MEDICAL NEGLIGENCE AND PROFESSIONAL MISCONDUCT: EXAMINING THE ROLE OF THE NATIONAL MEDICAL COMMISSION IN INDIA

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ABSTRACT

Medical negligence and professional misconduct are significant concerns within the Indian healthcare system because the relationship between a medical practitioner and a patient involves a high degree of trust, professional skill and responsibility. Medical practitioners are expected to exercise reasonable competence, follow accepted professional standards, maintain confidentiality, obtain appropriate consent and act in the best interests of patients. Failure to comply with these obligations may result in civil, criminal, consumer and disciplinary consequences. The National Medical Commission (NMC), established under the National Medical Commission Act, 2019, represents a major institutional change in the regulation of medical education, registration and professional ethics in India.This research examines the role of the NMC and its Ethics and Medical Registration Board (EMRB) in regulating professional conduct and addressing professional or ethical misconduct by registered medical practitioners. The study analyses the statutory framework under the National Medical Commission Act, 2019, the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, and the regulatory developments concerning the NMC Registered Medical Practitioner (Professional Conduct) Regulations, 2023. The research also distinguishes medical negligence from professional misconduct and examines the circumstances in which negligent medical treatment may attract civil, criminal, consumer and disciplinary liability.The study further analyses important judicial decisions including *Indian Medical Association v. V.P. Shantha*, *Jacob Mathew v. State of Punjab*, *Samira Kohli v. Dr. Prabha Manchanda*, *Kusum Sharma v. Batra Hospital & Medical Research Centre* and *Martin F. D'Souza v. Mohd. Ishfaq*. These decisions demonstrate the judicial effort to balance patient protection with the need to prevent unjustified proceedings against medical professionals. The study identifies challenges relating to overlapping remedies, disciplinary mechanisms, implementation of professional standards and the transitional position concerning the 2023 professional conduct regulations. It concludes that

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effective medical regulation requires a transparent, accessible and accountable disciplinary framework while preserving professional independence and ensuring patient safety.

Keywords: Medical Negligence, Professional Misconduct, National Medical Commission, Medical Ethics, EMRB, Patient Rights, Medical Practitioners, Disciplinary Proceedings.

CHAPTER 1

INTRODUCTION

Medical negligence and professional misconduct are important issues in the regulation of the medical profession in India. The medical profession involves a relationship of trust between a medical practitioner and a patient, where the patient depends upon the knowledge, skill and professional judgment of the practitioner. Therefore, a medical practitioner is expected to exercise reasonable care, competence and diligence while providing medical treatment. Failure to comply with the required standard of care may result in medical negligence, while violation of professional or ethical obligations may constitute professional misconduct.The regulation of the medical profession in India has undergone significant institutional changes. Earlier, the Medical Council of India (MCI) functioned as the principal regulatory body under the Indian Medical Council Act, 1956. The MCI was subsequently replaced by the **National Medical Commission (NMC)** under the **National Medical Commission Act, 2019**. The NMC Act seeks to ensure an adequate supply of high-quality medical professionals, promote equitable and universal healthcare, encourage medical education and research, and ensure that medical professionals maintain high ethical standards.[2]

Medical negligence is not established merely because a patient suffers an injury or because a particular treatment does not produce the expected result. Medical treatment involves professional judgment and, in many situations, more than one medically acceptable course of action may exist. The Supreme Court in ***Jacob Mathew v. State of Punjab*, (2005) 6 SCC 1**, made an important distinction between civil negligence and criminal negligence in the medical profession. The Court observed that criminal liability should arise only where the degree of negligence is sufficiently high and not merely because an error of judgment or an unsuccessful

[2] National Medical Commission Act, 2019, No. 30 of 2019, Statement of Objects and Reasons; see also §§ 10–11

treatment has occurred.[3]

Professional misconduct is a broader concept. It includes conduct by a medical practitioner that violates professional ethics, statutory regulations or accepted standards of medical practice. Matters such as breach of confidentiality, failure to maintain medical records, improper advertising, unethical relationships with patients, violation of informed consent requirements and other violations of professional obligations may attract disciplinary proceedings.The regulation of professional conduct has traditionally been governed by the **Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002**. These regulations prescribe standards of professional conduct and enumerate various forms of professional misconduct.[4] With the establishment of the NMC, the **Ethics and Medical Registration Board (EMRB)** became an important component of the regulatory structure. The EMRB is concerned with professional ethics, medical registration and disciplinary matters concerning registered medical practitioners.

The **National Medical Commission Act, 2019** provides a framework for dealing with professional or ethical misconduct. State Medical Councils have an important role at the initial stage of disciplinary proceedings, while the EMRB exercises appellate jurisdiction over disciplinary action taken by State Medical Councils.[5] This structure attempts to provide both decentralised regulation and national-level oversight.

An important development in this area was the notification of the **National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations, 2023**. However, the regulations were subsequently placed in abeyance by the NMC on **23 August 2023**, and the NMC stated that the 2002 Regulations would remain applicable until further notification.[6] This regulatory development makes the present legal framework particularly significant for examination.

Medical negligence may give rise to different forms of legal consequences depending upon the facts of a particular case. A patient may seek compensation through appropriate civil or consumer proceedings, while serious cases may also raise questions of criminal liability.

[3] Jacob Mathew v. State of Punjab, (2005) 6 SCC 1
[4] Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, chs. 1–8
[5] National Medical Commission Act, 2019, § 30
[6] National Medical Commission, National Medical Commission Registered Medical Practitioner (Professional Conduct) (Amendment) Regulations, 2023, Notification dated 23 August 2023

Independently, professional misconduct may result in disciplinary proceedings before the appropriate medical regulatory authority. Thus, medical negligence and professional misconduct may overlap in certain situations but cannot be treated as identical concepts.

1.1 Need for the Study

The increasing importance of patient rights, medical accountability and professional ethics has made the regulation of medical practitioners an important area of legal research. Patients require effective remedies when medical treatment falls below the legally recognised standard, while medical professionals require protection against complaints based merely on unsuccessful treatment or unavoidable medical complications.

The study is therefore necessary to examine whether the existing NMC regulatory framework adequately balances **patient protection, professional accountability and the legitimate autonomy of medical practitioners**.

1.2 Significance of the Study

The significance of this study lies in examining the changing regulatory structure from the Medical Council of India to the National Medical Commission and analysing the role of the NMC and its Ethics and Medical Registration Board in maintaining professional standards.

The study also attempts to distinguish medical negligence from professional misconduct and examines how courts and regulatory authorities approach these issues.

1.3 Objectives of the Study

1. To examine the concept and legal principles relating to medical negligence in India.
2. To distinguish medical negligence from professional misconduct.
3. To analyse the legal and regulatory framework governing medical professionals under the National Medical Commission Act, 2019.
4. To examine the role of the National Medical Commission and Ethics and Medical Registration Board in regulating professional conduct.

5. To analyse important judicial decisions concerning medical negligence and professional misconduct.

1.4 Research Questions

1. What is the distinction between medical negligence and professional misconduct under Indian law?

2. What is the role of the National Medical Commission in regulating professional misconduct?

3. How effective is the disciplinary mechanism involving State Medical Councils and the Ethics and Medical Registration Board?

4. How have Indian courts developed the principles governing medical negligence?

5. What reforms are necessary to strengthen medical accountability while protecting medical professionals from unjustified proceedings?

1.5 Hypothesis

The existing Indian legal and regulatory framework provides mechanisms for addressing medical negligence and professional misconduct; however, overlapping remedies, procedural difficulties and uncertainty arising from changes in professional conduct regulations may affect the effectiveness of medical regulation and access to appropriate remedies.

1.6 Research Methodology

The present study adopts a **doctrinal legal research methodology**. The research primarily relies upon primary legal sources such as the Constitution of India, the National Medical Commission Act, 2019, applicable professional conduct regulations and judicial decisions of the Supreme Court of India.

Secondary sources include books, research articles, official reports, publications of the National Medical Commission and other relevant academic materials relating to medical negligence, professional ethics and medical regulation.

1.7 Scope of the Study

The study primarily focuses on medical negligence and professional misconduct in the context of modern medicine in India. Particular attention is given to the regulatory role of the National Medical Commission, the Ethics and Medical Registration Board and State Medical Councils. The study also examines the judicial principles developed by the Supreme Court regarding medical negligence, informed consent, professional responsibility and criminal liability of medical practitioners.

CHAPTER 2

LEGAL AND REGULATORY FRAMEWORK GOVERNING MEDICAL NEGLIGENCE AND PROFESSIONAL MISCONDUCT IN INDIA

2.1 Constitutional Framework

The legal framework governing medical negligence and professional misconduct in India is founded upon constitutional principles, statutory provisions, professional regulations and judicial decisions. Although the Constitution of India does not specifically define medical negligence or professional misconduct, constitutional rights have an important bearing on the regulation of healthcare and the protection of patients. Article 14 guarantees equality before the law and equal protection of laws, requiring regulatory authorities to act fairly and without arbitrariness while dealing with complaints against medical practitioners.[7] Article 21 guarantees the right to life and personal liberty and has been interpreted by the Supreme Court to include various aspects of human dignity and healthcare. The constitutional framework therefore requires a balance between protection of patients and protection of medical professionals from arbitrary disciplinary action. Disciplinary proceedings against doctors must consequently comply with principles of natural justice and provide the concerned practitioner with a reasonable opportunity of being heard.

2.2 National Medical Commission Act, 2019

The **National Medical Commission Act, 2019** represents a major transformation in the regulation of the medical profession in India. The Act replaced the Indian Medical Council

[7] INDIA CONST. arts. 14, 21.

Act, 1956 and established the National Medical Commission as the principal statutory regulatory authority for modern medicine in India.[8] The objective of the legislation is not limited to regulating medical education but also includes ensuring the availability of adequate and high-quality medical professionals, promoting equitable and universal healthcare, encouraging medical research and ensuring that medical professionals maintain high ethical standards.[9]The Act therefore provides an institutional framework within which medical education, registration, professional conduct and medical ethics are regulated.

The establishment of the NMC also introduced a more structured regulatory system through autonomous boards dealing with different aspects of medical education and professional regulation. The Act provides for the Undergraduate Medical Education Board, Post-Graduate Medical Education Board, Medical Assessment and Rating Board and the **Ethics and Medical Registration Board (EMRB)**.[10] Among these bodies, the EMRB is particularly relevant to professional misconduct because it is concerned with professional ethics, registration and regulation of the conduct of medical practitioners.

2.3 Ethics and Medical Registration Board

The **Ethics and Medical Registration Board** occupies an important position in the NMC regulatory structure. Its functions include regulating professional conduct and promoting medical ethics among registered medical practitioners. It is also responsible for maintaining the National Register of licensed medical practitioners in accordance with the statutory framework.[11] The maintenance of a central register is significant because registration is an essential requirement for the lawful practice of modern medicine. Consequently, disciplinary action affecting registration may have a direct impact upon the professional status and career of a medical practitioner.

The EMRB also provides an appellate mechanism in relation to disciplinary decisions taken by State Medical Councils. This arrangement creates a regulatory structure in which complaints may initially be examined at the State level while allowing review at the national level. Such a mechanism is intended to promote accountability, consistency and professional standards while

[8] National Medical Commission Act, 2019, No. 30 of 2019 (India)
[9] Id., Statement of Objects and Reasons
[10] Id. § 16
[11]Id. §§ 16, 27–28

ensuring that medical practitioners have an avenue of appeal against disciplinary decisions.

2.4 State Medical Councils and Disciplinary Mechanism

State Medical Councils constitute an important part of the regulatory framework for professional misconduct. Complaints relating to professional or ethical misconduct may be considered by the appropriate State Medical Council in accordance with the applicable law and regulations. The State-level mechanism is significant because complaints generally arise from professional activities carried out within a particular State and therefore require an accessible local disciplinary authority.

The National Medical Commission Act, 2019 provides for an appellate structure in relation to disciplinary proceedings. Where a medical practitioner is aggrieved by an order of a State Medical Council, an appeal may be made to the Ethics and Medical Registration Board in accordance with the Act.[12] This arrangement can broadly be understood as a system of **initial disciplinary examination at the State level followed by national-level appellate supervision**. The mechanism seeks to ensure that professional misconduct is not left without an effective regulatory remedy while also providing procedural safeguards to medical practitioners.

2.5 Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002

The **Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002** constituted the principal professional code governing registered medical practitioners under the earlier regulatory framework and continues to be relevant to the present regulatory position. The Regulations prescribe standards relating to professional conduct, ethical responsibilities and the relationship between medical practitioners and patients.[13]They deal with several aspects of professional practice, including confidentiality, informed consent, maintenance of medical records, professional relationships, advertising and other forms of professional conduct.

Chapter 8 of the Regulations specifically deals with professional misconduct. It provides a

[12]Id. § 30
[13]Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002

mechanism through which complaints concerning professional misconduct may be brought before the appropriate Medical Council. The concerned practitioner is required to be given an opportunity to explain or defend the allegations before disciplinary action is taken.[14] The Regulations therefore recognise that professional misconduct is not merely a matter of private disagreement between a patient and a doctor but is also a matter of professional regulation affecting the standards of the medical profession as a whole.

2.6 National Medical Commission Registered Medical Practitioner Regulations, 2023

After the establishment of the National Medical Commission, the Commission introduced the **National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations, 2023**, with the intention of establishing an updated framework governing the professional conduct of registered medical practitioners. The 2023 Regulations sought to provide contemporary standards for professional behaviour and ethical medical practice. However, the regulatory position changed shortly after their notification. On **23 August 2023**, the National Medical Commission issued a notification placing the 2023 professional conduct regulations in abeyance. The notification stated that the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 would remain applicable until further notification.[15]

This development is significant from the perspective of the present study because it demonstrates the transitional nature of the professional conduct framework under the NMC. Consequently, an examination of professional misconduct in India requires consideration of both the statutory framework under the NMC Act, 2019 and the continuing applicability of the 2002 professional conduct regulations.

2.7 Legal Concept of Medical Negligence

Medical negligence is generally understood as a failure by a medical practitioner to exercise the degree of care and skill reasonably expected from a competent medical professional in similar circumstances. The mere occurrence of an adverse medical result does not automatically establish negligence. Medical treatment involves professional judgment, and

[14] Id. ch. 8
[15] National Medical Commission, National Medical Commission Registered Medical Practitioner (Professional Conduct) (Amendment) Regulations, 2023, Notification dated 23 August 2023

different treatment options may sometimes be medically acceptable depending upon the circumstances of a particular patient.

The Supreme Court in ***Jacob Mathew v. State of Punjab*** explained the importance of distinguishing ordinary negligence from criminal negligence in cases involving medical professionals.[16] The Court recognised that a medical professional should not be held criminally liable merely because treatment was unsuccessful or because the practitioner made an error of judgment. Criminal liability requires a substantially higher degree of negligence. This principle seeks to ensure that medical professionals are not subjected to criminal prosecution merely because a treatment did not produce the desired outcome.

The principle of reasonable professional skill was also considered by the Supreme Court in ***Kusum Sharma v. Batra Hospital & Medical Research Centre***, where the Court emphasised that a medical practitioner is expected to possess and exercise a reasonable degree of skill and knowledge.[17]A doctor cannot be considered negligent merely because another medical practitioner might have adopted a different treatment method. The standard is therefore one of reasonable professional competence rather than perfection.

2.8 Medical Negligence and Consumer Protection Law

Medical negligence may also have implications under consumer protection law. The Supreme Court in ***Indian Medical Association v. V.P. Shantha*** considered whether medical services fall within the concept of "service" under consumer protection legislation.[18] The Court held that medical services rendered for consideration could fall within the scope of consumer protection law, subject to the principles laid down in the judgment. The decision significantly expanded the legal remedies available to patients who alleged deficiency in medical services.

The decision is important because it established that a patient may, in appropriate circumstances, seek a remedy through consumer law in addition to other legal or regulatory mechanisms. However, the existence of a medical injury or an unsuccessful treatment does not by itself establish deficiency in service. The applicable legal standard must still be satisfied on the facts of each case.

[16]Jacob Mathew v. State of Punjab, (2005) 6 SCC 1
[17]Kusum Sharma v. Batra Hospital & Medical Research Centre, (2010) 3 SCC 480
[18]Indian Medical Association v. V.P. Shantha, (1995) 6 SCC 651

2.9 Criminal Liability for Medical Negligence

Medical negligence may, in appropriate circumstances, result in criminal liability; however, criminal negligence requires a higher degree of culpability than ordinary civil negligence. The Supreme Court in ***Dr. Suresh Gupta v. Government of NCT of Delhi*** considered the threshold required for criminal liability arising from alleged medical negligence.[19]The Court emphasised that a medical practitioner should not ordinarily face criminal prosecution merely because a patient has suffered an adverse outcome.

The principle was subsequently examined in greater detail by the Constitution Bench in ***Jacob Mathew v. State of Punjab***. The Court held that criminal negligence must involve a sufficiently high degree of negligence and that ordinary negligence or an error of judgment would not ordinarily justify criminal prosecution.[20]This distinction is particularly important because criminal proceedings may have serious consequences for the professional reputation and career of medical practitioners.

2.10 Informed Consent and Patient Autonomy

Informed consent is an essential element of ethical medical practice. A patient ordinarily has the right to receive sufficient information regarding the nature of a proposed treatment, its material risks and relevant alternatives before deciding whether to undergo the treatment. The principle recognises the autonomy of the patient in making decisions concerning their own body and healthcare.

In ***Samira Kohli v. Dr. Prabha Manchanda***, the Supreme Court examined the scope of consent in medical treatment and emphasised the importance of obtaining appropriate consent before undertaking medical procedures.[21]The Court distinguished consent for a particular procedure from consent for an entirely different procedure, subject to circumstances in which additional intervention may be medically necessary. The judgment demonstrates that professional responsibility extends beyond the technical performance of treatment and includes respect for patient autonomy.

[19]Dr. Suresh Gupta v. Government of NCT of Delhi, (2004) 6 SCC 422
[20] Jacob Mathew v. State of Punjab, (2005) 6 SCC 1
[21]Samira Kohli v. Dr. Prabha Manchanda, (2008) 2 SCC 1

2.11 Medical Records and Professional Responsibility

Maintenance of medical records is an important component of professional responsibility. Medical records contain information relating to the patient's medical history, diagnosis, investigations, treatment and clinical decisions. They may also become important evidence when a dispute concerning medical treatment arises. The professional conduct framework places obligations upon medical practitioners regarding the preparation and preservation of medical records.[22]

Failure to maintain appropriate medical records may raise questions concerning professional misconduct and may also make it difficult to determine whether appropriate medical care was provided. Proper documentation therefore serves two purposes: it protects the patient's interest by ensuring continuity and transparency of treatment and also protects the medical practitioner by providing evidence of the treatment and professional decisions undertaken.

2.12 Principles of Natural Justice in Disciplinary Proceedings

Disciplinary proceedings against medical practitioners must be conducted in accordance with the principles of natural justice. A medical practitioner facing an allegation of professional misconduct should receive adequate notice of the complaint and a reasonable opportunity to respond to the allegations. The disciplinary authority should consider the available material objectively and provide a reasoned decision.

These procedural safeguards are particularly important because disciplinary action may have significant consequences for a medical practitioner's registration and professional career. At the same time, procedural fairness should not prevent genuine complaints from being effectively investigated. A proper disciplinary mechanism must therefore balance the interests of complainants and medical practitioners.

2.13 Regulatory Remedies and Judicial Remedies

The regulatory mechanism established under the NMC framework operates alongside, rather than completely replacing, other legal remedies. Professional disciplinary proceedings primarily concern the ethical and professional conduct of medical practitioners, whereas courts

[22] Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, Regulation 1.3

and consumer authorities may determine questions of compensation, civil liability or criminal responsibility according to the relevant law.

Consequently, medical negligence may potentially have different legal consequences depending upon the facts of the case. A patient may seek compensation under applicable civil or consumer law, while serious negligence may raise questions of criminal liability. Independently, conduct that violates professional standards may result in disciplinary proceedings before the State Medical Council or appropriate NMC authority. The distinction between these mechanisms is important because each forum performs a different legal function.

CHAPTER 3

MEDICAL NEGLIGENCE AND PROFESSIONAL MISCONDUCT: JUDICIAL APPROACH IN INDIA

Medical negligence and professional misconduct are important aspects of medical law in India. Medical negligence generally refers to failure of a medical practitioner to exercise reasonable care and skill, whereas professional misconduct involves violation of professional or ethical standards applicable to medical practitioners. Indian courts have developed important principles to determine when medical treatment can result in legal or disciplinary liability.

3.1 Medical Negligence and Standard of Care

Medical negligence cannot be established merely because a patient has suffered an injury or because treatment has not produced the expected result. The conduct of the medical practitioner must be examined according to the standard of a reasonably competent medical professional in similar circumstances. In ***Jacob Mathew v. State of Punjab***, the Supreme Court held that medical professionals should not ordinarily be held criminally liable merely because treatment was unsuccessful or an error of judgment occurred.[23]

Similarly, in ***Kusum Sharma v. Batra Hospital & Medical Research Centre***, the Supreme Court held that a medical practitioner is expected to possess and exercise a reasonable degree of skill and knowledge. A doctor cannot be held negligent merely because another method of

[23]Jacob Mathew v. State of Punjab, (2005) 6 SCC 1

treatment could have been adopted.[24]

3.2 Civil and Criminal Medical Negligence

Medical negligence may result in civil liability, consumer liability or, in serious cases, criminal liability. However, the degree of negligence required for criminal liability is considerably higher than that required for ordinary civil negligence.

In ***Dr. Suresh Gupta v. Government of NCT of Delhi***, the Supreme Court recognised that ordinary negligence should not automatically result in criminal prosecution of a medical professional.[25]This principle was subsequently affirmed by the Constitution Bench in ***Jacob Mathew v. State of Punjab***, which held that criminal negligence requires a higher degree of negligence.[26]

3.3 Medical Services and Consumer Protection

The Supreme Court in ***Indian Medical Association v. V.P. Shantha*** examined whether medical services fall within the scope of consumer protection law. The Court held that medical services rendered for consideration could fall within the definition of "service", subject to the principles laid down in the judgment.[27]

The decision provided patients with an additional legal remedy in appropriate cases involving deficiency in medical services and contributed significantly to the development of medical negligence jurisprudence in India.

3.4 Informed Consent

Informed consent is an important part of medical ethics and patient autonomy. A patient should ordinarily be provided adequate information regarding the proposed treatment before consenting to it.

In ***Samira Kohli v. Dr. Prabha Manchanda***, the Supreme Court examined the scope of consent in medical treatment and emphasised that consent for one medical procedure cannot ordinarily

[24]Kusum Sharma v. Batra Hospital & Medical Research Centre, (2010) 3 SCC 480
[25]Dr. Suresh Gupta v. Government of NCT of Delhi, (2004) 6 SCC 422
[26]Jacob Mathew v. State of Punjab, (2005) 6 SCC 1
[27]Indian Medical Association v. V.P. Shantha, (1995) 6 SCC 651

be treated as consent for an entirely different procedure.[28]The judgment established the importance of respecting the patient's autonomy while recognising limited circumstances requiring additional medical intervention.

3.5 Professional Misconduct

Professional misconduct is broader than medical negligence and includes conduct that violates professional and ethical standards. It may include breach of confidentiality, failure to maintain medical records, unethical advertising and other violations of professional obligations.

The **Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002** contain provisions concerning professional conduct and disciplinary action. Chapter 8 specifically deals with professional misconduct and provides for disciplinary proceedings against medical practitioners.[29]

Under the present NMC framework, the State Medical Councils have an important role in dealing with complaints relating to professional or ethical misconduct, with appellate mechanisms available under the **National Medical Commission Act, 2019**.[30]

3.6 Protection of Medical Professionals

Indian courts have also recognised the need to protect doctors from frivolous proceedings. In ***Martin F. D'Souza v. Mohd. Ishfaq***, the Supreme Court expressed concern regarding proceedings against medical professionals merely because treatment had not produced the desired result.[31]

Similarly, *Kusum Sharma* emphasised that medical treatment should not be judged solely with the benefit of hindsight.[32] These decisions demonstrate the judicial attempt to balance **patient rights and medical accountability with protection of medical professionals from unjustified liability**.

[28]Samira Kohli v. Dr. Prabha Manchanda, (2008) 2 SCC 1
[29]Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, ch. 8
[30]National Medical Commission Act, 2019, § 30
[31]Martin F. D'Souza v. Mohd. Ishfaq, (2009) 3 SCC 1
[32]Kusum Sharma v. Batra Hospital & Medical Research Centre, (2010) 3 SCC 480

3.7 Judicial Approach

The judicial approach in India therefore establishes that an unsuccessful medical outcome does not automatically constitute negligence. Courts examine whether the medical practitioner failed to exercise the reasonable degree of care and skill expected in the circumstances. Criminal liability requires a substantially higher degree of negligence, while professional misconduct is examined primarily through the applicable disciplinary and ethical framework.

The decisions in ***Indian Medical Association v. V.P. Shantha***, ***Jacob Mathew v. State of Punjab***, ***Samira Kohli v. Dr. Prabha Manchanda*** and ***Kusum Sharma v. Batra Hospital & Medical Research Centre*** have significantly contributed to the development of Indian medical jurisprudence. Together, they demonstrate the need to protect patients from negligent and unethical medical practice while ensuring fairness to medical professionals.

CHAPTER 4

ROLE OF THE NATIONAL MEDICAL COMMISSION IN REGULATING MEDICAL NEGLIGENCE AND PROFESSIONAL MISCONDUCT IN INDIA

4.1 The National Medical Commission (NMC), established under the National Medical Commission Act, 2019, is the principal statutory body responsible for regulating medical education, professional standards and medical ethics in India. It replaced the Medical Council of India with the objective of strengthening transparency, accountability and the quality of medical regulation.[33] Its role in addressing medical negligence and professional misconduct primarily involves establishing ethical standards and overseeing the professional disciplinary framework.

4.2 Regulatory Role of the National Medical Commission

The NMC regulates the medical profession through its statutory boards, particularly the Ethics and Medical Registration Board (EMRB). Its responsibilities include maintaining professional standards, establishing a framework for ethical conduct and supervising the implementation of relevant statutory provisions.[34] However, the NMC's disciplinary functions must be distinguished from the powers of courts and consumer commissions, which determine legal

[33] The National Medical Commission Act, 2019, No. 30 of 2019
[34] Id., §§ 10, 16 and 27

liability and compensation in medical negligence cases.

4.3 Role of the Ethics and Medical Registration Board

Under Section 27 of the NMC Act, 2019, the EMRB is responsible for regulating professional conduct, promoting medical ethics and maintaining the National Registers of medical practitioners. It also coordinates with State Medical Councils to ensure compliance with ethical standards and exercises appellate jurisdiction over disciplinary decisions under Section 30.[35]

4.4 Role of State Medical Councils

State Medical Councils play an important role in investigating allegations of professional misconduct and initiating disciplinary proceedings under their respective statutory powers. Section 30 of the NMC Act recognises their disciplinary role and provides for an opportunity of hearing before disciplinary action is taken.[36]This decentralised arrangement enables professional complaints to be addressed at the state level, subject to the statutory appellate framework.

4.5 Professional Conduct and Ethical Standards

Professional misconduct includes violations of ethical duties such as improper disclosure of confidential information, failure to maintain prescribed medical records, unethical advertising and issuing improper medical certificates. The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, establish standards governing these responsibilities.[37]

Although the NMC introduced new professional conduct regulations in August 2023, they were subsequently placed in abeyance through a notification dated 23 August 2023. The same notification expressly adopted and restored the operation of the 2002 Regulations until further notification.[38]

[35] Id., § 27
[36] Id., § 30
[37] Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, Regulations 1.3, 2.2, 6.1 and Chapter 7
[38]National Medical Commission Registered Medical Practitioners (Professional Conduct) (Amendment) Regulations, 2023, Notification No. R-12013/01/2022/Ethics, dated 23 August 2023

4.6 Disciplinary Proceedings and Appellate Mechanism

Section 30 establishes an appellate framework for professional and ethical misconduct. A medical practitioner aggrieved by disciplinary action taken by a State Medical Council may appeal to the EMRB. A further appeal against the EMRB's decision may be made to the NMC in accordance with the Act.[39]

The appellate mechanism is intended to provide an additional level of scrutiny and promote consistency in professional disciplinary decisions. However, disciplinary proceedings must also observe procedural fairness and provide the practitioner with an appropriate opportunity to respond.

4.7 Role of the NMC in Medical Negligence

Medical negligence and professional misconduct may arise from the same incident, but their legal consequences are different. A negligent act may result in civil liability, consumer proceedings or criminal prosecution, depending on the circumstances. The professional regulatory framework separately examines whether the practitioner's conduct violates applicable ethical standards.

Consequently, disciplinary action by a medical regulatory authority does not automatically establish liability for compensation or criminal punishment. These matters are determined through the appropriate judicial or statutory proceedings.[40]

4.8 Challenges in Medical Regulation

Despite the statutory framework, certain issues require examination. The division of responsibilities between the NMC, EMRB and State Medical Councils may create procedural difficulties for complainants unfamiliar with the regulatory structure. Differences in state-level disciplinary procedures may also affect the consistency of complaint handling.

Furthermore, the continued operation of the 2002 Regulations highlights the importance of maintaining ethical standards that respond to developments in modern healthcare. Clear

[39]The National Medical Commission Act, 2019, § 30(3)–(4)
[40]Jacob Mathew v. State of Punjab, (2005) 6 SCC 1; Indian Medical Association v. V.P. Shantha, (1995) 6 SCC 651

complaint procedures, transparent disciplinary decisions and effective coordination between regulatory authorities are important considerations for strengthening professional accountability.

The National Medical Commission plays an important role in maintaining medical ethics and professional accountability in India. Through the EMRB and State Medical Councils, the statutory framework provides mechanisms for regulating professional conduct and reviewing disciplinary decisions. Nevertheless, effective medical regulation requires a clear distinction between professional misconduct and medical negligence, together with transparent disciplinary procedures and appropriate protection of patients' rights.

CHAPTER 5

SUGGESTIONS AND CONCLUSION

5.1 Suggestions

The regulatory framework governing medical negligence and professional misconduct in India should be strengthened to ensure both patient protection and fair treatment of medical professionals. The National Medical Commission and State Medical Councils should establish clear and easily accessible procedures for filing and tracking complaints relating to professional misconduct. This would improve transparency and enable patients to understand the appropriate authority before initiating proceedings.

There is also a need for greater uniformity in disciplinary proceedings conducted by State Medical Councils. Clear procedural standards and time limits may help prevent unnecessary delays in deciding complaints. The appellate mechanism involving the Ethics and Medical Registration Board and the National Medical Commission should function effectively so that disciplinary decisions are subject to appropriate review.

Professional ethics should form an important part of continuing medical education. Medical practitioners should receive regular training regarding informed consent, confidentiality, maintenance of medical records, communication with patients and other professional responsibilities. This can help prevent conduct that may amount to professional misconduct.

The distinction between medical negligence and professional misconduct should also be made

clear to patients and medical practitioners. Every unsuccessful medical treatment should not automatically be treated as negligence, while genuine breaches of professional duties should receive appropriate disciplinary attention. The principles laid down by the Supreme Court in *Jacob Mathew v. State of Punjab* and *Kusum Sharma v. Batra Hospital & Medical Research Centre* should continue to guide the assessment of negligence.The NMC should also ensure that its regulatory framework keeps pace with developments in modern healthcare. Emerging issues such as telemedicine, digital medical records, online consultations and technology-assisted healthcare require appropriate ethical standards and accountability mechanisms. A periodically updated professional conduct framework can strengthen public confidence in medical regulation.

5.2 Conclusion

Medical negligence and professional misconduct are important areas of healthcare regulation because they directly concern patient safety, professional responsibility and public confidence in the medical profession. The National Medical Commission Act, 2019 has established a statutory framework through the NMC, Ethics and Medical Registration Board and State Medical Councils for maintaining professional and ethical standards.

At the same time, medical negligence cannot be determined merely from an unsuccessful treatment or an adverse medical outcome. The standard of reasonable care and professional skill remains central to determining negligence. The Supreme Court has repeatedly emphasised the need to distinguish genuine negligence from a mere error of judgment or an unsuccessful result.The effectiveness of the NMC framework therefore depends not only on the existence of statutory powers but also on transparent disciplinary procedures, timely disposal of complaints, uniform professional standards and effective protection of patient rights. As healthcare continues to develop, medical regulation must also evolve to address new ethical and professional challenges. A balanced regulatory system should ultimately ensure that **"patient safety and professional responsibility remain the two pillars of ethical healthcare."**