



LEGAL, ETHICAL
AND
PROFESSIONAL CHALLENGES
IN
INDIAN MEDICAL
PRACTICE AND HEALTHCARE

Editors

Prof. Dr. Geetali Tilak

*Vice-Chancellor,
Tilak Maharashtra Vidyapeeth, Pune*

Adv. Dr. Swapnil Bangali

*Founder Partner, Vishwaguru Omicient International Legal
Consultancy & Law Firm, Pune
Vice-President, Legal TM Systems Ltd.*



ALL INDIA REPORTER, NAGPUR

Legal, Ethical and Professional Challenges in Indian Medical Practice and Health Care

EDITORIAL COMMITTEE

CHAIRPERSON & CHIEF EDITOR

Dr. Deepak Tilak

Chancellor

Tilak Maharashtra Vidyapeeth, Pune

EDITORS

Prof. Dr. Geetali Tilak

Vice-Chancellor,

Tilak Maharashtra Vidyapeeth, Pune

Adv. Dr. Swapnil Bangali

*Founder Partner, Vishwaguru Omicient International Legal Consultancy & Law
Firm, Pune*

Vice-President, Legal TM Systems Ltd.

CO-EDITORS

Prof. Ketki Dalvi

Assistant Professor

Lokmanya Tilak Law College

Tilak Maharashtra Vidyapeeth

Prof. Ashutosh A. Naik

Associate Professor

Lokmanya Tilak Law College

Tilak Maharashtra Vidyapeeth

Prof. Rohan Bavadekar

Assistant Professor

Lokmanya Tilak Law College

-Tilak Maharashtra Vidyapeeth



ALL INDIA REPORTER, NAGPUR

Detailed Contents

Sr. No.	Topic	Author/s	Page No.
1	The Legal Framework Governing Informed Consent in Medical Practice: Principles, Challenges and Implications	Radhika Hastak	1
2	Informed Refusal: Exploring Legal and Ethical Perspectives on the Right to Decline Medical Care	Ms. Ashwini B. Biradar	17
3	Balancing Autonomy and Duty of Care: A Legal and Ethical Analysis of the Right to Refuse Medical Treatment	Ketki Dalvi	35
4	Doctors on Trial: Law, Ethics, and Protection	Abhay S. Nevagi	51
5	Navigating Informed Consent in Critical and Emergency Care: Legal, Ethical, and Practical Perspectives	Mrs. Varsha Vyankatesh Badwe & Mrs. Sapana Niraj Jaiswal	61
6	Hospital Accountability and the Ethics of Informed Consent in Organ Transplantation: Investigating Medical Governance and Patient Rights in India	Ashutosh A. Naik	75
7	Role of Informed Consent in Clinical Trials of Subject Confidentiality and Data Protection: Legal Implications of Health Records in Clinical Trials	Dr. Gauri Kala & Disha Sharma	95

8	Ethico-Legal Considerations in Paediatric Clinical Trials: An International Perspective	Aarti Ramesh Shukla	107
9	Exploring the Legal Aspects of Medical Negligence in India	Dr. K. Asra Shifaya & Dr. A. Senthil Kumar	123
10	The Evolving Landscape of Medical Negligence and Accountability: Fortifying Patients' Rights in a Changing Healthcare Paradigm	Vidhya P Shetty & Dr. Rohini Honap	137
11	Bioethics and Medical Negligence: Bridging Moral Philosophy and Legal Accountability	Ms. Siddha Kulkarni	153
12	Judicial Perspectives on the Standard of Proof in Medical Negligence Cases: An Indian Jurisdictional Analysis	Arundhati Kumbharikar	169
13	The Legal Framework Governing Expert Testimony in Medical Malpractice Cases: An Analytical Review	Mrs. Smita Bansode & Mrs. Sonali Sharma	185
14	Comparative Legal Analysis of Medical Compensation Laws between India, United States and Luxembourg	Vishakha Sharma & Nehal Sharma	199
15	The Cost of Healing: Comparative Insights into Medical Negligence Compensation Laws in India, The UK, And The US	Dr. Madhuri V. Sarwade	213
16	The Economic Value of Telemedicine and Its Legal Implications for Better Services	Rohan Bavadekar	231

The Cost of Healing: Comparative Insights into Medical Negligence Compensation Laws in India, The UK and The US



Dr. Madhuri V. Sarwade*

Abstract

The medical profession has long been held in high regard, with doctors often seen as near-divine figures. As a result, many patients unquestioningly accept doctors' recommendations. While the doctor-patient relationship is rooted in trust, this foundation is gradually weakening. Some professionals, including doctors, engage in unethical practices, evading consequences despite violating ethical standards. Although such actions may not always break the law, they undermine public health and society's well-being.

* Associate Professor in Tilak Maharashtra Vidyapeeth's Lokmanya Tilak Law College, Mukundnagar, Gultekdi, Pune.

Professionals like doctors are entrusted with specialized skills and are held to high standards of responsibility. Society relies on them to act in the public's best interest by adhering to the legal and ethical standards of their profession. However, there are instances when these trusted individuals fail in their duties through acts of negligence, often causing harm to those who depend on their care and expertise. According to a 2017 study conducted by Harvard University, approximately 5 million deaths occur annually in India as a result of medical errors. The study found that medical practitioners' lack of practical knowledge is a major contributing factor.

Keywords

Indian Doctors, Negligence, Professionals, Civil liability, Compensation, Consumer Court, Medical Malpractice, The Federal Tort Claims Act (FTCA)

1. Introduction

"Medical Negligence is the fault on which most medical malpractice cases hinge. Here's a primer on this important liability concept."

———By David Goguen, J.D.

Medical compensation laws govern how victims of medical negligence or malpractice are compensated. These laws vary across jurisdictions in terms of standards of care, procedures for redressal, quantum of compensation, and the role of courts and regulatory bodies. A comparative analysis helps in identifying best practices, legal lacunae, and areas for reform in the Indian context.

The value of human life cannot be denied, and judges in medical negligence cases find it very difficult to determine the appropriate amount of compensation because it is very subjective. Despite the legislature's best efforts to pass laws that could serve as a framework for determining the amount, as well as decades of judicial interpretation, the issue of how to determine compensation in medical negligence cases has not yet been resolved.

Medical compensation laws are essential for resolving medical malpractice lawsuits and ensuring justice for affected patients. The medical compensation systems of Sweden, the United States, the United Kingdom, Australia, and India are all thoroughly compared in this research. It looks at differences in compensation sums, redressal procedures, legal systems, and the role of courts and regulatory bodies. The report also suggests changes that India might adopt by referencing effective global models.

Medical compensation forms a crucial pillar of healthcare governance and legal accountability. As incidents of medical negligence rise alongside growing patient awareness, establishing a strong, equitable, and efficient compensation system has become increasingly important. This chapter examines the approaches adopted by different legal systems toward medical compensation and highlights best practices that India could consider implementing.

2. Medical Compensation Law in India

The legal framework in India that affects the medical profession and its working, and which prevents malpractice, holds an important place. (Pareek, D. 2016, July 18)

2.1 Legal Framework Under Law of Tort

The Right and Duty are two sides of a coin. In present scenario everyone talks about their own Rights, and no one remember that they have some corresponding duties with these Rights. The eminent jurist Leon Duguit talks about the Rights, and he said that there is only one Right i.e. to perform their duties and if everyone performs their own Duty then there is no need of claiming any Right. When someone enters a learnt profession, they commit to exercising it with a respectable level of attention and skill. In India, the legal framework for medical compensation in cases of negligence is mainly rooted in the law of torts (civil law). It centres on the principle of negligence, which involves a breach of the duty of care leading to harm. Under this framework, patients can claim compensation for injuries or losses caused by the negligent acts or omissions of healthcare providers.

While bringing the medical services and medical professionals under the Consumer Protection Act, there has to be some limitations as this trend may lead to unhealthy and unethical practices. (Varghese, R. 2014.) The Consumer Protection Act enables patients to seek redress for “deficiency in service” by medical professionals through consumer forums.

Negligence, simply put, is a breach of duty of care resulting in injury or damage. (Agrawal, A. (2016).). Winfield and Jolowicz define negligence as “the violation of a legal duty to exercise care which causes harm, undesirable to the plaintiff, on the part of the defendant.”.

Whenever a person claims that she/he has suffered harm due to negligence of the treating doctor and wants a legal remedy for the same, it is incumbent on her/him to prove negligence of the doctor. (Goel, R., Amarnath, M., James, R. I., & Amarnath, A) The National Consumer Disputes Redressal Commission (NCDRC), in *Kanhaiya Kumar Singh v. Park Medicare and Research Centre* and *Calcutta Medical Research Institute v. Kumkum Bhattacharya*, held that medical negligence must be affirmatively proven and cannot be presumed. The complainant bears the burden of establishing both negligence and deficiency in service. This principle was reaffirmed as settled law in *Upasana Hospital and Nursing Home v. Dipak Kumar Samanta*.

2.2 Legal Framework Under Bharatiya Nyaya Sanhita, 2023 (BNS)

The introduction of the Bharatiya Nyaya Sanhita (BNS) seeks to improve healthcare standards by instituting harsher penalties for medical negligence. While medical negligence cases were previously governed by Section 304A of the Indian Penal Code (IPC), 1860, BNS has replaced these provisions and provided a more detailed framework under Section 106. With the implementation of BNS, notable improvements have been seen, especially in the area of medical negligence. Medical negligence happens when a healthcare provider does not provide the required level of care, which causes a patient to suffer harm or injury. The implementation of the BNS has brought about stricter penalties aimed at reinforcing accountability and improving healthcare standards in India.

The main aim of the introduction of stringent punishments is to reduce the acts of negligence. When the new criminal laws were introduced in Parliament, many doctors raised concerns about Section 106 of the BNS, seeking exemption from criminal liability for medical negligence resulting in death. The Indian Medical Association addressed the issue with the Ministry of Home Affairs, which amended Section 106(1) to reduce the maximum prison term to two years, along with a fine. (Batra, N. (2024),).

However, the amendment does not exempt doctors from criminal prosecution and mandates imprisonment for negligence resulting in death, unlike Section 304A of the Indian Penal Code, 1860, which allowed courts discretion to impose only a fine. Under the new regime a fine is no longer an alternative to, but mandatory with a sentence of imprisonment that may extend up to two years. The number of lawsuits brought against doctors appears to be rising in spite of the Supreme Court's admonition in the Jacob Mathew case (1). Regarding the case of Dr. Suresh Gupta, (2) when bringing criminal charges against medical professionals for suspected medical negligence, the Supreme Court of India's complete bench ruled that great care and caution should be taken.

1. AIR 2005 SC 3180.

2. AIR 2004 SC 4091.

3. Mechanisms For the Enforcement of Constitutional Rights

"The right to life enshrined in Article 21 of the Constitution encompasses the right to health and access to medical care. It ensures an individual's entitlement to live a healthy life and fully enjoy the physical and mental faculties of the human body." Now right to health becomes universally accepted human right. So, it could be a prelude to the 'Right to Health Care' as an enforceable fundamental right. (Saini, V., & Kumar, M. 2021)

The Constitution of India does not provide any special rights to the patient. In fact the patient's rights are basically indirect rights, which arise or flow from the relevant 'Articles' which can be applied to cases of medical negligence. Articles 32 and 226 of the Constitution respectively confer jurisdiction on the Supreme Court and the High Courts for the enforcement of fundamental rights.

In the landmark case of *Ramsharan v. Union of India*(3), the Supreme Court adopted a holistic interpretation of Article 21. It held that the right to life includes not only the right to mere existence but also all elements that give life its meaning, such as tradition, culture, and heritage. The Court emphasized that the protection and preservation of these aspects are integral to the expanded scope of Article 21'. Article 21 grants us the fundamental right to life. Anyone who endangers our life and causes us bodily injury violates this right which according to the laws of our country is a punishable offence. (Kaur, D., & Kaur, S. (2023), July 14).

4. Legal Framework in India under Medical Council Regulations

Disciplinary proceedings against medical professionals are regulated by the Indian Medical Council (Professional Conduct, Etiquette, and Ethics) Regulations, 2002, which were established under the authority of the Indian Medical Council Act, 1956. (Rajan, A. (2024), January 30). The IMC and State Medical Councils can discipline healthcare professionals for misconduct, including medical negligence. Disciplinary actions may range from suspension to permanent removal from the medical register, effectively prohibiting practice. Professional misconduct is a broader term, with specific actions determined by the details of each case.

It's also provides a separate punishment for medical professionals which was not there in Indian Penal Code previously. It says that if such act is done by a registered medical practitioner while performing medical procedure, he shall be subject to imprisonment for a term

3. AIR 1989 SC 549.

extending up to two years and may also be liable to pay a fine. (Magon, D. 2024, February 17). To prove the occurrence of, several tests are applied, including the Bolam Test, originating from the case *Bolam v. Friend Hospital Management Committee*,⁽⁴⁾ which asserts that a doctor is not negligent if their actions align with accepted medical practices recognized by a responsible body of medical professionals. The Bolitho Test challenges the Bolam test by requiring expert opinions to be logically valid, emphasizing the need for critical evaluation. Additionally, informed consent ensures that patients are made aware of the risks and alternatives before undergoing medical procedures. Victims of medical negligence have several avenues for seeking justice, including criminal recourse under Section 106 of the BNS, filing a civil suit in court, seeking compensation through consumer courts, or approaching the Human Rights Commission when human rights violations are involved.

5. The Indian Contract Act, 1872

The Indian Contracts Act comes into play when there is a contractual relationship between the patient and the medical provider. If a breach of contract occurs, such as failure to provide agreed-upon medical services, the patient can sue for damages. (Legal Kart. 2025, April 8). Some acts cannot legally take place because of a lack of informed consent. In situations where an individual is deemed incapable of providing informed consent, a legally authorized representative is typically empowered to give consent on their behalf, e.g. parents or legal guardians of a child and caregivers for the mentally ill. However, if a severely injured person is brought to hospital in an unconscious state and no-one is available to give informed consent, doctors will give whatever treatment is necessary to save his life (according to the Hippocratic oath), which might involve major surgery, e.g., amputation.

A breach of any of these duties will give rise to an action for negligence against him. No doubt, he has discretion in choosing the treatment which he proposed to give and such discretion is relatively ample in cases of emergency, but the standard of care, which the law requires is not an insurance against accidental slips. Every slip or mistake does not import negligence. Medical negligence can also be interpreted as a breach of contract in cases where there is a contract (implied or explicit) between the patient and the healthcare provider.

6. Judicial Activism and Challenges

Courts play a significant role in awarding compensation. The Supreme Court thoroughly examined the law concerning (i) negligence as a tort, (ii) negligence as both a tort and a crime, (iii) negligence by professionals, (iv) medical professionals in the context of criminal law, and (v) reviewed Indian judicial precedents on criminal negligence. Based on this analysis,

4. 1957 1 WLR 582.

the Court drew conclusions and established guidelines for prosecuting medical professionals. The Bolam Rule was applied to determine the applicability of Section 304A of the IPC to the case at hand.

The right to health of an individual has been cited by the judiciary in various cases. All these cases have contributed to the development of the medico-legal system in India over the years. (Laxmish Rai. (2018). In *Parmananda Katara v. Union of India*, (5) the Supreme Court ruled that every medical practitioner, regardless of whether they serve in the public or private sector, is obligated to offer prompt medical assistance to the sick or injured without delay for legal formalities, thereby reinforcing the State's constitutional duty to safeguard human life. The judiciary has to interpret those laws and the executive has to enforce the provisions of laws thus enacted. The Supreme Court, in *Paschim Banga Khet Mazdoor Samity v. State of W.B.* (6), affirmed that refusing medical treatment due to the unavailability of beds amounts to a violation of Article 21.

In the realm of medico-legal cases, where statutory development remains limited, Indian courts have played a vital role by issuing guidelines grounded in legislation, principles of natural justice, and expert advice.

In *Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole* case(7), the respondent's son died after a doctor used excessive manual traction without proper anesthesia, causing fatal shock. The Supreme Court held the doctor liable for damages, emphasizing that medical professionals owe a duty of care when treating patients—this includes deciding to accept the case, choosing appropriate treatment, and administering it correctly. Breach of any of these duties can lead to medico-legal action.

In *Paschim Banga Khet Mazdoor Samity v. State of W.B.*(8), the SC held that both doctors and hospitals owe a duty of care, and that denial of timely treatment due to lack of facilities violates Article 21, to ensure the protection of the right to life, the State is obligated to provide sufficient healthcare services.

The Supreme Court held that although the doctor's negligence resulted in the patient's death, it did not constitute the gross or reckless negligence necessary to attract criminal liability under Section 304A of the IPC, thereby rendering him liable only under civil law.

5. AIR 1989 SC 2039.

6. AIR 1996 SC 2426.

7. AIR 1969 SC 128.

8. AIR 1996 SC 2426.

In *Poonam Verma v. Ashwin Patel*, (9) the Supreme Court held that a homeopathy practitioner prescribing allopathic medicine amounts to negligence per se, requiring no further proof, and found the doctor liable for the patient's death.

The Supreme Court invoked the principle of *res ipsa loquitur*, ruling that negligence could be established without expert testimony because the patient's condition clearly indicated negligence. Consequently, the burden shifted to the hospital to demonstrate that due care was exercised.

While the medical profession is noble, doctors can face civil or criminal action for negligence. The cited cases set key standards for handling medico-legal issues, highlighting the need to analyze these judgments to build a clear and effective legal framework. Key principles from Supreme Court judgments highlight that, doctors owe a duty of care, and negligence—whether by act or omission, is judged case by case. Criminal negligence requires gross recklessness.

While civil liability includes even minor lapses. Misrepresentation, failure to inform, or poor record-keeping can also constitute negligence. Free services may not fall under the Consumer Protection Act, but mixed-practice models do. Courts have played a crucial role in shaping medico-legal law due to legislative gaps, often applying doctrines like *res ipsa loquitur* and vicarious liability, and awarding both compensatory and exemplary damages. The courts have to strive continuously to sustain and maintain such legitimacy.

7. Medical Malpractice Law in The United States: Structure, Impact and Legal Framework

Malpractice insurance plays a significant role. Physicians and particularly psychiatrists may be to a different standard than other defendants in a tort claim. "Very often in a claim for compensation arising out of medical negligence a plea is taken that it is a case of bona fide mistake which under certain circumstances may be excusable, but a mistake which would be tantamount to negligence cannot be pardoned. In the United States, patients typically initiate medical negligence claims with the assistance of an attorney. The legal process often includes pre-trial discovery, depositions, and sometimes a full trial, though many cases are resolved through out-of-court settlements. Unlike the UK, U.S. law also allows for punitive damages in certain cases. Generally, in tort law, suicide breaks the chain of causation, meaning the defendant is not liable for damages following the act. However, an exception exists for physicians: if medical malpractice leads to a patient's suicide, the physician may be held accountable for post-suicide damages, provided future losses are clearly demonstrated. Annually, approximately 85,000 medical malpractice lawsuits are filed in the U.S.,

9. AIR 1996 SC 2111.

although the actual number of negligence incidents is likely higher due to underreporting. In 2022, the average malpractice payout was around \$679,000. Despite the introduction of tort reform laws in states like Texas, designed to reduce healthcare costs and limit malpractice claims, studies indicate these measures have not significantly affected healthcare expenses, physician availability, or the practice of defensive medicine. Moreover, several jurisdictions have imposed caps on recoverable damages in malpractice cases, aiming to lower costs for hospitals and healthcare providers. (Saini, A. (2024), June 15.)

Although the law of medical malpractice differs significantly between nations, as a broad general rule liability follows when a health care practitioner does not show a fair, reasonable and competent degree of skill when providing medical care to a patient. The law that developed concerning medical malpractice is part of the more general body of law dealing with injuries to people or property, known as "tort law." (Budetti, P. P. (2005)

According to the Medical Malpractice Centre, in the United States, there are between 15,000 and 19,000 medical malpractice suits against doctors every year. (Brazier, Y. (2023), June 8.). According to a 2022 AMA (American Medical Association), analysis, nearly 30% of U.S. physicians face medical malpractice lawsuits, with risk increasing over time in practice. Basile, L. M. (2024, February 14). In 2017, the American Hospital Civil suits against the government are difficult due to sovereign immunity, but the federal government can still be held liable for harm caused by its employees. (Heller, T. A. (2017), October). In the United States, the high cost of legal proceedings and the complexity of litigation often pose significant obstacles to accessing justice. Although the legal system offers the possibility of substantial compensation, the financial and procedural demands can discourage many victims from filing claims.

8. Recent Legal Developments in the U.S

There has been a noticeable shift toward restricting punitive damages and placing caps on certain types of compensation, especially in medical malpractice cases. These reforms are largely driven by concerns over escalating litigation expenses and their impact on the healthcare and legal systems.

9. United Kingdom

Patients can file complaints with the NHS or directly pursue civil litigation. Medical negligence is a significant issue in the UK, with an estimated 237 million cases annually, including 712 to 1,708 resulting in death. Claims are typically pursued through the civil justice system and involve collecting medical records, expert opinions, and potentially going to court. These

claims seek compensation for both economic losses (like medical expenses and lost income) and non-economic damages (such as pain and suffering). In *Heath v. Berkshire Health Authority*(10), the Queen's Bench found the surgeon negligent for causing nerve damage due to lack of care but did not fault him for failing to warn the patient, as professional opinion supported not providing such a warning. Medical negligence not only affects individuals but also undermines trust in the healthcare system and increases costs, highlighting the need for improved patient safety measures. (Saini, A. (2024), June 15).

In the UK, medical negligence claims are typically pursued through the civil justice system. The Bolam(11) and Bolitho tests guide courts in assessing whether a healthcare professional acted within accepted medical standards. (Yagan, A. (2024), April 3).

In the U.S., *Hammontree v. Jenner* (1907) affirmed physicians' duty of care and patients' right to seek compensation for medical errors, influencing both legal standards and patient rights. (Noor, T. (2024)).

In the UK, where the NHS is the primary healthcare provider, medical malpractice compensation is taxpayer-funded. Recent data shows rising costs of clinical negligence, especially in England. While England relies on fault-based claims, Scotland is moving toward a no-fault compensation model, guided by the NHS Redress Act, 2006 and recommendations from the No Fault Compensation Review Group.

Proving medical negligence is complex, often requiring expert input to confirm a breach of care and resulting harm. Such cases can be emotionally taxing for both patients and healthcare providers. Beyond individual impact, medical negligence can erode public trust and raise healthcare costs, while also revealing areas needing improvement for better patient safety.

In many instances, medical negligence claims begin with a pre-litigation settlement process. During this stage, the involved legal teams exchange relevant evidence and engage in negotiations to reach a mutually agreeable settlement. The outcome typically depends on the strength of the case, the quality and sufficiency of the evidence presented, and the anticipated impact of the alleged negligence on the claimant's quality of life. This can include damages for medical costs, loss of earnings, pain and suffering, and future care needs. (Oh Parsons. (2024), November 27).

Medical negligence is a serious concern that demands accountability. While most healthcare professionals aim to provide quality care, lapses can occur. Understanding the legal framework and types of negligence helps reduce risks and enhance patient safety.

10. (1992) 3 Med LR 57.

11. 1957 1 WLR 582.

The differences between personal injury law in India and the United States significantly influence how victims pursue and obtain compensation. In India, the legal process tends to be slower, and the limited scope for punitive damages often results in lower compensation, even in cases of gross negligence. In contrast, the U.S. system, while offering faster resolutions and the possibility of punitive damages, presents challenges due to its complexity and high litigation costs, which can discourage some claimants.

For legal professionals, handling cross-border personal injury matters, understanding these legal and procedural distinctions is essential. It's not just about navigating two legal systems, but also about setting realistic expectations for clients. Factors such as dealing with insurers, estimating compensation, and evaluating the likely duration of a case, play a critical role in shaping legal strategies and guiding client decisions.

10. Lessons for India Regarding Medical Negligence and Compensatory Laws

The modern states have understood the importance of compensation given to the victims of crime and are accordingly taping up several victim compensation programmes as part of their universal welfare programmes. So many countries around the world have taken up the system of payment of compensation to victim of crimes. There is a fund for payment of compensation to crime victims in Canada, Australia, New Zealand, United Kingdom and India under the control of a board. As we too need such funds to support and reassure the victims that 'we care for them on a humanitarian ground'.

a) Streamline Redressal Mechanisms: India's current legal infrastructure for addressing medical negligence is often plagued by procedural delays, case backlogs, and complex litigation processes. Victims frequently endure prolonged trials, which can exacerbate their trauma and delay much-needed compensation. To address this, there is a critical need to reform and streamline redressal mechanisms. This includes establishing fast-track tribunals, encouraging digital grievance portals, and simplifying procedural laws to enable quicker resolution. Such efforts would not only reduce the burden on conventional courts but also ensure that victims receive justice in a timely and effective manner.

b) Establish No-Fault Liability Systems: Patients can receive compensation for medical damage under a no-fault compensation paradigm without having to prove that healthcare professionals were negligent. This system has been successfully implemented in countries like New Zealand and Sweden. In the Indian context, such a model could be particularly effective for specific, well-defined medical scenarios—such as surgical errors, childbirth complications, or adverse reactions to vaccines—where causation is clear. Introducing such mechanisms would provide prompt financial relief to victims, reduce litigation costs, and foster a more trust-based relationship between patients and medical professionals.

c) Institutionalize Medical Mediation and Ombudsman Services: Adversarial legal proceedings can strain doctor-patient relationships and prolong resolution. Therefore, India could benefit from institutionalizing alternative dispute resolution procedures such as medical mediation panels or appointing dedicated health ombudsmen at regional levels. These platforms would serve as independent, neutral bodies to hear complaints, facilitate mutual understanding, and recommend fair settlements without lengthy trials. Such an approach would make the grievance process more accessible, reduce legal expenses, and increase public trust in the healthcare system.

d) Standardize Compensation Guidelines: The absence of uniform guidelines for awarding compensation in medical negligence cases leads to inconsistencies and disparities in judicial decisions. Establishing standardized metrics—based on the severity of harm, loss of income, age of the victim, and impact on quality of life—would ensure equitable and predictable outcomes. Uniform compensation standards would also help judges, insurers, and legal practitioners to make informed decisions, thereby fostering fairness and transparency across all cases.

e) Enhance Regulatory Oversight and Accountability: Repeated incidents of medical negligence often stem from systemic failures and lax regulatory frameworks. Strengthening the authority, capacity, and independence of medical councils and oversight bodies is essential to improve accountability in healthcare. This involves regular audits, licensing reforms, mandatory reporting of adverse events, and stronger penalties for violations. By ensuring that healthcare institutions and professionals adhere to established medical standards, India can significantly reduce preventable errors and safeguard patients' rights more effectively.

11. Conclusion

Medical negligence has been a cause of concern for a long time. Medical negligence in India stems from various factors, including incompetence and inadequate resources. Addressing this issue requires a multifaceted approach:

- 1) Enhancing the quality and accessibility of healthcare infrastructure.
- 2) Promoting greater transparency within the healthcare system.
- 3) Ensuring healthcare professionals are properly trained and held accountable for their actions.

- 4) Raising awareness among patients, particularly in rural areas, about their healthcare rights.
- 5) Enforcing stricter laws and regulations related to medical negligence.
- 6) Offering financial support to the families of victims affected by medical negligence.

Meaningful change is possible through collective action and a commitment to reform.

Relationship between medical practitioner and patient is completely based on trust. However, nowadays commercialization is influencing this relationship and transforming this noble profession to a level of simple business/commerce. The arrivals of big hospitals have changed the entire structure of the medical profession as profitability and shareholders value maximization became the prime objective. The increasing importance of "Money" in medical practitioner has reduced the level of trust and patients (including their dependents) have started doubting the procedure, medicines etc. and to clarify this doubt, they started approaching the Court of Law in India.

"In my opinion, our health care system has failed when a doctor fails to treat an illness that is treatable."

- Kevin Alan Lee

India's legal system faces significant challenges, including judicial delays, corruption, and limited access to legal resources for many victims. These issues can hinder the pursuit of personal injury claims and reduce the likelihood of obtaining fair compensation. (Law Bhoomi. (2024), August 28).

India's existing medical compensation framework primarily depends on a fault-based system handled by courts and consumer forums, often resulting in delays and inconsistent outcomes. A comparative perspective suggests that integrating fault-based liability with alternative dispute resolution (ADR) and no-fault compensation for specific cases could improve both patient protection and accountability of medical professionals. Drawing lessons from international models can aid in building a more efficient, equitable, and patient-centric system.

References

1. Jain, N. (n.d.). Role of Indian laws relating to medical negligence in the 21st century [Doctoral synopsis]. Shodhgangotri. <https://shodhgangotri.inflibnet.ac.in:8443/jspui/bitstream/20.500.14146/13010/1/final%20synopsis%20-%20akshita.pdf>

2. Agarwal, A. K. (2014). Medical negligence and compensation in India: How much is just and effective? Indian Institute of Management Ahmadabad. <https://www.iima.ac.in/sites/default/files/rmpfiles/15451890132014-03-27.pdf>
3. Pareek, D. (2016, July 18). Medical negligence and law in India – An analysis. iPleaders. <https://blog.ipleaders.in/medical-negligence-law-india-analysis/>
4. Indian Bar Review. (2018).
5. Singh, G. P. (1994). Ratanlal & Dhirajlal: The law of torts (22nd ed.). Wadhwa & Company. p. 453.
6. Varghese, R. (2014). Medical negligence: The limits and limitations. Galgotias Journal of Legal Studies, 2(2), 1–XX. <https://doi.org/xxxxxxx>
7. Agrawal, A. (2016). Medical negligence: Indian legal perspective. PubMed Central. <https://pmc.ncbi.nlm.nih.gov/articles/PMC5109761/>
8. LawBhoomi. (2021, January 6). Negligence under law of torts: Meaning, essentials, remedies and defenses. <https://lawbhoomi.com/negligence-under-law-of-torts/>
9. Goel, R., Amarnath, M., James, R. I., & Amarnath, A. (n.d.). Legal mechanisms and procedures in alleged medical negligence: A review of Indian laws and judgments. National Medical Journal of India. <https://nmji.in/legal-mechanisms-and-procedures-in-alleged-medical-negligence-a-review-of-indian-laws-and-judgments/>
10. LawBhoomi. (2025, January 27). Medical negligence under Bharatiya Nyaya Sanhita. <https://lawbhoomi.com/medical-negligence-under-bharatiya-nyaya-sanhita/>
11. Drishti Judiciary. (2024, September 25). Medical Negligence Under BNS. <https://www.drishtijudiciary.com/bharatiya-nyaya-sanhita-&-indian-penal-code/medical-negligence-under-bns>
12. Batra, N. (2024, October 25). Impact of new criminal laws on prosecution for medical negligence. National Law School of India University. <https://www.nls.ac.in/blog/impact-of-new-criminal-laws-on-prosecution-for-medical-negligence/>
13. Dr. Suresh Gupta v. Govt of NCT Delhi, AIR 2004 SC 4091.

14. Manupatra Academy. (n.d.). 304A and medical negligence. <http://www.manupatracademy.com/legalpost/medical-negligence>
15. Kumar, N. (n.d.). Constitutional law of India. Pioneer Books. p. 360.
16. Indian Bar Review. (2009). Indian Bar Review, XXXVI(1-4), 179.
17. Law in India: Medico legal. (2017, September 1). SlideShare. <https://www.slideshare.net/slideshow/law-in-india-medico-legal/79338842>
18. Saini, V., & Kumar, M. (2021). Civil liabilities for medical negligence in India. *Journal of Advances and Scholarly Researches in Allied Education*, 18(7), 1-XX.
19. Bhargava, R., & Acharya, A. (2015). Political theory: An introduction (14th Impression). Dorling Kindersley (India). p. 56.
20. Kaur, D., & Kaur, S. (2023, July 14). Medical negligence and the Indian law. <https://www.criminallawjournal.org/article/39/2-2-11-366.pdf>
21. Rajan, A. (2024, January 30). Medical negligence and the new criminal law codes. Healthcare Executive. <https://www.healthcareexecutive.in/blog/medical-negligence>
22. Magon, D. (2024, February 17). Medical negligence under BNS (Bharatiya Nyaya Sanhita). JudiX. <https://www.myjudix.com/post/medical-negligence-under-bns-bharatiya-nyaya-sanhita>
23. Bolam v. Friern Hospital Management Committee (1957, UK). 1957 1 WLR 582.
24. Timms Solicitors. (n.d.). The Bolam 1957 1 WLR 582 test. <https://www.timms-law.com/personal-services/clinical-negligence/the-bolam-test/>
25. LegalKart. (2025, April 8). Medical negligence in India: Understanding the laws and legal procedures. <https://www.legalkart.com/legal-blog/medical-negligence-in-india-understanding-the-laws-and-legal-procedures>
26. Bhatia, K. L. (2016). Textbook on legal language and legal writing (3rd ed.). Universal Law Publication. p. 267.
27. Gandhi, B. M. (2016). Law of torts with law of statutory compensation and consumer protection (3rd ed.). Eastern Book Company. p. 294.

- 228 Legal, Ethical and Professional Challenges in Indian Medical Practice and Health Care
28. Indian Law Watch. (2024, November 15). New criminal code and medical negligence. <https://indianlawwatch.com/practice/medical-negligence-and-new-criminal-code/>
29. V. Kishan Rao v. Nikhil Super Speciality Hospital. 2010 AIR SCW 4252
30. Ganguly, B. R. (n.d.). Medical negligence – The judicial approach by Indian courts. The Association of Surgeons of India. <https://asiindia.org/medical-negligence-the-judicial-approach-by-indian-courts/>
31. Rai, L. (2018). Medical Negligence and Evolving Judicial Activism. *International Journal of Law and Social Sciences*, 4(1). <https://www.alliance.edu.in/ijls/ijls-2018/assets/documents/Medical-negligence-and-evolving-judicial-activism.pdf>
32. Saini, A. (2024, June 15). Medical negligence across continents: Comparing laws and policies in UK, USA and India. *International Journal of Science and Research (IJSR)*. <https://www.ijsr.net/archive/v13i6/SR24611154200.pdf>
33. Bal, B. S. (2009). An introduction to Medical Malpractice in the United States. *Clinical Orthopedics and Related Research*, 467(2), 339–347. <https://pmc.ncbi.nlm.nih.gov/articles/PMC2628513/>
34. Wikipedia contributors. (n.d.). Medical Malpractice. Wikipedia. https://en.wikipedia.org/wiki/Medical_malpractice
35. Budetti, P. P. (2005). Medical Malpractice Law in the United States. Edward E. and Helen T. Bartlett. <https://www.kff.org/wp-content/uploads/2013/01/medical-malpractice-law-in-the-united-states-report.pdf>
36. Brazier, Y. (2023, June 8). What is medical malpractice? *Medical News Today*. <https://www.medicalnewstoday.com/articles/248175>
37. Basile, L. M. (2024, February 14). The legal battlefield of medicine: Insights into medical malpractice nationwide. MDLinx. <https://www.mdlinx.com/exclusive/the-legal-battlefield-of-medicine-insights-into-medical-malpractice-nationwide/4kFG3xWnOWzdjqJBz78rNa>
38. Sigelman, K. (n.d.). Medical malpractice claims under federal law. Sigelman & Associates. <https://sigelmanassociates.com/medical-malpractice-statute-of-limitations-under-federal-law/>

39. Wikipedia contributors. (n.d.). Medical Malpractice in the United States. Wikipedia. https://en.wikipedia.org/wiki/Medical_malpractice_in_the_United_States
40. Saini, A. (2024, June 15). Medical negligence across continents: Comparing laws and policies in UK, USA and India. *International Journal of Science and Research (IJSR)*. <https://www.ijsr.net/archive/v13i6/SR24611154200.pdf>
41. Yagan, A. (2024, April 3). Understanding medical negligence in the UK: A brief overview. *Eye News*. <https://www.eyenews.uk.com/education/top-tips/post/understanding-medical-negligence-in-the-uk-a-brief-overview>
42. Noor, T. (2024). Medical negligence: A critical analysis. *Indian Journal of Legal Review*, 4(1), 1–15. <https://ijlr.iledu.in/wp-content/uploads/2024/05/V4I11121.pdf>
43. Goldberg, R. (2012). Medical Malpractice and Compensation in the UK. *Chicago-Kent Law Review*, 87(1), 131 <https://scholarship.kentlaw.iit.edu/cklawreview/vol87/iss1/7/>
44. Oh Parsons. (2024, November 27). How do you prove medical negligence in a court of law? <https://ohparsons.co.uk/how-do-you-prove-medical-negligence-in-a-court-of-law/>
45. Indian Bar Review. (2019).
46. Khattri, S. (2023, May 29). Stats on medical negligence cases in India in comparison to other countries. <https://www.delhimedicalnegligence.com/post/stats-on-medical-negligence-cases-in-india-in-comparison-to-other-countries>
47. Indian Bar Review. (2017).
48. Perayil, A. (n.d.). Critical analysis of legal regimes for medical negligence in India: Need for a comprehensive legal framework [Supervised research work]. <http://14.139.185.167:8080/jspui/bitstream/123456789/454/1/LM0320003-PHL.pdf>
49. LawBhoomi. (2024, August 28). Personal injury law: A comparative analysis between India and the USA. <https://lawbhoomi.com/personal-injury-law-a-comparative-analysis-between-india-and-the-usa/>
50. NHS Resolution Annual Reports.
51. Swedish Patient Insurance Act documentation.

- 230 Legal, Ethical and Professional Challenges in Indian Medical Practice and Health Care
52. American Medical Association – Malpractice Statistics and Reports.
53. Dr. Mayank Kumar, D. A. (2015). Medical Negligence: A Case Report, India Volume 4 Issue 9. International Journal of Science and Research (IJSR).
54. Gaur, K. D. (2016). Indian Penal Code (Vol. 6th Edition). Universal Law Publishing an imprint of LexisNexis.
55. Miraj Medical Centre Miraj through Medical Superintendent & Others v. Sunil Tukaram Danane & Another, 10897 of 2014 (High Court of Judicature at Bombay October 15, 2019).
56. Raju D. G. (2015). The Constitution of India.
57. Agrawal A. (2016). Medical negligence: Indian legal perspective. Annals of Indian Academy of Neurology, 19(Suppl 1), S9–S14.
58. Indian Bar Review, 44(3), 147.
59. Indian Bar Review, 45(1), 235.

