Testimonies**

In order to ascertain if a medical practitioner violated their duty of care, expert testimony is essential. Nonetheless, there are substantial obstacles when it comes to the accessibility, legitimacy, and dependability of expert witnesses:

**Lack of Experts:** It is common for medical professionals to be reluctant to testify against their colleagues. Expert witnesses may not be able to address every topic of medicine in a given case.

**Disparities of Interest and Bias:** Due to their professional ties or fear of rejection by the medical community, experts may have conflicts of interest. Testimonies that are biased in the defendant's favour may result from this.

**Expert Testimony Fees:** It is costly and sometimes out of the financial reach of many litigants, especially in rural or underdeveloped regions, to hire reliable experts.

#### **Procedure Hold-Ups in Court Cases**

Medical negligence lawsuits are not an exception to the well-known backlog of cases and delays in providing justice in Indian courts. There are a few reasons why the legal process could drag on:

**Complexity of Cases:** Trials involving medical negligence can entail intricate facts and advanced medical expertise, necessitating the thorough questioning and rebutting of witnesses.

**Overburdened Judiciary:** Trials involving medical negligence can entail intricate facts and advanced medical expertise, necessitating the thorough questioning and rebutting of witnesses.

**Interim Relief and Compensation:** In situations involving medical malpractice, interim relief or temporary compensation is seldom given, notwithstanding its provision in some civil trials. As a result, plaintiffs frequently endure hardships as they wait for the long-awaited verdict.

#### **(G) Lack of Awareness and Access to Justice**

The ignorance of patients about their legal rights is one of the main obstacles to medical malpractice lawsuits. A lot of victims aren't aware that they may get compensation for carelessness, especially those who live in remote regions. Furthermore, the following factors make it extremely difficult to attain justice:

**Geographical Barriers:** The concentration of specialised consumer courts and legal aid in metropolitan areas makes it challenging for rural residents to prosecute claims of medical negligence.

**Cost of Litigation:** While consumer forums provide a more affordable alternative to civil courts for litigation, many patients may find the costs associated with pursuing a medical negligence claim—including legal expenses and expert witness costs—to be unaffordable.

**Intimidation by Medical Professionals:** The idea of going to court to challenge a medical facility or practitioner frequently scares patients because they fear reprisals or additional damage.

#### **(H) Regulation and Ethical Difficulties**

**Inadequate Disciplinary Action:** Organisations like the Medical Council of India (MCI), which has been superseded by the National Medical Commission (NMC), regulate medical practitioners in India and are in charge of upholding moral principles. However, a number of moral and legal issues make it difficult to bring successful medical malpractice claims:

**Insufficient Disciplinary Action:** It is rare for the MCI and state medical councils to effectively discipline careless physicians, despite their legal right to do so. The internal procedures of these regulating bodies are often attacked for being convoluted, opaque, and biased towards physicians.

**Unregulated Private Healthcare:** In India, the private healthcare industry provides services to a significant percentage of the populace and is frequently unregulated. Litigation becomes more complex when private hospitals refuse to participate in medical negligence investigations.

**Ethical Dilemmas in Treatment:** Ethical conundrums are frequently present in medical negligence cases, especially when lives are at stake. There is a thin line between negligence and good faith behaviour on the part of the doctor, and ethical issues make litigation more difficult.



### III. SUGGESTIONS AND CHANGES

A number of institutional and legal adjustments are needed to solve the issues mentioned above:

**Strengthening the Consumer Protection Mechanism:** Better medical knowledge should be available to consumer courts so they may assess cases of negligence in an efficient manner. To help with complicated cases, this may entail designating internal medical specialists or working with outside medical organisations.

**Improving the Expert Testimony System:** To enable courts to depend on unbiased opinions, a panel of trained and impartial medical experts should be formed at both the state and federal levels. By doing this, the problems of prejudice and restricted access to expert testimony would be lessened.

**Speedy Resolution of Cases:** To guarantee prompt settlement, medical negligence cases might be assigned to dedicated fast-track tribunals. Interim relief provisions were included to lessen the financial strain on plaintiffs during the legal process.

**Enhancing Patient Awareness:** Public It is important to run awareness programs to inform patients about their legal rights and the channels through which they can pursue compensation in the event of medical malpractice. Expanding legal aid services would benefit those living in rural areas and in lower socioeconomic groups.

**Regulating the Private Healthcare Sector:** There should be stricter regulations governing the private healthcare industry, along with procedures to guarantee responsibility and transparency in the case of medical malpractice. It should be mandatory for hospitals to keep thorough and precise records of all patient treatments, as these documents could be used as proof in court.

**Strengthening the Role of the NMC:** Enforcing medical ethics and penalising negligent practitioners should be the National Medical Commission's first priority. To handle concerns, a more open and effective complaints procedure has to be put in place.

### IV. CONCLUSION

India faces several obstacles in medical negligence cases due to the country's complicated legal system, heavy weight of proof, protracted legal proceedings, and lax regulation of healthcare providers. The procedure is made more difficult by the dearth of trustworthy expert testimony and patient ignorance. However, India may make great progress in guaranteeing justice for victims of medical malpractice if the right reforms are implemented, such as fortifying the consumer protection mechanism, enhancing access to expert witnesses, and regulating the healthcare industry. It is essential that the legislative framework change to meet the

requirements of both patients and medical professionals as the healthcare system continues to develop.

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