



## Medical negligence: Indian legal perspective

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### Abstract

An all-encompassing term, "medical negligence," has gained popularity to describe wrongdoings committed by medical personnel while practicing their trade and interacting with patients. In none of the Indian laws that have been passed, the phrase is defined or even mentioned once. With the least amount of legalese possible, this article aims to describe the fundamental aspects of "medical negligence." Additionally, this article is meant to enlighten rather than debate the complex problems raised by the topic. Instead of being an exhaustive list of authorities, the methodology used is descriptive; it is based on judicial opinions from higher courts in India and is only confined to certain judicial judgments.

"Law ignorance is no defense," Everywhere follows the rule. A doctor in particular should be knowledgeable about legislation since it pertains to the medical field. The medical profession is different from other industries in terms of professional liability. occupations because elements outside of the doctor's control determine whether a therapy is successful or unsuccessful. No clinician is permitted to unfairly exploit this information or engage in careless behavior that could endanger a patient's health. The number of lawsuits in the medical field is rising daily. Super-specializing doctors can potentially be sued in both civil and criminal cases. This causes doctors to become overly cautious during treatment, which ultimately has an impact on both the legal system and the broader medical profession. Therefore, in order to prevent medical negligence cases, we will discuss various aspects of medical negligence one by one in this series of articles. These include the history of medical negligence, doctor-patient relationship, duties of the doctor towards the patient, duties of the patient towards the doctor, areas of medical negligence, causes of medical negligence, and importance of consent in the medical profession, liability and its extent, approach of various countries to medical negligence.

**Keywords:** Indian legal perspective, medical negligence, medical malpractice, medical law, medical malpractice claim

### Introduction

#### Objective of the Research

Understanding the legal relationship between health care service providers and patients is the goal of this research study. Study the fundamentals of the doctor-patient relationship, the idea of culpability, the significance of consent in the medical field, and how different nations handle cases of medical negligence.

#### Research Methodology

This research makes use of a number of different methodologies used in legal research. The most crucial component of legal research is the sources of legal materials because without them, it is impossible to find solutions to the legal problems that have been raised. As a result, legal materials are used as sources of legal research in order to address the problems that have been raised. The writers of this study used both primary and secondary legal sources.

#### Obligations of doctors to their Patients

##### Obligations to the Sick

It is the responsibility of every doctor to provide the sick person with the greatest information and treatment possible. In the course of treatment, there should be no discrimination against any patient.

##### The patient cannot be ignored

The patient must be informed of all pertinent information on diagnosis, prognosis, manner of therapy, advantages and disadvantages, etc. before beginning treatment as well as throughout and after treatment.

#### Patience, Delicacy and Secrecy

Physicians and other healthcare providers are prohibited from disclosing patient information for any reason other than legal requirements. Hospitals and other service providers are required to preserve patient records for a minimum of three years.

#### Prognosis

A good doctor should start treating patients after making a diagnosis. To provide an accurate diagnosis, on which prognosis is dependent, a variety of investigations and technological assistance might be used.

#### Appointment of Substitute

It is the responsibility of the doctor to secure another doctor for the patient's safety if they are unable to do it themselves. It is primarily required for IPD patients. where the patient needed greater care and monitoring.

#### Statement to Patient after Consultation

Patients must fully disclose the status of their illnesses as well as any pertinent questions they may have during consultation and therapy.

#### Treatment after Consultation

Treatment must only begin after thorough consultation in person; telephone consultation is advised for follow-ups.

#### Crucial Reasons for Medical Negligence

##### Different Pathies for treatments

Scientific medicine is an allopathic theory that has been demonstrated on animals through experimentation. The

allopathic style of treatment is based on numerous diagnostic tests. The world accepts this pathy. Allopathic medical schools are the most prevalent type of medical schools worldwide. Lawsuits involving medical malpractice are not as common in nations with fewer patients needing treatment for diseases. It became simple for these nations to create universal regulations that aid in managing, preventing, and controlling unwarranted medical malpractice claims. In the Indian context, there are currently more than nine different pathologies being used for patient care, which contributes to medical treatment errors and drives up the annual trend in incidents of medical negligence. Pathies for therapy include Ayurveda, Homeopathy, Unani, Siddha, Naturopathy, Traditional Chinese Medicine (TCM), chiropractors, complementary and alternative medicine (CAM), and others. While many of these pathies are very beneficial, it can be difficult for patients to choose the best one. Doctors from one particular stream are improperly practicing other pathologies. Various pathologies approach the same disease in different ways. Depending on the fundamental beliefs of various pathies, the mode of treatment also varies. Patients are having trouble deciding on the best course of treatment because each ailment has advantages and disadvantages. Selecting one pathology for treatment can help the patient, but other treatments, medicines, and their modes of administration also play a significant influence in the patient's therapy. Treating one disease does not guarantee that the patient will not experience any other diseases. One of the causes of the rise in medical malpractice claims in a country like India is the fact that every component connected to various pathologies has its own advantages and restrictions.

### **New technologies in medical field**

Medical diagnostic, research, and other laboratories must employ medical laboratory technologies. Beginning with the collection of various samples, tests are run to examine tissue, body fluids, and other elements in urine, blood, and sputum. Each of these steps addresses medical malpractice at its most fundamental level. subjects including radiography, hearing aid technology, optics, and x-ray technology. topics like biochemistry, microbiology, hematology, transfusion science, and histology. All of this relates to the diagnostic value of the patient's state and is crucial for determining the disease's diagnosis and the best course of therapy. Any carelessness here could lead to an unnecessary medical malpractice claim.

### **Poorly developed health policies**

Different policies created by competent authorities in various nations will aid in preventing medical malpractice claims, but those policies vary depending on the applicable laws in each nation. The process is becoming more difficult in India due to the various legal laws related to medical misconduct being interpreted differently. It is imperative that rigorous legislation and other rules be put in place to prevent medical malpractice claims in light of the rising number of claims involving medical carelessness.

### **Lack of services**

Many services that are necessary to preserve patients' lives, such as defibrillators and ventilators, professional medical staff, and life-saving medications, are typically not found at ordinary hospitals. When considering government hospitals

and the services they offer, the situation where a doctor has perform a surgery while lit by a mobile flashlight seems unimaginable. The operating room's sealing wall is covered in fungus. ICU's surroundings were infected. For the strict application of standard protocol, all of these factors must be taken into account.

### **Undue competition in medical field**

There is open competition in the medical industry. Pharmaceutical companies are investing a significant amount of money in the development of new medicines that will provide the quickest relief to patients' suffering since the cost of medications rises daily as a result of the discovery of new molecules. Although using modern technology in healthcare isn't particularly expensive, the cost should be justified. One of the factors contributing to the high cost of medications in India is the well-established CUT practice notion.

### **Legal Provisions in India**

#### **Provisions under Indian Penal Code**

Indian Penal Code, Section 29: Records and Documents  
After the date of registration, medical records must be kept for three years. Such a record must be clear, accurate, and free of overwriting or questionable changes. Records must match the written directives from doctors and the nursing staff's nursing chart accurately.

The Indian Penal Code contains defenses for doctors who are accused of criminal responsibility in Sections 80 and 88. Nothing that is done by accident or bad luck, without any criminal intent or knowledge, while performing a lawful act in a lawful manner, using a lawful means, and with appropriate care and caution is considered an offence under Section 80 (accident in completing a lawful act).

Section 87: Consent-based acts that are not intended to cause death or serious injury and are not known to be likely to do so the nature of the procedure, its advantages, purposes, and effects should be explained by the doctor. If there is an alternative technique, the negative implications of not receiving therapy. If you grant consent for one surgery or treatment, it cannot be used for another. Only when the patient's life is in jeopardy is there an exception. Different forms of consent should be used for diagnosis and treatment.

According to Section 88, a person cannot be accused of an offence if he performs an act in good faith for the other's benefit, does not intend to cause harm even if there is a risk, and the patient has explicitly or implicitly given consent. Section 92- Act done in good faith for benefit of a person without consent Section 324, 326 - Punishment for culpable homicide not amount to murder Section 312, 313, 314, 315, 316- Offences related with miscarriage. Section 304A Of the Indian Penal Code of 1860 states that whoever causes the death of a person by a rash or negligent act not amounting to culpable homicide shall be punished with imprisonment for a term of two years, or with a fine, or with both. Section 337- Causing hurt by act endangering life or personal safety of others. Section 338- Causing grievous hurt by act endangering life or personal Safety of others. Section 341,342 – Detaining patient's body for nonpayment of bills may also fall within the definition of wrongful restraint or wrongful confinement.

### **Provisions under Law of Torts**

The basic principle of tort liability is that the one who causes harm must make up the difference. Vicarious liability, often known as third-party liability, may occur in several circumstances. There must be some sort of legal connection between the defendant and the third party for vicarious liability to exist. Due to the master-servant connection between employers and employees, vicarious responsibility can develop during the course of employment. For instance, an allergic reaction and consequent death come from a patient receiving the wrong medication from a hospital staff nurse. According to the vicarious liability principle, the hospital in this case, which is the employer of the nursing staff, is also accountable for the nurse's misconduct. As a result, one spouse may be responsible for the shortcomings of the other.

According to the strict liability rule, every economic activity that causes someone harm must make up for it. Even if it took all reasonable efforts to limit the damage, this liability would still apply. *Fletcher v. Rylands*

### **Conclusion and Suggestions**

These are the critical topics in medical negligence lawsuits, and we have briefly summarized them in this post. In following articles, we will examine each of those topics in depth while referencing the opinions of many nations and significant rulings rendered by the Supreme Court. By publishing this paper, the author hopes to increase public awareness of medical malpractice and to offer appropriate protocols and guidelines for those who provide healthcare services. This will support the creation of health laws that will provide the entire society with the best care and treatment. The legislation simply specifies the minimal level, beyond which patients cannot be treated, not the upper boundaries of high standards that can be imposed. A growing necessity for clinicians to interact with patients during treatment has been highlighted by judicial forums, particularly when the course of therapy is contested, has substantial adverse effects, and other treatments are available.

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