DUTY OF CARE AND LIABILITY IN MEDICAL NEGLIGENCE

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ABSTRACT

Medical negligence lawsuits has arisen as a major source of concern in India's healthcare system, especially given the growing number of malpractice claims. Despite the legal framework provided by the Consumer Protection Act of 1986 and the Medical Council of India regulations, victims of medical malpractice continue to face significant hurdles in obtaining justice. This research investigates the various problems encountered in medical negligence lawsuits in India, including legal, procedural, and sociological aspects. The first section of the paper discusses the idea of medical negligence as well as the legal regulations that govern it. It goes into greater depth about how difficult it is to prove negligence, which necessitates a thorough understanding of medical norms and processes. A critical review of medical experts' duties and testimony is offered, emphasizing how difficult it can be to obtain unbiased expert opinions. The report also tackles the lengthy and often difficult legal procedures that victims must go through, such as a lack of specialised tribunals and a backlog of cases in the judicial system.

The piece also explores how the stigma surrounding medical malpractice lawsuits prevents victims from seeking justice. It also highlights the danger of discrimination in the court system, as well as the authority of the medical community. To expedite justice for victims of medical negligence, the paper concludes with recommendations to improve public understanding of the law, reduce the litigation process, and establish specialised tribunals. This study aims to advance the existing discourse about improving the medical negligence litigation environment in India by advocating for changes that ensure responsibility within the healthcare system and protect patients' rights.

Keywords: Medical negligence, litigation, India, healthcare, consumer protection, legal challenges, patient rights.

INTRODUCTION

Medical or clinical negligence is described as "failure by a healthcare professional to exercise a reasonable standard of care". When a doctor fails to do his work truly and with utmost care, causing significant harm or even death in difficult conditions, the doctor/medical practitioner is considered to have been medically negligent or committed malpractice. The distinction between medical malpractice and medical negligence is that all medical malpractices are considered medical negligence, whereas all medical negligence is not considered medical malpractice.

Medical negligence is a phenomenon that can be linked to man's general laziness or carelessness, but in a more serious form because negligence/carelessness in the case of the human body can result in death. The genesis of medical negligence legislation, or "legal punishment" for medical carelessness, can be traced back to the world's earliest legal text, "The Code of Hammurabi,"[1] a comprehensive legal document from ancient Mesopotamia.

The code of Hammurabi reads: "If the doctor has treated a gentleman with a lancet of bronze and has caused the gentleman to die, or has opened an abscess of the eye for a gentleman with a bronze lancet, and has caused the loss of the gentleman's eye, one shall cut off his hands" . The ancient Romans had legal reference for medical malpractice laws. Medical negligence, particularly in today's world of rapid technological innovation, is one of the most serious health-care challenges in a country like India.

Litigation involving medical negligence has increased year after year, especially since the Consumer Protection Act of 1986[2] went into effect. "The need for such knowledge is more now than before in light of higher premium being placed by the Indian forums on the value of human life and suffering,[3] and perhaps rightly so" . The primary goal of this research paper is to educate readers about the existing common practices of medical negligence, medical negligence terminology such as the 4Ds of medical negligence, medical negligence instances, the Indian legal perspective on medical negligence, and the Bolam test.

[1] *The Code of Hammurabi* (Laws 215–218) (c. 1754 B.C.).
[2] Consumer Protection Act, No. 68 of 1986 (India).
[3] P.M. Bakshi, Consumer Protection and Medical Negligence, 33 J. Indian L. Inst. (1991).

DIFFERENCE BETWEEN MEDICAL NEGLIGENCE AND MEDICAL MALPRACTICE

The distinction between medical negligence and medical malpractice can be determined nearly entirely by the two terms themselves. A common man's distinction between the two is that medical negligence happens when the medical practitioner in question is unconcerned with the patient and the latter develops a medical condition that may result in grave harm or, in extreme cases, death. The common man's definition of medical malpractice is something that occurs when a medical practitioner performs an act that is prohibited according to the medical law lexicon and violates medical ethics. "In Poonam Verma vs. Ashwin Patel,[4] the Supreme Court distinguished between negligence, rashness, and recklessness. A negligent person is someone who unintentionally commits an act of omission that violates a positive duty. A person who is rash is aware of the consequences but believes that they will not materialize as a result of her or his actions. A reckless individual is aware of the repercussions yet is unconcerned about whether they are caused by her or his actions. "Any conduct that falls short of recklessness and deliberate wrongdoing should not be subject to criminal liability."

Different people separate them elaborately in legal language in their own unique ways. According to PICKET LAW FIRM,[5] medical negligence occurs when a medical provider or facility fails to uphold their duty of care. It includes an element of intent, which medical negligence does not. The doctor or provider was aware that he should have done anything to treat the patient, but he chose not to do so, despite the fact that his failure could injure the patient. It was not malicious in the sense that he wanted to injure the patient, but it was intentional because he knew there was a danger of injury. For example, a doctor decides to skip an expensive diagnostic test since the person's insurance company will not cover the cost of doing the test; thus, the doctor would suffer the financial burden if he performed the test."

On the other hand, "medical carelessness does not imply intent. Medical negligence occurs when a medical provider makes a "mistake" in treating a patient, which causes injury to the patient. While the act or omission is clearly negligent, it does not constitute medical malpractice because the medical professional did not act with the purpose to cause harm or with knowledge that the patient would be harmed. Medical carelessness can occur when a nurse mistakenly

[4] Poonam Verma v. Ashwin Patel, (1996) 4 SCC 332.
[5] Pickett Law Firm, "Difference Between Negligence and Malpractice," Legal Commentary.

leaves a sponge within a surgical wound. She did not want to injure the patient, yet her actions may not constitute medical malpractice. Only an experienced medical malpractice attorney is qualified to examine the case based on the facts to determine if a medical malpractice lawsuit is warranted or a medical negligence lawsuit would be more appropriate given the facts in your case." The literal definitions of both will make little difference to anyone who has been the victim of either. The victim's counsel will be concerned with the contrast between the two.

According to **THOMAS ROBENAULT**,[6] a famous legal practitioner, there are four compulsory elements for an act to be medical malpractice.

I. Presence of a legal duty

ii. Breach of that duty

iii. A connection between the injury caused and the cause

iv. Measurable harm from the injury

Irrespective of the action or omission which led to the medical injury, these four elements must be satisfied for an act to be medical malpractice.

MEDICAL NEGLIGENCE IN INDIA

The first civilization known to us is the Indus Valley Civilization, which existed about 3000-2000 BC. According to renowned medical historian Henry Sigerist,[7] Mohenjo-Daro's public amenities were superior to those of any other civilization at the time. During ancient times, men who cared for other people's health were considered sacrosanct, and anyone who turned that profession for profit or who refused to show the proper respect to that profession was punished by the civilization's leader. The previous assertion is shown by Charak's oath of 1000 BC and the Hippocratic Oath of 460 BC.

- **Current Indian legal Perspective**

Section 304A of the IPC[8] (Indian Penal Code) clearly indicates a person's liability if his

[6] Thomas Robenault, "Essential Elements of Medical Malpractice," Legal Analysis.
[7] Henry E. Sigerist, *A History of Medicine*, Vol. 1.
[8] Indian Penal Code, 1860, Section 304A.

reckless or negligent act causes the death or grave injury of another person. This act specifically addresses criminal carelessness rather than medical negligence. The number of complaints against doctors and hospitals in India has only increased after the enactment of the Consumer Protection Act of 1986.

There were no strong and effective laws in India prior to the act that allowed the public to sue doctors and hospitals. As previously stated by the researcher, several conditions must be met in order for an act by a competent medical physician to be considered negligent, because even the best doctor in the world can make a mistake.

Some of the most important laws or acts in India regarding medical negligence or a physician's misconduct is as follows:

a) The Indian Medical Council Act, 1956[9]

b) Indian Medical Council (Professional Conduct, Etiquette, and Ethics Regulations 2002)[10]

c) Indian Medical degree Act 1916

d) Indian Nursing Council Act 1947

e) Delhi Nursing Council Act 19976

f) The Dentist's Act 1948

g) AICTE Rules for Technicians 1987

h) The Paramedical and Physiotherapy Central Councils Bill 2007[11]

i) The Pharmacy Act 1948

j) The Apprenticeship Act 1961

[9] Indian Medical Council Act, 1956.
[10] Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.
[11] Paramedical & Physiotherapy Central Councils Bill, 2007.

- **CASE LAWS**

In the case of **State of Haryana and Others against Smt. Santra (2000),**[12] the Supreme Court declared that "the doctor who performed the procedure had been negligent by failing to perform any action on one of Smt. Santra's fallopian tubes." As a result, the issue in this case was who would cover the costs of raising the child. The Supreme Court considered analogous case law from the United Kingdom, Scotland, the United States, South Africa, New Zealand, and Australia and concluded that there was no consensus: in some cases, courts refused to grant damages for the birth of a child, citing public policy, whereas in many others, damages were offset against the benefits derived from the pleasure of having and raising that child. The Court also addressed cases in which damages were awarded if the sterilization was performed for social or economic reasons."

In the case of Indian Medical Association vs V P Santha, the Supreme Court ruled that "Medical Services are treated as in ambit of "services" under Section 2(1) (o) of the Act."[13]

In the case of **Whitehouse vs. Jordan**,[14] "The claimant was an infant who suffered severe brain injury following a traumatic birth. The Lords determined that the doctor's standard of care did not fall below that of a reasonable doctor in the circumstances, and hence the infant received no compensation.

In the case **Kishan Rao vs Nikhil Super Specialty Hospital,**[15] the Supreme Court held that "certain cases, the principle of res ipsa loquitor will be applicable, and in the said case, the plaintiff was awarded an amount of Rs. 2 lakh from the defendant as there was a pure case of negligence on the part of the defendant."

In the case of **A. S. Mittal vs. state of U.P,**[16] "the law recognizes the dangers which are inherent in surgical operations and that will occur on occasions despite the exercise of reasonable skill and care but a mistake by a medical practitioner which no reasonably competent and a careful practitioner would have committed is a negligent one." Compensation was given.

[12] State of Haryana v. Smt. Santra, (2000) 5 SCC 182.
[13] Indian Medical Association v. V.P. Shantha, (1995) 6 SCC 651.
[14] Whitehouse v. Jordan, [1981] 1 All ER 267 (HL).
[15] Kishan Rao v. Nikhil Super Specialty Hospital, (2010) 5 SCC 513.
[16] A.S. Mittal v. State of U.P., (1989) 3 SCC 223.

The Supreme Court explained in **State of Punjab v. Shiv Ram**[17] that "merely because a woman who has undergone a sterilization operation becomes pregnant and delivers a child thereafter, the operating surgeon or his employer cannot be held liable on account of the unwarranted pregnancy or unwanted child." Failure due to natural reasons, since no method of sterilization is foolproof or guarantees 100% success, would not be grounds for a claim of compensation."

BOLAM TEST

BOLAM VS FRIERN Hospital Management Committee is a landmark English case law in medical negligence that is regarded as a celebrity case in the history of the medical fraternity. Brief facts of the case are as follows: Mr. Bolam, a voluntary patient at Friern Hospital in England in 1957, suffered from recurring depression. He consented to ECT (Electro Convulsive Therapy) because he trusted the hospital's medical system.

Mr. Bolam's physician was irresponsible in administering unmodified ECT, which included no muscle relaxant, no anaesthesia, and no restraints throughout the operation, resulting in violent convulsions and hip fractures. The Bolam Test is a peer evaluation system for medical professionals that determines if they were negligent during a patient's diagnosis, treatment, or follow-up care. A doctor must establish that he or she acted in a way that a responsible group of medical practitioners or professionals in the same field would consider reasonable.[18]

TYPES OF MEDICAL NEGLIGENCE

Medical negligence can take several forms, depending on the act, omission, or level of carelessness involved in a medical professional's actions. The classification of medical negligence aids in determining the extent of liability and the resulting legal repercussions, whether civil or criminal. Each kind indicates a different way in which the duty of care and professional responsibility can be infringed.

1. Gross Negligence

Gross negligence is the highest level of professional malpractice in medical practice. It occurs when a medical practitioner acts recklessly and carelessly, bordering on indifference to human life. This type of negligence is more than just a mistake of judgment or a lack of due care; it

[17] State of Punjab v. Shiv Ram, (2005) 7 SCC 1.
[18] Bolam v. Friern Hospital Management Committee, [1957] 1 WLR 582.

represents a complete failure to act with the caution that even a moderately competent doctor would exercise.[19]

For example, doing surgery while intoxicated, using contaminated surgical tools, or failing to follow crucial safety standards might all constitute gross negligence. Such behaviour usually results in criminal charges under Section 304A of the Indian Penal Code, which punishes hasty or careless acts that cause death. In **Jacob Mathew v. State of Punjab (2005),** the Supreme Court emphasized that criminal prosecution for medical negligence should be reserved for circumstances when the degree of carelessness is so severe that it demonstrates recklessness or a callous disregard for patient welfare.

2. Negligence by Omission (Failure to Act)

Negligence by omission occurs when a medical professional fails to fulfil an expected act or duty in a specific situation.[20] It is a type of passive negligence in which harm is caused by failing to act at all rather than performing an inappropriate act.

Some common examples are not diagnosing a serious illness quickly enough, not giving proper care after surgery, and not keeping an eye on a patient's vital signs during treatment. Normally, negligence by omission is only punishable under civil law, but if the failure to act shows a high level of irresponsibility or contempt for the patient's life, it could lead to criminal charges.

3. Negligence by Commission (Wrongful Act)

In contrast, negligence by commission occurs when a doctor performs a medical act in a manner that no reasonable professional would have followed. It entails active misbehaviour or the improper performance of a medical treatment.

Examples include doing the wrong surgery, working on the wrong part of the body, or delivering the wrong amount of medicine.[21] The famous case of **Achutrao Haribhau Khodwa v. State of Maharashtra (1996)**, vividly shows this type, in which a mop was left within the patient's abdomen after surgery. This is an undeniable example of carelessness by commission.

[19] Jacob Mathew v. State of Punjab, (2005) 6 SCC 1.
[20] R. v. Adomako, [1995] 1 AC 171.
[21] Achutrao Haribhau Khodwa v. State of Maharashtra, (1996) 2 SCC 634.

4. Diagnostic Negligence

Diagnostic negligence happens when a doctor does not correctly identify a patient's illness or misreads clinical evidence, which leads to wrong treatment or delayed medical care. This is a very common sort of medical misconduct, and it often leads to civil litigation.

Some examples are misreading X-rays or blood tests, mistaking a serious illness for a minor one, or ignoring signs that someone is in danger of dying. Diagnostic negligence usually leads to civil liability, but repeated or careless diagnostic mistakes that cause death or serious injury may be considered gross negligence.[22]

5. Negligence in therapy or treatment

Therapeutic neglect happens when a doctor does not take reasonable care when prescribing or giving medication or when choosing the right treatment plan. Courts recognize that a mere error in judgment does not equate to negligence; nonetheless, culpability emerges when the decision or action taken is one that no reasonably competent expert would undertake. Providing dangerous drugs, ignoring known allergies, or prolonging a treatment even when it has bad side effects are all examples. In **Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole (1969),**[23] the Supreme Court said that a doctor has three responsibilities to a patient: deciding whether to take on the case, deciding what therapy to give, and administering that treatment. Any violation of these standards constitutes actionable negligence.

6. Negligence in Informed Consent

Informed consent is a key component of ethical and legal medical practice. Failure to seek a patient's consent—or to communicate the risks, options, and consequences of a procedure—is considered a breach of duty. Even if the therapy is technically sound, the absence of proper consent can deem the act negligent.

For example, executing an unlawful operation or sterilizing procedure without the patient's knowledge is considered negligence. In **Samira Kohli v. Dr. Prabha Manchanda (2008),**[24]

[22] Spring Meadows Hospital v. Harjol Ahluwalia, (1998) 4 SCC 39.
[23] Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole, AIR 1969 SC 128.
[24] Samira Kohli v. Dr. Prabha Manchanda, (2008) 2 SCC 1.

the Supreme Court ruled that performing an operation without the patient's consent breaches their autonomy and bodily integrity, rendering the act illegal and irresponsible.

7. Systemic or Institutional Negligence

Systemic negligence, also known as institutional negligence, happens when a hospital or healthcare system fails to maintain acceptable levels of safety, hygiene, or competence. The duty applies to the whole institution, not simply to certain people.

Some instances are not cleaning properly, not having the right drugs, broken medical equipment, or hiring people who are not qualified. The Supreme Court said in **Savita Garg v. Director, National Heart Institute (2004),**[25] that hospitals are responsible for the mistakes of their workers and for problems in the system that put patient care at risk.

8. Contributory Negligence

Contributory negligence is not a direct kind of medical negligence, but it happens when the patient's own activities make the harm worse. In some cases, the doctor's responsibility may be lessened in proportion.[26]

Some examples are when a patient does not want to follow medical advice, stops taking their prescribed medication, or does not tell their doctor important medical facts. Courts determine contributory negligence based on the patient's knowledge and ability to understand the medical advice provided.

MEDICAL PROFESSIONAL

In common usage, a professional can be defined as a member of a profession or as somebody who earns a living through a certain activity, such as a lawyer, engineer, or doctor. The term also refers to the educational and training requirements that provide such profession members with the specific information and abilities required to perform their roles. As a result, any decent man adopting a profession implicitly ensures another person dealing with that professional that the competence he professes will be used with a reasonable degree of care

[25] Savita Garg v. Director, National Heart Institute, (2004) 8 SCC 56.
[26] Kusum Sharma v. Batra Hospital, (2010) 3 SCC 480.

and caution. He may not guarantee his client's ultimate outcome. A physician would not guarantee the patient's full recovery in every circumstance.

A surgeon cannot and does not guarantee that the outcome of a surgery will always be favourable or effective, much less to the level of 100% for the individual operated on. A medical practitioner is responsible for utilizing his talent with acceptable competence while doing the work assigned to him.

DUTIES OF A PROFESSIONAL MEDICAL PRACTITIONER

The duties of a medical professional are generally understood to cover:

1. Duty of care in deciding what treatment is to be given,

2. Duty to take care in administering of the treatment identified.

Breach of any of these duties may lead to an action for negligence by the patient. There are three possibilities to fix the responsibility and taking action against the defaulter:

a) Under Common Law – Tort

b) Under Criminal Law for Gross Negligence or Rash and Negligent act

c) Under the Consumer Protection Act for deficiency in service

In medical negligence proceedings, the Adjudicatory Fora cannot use a mechanical technique. It must approach the case from a new perspective. How to Determine Medical Negligence? Which branch of law should be used to determine a medical professional's liability?[27]

Historically, the judiciary addressed all liability, including criminal liability, under tort law. The judiciary paid damages for all misdeeds, including crimes, to compensate victims for their losses. Later, criminal law joined the picture, imposing punishment on those found guilty of an offense.[28] As time passed, rules to safeguard consumers' interests became more widely recognized, particularly in circumstances when there is no motive or mens rea to invoke

[27] Mayo v. Trego, [1928] 1 KB 219 (definition of professional duty).
[28] Laxman Balkrishna Joshi v. Trimbak Bapu Godbole, AIR 1969 SC 128.

criminal law but the victim has suffered some injury.

CIVIL AND CRIMINAL LIABILITIES IN MEDICAL NEGLIGENCE

Medical negligence creates two distinct but linked types of legal responsibility: civil culpability and criminal liability. Both seek to promote accountability in the medical profession, but they differ greatly in their purpose, standard of proof, and nature of the cure offered.[29] Civil liability is generally compensatory, trying to remedy the patient's harm, whereas criminal culpability is punitive, aimed at punishing severely negligent conduct that endangers life or the public safety. Understanding these two elements is critical to understanding how the law balances patient safety with medical practitioners' autonomy and integrity.

- **Civil Liability in Medical Negligence**

Civil liability for medical malpractice occurs under tort law, as well as consumer protection regulations in India. It is based on the idea that every medical professional owes a duty of care to their patients, and any breach of this obligation that causes injury or harm constitutes a civil wrong. Civil procedures are not intended to punish the doctor, but rather to recompense the sufferer for any loss or damage caused by the doctor's failure to exercise reasonable care and skill.

Civil responsibility aims to make things right instead than punishing people. The goal is to put the person who was hurt back in the same situation they would have been in if the negligence had not happened. Civil lawsuits are started by the patient who was hurt or someone who works for them, and the burden of proof is lower than in criminal trials.[30]

In India, medical negligence cases are governed under the **Law of Torts and the Consumer Protection Act of 2019 (previously the 1986 Act).**[31] These rules see a patient as a customer of medical services, and a doctor or institution that does not give enough care may be held responsible. By recognizing medical services as a "service" under consumer law, patient rights grew a lot and it was easier to get help.[32]

[29] Consumer Protection Act, 2019, Sections 2(7), 2(11), 2(42).
[30] Indian Medical Association v. V.P. Shantha, (1995) 6 SCC 651.
[31] Spring Meadows Hospital v. Harjol Ahluwalia, (1998) 4 SCC 39.
[32] Bolitho v. City & Hackney Health Authority, [1998] AC 232.

- **Essential Elements of Civil Negligence**

To establish civil liability, three essential components must be proven:

1. **Duty of Care:** The existence of a legal duty owed by the doctor to the patient.
2. **Dereliction of Duty:** A breach of that duty by failing to act with reasonable skill and caution.
3. **Resultant Damage:** The breach must have directly caused injury or harm to the patient.

Courts use the **Bolam Test from Bolam v. Friern Hospital Management Committee (1957),** which states that a doctor is not negligent if their actions are consistent with a practice recognized as proper by a respectable body of medical opinion. The Bolitho Test (1997) enhanced this by requiring reasonable and defensible medical opinions.

The case of **Indian Medical Association v. V.P. Shantha (1995)** marked a watershed moment in which the Supreme Court brought medical services under the Consumer Protection Act, holding doctors accountable for service deficiencies. In **Spring Meadows Hospital v. Harjol Ahluwalia (1998),** the Court reiterated that both patients and their guardians are customers who can seek compensation for negligence. These trials established that civil liability in medical negligence is largely compensatory, ensuring remedy while not criminalizing honest professional errors.

Criminal Liability in Medical Negligence

Criminal culpability in medical negligence arises when a doctor's conduct is not only negligent, but highly negligent, demonstrating a reckless disregard for the lives or safety of patients. It refers to acts or omissions that are severe enough to constitute a crime against the State rather than a private wrong. The goal of criminal law in this situation is to punish and deter behaviour that jeopardizes public trust in medicine.

Criminal culpability, as opposed to civil liability, is punitive in nature and seeks to ensure public safety. It is enforced by the state, and the standard of proof is beyond reasonable doubt, which is substantially greater than in civil court. Depending on the nature of the offense, the accused doctor may face penalties such as jail or a fine.

The **Indian Penal Code (IPC)**[33] provides specific provisions for acts of criminal negligence:

- **Section 304A IPC**: Causing death by a rash or negligent act not amounting to culpable homicide.
- **Section 337 IPC**: Causing hurt by an act endangering life or personal safety.
- **Section 338 IPC**: Causing grievous hurt by an act endangering life or personal safety.

These provisions hold medical practitioners criminally responsible when their acts or omissions exhibit a reckless disregard for patient safety.

The landmark case of **Jacob Mathew v. State of Punjab (2005)**[34] established the threshold for criminal liability in medical negligence. The Supreme Court held that:

- Simple negligence or an error of judgment does not constitute a criminal offence.
- The negligence must be **gross or of a very high degree** to attract criminal liability.
- Before prosecuting a doctor, an **independent and competent medical opinion** should be obtained to verify the allegation of gross negligence.

The Court warned against indiscriminate prosecution of doctors, underlining that criminal responsibility should only apply to conduct that indicate a complete disregard for human life and safety.

In **Dr. Suresh Gupta v. Government of NCT of Delhi (2004)**,[35] the Supreme Court stated that a doctor can only be held criminally accountable if their negligence is so egregious that it displays recklessness or absolute indifference. Similarly, in Kusum Sharma v. Batra Hospital (2010), the Court underlined that a simple error of judgment or accident does not constitute criminal negligence unless combined with egregious incompetence.

Distinction Between Civil and Criminal Liability

While civil and criminal liability might result from the same irresponsible act, they differ

[33] Indian Penal Code, Sections 304A, 337, 338.
[34] Jacob Mathew v. State of Punjab, (2005) 6 SCC 1.
[35] Dr. Suresh Gupta v. Govt. of NCT of Delhi, (2004) 6 SCC 422.

fundamentally in terms of objective, burden of proof, and consequences. Civil processes are compensatory and based on a preponderance of the evidence, but criminal proceedings are punitive and require proof beyond a reasonable doubt.

Aspect	**Civil Liability**	**Criminal Liability**
Nature	Private wrong	Public wrong
Objective	Compensation / restitution	Punishment / deterrence
Standard of Proof	Preponderance of probabilities	Beyond reasonable doubt
Degree of Negligence Required	Ordinary negligence	Gross or reckless negligence
Initiation	By the injured patient	By the State
Remedy	Damages or compensation	Imprisonment or fine

NEGLIGENT ACTS BY MEDICAL PROFESSIONALS UNDER THE CRIMINAL LAW

In **Juggankhan v. State of Madhya Pradesh,**[36] the Supreme Court highlighted a medical practitioner's criminal culpability. The Court ruled that prescribing deadly drugs without first investigating their potential side effects was hasty and negligent. The Court also held that, while it was true, as ruled in John Oni v. King, that care should be taken before imputing criminal negligence to a professional man acting in the course of his profession, it was clear that the appellant committed a rash and negligent act, making him liable for conviction under Section 304A of the IPC.

[36] Juggankhan v. State of Madhya Pradesh, AIR 1965 SC 831.

In **Martin F. D'Souza v. Mohd. Ishfaq,**[37] the Supreme Court clearly addressed medical professionals' concerns about the adjudicatory procedure that will be used by courts and fora in situations of claimed medical negligence against doctors. The Court ruled that the level of negligence required to establish liability under Section 304-A IPC is greater than that required to establish liability in civil proceedings. The doctor's failure to take reasonable care may be sufficient to impose legal culpability. However, in order to hold a doctor criminally liable, serious negligence amounting to recklessness must be proven.

The Court also underlined the distinction between simple and severe negligence, as indicated in the Jacob Mathew case. In **Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole & Another,** the Supreme Court stated that a person who offered to provide medical advice and treatment meant that he possessed the necessary ability and expertise. Such a person owed various duties to his patient, including a duty of care in deciding whether to pursue the case, a duty of care in deciding what treatment to provide, and a duty of care in administering that therapy.

A breach of any of these duties provided the patient the right to sue for negligence. The medical practitioner must bring reasonable expertise and understanding to his assignment, as well as exhibit reasonable care. The law demanded neither the highest nor the lowest level of care and competency, as determined by the individual circumstances of each instance. A doctor undoubtedly had discretion in deciding on the treatment that he offered for the patient, and such discretion was significantly greater in emergency situations. However, given the factual findings, the Court did not believe this matter to be relevant in the instant case. The surgeon's appeal was dismissed, with costs.

In **A.S. Mittal and Others v. State of UP**[38] and Others, the Supreme Court considered a mishap in a 'Eye Camp' in Khurja, Uttar Pradesh, in a public interest litigation filed under Article 32 of the Constitution, and observed that a mistake made by a medical practitioner that no reasonably competent and careful practitioner would have committed was negligent. It also mentioned the concept of reasonable man and how the law recognized the risks associated with surgical procedures, as well as the ruling in the case of **Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole & Another,** among other things. The Court reviewed whether the

[37] Martin F. D'Souza v. Mohd. Ishfaq, (2009) 3 SCC 1.
[38] A.S. Mittal v. State of U.P., (1989) 3 SCC 223.

State Guidelines establishing norms and circumstances for the conduct of 'eye-camps' were sufficiently comprehensive to assure patient protection, which was mainly drawn from the lower sections of society, as well as redress for those impacted.

The Court noted that while the dispute was pending, the Central Government issued a revised Guideline, which the Court determined to be sufficient. However, the court stressed the importance of maintaining sterile aseptic conditions in hospitals to prevent infections and previous testing of pharmaceuticals, and condemned the erosion of standards. On the issue of relief, the court stated that while it would not entertain any monetary claims based on state action in these PIL proceedings, on humanitarian grounds, it directed the State Government to pay an additional sum of Rs. 12,500/- to each of the victims in addition to the Rs. 5,000/- already paid by the government.

LIABILITY OF MEDICAL PROFESSIONALS UNDER THE CONSUMER PROTECTION ACT

The concept of medical practitioners' accountability under the Consumer Protection Act (CPA) is one of the most significant breakthroughs in Indian medical jurisprudence. Patients who were hurt by medical negligence used to have to go to civil courts under tort law to get justice. This may take a long time, be hard to understand, and cost a lot of money. The Consumer Protection Act of 1986 and its successor, the Consumer Protection Act of 2019, revolutionized things by recognizing patients as consumers and doctors as providers.

This legal recognition has effectively placed medical services within the domain of consumer law, enabling patients to submit claims for service deficiencies in consumer forums, circumventing the procedural complexities associated with civil litigation.

Medical services are classified as "services" performed for consideration under the Act, unless they are provided completely free of charge or under a "contract of personal service." **Section 2(7) of the Consumer Protection Act of 2019**[39] defines a "consumer" as any individual who hires or avails of any service for consideration, while **Section 2(42)** defines a "service" as any description of a service made available to prospective users. As a result, a patient who pays hospital or medical practitioner fees for diagnostic, consultation, surgery, or therapy is considered a consumer. This classification has the legal consequence of allowing such a patient

[39] Consumer Protection Act, 2019.

to seek remedies for any deficiency, as specified in Section 2(11), which refers to any flaw, imperfection, insufficiency, or inadequacy in the quality, character, or manner of performance required by statute or contract.

The seminal case of **Indian Medical Association v. V.P. Shantha (1995)** substantially altered this field of law. In this decision, the Supreme Court made it clear that medical services are covered by the Consumer Protection Act. The Court reasoned that when a patient pays for medical care, a contractual relationship develops to provide services. As a result, any act of carelessness, omission, or failure in the execution of such services allows the patient to seek restitution under the Act. The Court did, however, make two important exceptions: first, services supplied for free, such as in government hospitals or charitable institutions, and second, services provided under a personal service contract, such as between a doctor engaged by a commercial company and the company itself. In all other circumstances, medical professionals and institutions were held accountable as service providers under the Act.[40]

The verdict in V.P. Shantha was groundbreaking because it acknowledged patients' rights to accountability and consumer protection in the healthcare industry. It established that a patient is more than just a beneficiary of medical care; he or she is also a customer with the right to reasonable quality and competence. The Court highlighted that, while medical experts are not expected to guarantee success, they are legally required to exert the level of care and expertise that is reasonable for practitioners in their area. A failure to achieve this criteria is considered a "deficiency in service" under the Act.

Later court decisions built on and improved the ideas put forward in V.P. Shantha. In **Spring Meadows Hospital v. Harjol Ahluwalia (1998),**[41] the Supreme Court acknowledged both the patient and their parents (for minors) as customers, permitting them to pursue compensation for emotional distress and financial damages resulting from medical misconduct. This ruling reinforced the idea that hospitals are responsible for the careless actions of its employees, like doctors, nurses, and support staff. It stressed that institutional responsibility is a key part of protecting patients in the medical field. In the same way, the Supreme Court said in Savita Garg v. Director, National Heart Institute (2004) that hospitals and clinics cannot evade accountability by blaming individual doctors. Instead, they all have a duty to make sure that

[40] Indian Medical Association v. V.P. Shantha, (1995) 6 SCC 651.
[41] Spring Meadows Hospital v. Harjol Ahluwalia, (1998) 4 SCC 39.

service, infrastructure, and supervision are all done correctly.

The Consumer Protection Act makes a lot of people responsible. It encompasses not just direct acts of carelessness, including making mistakes during surgery or misdiagnosing a patient, but also failures by hospital staff, keeping records wrong, and not providing enough follow-up care. Not getting informed consent before doing invasive procedures has also been called a service failure. The case of **Samira Kohli v. Dr. Prabha Manchanda (2008)** illustrates this principle. The Court found that doing an illegal surgery without the patient's informed consent is both unethical and illegal, which is grounds for negligence. The decision underlined how important it is for patients to be able to make their own decisions and how important it is for doctors to explain all the major risks and options before doing a procedure.

The level of proof is another key part of medical liability under the Consumer Protection Act. In criminal trials, it must be demonstrated that the defendant was careless beyond a reasonable doubt. In cases under the Act, however, it must be shown that the evidence is more likely than not. This decreased barrier makes it easier for people who are sick to get justice. But courts have warned against making false or exaggerated claims. They know that medicine is not always exact and that not every bad result means someone was careless. As stated in **Kusum Sharma v. Batra Hospital (2010),** a minor mistake in judgment or a difference of opinion about medical care does not mean that someone is incompetent or not providing the right care.[42]

The 2019 Consumer Protection Act, which revised the 1986 Act, made it easier for people to get help. It set up three levels of adjudication: the District, State, and National Consumer Commissions. These commissions had more power over financial matters, which made it easier for patients to get their money back. The Act also introduced the idea of product liability, which can be used to hold medical devices or drugs that are faulty during treatment responsible. This broadens the range of medical responsibility. The 2019 Act also encourages mediation as a way to settle disputes, which is especially useful in sensitive medical cases where keeping the doctor-patient relationship strong is important.

The addition of medical services to the Consumer Protection Act has given people more power and made things clearer, but it has also made medical professionals worried. A lot of people think that doctors may practice defensive medicine, which means they put legal safety ahead

[42] Samira Kohli v. Dr. Prabha Manchanda, (2008) 2 SCC 1.

of therapeutic judgment, because they are afraid of lawsuits and consumer claims. But the courts have tried to find a middle ground between patient safety and professional independence. In general, courts have said that doctors should not be punished for making legitimate mistakes in good faith as long as they follow established medical standards and do their jobs well.

CONCLUSION AND SUGGESTIONS

The examination of medical negligence exemplifies the precarious equilibrium between the legal system's primary aims: safeguarding patients' rights and maintaining the independence of the medical profession. The legal limits for medical professionals are founded on the two principles of duty of care and dereliction of duty. Civil and criminal obligations, however distinct in their objectives, mutually reinforce each other in the pursuit of justice and the maintenance of ethical standards in healthcare.

The civil aspect of medical negligence, grounded in tort law and consumer protection jurisprudence, principally aims to indemnify patients who incur harm due to a physician's violation of duty. It puts reparation ahead of punishment, based on tests like Bolam and Bolitho, which check to see if the medical professional followed acknowledged professional standards. In important cases like **Indian Medical Association v. V.P. Shantha and Spring Meadows Hospital v. Harjol Ahluwalia,** Indian courts have expanded the extent of patient protection while recognizing the complex nature of medical practice.

The criminal aspect of medical negligence, primarily addressed under Sections 304A, 337, and 338 of the Indian Penal Code, focuses on punitive deterrence. In Jacob Mathew v. State of Punjab (2005), the courts made a clear distinction between civil wrongs and criminal offenses. They stressed that criminal culpability should only come into play when there is extreme negligence or a wilful disregard for human life. This judicial constraint is necessary to prevent having a negative effect on the medical field, which operates in an atmosphere of inherent risk and uncertainty.

The data also shows that medical negligence can happen in numerous ways, such as making mistakes in diagnosis and treatment, failing to follow the rules, or not getting informed permission. Each type stresses an important point: the law needs to reform to keep up with how complicated contemporary medicine is getting, while still being fair to both patients and doctors. Finding institutional negligence is a big step toward holding institutions responsible

for systematic problems that put patient safety at risk.

Finally, India's laws around medical negligence are changing to be more balanced, holding people accountable but also keeping their professional credibility. Civil law lets people get their money back, but criminal law protects against really bad behaviour. They work together to make the ethical basis of medicine stronger, making sure that justice, compassion, and accountability all present in the healthcare system.

India needs a full set of medical negligence laws right away. At the moment, the law is made up of tort principles, consumer protection laws, and criminal laws. A uniform statute would promote clarity, consistency, and equity in legal proceedings.

The government should come up with clear rules for when criminal prosecution is acceptable, in the spirit of Jacob Mathew. Before starting criminal procedures against doctors, these kinds of norms should require approval from an unbiased medical board.

Mandatory Professional Insurance: Doctors and healthcare facilities should be required to acquire professional indemnity insurance. This would safeguard patients by making sure they are paid and also protect practitioners from the huge costs of going to court.

Enhancing Medical Ethics and Education: Medical school programs should include legal and ethical instruction to help doctors comprehend their legal duties and the rights of their patients. Continuing medical education (CME) programs should put accountability, record-keeping, and talking to patients first.

Accountability in Institutions: Medical school programs should teach students about the law and ethics so that they know their legal duties and the rights of their patients. Continuing medical education (CME) programs should focus on accountability, record-keeping, and contact with patients.