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LEGAL REGIMES FOR MEDICAL NEGLIGENCE IN INDIA: A CRITICAL ANALYSIS ON THE NECESSITY OF A COMPREHENSIVE LEGAL FRAMEWORK

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Abstract

Medical negligence (MN) remains a significant issue within the healthcare (HC) system in India, where the medical profession is held in high esteem but is not immune to human error. This study examines the various legal frameworks—civil, criminal, and consumer law—that address MN, outlining the challenges of holding HC providers accountable due to the complex nature of medical practice. Legal provisions under the Indian Penal Code (IPC), Tort Law, and the Consumer Protection Act (CPA) provide avenues for patients to seek redressal, though each system operates under distinct legal principles. The study also offers recommendations to address the MN crisis, including the creation of a national database, uniform compensation measures, and an analysis of judicial decisions to enhance healthcare system transparency. Ultimately, the study advocates for stronger legal protections, comprehensive reforms, and a balanced approach to uphold both patient rights and medical professionalism in India.

Keywords: *Medical negligence, legal framework, criminal liability, compensation.*

Introduction

The field of medicine is often regarded as one of the most honourable professions in India. A patient sometimes compares the doctor to a god or a goddess. On top of that, God is without mistakes. With, it is the viewpoint of the patient. As it is a human tendency to make mistakes; so, do medical professionals. Negligence is a possible behaviour among medical professionals. If there are two incidents of neglect, it could lead to a substantially more serious problem. Within the context of MN, determining who was irresponsible is of the utmost importance

along with the conditions that surrounded it. These kinds of problems are brought before the courts in a country that is committed to the rule of law, and it is anticipated of the judges that they will make decisions. On the other hand, since judges lack experience in medical science, thus find it difficult to determine whether a patient was neglected in their medical care¹. The decisions that they make are based on the opinions of specialists. When reaching a decision, judges make use of fundamental legal concepts in conjunction with the laws that are currently in effect. The principles that serve as the guiding principles are reasonableness and wisdom. Given that these issues are fundamental to the medical profession and that hospitals are influenced by the reinterpretation of existing laws concerning HC professionals, it is essential to address them at both the individual physician level and the institutional level of the hospital². This is because hospitals are directly influenced by the reformulation of laws that pertain to medical professionals.

The Government of India is going to act to reduce the amount of uncertainty that is caused by the growing count of MN lawsuits in the nation. There exists a significant desire for a new provision or a separate legal framework that may settle the situation in a manner that is speedy, accurate, and prudent.

A further RTI submitted by Vidhi disclosed the DMC carried out 3,836 investigations into HC practitioners for any professional misconduct or negligence from 2002 to 2022. Also, warnings were given in 160 instances. In an additional 160 instances, the names of practitioners were provisionally expunged from the registries³.

¹ Rahul, "Comparative Study on Medical Negligence" (2019) 4 International Journal of Multidisciplinary <<https://old.rrjournals.com/past-issue/comparative-study-on-medical-negligence/>>

² Raveesh BN, Nayak RB and Kumbar SF, "Preventing Medico-Legal Issues in Clinical Practice" (2016) 19 Annals of Indian Academy of Neurology 15 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5109754/>>

³ Pratyush Deep and Pratyush Deep, "Battling Bias: India's Medical Councils Often Fail Patients in Medical Negligence Cases" (*NewsLaundry*, June 14, 2024) <<https://www.newsLaundry.com/2024/06/14/battling-bias-indias-medical-councils-often-fail-patients-in-medical-negligence-cases>>

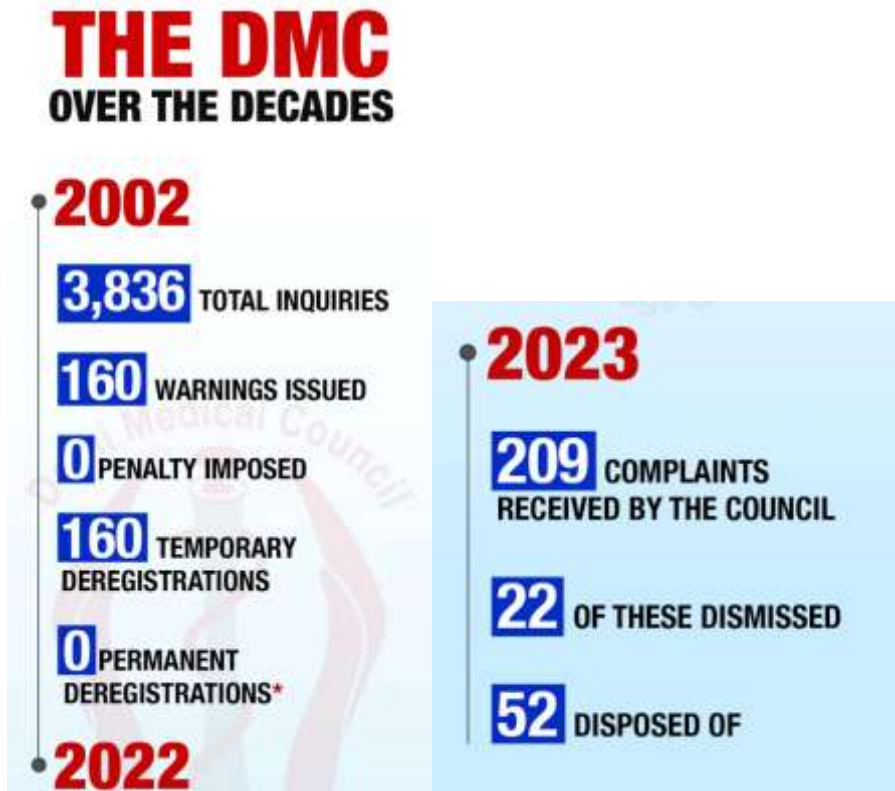


Figure 1: Recent Cases of Medical Negligence⁴

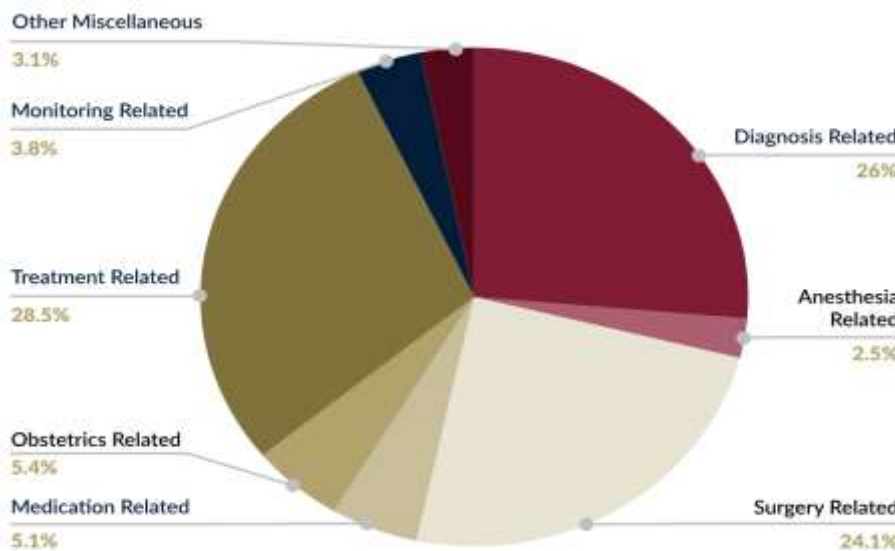


Figure 2: Causes of Medical Malpractices Claims (2017-2021)⁵

⁴ Pratyush Deep and Pratyush Deep, “Battling Bias: India’s Medical Councils Often Fail Patients in Medical Negligence Cases” (*NewsLaundry*, June 14, 2024) <<https://www.newsLaundry.com/2024/06/14/battling-bias-indias-medical-councils-often-fail-patients-in-medical-negligence-cases>>

⁵ <https://justpoint.com/knowledge-base/us-medical-malpractice-case-statistics>

Table 1: Latest statistic of medical Negligence in India⁶

Aspect	Details
Annual Medical Malpractice Cases in India	5.2 million cases
Growth in Caseloads	110% increase in caseloads
Growth in Legal Disputes	400% increase in legal disputes
Healthcare Professionals Following Moral Standards	Only 46% adhere to moral standards
Leading Causes of Medical Error Deaths	- Surgical errors: 80% of deaths - Poor management: 70% of emergency deaths

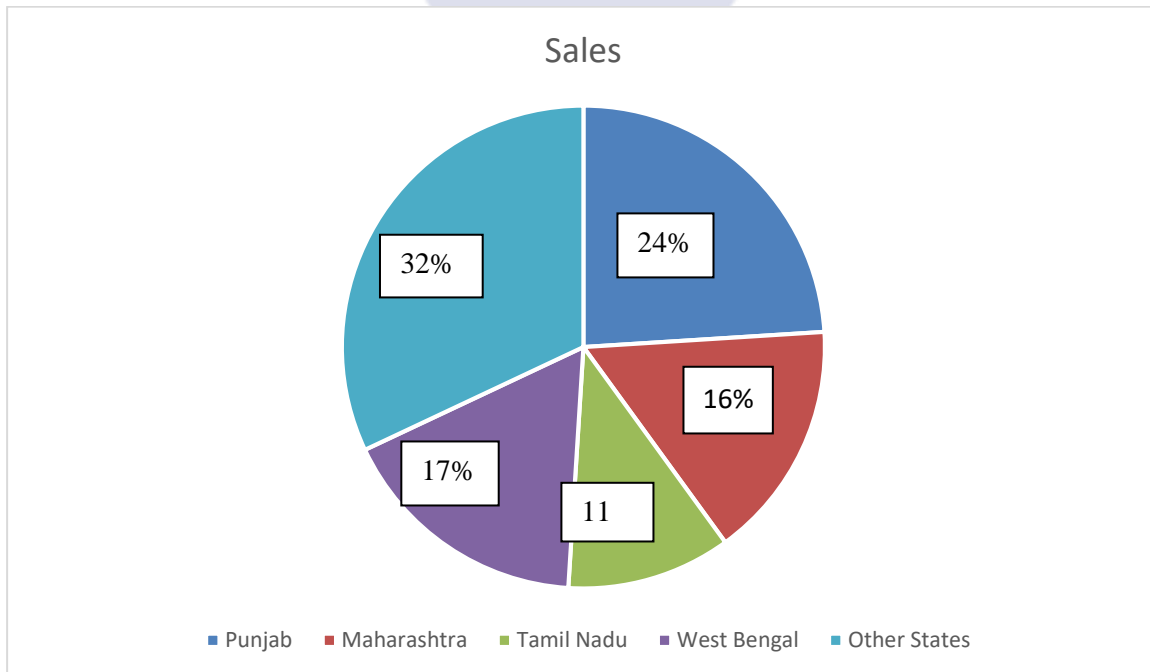


Figure 3: Most cases State wise⁷

Negligence

Negligence happens to be the breach of obligation characterized by the execution of an act that a prudent individual would not undertake or the oversight of an act that a prudent person, according to conventional norms of conduct, would do. To be negligent and hence liable for

⁶ Business Standard, “Over 5.2 Mn Medical Malpractice Cases Filed in India Annually, Shows Data” ([www.business-standard.com](https://www.business-standard.com/finance/personal-finance/over-5-2-mn-medical-malpractice-cases-filed-in-india-annually-shows-data-124042900073_1.html), April 29, 2024) <https://www.business-standard.com/finance/personal-finance/over-5-2-mn-medical-malpractice-cases-filed-in-india-annually-shows-data-124042900073_1.html>

⁷ Business Standard, “Over 5.2 Mn Medical Malpractice Cases Filed in India Annually, Shows Data” ([www.business-standard.com](https://www.business-standard.com/finance/personal-finance/over-5-2-mn-medical-malpractice-cases-filed-in-india-annually-shows-data-124042900073_1.html), April 29, 2024) <https://www.business-standard.com/finance/personal-finance/over-5-2-mn-medical-malpractice-cases-filed-in-india-annually-shows-data-124042900073_1.html>

damages, a defendant must have owed the plaintiff a duty to exercise ordinary care along with skill, and the plaintiff must have experienced some kind of harm owing to the defendant's failure to do so⁸.

There are three forms of negligence:

- The condition of mind where it opposes the intent.
- Inconsiderate behaviour
- Neglecting one's responsibilities

Medical Negligence – Laws in India

MN transpires when a HC provider fails to deliver the desired quality of care, causing damage or injury straight to the patient. The legal recourse available for MN victims can be sought through civil law, criminal law, and consumer law in India. Each of these legal systems offers distinct approaches to address MN and hold healthcare professionals accountable.

1. Criminal Law (Indian Penal Code - IPC)

Under criminal law, MN can lead to criminal liability if a HC provider's negligent actions directly cause harm or death. The Indian Penal Code⁹ (IPC) addresses such cases through various sections:

- Section 304A¹⁰: This section entails "causing death by negligence." If a patient's death occurs due to a doctor's rash or negligent behavior, it constitutes a criminal offense under this section. The penalty may include incarceration for up to two years, or a monetary fine, or both.. For example, if a doctor administers anesthesia carelessly, leading to death, they can be charged under Section 304A.
- Section 337¹¹: This section covers causing "hurt by an act endangering life or personal safety of others" through negligence, which results in harm but not death. In such cases, the doctor can face imprisonment for up to 6 months, or a fine, or both.
- Section 338¹²: This deals with "causing grievous hurt by negligence," where the injury is serious but does not result in death. It can lead to more severe penalties compared to

⁸ Tiwari DS, "Medical Negligence in India" [2022] International Journal of Health Sciences 10765 <<https://sciencescholar.us/journal/index.php/ijhs/article/view/7587>>

⁹ Indian Penal Code, 1860, Act No. 45 of 1860.

¹⁰ Section 304A. Causing death by negligence. - India Code

¹¹ IPC Section 337 - Causing hurt by act endangering life

¹² IPC Section 338 - Causing grievous hurt by act endangering life.

Section 337.

Criminal liability requires proof that the doctor's actions amounted to gross negligence or recklessness, causing harm or death. However, medical professionals acting in good faith and following medical protocols are protected from prosecution under Section 88¹³ of the IPC, which exempts acts carried out for the patient's benefit.

2. Civil Law (Tort Law)

Under civil law, MN is primarily addressed through tort law¹⁴, where the injured patient can file a claim for compensation for the harm caused. In civil cases, the standard of proof is grounded in the "preponderance of evidence"—that is, it must be more likely than not that the doctor's MN resulted in the injury.

- **Negligence and Breach of Duty:** In civil law, a MN claim can be filed if the healthcare provider breaches the duty of care owed to the patient. Also, the duty of care is the responsibility of the doctor or medical professional to provide treatment in a manner that is consistent with accepted medical standards. If the standard of care is violated and this breach results in injury, the doctor can be held liable.
- **Damages:** The patient may be entitled to compensation for physical injury, medical costs, loss of income, and mental pain. The compensation amount varies depending on the injury's severity and the scale of negligence involved¹⁵.

3. Consumer Law (Consumer Protection Act - CPA)

The CPA¹⁶ of 1986 provides an additional recourse for patients suffering due to MN, as medical services are classified as a "service" under the Act. Patients can file a complaint before the Consumer Forums if they believe the medical service was deficient or the standard of care was not met.

- **Section 2(1)(0)¹⁷ of CPA:** It defines "deficiency in service," which includes MN. This can apply to hospitals, doctors, and healthcare institutions that provide inadequate treatment, either by omission or commission.

¹³ Section 88 in The Indian Penal Code, 1860

¹⁴ Tort law is the branch of the law that deals with civil suits, with the exception of disputes involving contracts. Tort law is considered to be a form of restorative justice since it seeks to remedy losses or injury by providing monetary compensation.

¹⁵ Raj A, "Critical Analysis of Legal Regimes for Medical Negligence in India- Need for a Comprehensive Legal Framework" (Ambily Perayil and National University of Advanced Legal Studies, Kochi, 2020) <<http://14.139.185.167:8080/jspui/bitstream/123456789/454/1/LM0320003-PHL.pdf>>

¹⁶ Consumer Protection Act, 2019, Act No. 35 of 2019.

¹⁷ Section 2(1) in The Consumer Protection Act, 1986

- Redressal: Under the CPA, the patient or complainant can seek remedies such as compensation for harm or injury, as well as an order to rectify the situation (such as proper treatment or care). Patients can file complaints in District Forums, State Forums, or National Forums, depending on the value of the claim.
- Burden of Proof: The patient or complainant must prove that the service was deficient, but the process is often simpler than in civil law cases, as consumer courts follow a more lenient standard of proof. Also, experts are often relied upon for opinion, much like in civil court proceedings.
- Case Example: In *State of Haryana v. Smt. Santra*¹⁸, the Indian Supreme Court (ISC) ruled that doctors must provide a reasonable standard of care and expertise. If a doctor or hospital fails to meet this standard and a patient is harmed, it amounts to a deficiency of service, and the patient can claim compensation per the CPA¹⁹.

4. Summary of Legal Recourses

- Criminal Law: Prosecutes doctors for gross negligence leading to death or injury. Proving criminal negligence requires establishing that the doctor's conduct was reckless or resulted in harm without justification.
- Civil Law: Focuses on the duty of care owed to the patient. If a doctor's failure to obey medical standards causes harm, the patient can claim damages for the injuries sustained.
- Consumer Law: Allows patients to file any complaints within consumer courts for deficient medical services under the CPA. It is designed to offer an accessible platform for all patients to seek restitution for damages resulting from medical malpractice.

In all cases, proving MN is challenging due to the complex nature of medical practice, requiring expert testimony and clear evidence of breach. However, these legal avenues provide critical means for patients to seek justice and hold HC professionals accountable.

Case Laws

In the **Martin F. D'Souza vs Mohd. Ishfaq**²⁰ case (17 February 2009), the ISC addressed MN. The patient, Martin F. D'Souza, sued Dr. Mohd. Ishfaq, claiming that the latter caused him suffering and injury as a result of his surgical procedures. Whether the doctor had provided the

¹⁸ State Of Haryana & Ors vs Smt. Santra on 24 April, 2000

¹⁹ Chandrakar E, Singh N and Tyagi S, "Critical Analysis Study on Various Indian Legislations for Medical Negligence" [2022] International Journal of Health Sciences 8191 <<https://sciencescholar.us/journal/index.php/ijhs/article/view/7076>>

²⁰ Martin F. D' Souza vs Mohd. Ishfaq on 17 February, 2009, AIR 2009 SUPREME COURT 2049.

necessary level of care, whether the plaintiff had established carelessness, and the significance of expert evidence in cases involving MN were the primary concerns in this case. The Court's decision in Dr. Ishfaq's favor highlights the fact that doctors cannot be held responsible for unpleasant outcomes if they adhere to established medical standards. It went on to say that the plaintiff carries the burden of proof in proving carelessness, not just that something unpleasant happened. Aside from being factually sound, the Court emphasized that expert testimony should neither be broad or subjective. Furthermore, it was pointed out that unless extreme carelessness is demonstrated, medical practitioners are not accountable for mistakes in judgment. A patient's informed permission is still required before any surgery may proceed, but the decision made it clear that this does not constitute carelessness if the procedure fails. The verdict highlighted that unfavorable results do not constitute proof of carelessness and set significant standards for MN actions in India.

In the *Kusum Sharma & Ors vs Batra Hospital & Medical Research Centre*²¹ case (2010), the ISC dealt with a claim of MN following a patient's death during surgery at Batra Hospital. The family of Kusum Sharma filed a lawsuit against the hospital and its doctors, claiming the patient's cardiac arrest and subsequent death were the consequence of surgical negligence. The case's fundamental questions were whether the hospital and its doctors and nurses had failed in their duty of care and whether the victims should get damages. The plaintiffs were successful in having the hospital and its physicians found guilty of gross negligence by the ISC. It stressed that doctors along with hospitals are responsible for providing patients with adequate treatment, and that patients should be compensated when their deaths occur as a result of their negligence. Additionally, it emphasized how critical it is for hospitals to advise patients accurately and clearly about the dangers associated with medical operations. Patients and their families have the right to seek justice in cases of medical malpractice, and this case emphasized the prominence of accountability in healthcare.

In the *Brij Mohan Kher vs N.H. Banka*²² case, the ISC dealt with a dispute regarding MN. In his lawsuit against Dr. N.H. Banka, Brij Mohan Kher claimed that the doctor was negligent and caused Kher pain and harm. Whether the doctor had neglected to utilise reasonable care and skill throughout the patient's medical treatment was the main concern. After reviewing the evidence, the court stressed that there must be proof that the doctor's conduct were negligent if

²¹ *Kusum Sharma & Ors vs Batra Hospital & Med.Research Centre*, on 10 February, 2010, 2010 (3) SCC 480.

²² *Brij Mohan Kher Vs N. H. Banka*, 1995 CPJ 99 NC.

medical standards and procedures are to be developed. There was no evidence of Dr. Banka's gross negligence, and the court ruled that the treatment was within the bounds of reasonable medical practice. Further emphasis was placed on the fact that doctors and hospitals cannot be held responsible for mistakes or negative results so long as they follow standard medical procedures. At the end of the day, the ruling reaffirmed the idea that cases claiming MN need proof of a departure from conventional care, not just bad results.

Recommendations to intensify our combat against the malpractice crisis

1. A comprehensive national database must be constructed to precisely quantify the count of lawsuits filed against physicians along with institutions across multiple platforms. Claims' thematic categorization must be analyzed to implement risk management within clinical environments and enhance awareness across healthcare providers.
2. In instances of established carelessness, a uniform approach must be implemented to ascertain compensation for circumstances that are consistent nationwide.
3. Data on monetary awards (be it economic, or non-economic, or punitive) from orders along with judgments must be documented and analyzed to facilitate necessary tort changes and advance an accessible and sustainable HC system.
4. A database categorizing MN by act or subject should be established on esteemed courts' websites, and commissions, along with medical councils to facilitate the retrieval of judgments and decrees.
5. To understand the psychological factors and deficiencies within our system regarding appeals, it is essential to analyze the volume of appeals submitted against the rulings or verdicts issued by various commissions, and courts, along with medical councils.
6. Any decision, and judgment, or even opinion that is reversed, altered, or remanded by a superior commission, and court, or even appellate body ought to be meticulously scrutinized to identify deficiencies within our legal and regulatory frameworks and HC systems, and appropriate measures must be implemented to systematically rectify them²³.

²³ Ravi K, Devnath GP and James RI, "Medical Negligence in India: Urgent Call for Comprehensive Data, Tort Reforms, and Cultural Transformation to Revitalize Healthcare System" (2024) 17 Medical Journal of Dr D Y Patil Vidyapeeth 259
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Conclusion

Finally, patients and healthcare providers in India are still dealing with medical negligence. Although doctors are held in high regard for their selfless nature, it is important to remember that they are human and can make mistakes, some of which can have serious consequences. Despite its intended purpose of ensuring accountability, the intricate nature of medical practice presents obstacles to the legal system governing medical negligence, which is based on both civil and criminal law.

There must be stricter legal protections and a more active judiciary to deal with the rising tide of medical negligence along with malpractice cases. Essential measures toward reforming the healthcare system include recommendations such as the creation of a national database for malpractice cases, thematic classification of claims, consistent compensation procedures, and systematic review of court rulings. We can achieve a balance between medical professionals' accountability and patients' trust in them by making sure they follow high standards of care and giving patients more ways to get their problems fixed. All parties concerned hope that these reforms will create a more open, responsible, and long-lasting healthcare system.

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