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AN EVALUATION OF THE LAWS GOVERNING MEDICAL NEGLIGENCE IN INDIA

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Abstract

This article critically examines the laws regulating medical negligence in India after initially describing the concept of negligence in general and medical negligence in particular. Medical negligence refers to the failure of a healthcare professional to provide the expected level of care and is a serious issue that impacts patient safety and legal liability. The study examines in depth the law and jurisprudence of each jurisdiction, providing a comparative analysis to assess the effectiveness of remedies and the challenges that plaintiffs face in their pursuit of justice. In India, the legal environment surrounding medical negligence has changed over time and the Consumer Protection Act, 1986 has played a key role. The landmark judgment in *Indian Medical Association v. V. P. Shanta* (1995) established a framework for protecting consumer rights in medical matters, but problems of accessibility and acceptability of justice to patients remains.

Keywords: *Medical negligence, legal framework, tort law, consumer protection.*

1- Introduction

Medical professionals are treated as next to God. They provide humanitarian services and gives solace to individuals suffering from various diseases and disorders. Due to their great service to humanity, the doctors and medical professionals are treated with reverence and since the ancient times the medical profession has been considered as a noble profession.¹⁷²

Over time, the doctor-patient relationship has evolved. In recent decades, numerous incidents have emerged where patients have suffered due to the errors and inadvertent actions of doctors. With the rise in conflicts and legal disputes between doctors and patients, legal systems worldwide have developed various principles and rules to address such inadvertent behavior by medical professionals. This has led to the creation of a new branch of jurisprudence known as medical negligence. Therefore, any

negligence by a medical professional is classified either as a tort of negligence or a deficiency in service under the Consumer Protection Act, 2019. The medical profession is distinct from occupations focused on the production or sale of commodities, as it relies on intellectual and manual skills. Medicine, being complex, presents challenges for consumer laws to address medical negligence cases with technical precision. As such, legal decisions regarding medical negligence are influenced not only by the judiciary but also by expert input from specialized professionals. This paper examines medical negligence in the context of existing laws, with a particular focus on judicial interpretations of consumer protection law.

The adage "Health is Wealth" underscores the close relationship between happiness and health, as a sound body is essential for a sound mind. While we strive to maintain our health, at times we face health problems that necessitate medical attention. Doctors, entrusted with

¹⁷² Bratin Kumar Dey, "Medical Negligence: An Overview" 25 *Bengal Journal of Otolaryngology and Head Neck Surgery* (2017).

significant responsibilities, often hold the lives of patients in their hands, especially in critical situations. However, as no one is perfect, even skilled and knowledgeable individuals can make mistakes. In the medical field, such errors can result in minor injuries, serious harm, or even death, necessitating remedies for the injured to ensure justice. This led to the development of the concept of medical negligence.

This article examines medical negligence laws in India under three main aspects: **civil remedies** under the *Consumer Protection Act, 2019*, **tort law**, and **criminal liability** under the *Bhartiya Nyaya Sanhita, 2023* and the *Evidence Act*.

The concerns surrounding medical negligence remain as relevant today as they were centuries ago. While the medical profession has long been revered, it now faces growing skepticism and legal scrutiny. In recent years, complaints of medical malpractice have surged, with consumer dispute forums frequently ordering compensation. Additionally, criminal cases against doctors for alleged negligence leading to patient deaths have increased.

This rise in litigation can be attributed to greater public awareness of constitutional rights and evolving legal perspectives. Both **international agreements** and **Supreme Court rulings** have increasingly recognized healthcare as a fundamental right under the Indian Constitution. This shift reflects a broader societal tension between trust in medical professionals and individuals' rights, mirroring trends in developed nations.

Moreover, India's medical governance has struggled to ensure accountability. The *Medical Council of India (MCI)* failed to enforce its regulatory authority under the *Indian Medical Council Act, 1956*, leading to a lack of discipline among practitioners. Consequently, civil society has turned to **consumer protection and criminal law** to address medical negligence, underscoring how professional standards

evolve in response to social forces, often in ways unintended by practitioners.¹⁷³

2- **Concept of Negligence**

Negligence is defined simply as the failure to exercise due care and caution, often involving a breach of duty by failing to do something a reasonable person would have done, or doing something a prudent person would not have done. The essential elements of negligence are duty, breach, and resulting damage. These definitions can change depending on the circumstances. For example, a doctor may be required to perform emergency surgery on a critically injured person, and no negligence is involved if the doctor's actions are aimed at saving a life.

Initially, courts were not particularly engaged with medical negligence cases, but as these incidents increased, the judiciary began paying more attention. This shift is evident in several landmark cases such as the *Indian Medical Association case*, *Achutrao Haribhau Khodwa case*, *Jacob Mathew case*, and *Anuradha Saha case*, where the courts developed the concept of medical negligence and provided remedies by imposing civil, tortious, and criminal liability.

Negligence is not only about the result of a person's intentional acts but also about the lack of ordinary care or skill in the management of a person's property or health. In common law, negligence is seen as a complex, evolving relationship, influenced by time, place, society, law, ethics, and professional conduct. The elements of a negligence tort include: (1) a duty of care; (2) a breach of that duty; (3) a causal connection between the breach and the injury; and (4) resulting damage. Negligence involves failing to take reasonable precautions to avoid foreseeable risks of injury to others, and it is a tort, a civil wrong committed by one individual against another.

In legal terms, negligence requires the elimination of unreasonable risks, not all risks,

¹⁷³ Karunakaran Mathiharan, *Supreme Court on Medical Negligence*, 41 *ECONOMIC & POLITICAL WEEKLY* 111, 111-115 (Jan. 14-20, 2006).

from a person's conduct. A higher standard of care is expected in certain industries, such as the manufacture of nitroglycerin, compared to less hazardous fields like making kitchen matches. In some sectors, like the milk industry, strict liability may apply, meaning any mistake could lead to legal liability, even with the highest precautions. For most other legal cases, negligence arises from a failure to meet the standard of behavior designed to protect society from unreasonable risk.

2.1- Concept of Medical Negligence

Medical negligence is the failure of a medical practitioner to provide the standard of care expected from a prudent, qualified person in similar circumstances. It involves either the commission or omission of an act by a medical professional that deviates from accepted medical standards, resulting in harm to the patient. This failure to adhere to medical standards typically constitutes negligence.

The Supreme Court has simplified the concept of negligence as a breach of a legal duty to care. Carelessness that results in harm can be grounds for legal liability if it breaches a duty of care. The Court acknowledges that even highly skilled doctors can make mistakes in diagnosis or treatment, but they are expected to act with a reasonable level of competence. A doctor can only be found negligent if they fail to act with ordinary skills, or if their error would not have been made by a reasonably competent professional acting with ordinary care. Thus as reflected from the various decisions of Supreme Court a doctor can be held liable for negligence only if –

- 1) One can prove that she/ he is guilty of a failure to act with ordinary skills and fail to act with reasonable care.¹⁷⁴
- 2) An error of judgment constitutes negligence only if a reasonably competent professional with the standard skills that the defendant

professes to have, and acting with ordinary care, would not have made the same error.

- 3) The principle of *res ipsa loquitur* comes into operation only when there is proof that the occurrence was unexpected, that the accident could not have happened without negligence and lapses on the part of the doctor, and that the circumstances conclusively show that the doctor and not any other person was negligent.¹⁷⁵

- 4) A doctor can be held to be negligent only if the complainant can prove that the standard of medical care given does not match the standards of care set up by the profession itself. It says a wrong outcome or recourse to one of several different methods available to treat a patient cannot be termed as negligence.¹⁷⁶

- 5) A simple lack of care, an error of judgment or an accident, even fatal, will not constitute culpable medical negligence. If the doctor had followed a practice acceptable to the medical profession at the relevant time, he or she cannot be held liable for negligence merely because a better alternative course or method of treatment was also available, or simply because a more skilled doctor would not have chosen to follow or resort to that practice. Professionals may certainly be held liable for negligence if they were not possessed of the requisite skill which they claimed, or if they did not exercise, with reasonable competence, the skill which they did possess.¹⁷⁷

In medical negligence cases, the principle of "*res ipsa loquitur*" applies when it can be shown that the occurrence was unexpected, could not have happened without negligence, and that the doctor was responsible for the negligence. A doctor is liable for negligence only if it is proven that the standard of care provided was below

¹⁷⁵ *Supra* note 2

¹⁷⁶ M S Kamath, "Court Has Killed All Medical Negligence Cases", *Dna India*, Feb. 22, 2010, available at: http://www.dnaindia.com/mumbai/report_court-has-killed-allmedical-negligence-cases_1350940 (last visited on April. 02, 2025).

¹⁷⁷ MR Hariharan Nair, "Supreme Court Judgment on Criminal Medical Negligence : A Challenge to the Profession" 4 *Indian Journal of Medical Ethics* (2005)

¹⁷⁴K K S R Murthy, "Medical Negligence and the Law" 4 *Indian Journal of Medical Ethics* [116,117] (2007).

the accepted medical standards. A wrong outcome or an error of judgment does not automatically constitute negligence, particularly if the doctor followed a generally accepted practice.

Medical negligence falls under the broader category of professional negligence, which involves a breach of duty by a physician in the exercise of their specialized knowledge. When a doctor agrees to treat a patient, they create a legal duty of care. This relationship is based on the patient's reasonable reliance on the doctor's skills.

3- Civil Liability under the Consumer Protection Act, 2019

The *Indian Medical Council Act, 1956* empowers the Medical Council to define professional misconduct, with penalties ranging from suspension to expulsion. However, enforcement has been weak due to leniency among council members and limited accessibility for patients. Additionally, the Council lacks the authority to compensate victims.

While civil and criminal laws offer legal remedies, criminal prosecution is rare and typically pursued only in cases of death. Civil claims, though available, involve lengthy and costly litigation, discouraging patients from seeking justice. As a result, doctors often evade accountability despite generally maintaining professional standards.

A major shift occurred with the *Consumer Protection Act, 1986*, later replaced by the *Consumer Protection Act, 2019 (CPA)*, which introduced **consumer dispute forums** at district, state, and national levels. Under **Section 42(11)** of the CPA, medical negligence by service providers is classified as a **defect**, bringing medical services under consumer law. The Supreme Court, in *Indian Medical Association vs. V.P. Santha (1995)*¹⁷⁸, confirmed that the CPA covers medical services, barring exceptions designated by the **Central Government**.

¹⁷⁸ Indian Medical Association v. V.P. Santha & Ors., (1995) 6 SCC 651.

Although the **Consumer Protection Bill, 2018** initially included "healthcare" under its definition of **service**, the **CPA 2019** removed this term. This omission, widely seen as a concession to medical professionals, created ambiguity regarding whether healthcare remains covered. However, officials clarified that patients can still file complaints under consumer law for medical negligence. The inclusive wording of **Section 2(42)** suggests healthcare may still be interpreted as a **service**, making the exclusion more of a legal uncertainty than a genuine relief for medical practitioners.¹⁷⁹

Patients harmed by medical malpractice can seek compensation from doctors or hospitals, but complaints must be filed within **two years** under **Section 69(1) of the Consumer Protection Act (CPA)**.

- Services under a *contract of personal service*
- Services provided *free of charge*

The Supreme Court ruled that since the doctor-patient relationship is contractual, paid medical services fall under the CPA's jurisdiction. However, token payments are not considered *consideration*, meaning such services may be exempt.

3.1- **Deficiency in Service (Section 2(11)):**

Defined as any *defect, imperfection, or inadequacy* in service quality, either under law or contract. Since formal contracts rarely exist in medical treatment, deficiency is assessed based on *standard medical practices*. A doctor is expected to provide competent care comparable to that of a typical professional in similar circumstances. Failure to meet this standard constitutes **deficiency**.¹⁸⁰

3.2- **Legal Remedies (Section 39):**

Patients can seek:

¹⁷⁹ Smita Paliwal & Gaurav Singh Gaur, India: Exclusion of 'Healthcare' from the Definition of 'Service': A Delusional Relief for Medical Professionals, MONDAQ, Aug. 11, 2020, available at: <https://www.mondaq.com/india/healthcare/975294/exclusion-of-healthcare39-from-the-definition-of-service39-a-delusional-relief-for-medical-professionals>.

¹⁸⁰ G. Singh, Medical Negligence and the Widening Ambit of the Consumer Protection Act, 1986 – A Comment on Spring Meadows Hospital v. Harjot Ahluwalia, 42(1) J. INDIAN L. INST. 78, 78-85 (2000)

1. **Correction of deficiency or reimbursement** (Section 39(1)(a) & (f))
2. **Compensation for damages due to negligence** (Section 39(1)(d))

While negligence is not explicitly defined in the CPA, deficiency is, making it subject to **tort law interpretation**. Though the two concepts overlap, it is crucial to distinguish them when seeking legal relief.¹⁸¹

3.3- Compensation for Medical Negligence: Determination and Challenges

The **Consumer Protection Act (CPA)** grants adjudicating authorities the discretion to determine compensation for medical negligence. Unlike other remedies defined by the Act, compensation is awarded based on the **facts of each case**, without requiring precise loss calculations. As a result, **compensation amounts vary significantly**, ranging from **₹1,000 to ₹10,00,000**, depending on factors such as the **patient's age, health condition, and fees paid**.

Since certain damages—such as **physical pain, mental distress, and reduced quality of life**—are difficult to quantify, two evaluation methods are used:

1. **Global assessment**, based on the judgment of the adjudicating body.
2. **Fixed yardsticks**, which provide more accuracy but are hard to standardize. Currently, **global assessment** is the preferred approach.

3.4- Limitations of CPA Protection

While the CPA provides **greater protection for paying patients**, two groups remain excluded:

- **Patients denied service**
- **Those unable to afford treatment**

Efforts to include free healthcare recipients under CPA jurisdiction were rejected, as charitable and government hospitals are

expected to provide care for them. However, **better monitoring and medical audits** are necessary to **prevent negligence** in these settings.

3.5- Impact on Medical Professionals

- **Commercialization of healthcare** has made **consumer protection laws increasingly relevant**.
- Doctors can protect themselves by **maintaining accurate case records** and **avoiding cases beyond their expertise**, while still providing **emergency care**.¹⁸²
- **Reputation damage from false complaints** remains a major concern, even if the case is dismissed.

3.6- Potential Solutions

- **Mandatory mediation** before formal complaints are filed to reduce frivolous cases.
- **Including medical professionals** in adjudicating forums to ensure fair judgment.

By implementing these measures, the system can balance **consumer rights with fair treatment for healthcare providers**.

4- Evolution of Medical Negligence: From Crime to Tort

Historically, **medical negligence** was treated as a **crime**, with severe punishments. The **Code of Hammurabi** (circa 2000 BCE) mandated **amputation of a physician's hands** if a patient died due to surgical errors. Similar strict penalties were imposed in ancient civilizations. Medical negligence was considered **an offense against the state**, with the focus on punishing the offender rather than compensating the victim.

4.1- Transition to Tort Law

By the **14th century in England**, medical malpractice began to be recognized as a **tort**

¹⁸¹ D. Annoussamy, Medical Profession and the Consumer Protection Act, 41(3/4) J. INDIAN L. INST. 460, 460-466 (1999)

¹⁸² SS Rana & Co., Medical Negligence in India, LEXOLOGY, Apr. 27, 2021, available at: <https://www.lexology.com/library/detail.aspx?g=b271f61b-9bc7-4d12-9e88-4c058fd8951b..>

rather than a **crime**. The shift focused on **compensating victims** rather than penalizing doctors. In **1838**, **Chief Justice Tyndall** emphasized that professionals must exercise a **reasonable degree of care and competence** in their practice.

4.2- Medical Negligence Under Tort Law

- **Tort law applies even when medical services are free**, unlike the **Consumer Protection Act (CPA)**, which only covers paid services.
- Patients who **cannot seek relief under the CPA** can still **file negligence claims** under tort law.
- **Burden of proof** lies with the patient, who must demonstrate that the doctor's negligence caused harm.
- Examples of medical malpractice include:
 - **Wrong blood transfusion**
 - **Surgical errors (e.g., leaving medical instruments inside the body)**
 - **Unauthorized organ removal**
 - **Incorrect prescriptions leading to harm**

Legal Considerations

Medical practitioners have an **implied duty** to possess the necessary **knowledge, skills, and judgment** to provide proper care. To establish negligence, the patient must prove:

1. **A breach of duty occurred** (act of omission or commission).
2. **The breach directly caused harm** to the patient.
3. **Expert medical testimony and scientific evidence** support the claim.

4.3- Distinguishing Civil and Criminal Negligence

The **degree of negligence** determines whether a case falls under **civil** or **criminal law**. Civil

negligence focuses on **compensation**, whereas criminal negligence involves **punishment** for reckless disregard of patient safety.

5- Criminal Liability in Medical Negligence

The **Supreme Court of India**, in *State of Haryana v. Smt. Santra*¹⁸³, ruled that doctors must act with a **reasonable degree of care and skill**. Criminal liability for medical negligence falls under **broad provisions** of the **Indian Penal Code (IPC), 1860**, which does not specifically address medical negligence but applies general laws to such cases.

5.1- Legal Provisions for Criminal Liability¹⁸⁴

- **Section 106 BNS**: Covers **death caused by rash or negligent acts**, including **medical negligence**, with a penalty of **up to two years in prison** and shall also be liable to fine

5.2- Assessment of Criminal Responsibility

- **Distinction Between Negligence, Rashness, and Recklessness** (*Poonam Verma v. Ashwin Patel*):
 - **Negligence**: Failure to fulfill a **required duty**.
 - **Rashness**: Awareness of risks but **mistakenly assuming** they won't occur.
 - **Recklessness**: **Total disregard** for consequences, making it **criminally punishable**.

A doctor **cannot be criminally liable** unless it is proven that they acted with **gross negligence** and **disregard for patient safety**, amounting to a **crime against the state** (*R v. Adomako*).

5.3- Defenses Available to Doctors

- **Section 80 IPC/ Section 18 BNS**: No liability if harm was caused **accidentally** while performing a **lawful act with due care**.

¹⁸³ State of Haryana v. Smt. Santra, 5 SCC 182, AIR 2000.

¹⁸⁴ Indian Penal Code, 1860, § 304

- **Section 88 IPC/ Section 26 BNS:** No liability if the act was done **in good faith**, for the **patient's benefit**, without intention to cause harm, and with **patient's consent**.

In conclusion, while **civil liability** focuses on **compensation**, **criminal liability** requires proof of **gross negligence** or **reckless disregard** for life.¹⁸⁵

5.4- Burden of Proof and Possibility of Error in Medical Negligence Cases

In medical negligence cases, the **burden of proof** lies with the **complainant**, who must demonstrate that the doctor acted negligently. Courts require a **higher standard of proof** for medical malpractice than for other civil claims.

5.5- Key Judicial Precedents

- *Calcutta Medical Research Institute v. Bimallesh Chatterjee*: The complainant must **prove negligence** and **deficiency in service**.
- *Kanhaiya Kumar Singh v. Park Medicare & Research Centre*: **Negligence must be proven, not presumed**.

Even skilled doctors **may make mistakes**, but as long as they **follow accepted medical practices**, they **cannot be held negligent**. Courts recognize that **accidents and complications** are inherent in medical procedures, and patients **implicitly accept such risks**.

5.6- Role of Medical Experts

Under **Section 45 of the Indian Evidence Act (1872)**, expert opinions are **relevant** but not always **conclusive**. Courts rely on **persuasive, well-reasoned expert testimony** but retain discretion to determine whether medical actions were **unreasonable** or **negligent**.¹⁸⁶

5.5- Criminal Medical Negligence in India: Key Supreme Court Rulings

Since 1998, the **Supreme Court** has issued conflicting rulings on filing charges against doctors under **Section 304-A of the IPC** for medical negligence.

Key Supreme Court Cases

1. **Mohanani vs. Prabha G. Nair (2004)**¹⁸⁷
 - The court ruled that a case should not be dismissed prematurely and must be examined with **expert evidence** before determining negligence.
2. **Dr. Suresh Gupta vs. Govt. of NCT of Delhi (2004)**¹⁸⁸
 - Established that criminal negligence under **Section 304-A IPC** requires proof of **gross negligence or recklessness**, not just lack of care.
3. **Jacob Mathew vs. State of Punjab (2005)**¹⁸⁹
 - Affirmed *Suresh Gupta*, clarifying that a **mistake in judgment does not equate to negligence**.
 - Differentiated **civil negligence (lack of care)** from **criminal negligence (gross disregard for duty)**.

5.6- Principles of Medical Negligence

- **Negligence** is a **breach of duty** causing harm. Three elements:
 1. Duty of care
 2. Breach of duty
 3. Resulting harm
- **Doctors are not liable** for choosing an accepted treatment, even if another method was preferable.

¹⁸⁵ Amit Agrawal, Medical Negligence: Indian Legal Perspective, 1 ANN. INDIAN ACAD. NEUROL. S9, S9-S14 (2016)

¹⁸⁶ Titli v. Alfred Robert Jones, AIR 1934 All 273

¹⁸⁷ Mohanani v. Prabha G. Nair, (2004) 3 SCC 391

¹⁸⁸ Dr. Suresh Gupta v. Government of NCT of Delhi, (JT 2004 (6) SC 238; (2004) 6 SCC 422.

¹⁸⁹ Jacob Mathew v. State of Punjab, (2005) 6 SCC 1.

- **Liability arises if** a doctor lacks the required skill or fails to apply it with reasonable competence.
- **Criminal negligence requires** an **extreme degree of carelessness** or **recklessness** beyond ordinary negligence.

6- **Application of Legal Doctrines**

- **Bolam Test** (UK precedent) remains applicable in India for assessing medical negligence.¹⁹⁰
- **Res ipsa loquitur** (the event speaks for itself) is only an **evidentiary rule** in civil law and has **limited applicability** in criminal cases.

6.1- **Guidelines for Prosecuting Doctors**

- Before prosecution, **expert medical opinion** should be obtained from a **neutral government doctor**.
- **Doctors should not be arrested arbitrarily** unless absolutely necessary for investigation.
- **Following Jacob Mathew**, it was misinterpreted that doctors could not be sued for negligence. However, in **State of Punjab vs. Shiv Ram**¹⁹¹, the Supreme Court reaffirmed that **the burden of proof lies with the claimant**, and doctors may be required to justify their actions.

CONCLUSION

The Supreme Court's ruling in *Jacob Mathew* may have brought relief to medical practitioners, but it did not grant them any **special concessions**. Instead, it reaffirmed **global judicial principles** in handling civil medical negligence cases and reiterated earlier rulings on arrests.

In *State of Punjab vs. Shiv Ram*, the Court **warned doctors** about unethical practices among their peers, highlighting the **decline of self-regulation** in the medical field due to

growing **commercialization**. Reports of **exploitation, misuse of diagnostic tools, and illegal organ trade** have raised concerns about maintaining ethical standards.

With healthcare increasingly **driven by profit**, the **balance between service and business** is shifting dangerously. While medicine has traditionally been a **highly respected profession**, there is now a growing need for **stricter regulations—both internal and external**. The responsibility ultimately lies with the **medical community** to uphold **discipline and high standards**, ensuring ethical practices prevail.

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