

Criminal Provisions Regarding Medical Negligence in India: A Critical Analysis

Soumya

Research Scholar, Faculty of Law, University of Allahabad

Dr. Mukta Verma

Assistant Professor, Faculty of Law, University of Allahabad

Abstract

India's healthcare system, while making strides in various areas, grapples with a persistent challenge: medical negligence. Despite the efforts of healthcare providers, instances of medical negligence continue to plague the system, causing immense suffering to patients and their families.

This research article examines the existing legal framework and challenges related to medical negligence in India and proposes certain reforms and recommendations to improve the current situation. It suggests that there should be a clear and uniform definition of medical negligence, a standard and objective criterion for determining negligence, a speedy and cost-effective litigation process, and proper enforcement and implementation of the laws and judgments. The article also advocates for alternative dispute resolution mechanisms and greater awareness and education among the patients and doctors. The article aims to promote a more balanced and effective approach to medical negligence in India, which would ensure the accountability and responsibility of the medical professionals, as well as the protection and satisfaction of the patients.

Keywords: medical negligence, legal framework, challenges, reforms, India, civil and criminal liability

Introduction

In the realm of healthcare, trust is paramount. Patients entrust their well-being to healthcare providers with the expectation of receiving competent and compassionate care. However, in the complex landscape of medical practice, instances of failure to meet this standard occur, leading to what is known as medical negligence.

Medical negligence, often referred to as medical malpractice or medical error, represents a breach of duty by a healthcare provider that results in harm to the patient. It encompasses a wide range of scenarios, from misdiagnoses and surgical mistakes to medication errors and inadequate treatment. At its core, medical negligence reflects a deviation from the accepted standard of care that a reasonably competent practitioner would provide under similar circumstances.

The consequences of medical negligence can be profound, extending beyond physical harm to encompass emotional distress, financial burden, and loss of trust in the healthcare system. Each case of negligence represents a breach of the sacred trust between patient and provider, underscoring the need for robust systems of accountability, transparency, and patient safety within healthcare delivery.

Understanding the complexities of medical negligence requires a multifaceted approach, encompassing legal, ethical, clinical, and systemic perspectives. It is a serious issue that affects the lives and rights of patients and doctors. Medical negligence can result in physical, mental, or emotional harm to the patient,

or even death in some cases. It can also expose the medical professional to legal liability, both civil and criminal, depending on the nature and extent of the harm caused.¹

In India, the law on medical negligence is complex and evolving. There are various statutes, regulations, codes of ethics, and judicial precedents that govern the standards and duties of medical professionals, as well as the rights and remedies of patients. The most relevant laws are the Indian Penal Code, 1860 (IPC), the Consumer Protection Act, 1986 (CPA), and the Indian Medical Council Act, 1956 (IMCA). These laws provide different forums, procedures, and criteria for determining the liability and punishment of medical professionals for negligence. However, there are also several challenges and gaps in the existing legal framework, such as the lack of uniformity, clarity, and consistency in the definitions, standards, and evidentiary requirements of medical negligence, the overlapping and conflicting jurisdictions of various courts and tribunals, the delays and costs involved in the litigation process, and the inadequate enforcement and implementation of the laws and judgments.²

This article seeks to delve into the various dimensions of medical negligence, exploring its causes, impacts, challenges, and potential avenues for prevention and redressal. By shedding light on this critical issue, we aim to foster dialogue, awareness, and action towards ensuring that every patient receives the standard of care they rightfully deserve.

The aim is to critically analyze the criminal provisions regarding medical negligence in India, and to suggest certain reforms and recommendations to improve the legal system and protect the interests of both patients and doctors. The article is divided into four sections. The first section discusses the concept and elements of medical negligence, and the distinction between civil and criminal negligence. The second section examines the relevant provisions of the IPC that deal with medical negligence, and the judicial interpretation and application of these provisions. The third section highlights the main issues and challenges faced by the legal system in dealing with medical negligence cases, and the impact of these challenges on the rights and duties of patients and doctors. Lastly, fourth section concludes the article with some suggestions and recommendations to address the problems and gaps in the existing legal framework, and to promote a more balanced and effective approach to medical negligence in India.

Medical Negligence: Concept and Elements

Medical negligence is a subset of the general concept of negligence, which is a branch of the law of torts. Negligence, in simple terms, means the breach of a legal duty to take care, resulting in damage to the person to whom the duty is owed.³ Negligence can be classified into two types: civil negligence and criminal negligence. Civil negligence is the failure to exercise the standard of care that a reasonable person would have exercised in a similar situation, causing harm to another person. Criminal negligence is the failure to exercise the standard of care that a reasonable person would have exercised in a similar situation, causing harm to another person, with a reckless disregard for the consequences or with a high degree of risk or probability of harm.⁴

Medical negligence, therefore, is the failure of a medical professional to exercise the standard of care that a reasonable medical professional would have exercised in a similar situation, causing harm to a patient. The standard of care expected from a medical professional depends on various factors, such as the qualifications, experience, specialization, and prevailing practices of the medical professional, the nature and complexity of the medical condition and treatment, and the circumstances and resources available at

¹ Dr. Kunal Saha v. Dr. Sukumar Mukherjee and Ors., (2009) 9 SCC 221, para 7.

² Dr. M. Kochar v. Ispita Seal and Anr., (2019) 11 SCC 527, para 8.

³ Ratanlal and Dhirajlal, The Law of Torts, 27th ed., LexisNexis, 2019, p. 38.

⁴ Dr. Suresh Gupta v. Govt. of NCT of Delhi and Anr., (2004) 6 SCC 422, para 11.

the time of the medical intervention.⁵ The standard of care is not an absolute or fixed standard, but a relative and flexible one, that varies from case to case.⁶

To establish medical negligence, the following elements must be proved: (a) the existence of a duty of care owed by the medical professional to the patient; (b) the breach of that duty of care by the medical professional; (c) the causation of harm to the patient by the breach of duty of care; and (d) the damages suffered by the patient as a result of the harm.⁷ These elements are common to both civil and criminal negligence, but the degree and nature of proof required for each element may differ. For civil negligence, the burden of proof is on the balance of probabilities, and the remedy is compensation for the damages suffered by the patient. For criminal negligence, the burden of proof is beyond reasonable doubt, and the remedy is punishment for the offence committed by the medical professional.⁸

Criminal Provisions Regarding Medical Negligence in India

The Indian Penal Code, 1860 is the main statute that deals with criminal offences in India, including those related to medical negligence. The IPC does not define or mention the term "medical negligence" explicitly, but it contains several provisions that can be invoked to prosecute medical professionals for negligence that causes harm or death to patients. The most relevant provisions are sections 304A, 337, 338, and 88 of the IPC.⁹

Section 304A of the IPC states that whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both. This section covers the cases of medical negligence that result in the death of the patient, and is the most commonly used provision to prosecute medical professionals for criminal negligence. However, the section does not define what constitutes a "rash or negligent act", and leaves it to the courts to interpret and apply the term on a case-by-case basis.¹⁰

The landmark case that laid down the test for determining criminal negligence under section 304A of the IPC is *Jacob Mathew v. State of Punjab*.¹¹ In this case, the Supreme Court held that for a medical professional to be held criminally liable for negligence, it must be shown that he or she acted with such a high degree of negligence or incompetence that it amounted to a gross or reckless disregard for the life and safety of the patient, or that he or she did something or omitted to do something that no reasonable medical professional in his or her ordinary senses and prudence would have done or omitted to do. The court also held that the standard of negligence required to prove criminal liability is higher than that required to prove civil liability, and that a mere error of judgment or difference of opinion among medical professionals is not enough to constitute criminal negligence. The court further held that before initiating criminal proceedings against a medical professional for negligence, the opinion of another competent medical professional should be obtained, preferably from a doctor working in the same field, to support the allegation of negligence.¹²

Section 337 of the IPC states that whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both. Section 338 of the IPC states that whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with

⁵ Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole and Anr., AIR 1969 SC 128, para 13.

⁶ Dr. J.J. Merchant and Ors. v. Shrinath Chaturvedi, (2002) 6 SCC 635, para 13.

⁷ Dr. Martin F. D'Souza v. Mohd. Ishfaq, (2009) 3 SCC 1, para 42.

⁸ *Jacob Mathew v. State of Punjab and Anr.*, (2005) 6 SCC 1, para 12.

⁹ The Indian Penal Code, 1860, ss. 304A, 337, 338, and 88.

¹⁰ *Jacob Mathew v. State of Punjab and Anr.*, (2005) 6 SCC 1, para 15.

¹¹ *Ibid.*

¹² *Ibid.*, paras 24-32.

imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both. These sections cover the cases of medical negligence that cause harm or injury to the patient, but not death. The term "hurt" means any bodily pain, disease, or infirmity, and the term "grievous hurt" means any hurt that endangers life, or causes permanent or serious damage to any organ or limb of the body.¹³ The test for determining criminal negligence under these sections is the same as that under section 304A of the IPC, as laid down in Jacob Mathew's case.¹⁴

Section 88 of the IPC states that nothing which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm. This section provides a defence or an exception to the medical professionals who perform any act in good faith and with the consent of the patient, for the benefit of the patient, even if the act causes harm or death to the patient. The term "good faith" means that the act is done with due care and attention, and without any ill-will or malice. The term "consent" means that the patient is informed about the nature, purpose, risks, and consequences of the act, and voluntarily agrees to undergo the act.¹⁵ However, this section does not apply to the cases where the act is done negligently or recklessly, or where the consent is obtained by fraud, coercion, or misrepresentation.¹⁶

Issues and Challenges in the Indian Legal System

The legal system in India faces several issues and challenges in dealing with the cases of medical negligence, especially those involving criminal liability. Some of the major issues and challenges are as follows:¹⁷

- Lack of uniformity, clarity, and consistency in the definitions, standards, and evidentiary requirements of medical negligence across various laws, courts, and tribunals. For instance, the CPA and the IMCA have different definitions and criteria for determining medical negligence than the IPC, and the consumer courts and the medical councils have different procedures and powers than the criminal courts. This creates confusion and uncertainty among the patients and doctors, and also leads to overlapping and conflicting judgments and orders.
- India's healthcare infrastructure often struggles to cope with the burgeoning population's healthcare needs. Overcrowded hospitals, understaffed facilities, and limited resources contribute to situations where medical errors are more likely to occur. The pressure to attend to a large number of patients within limited timeframes increases the risk of oversight and negligence. Another significant issue is the lack of comprehensive training and supervision of healthcare professionals, particularly in rural areas. Many healthcare providers may not receive adequate training or ongoing professional development, leading to gaps in their knowledge and skills, which can result in medical errors.
- Informed consent, whereby patients are fully informed of the risks, benefits, and alternatives of medical treatments, is a fundamental aspect of medical practice. However, in many cases, patients in India may not receive adequate information about their treatment options or their right to refuse treatment. Strengthening patient rights and ensuring informed consent can help mitigate instances of medical negligence.
- Delays and costs involved in the litigation process, which discourage the patients from seeking justice and redressal, and also affect the reputation and livelihood of the doctors. The litigation process involves multiple stages, forums, appeals, and revisions, which consume a lot of time and money. Moreover, the courts and tribunals are overburdened with a large number of pending cases,

¹³ The Indian Penal Code, 1860, ss. 319 and 320.

¹⁴ Jacob Mathew v. State of Punjab and Anr., (2005) 6 SCC 1, para 33.

¹⁵ The Indian Penal Code, 1860, s. 52.

¹⁶ Dr. Nikhil D. Datar v. Union of India and Ors., (2008) 110 Bom LR 3293, para 57.

¹⁷ Dr. M. Kochar v. Ispita Seal and Anr., (2019) 11 SCC 527, para 9.

and face a shortage of judges, staff, and infrastructure. These factors result in a long and tedious process, which often defeats the purpose and spirit of the law.

- Inadequate enforcement and implementation of the laws and judgments, which undermine the effectiveness and credibility of the legal system. The laws and judgments are often not complied with or followed by the parties, and there is a lack of proper monitoring and supervision by the authorities. Moreover, there is a lack of awareness and education among the patients and doctors about their rights and duties, and the remedies and procedures available under the law. This leads to a low rate of reporting and redressal of the cases of medical negligence, and also creates a gap between the law and practice.
- While regulatory bodies such as the Medical Council of India (MCI) are responsible for setting standards and regulating medical practice, concerns have been raised about their effectiveness in addressing cases of medical negligence. There is a need for stronger mechanisms to hold healthcare providers accountable for their actions, including transparent disciplinary processes and sanctions for violations of ethical and professional standards.

Conclusion and Suggestions

Medical negligence is a serious and complex issue that affects the lives and rights of patients and doctors. The law on medical negligence in India is also complex and evolving, and faces several issues and challenges in its implementation and enforcement. The criminal provisions regarding medical negligence in India are contained in the IPC, which provides for the liability and punishment of medical professionals for negligence that causes harm or death to patients. However, the IPC does not define or mention the term "medical negligence" explicitly, and leaves it to the courts to interpret and apply the term on a case-by-case basis. The test for determining criminal negligence under the IPC is that the medical professional must have acted with such a high degree of negligence or incompetence that it amounted to a gross or reckless disregard for the life and safety of the patient, or that he or she did something or omitted to do something that no reasonable medical professional in his or her ordinary senses and prudence would have done or omitted to do. The IPC also provides a defence or an exception to the medical professionals who perform any act in good faith and with the consent of the patient, for the benefit of the patient, even if the act causes harm or death to the patient.

The legal system in India, however, faces several issues and challenges in dealing with the cases of medical negligence, such as the lack of uniformity, clarity, and consistency in the definitions, standards, and evidentiary requirements of medical negligence, the delays and costs involved in the litigation process, and the inadequate enforcement and implementation of the laws and judgments. These issues and challenges affect the rights and duties of patients and doctors, and also the effectiveness and credibility of the legal system. Therefore, there is a need for some reforms and recommendations to improve the legal system and protect the interests of both patients and doctors. Some of the possible reforms and recommendations are as follows:¹⁸

- There should be a clear and comprehensive definition and classification of medical negligence in the IPC, and the criteria and standards for determining criminal negligence should be consistent and uniform across various laws, courts, and tribunals. This would reduce the confusion and uncertainty among the patients and doctors, and also avoid the overlapping and conflicting judgments and orders.
- Investments in healthcare infrastructure, including the expansion of healthcare facilities, recruitment of qualified staff, and procurement of essential medical equipment, are essential to alleviate the burden on the healthcare system and improve patient outcomes.

¹⁸ Ibid., para 10.

Moreover, healthcare professionals should be encouraged to pursue continuous professional development to enhance their knowledge and skills. This can be achieved through mandatory training programs, workshops, and certifications, particularly in rural and underserved areas.

- There should be a speedy and cost-effective litigation process, which would encourage the patients to seek justice and redressal, and also protect the reputation and livelihood of the doctors. The litigation process should involve fewer stages, forums, appeals, and revisions, and the courts and tribunals should be adequately staffed, equipped, and funded. Moreover, recourse to alternative dispute resolution mechanisms, such as mediation, arbitration, and conciliation, should be encouraged, which would facilitate the amicable and timely settlement of the cases of medical negligence.
- There should be a proper enforcement and implementation of the laws and judgments, to enhance the effectiveness and credibility of the legal system. The laws and judgments should be complied with and followed by the parties, and there should be a regular monitoring and supervision by the authorities. Moreover, there should be a greater awareness and education among the patients and doctors about their rights and duties, and the remedies and procedures available under the law. This would increase the rate of reporting and redressal of the cases of medical negligence, and also bridge the gap between the law and practice.

These reforms and recommendations, if implemented, would help in addressing the problems and gaps in the existing legal framework, and in promoting a more balanced and effective approach to medical negligence in India. They would also help in ensuring the accountability and responsibility of the medical professionals, and the protection and satisfaction of the patients.