

# Medical Negligence across Continents: Comparing Laws and Policies In UK, USA and India

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**Abstract:** *The service of the doctors is covered under the provisions of the Consumer Protection Act, 1986 and a patient can seek redressal of grievances from the Consumer Courts. The relationship takes the shape of a contract retaining the essential elements of tort. Medical negligence occurs when a healthcare professional selects the wrong method or procedure or improperly executes an appropriate method to treat or diagnose the patient. Doctors in India may be held liable for their services individually or vicariously unless they come within the exceptions specified in our laws. In some situations, the complainant can invoke the principle of res Ipsa loquitur or "the thing speaks for itself". In certain circumstances no proof of negligence is required beyond the accident itself. Thus, a doctor cannot be held criminally responsible for a patient's death unless it is shown that she/ he was negligent or incompetent, with such disregard for the life and safety of his patient that it amounted to a crime against the State. Medical negligence is a complicated legal situation. If you find yourself involved in negligence proceedings, you will need to understand the principles of negligence.*

**Keywords:** Medical, negligence, life, safety, laws, patients, health, doctors, malpractice, cardio, anesthesia, brain, damage

## 1. Introduction

### What is Medical Negligence?

Medical negligence is the breach of a duty of care by an act of omission or commission by a medical professional of ordinary prudence. Actionable medical negligence is the neglect in exercising a reasonable degree of skill and knowledge to the patient, to whom he owes a duty of care, which has resulted in injury to such person<sup>1</sup>. A tort is a civil wrong (*right in rem*) as against a contractual obligation (*right in personam*) – a breach that attracts judicial intervention by way of awarding damages. Thus, a patient's right to receive medical attention from doctors and hospitals is essentially a civil right. The medical profession is considered a noble profession because it helps in preserving life. We believe life is God given. Thus, a doctor figures in the scheme of God as he stands to carry out His command. In *Jacob Mathew v state of Punjab*<sup>2</sup> dealt with the law of medical negligence in respect of professionals professing some special skills. Thus, any individual approaching such a skilled person would have a reasonable expectation under the duty of care and caution but there could be no assurance of the result. No doctor would assure a full recovery in every case. A patient generally approaches a doctor/hospital based on his/its reputation. It's important to know the medical negligence definition in order to determine if a healthcare provider did not meet the duty of care that was owed and to determine if you have a legal right to compensation as a result<sup>3</sup>. Medical negligence can be defined as any action by medical staff or members of hospital/clinic staffs which fall below an acceptable standard of care and which directly

causes injury or disease or allows the health of a person to deteriorate as a result.

### Medical practices amounting to negligence:

The medical lawsuits from various medical specialities filed before the different courts of India including the consumer courts are discussed below. The courts have declared certain practices followed by the medical practitioners in the irrespective medical practices as practices amounting to medical negligence.

#### 1) Anesthetist

Anesthesia has an important role in modern surgeries. A minor mistake on the side of Anesthetist can severely harm the patient undergoes to a medical operation or surgery.

#### 2) Administration of Heavy Dose of Anesthesia without Proper Precaution

The patient was admitted to the nursing home for the operation of Hernia. He was taken to the operation theatre at 02: 30 pm and brought out as dead after nine hours. The postmortem report revealed that death was due to aspiration of fluid in the lungs, resulting in cardio - respiratory failure.

#### 3) Brain Damage after Tonsillectomy

The patient underwent Tonsillectomy operation in a Government Hospital. The consistent expert evidence is that Tonsillectomy is an elective operation. On the commencement of operation, the respiratory arrest occurred on account of the Anesthetist removing the tube from the mouth of the patient without giving fresh breaths of oxygen and there was a delay on the part of the Anesthetist in noticing the respiratory arrest and inserting the tube for the second time, and in the meanwhile, the respiratory arrest led to cardiac arrest which made the Anesthetist give massage and chest compression to assist circulation of blood.

#### 4) Brain Damage after Caesarean

The patient was admitted to the hospital for delivery of child under the care of the gynecologist. The complications developed after giving I. V. fluids with necessary medication.

<sup>1</sup> *Maharaja Agrasen Hospital v. Master Rishabh Sharma* 2019 SCC OnLine SC 1658, referring to *Laxman Balkrishna Joshi (Dr.) v. Dr. Trimbak Babu Godbole*, (1969) 1 SCR 206 : AIR 1969 SC 128; *Kusum Sharma v. Batra Hospital* (2010) 3 SCC 480 : (2010) 2 SCC (Cri) 1127 : (2010) 1 SCC (Civ) 747

<sup>2</sup> (2005) 6 SCC

<sup>3</sup> <https://www.forbes.com/advisor/legal/medical-malpractice/medical-negligence/> (visited on 6/5/2024)

### 5) Unqualified Anesthetist Held Liable for Child's Death

Parents admitted their five - year - old daughter *Shrutti* to Pune's prominent Ruby Hall Clinic run by the Grant Medical Foundation. The child had a history of renal calculi, was examined by a team of doctors which included a pediatrician, an endocrinologist and an urologist who concluded that she would require surgery for removal of kidney stone.

### 6) Cardiologist

Cardiologists have an important job in modern medical specialities. A minor mistake on the side of cardiologists can severely harm the patient undergo a medical operation or even cause death.

#### *Medical Negligence in India and other countries:*

As per the National Library of Medicine, the yearly number of medical negligence cases in India is around 5.2 million<sup>4</sup>. lack of communication and co - ordination among the team members, is to be blamed. This kind of mismanagement during emergencies leads to deaths. total deaths due to medical errors as reported by NCRB. This zone - wise data is a compilation of 2017, 2018, and 2019 annual reports.

- North - 118 cases
- North - East - 23 cases
- Central - 115 cases
- East - 196 cases
- West - 46 cases
- South - 128 cases<sup>5</sup>

#### In India -

Patients can file complaints with consumer courts under the Consumer Protection Act or pursue criminal proceedings under the IPC. Civil suits for compensation are also common. Awards can be for economic and non - economic damages, but the amounts are generally lower than in the UK and USA In India, the right to health care and protection has been recognized since early times. The Constitution of India, which is the Supreme law of land, does not expressly deal with right to healthcare. But Preamble, Fundamental Right sand Directive Principles of State Policy have a direct bearing on health care of Indian citizens. Apart from this, number of laws has been enacted to protect the health interests of the people. These include The Indian Penal Code 1860, the Fatal Accidents Act 1855, the Indian Medical Degrees Act 1916, the Dangerous Drugs Act 1930, Drugs and Cosmetics Act 1940, the Dentists Act 1948, Drugs (Control) Act, 1950, Pharmacy Council of India Regulations, 1952, Prevention of Food Adulteration Act, 1954, Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, the Medical Council Rules, 1957, the Medical Termination of Pregnancy Act, 1975, The Dentist Code of Ethics and Regulations 1976, the Consumer Protection Act, 1986, the Pre - natal Diagnostic Technique (Regulation and Prevention of Misuse Act, 1994, the Transplantation of Human Organs Act, 1994, etc

#### In USA-

Patients usually file a lawsuit with the help of an attorney. The process involves pre - trial discovery, depositions, and possibly a trial. Many cases settle out of court. Similar to the UK with additional punitive damages in some cases Malpractice insurance plays a significant role. Physicians and particularly psychiatrists may be to a different standard than other defendants in a tort claim. In most tort cases, suicide is legally viewed as an act which terminates a chain of causality. Although the defendant may be held negligent for another's suicide, he or she is not responsible for damages which occur after the act. An exception is made for physicians who are found to have committed malpractice that results in a suicide, with damages assessed based on losses that are proved likely to accrue after the act of suicide. The US medical malpractice stats show about 85, 000, lawsuits on average are filed every year. And given that many go unreported/ unrecognized, the actual digit for cases of medical negligence in the USA is probably more. As far as payouts go, 2022 saw the average reward be around \$679, 000<sup>6</sup>. Various studies have shown that the Texas tort - reform law has had no effect on healthcare costs or the number of physicians practicing in the state. Laws restricting medical - malpractice suits do not reduce the amount of "defensive medicine" or reduce health - care costs. Many jurisdiction that limits the amount that victims of medical malpractice can recover from negligent physicians, purportedly in an effort to decrease hospital and physician costs.

#### In UK -

Patients can file complaints with the NHS or directly pursue civil litigation. The process involves gathering medical records, obtaining expert opinions, and potentially a court trial. Claims are typically for damages to cover both economic losses (e. g., medical expenses, lost earnings) and non - economic losses (e. g., pain and suffering) Medical negligence is also prevalent in the United Kingdom. The estimated figure is around 237 million cases in England every year. Out of them, about 712 to 1708 are extreme leading to death. In the UK, medical negligence claims are typically pursued through the civil justice system. *Heath v. Berkshire Health Authority*<sup>7</sup> the Queen Bench in the U. K. held that damage to the nerve was not caused by unavoidable manipulation of the tractor, but by lack of due care and skill on the part of the surgeon who allowed the drill to cut into the lingual nerve. However, the negligence on the part of the surgeon in not issuing the warning was not established, because a responsible body of professional opinion was in favour of not issuing a warning of the risk of the symptoms involving partial loss of taste and unpleasant sensation in the mouth. *In the UK, medical negligence is a serious issue that can have profound consequences for patients and their families.* Medical negligence not only has immediate consequences for the individuals involved but also broader implications for the healthcare system. It can erode trust in healthcare providers and lead to increased

<sup>4</sup> <https://www.delhimedicalnegligence.com/post/stats-on-medical-negligence-cases-in-india-in-comparison-to-other-countries>

<sup>5</sup> <https://ncrb.gov.in/sites/default/files/CII-2021/TABLE%201.2.pdf>

<sup>6</sup> <https://www.delhimedicalnegligence.com/post/stats-on-medical-negligence-cases-in-india-in-comparison-to-other-countries> (VISITED ON 10/5/2023)

<sup>7</sup> 1991(8)BMLR98

healthcare costs due to litigation but it also highlights areas where improvements are needed to enhance patient safety.

## 2. Conclusion

Annual medical malpractices in India hits 5.2 million cases – incidences increased by 110%; litigation surged by 400% - only 46% of providers follow ethical guidance – 80% of medical error deaths are due to surgical mistake. The 'reporting' process got impacted by COVID. Or see it positively as a sign of improvement in healthcare facilities incompetency to lack of resources, there are many reasons behind medical negligence cases in India. To address the problem, it is essential to -

- 1) Improve the healthcare facilities, bring more transparency to the system,
- 2) Train the practitioners to take accountability, increase awareness among patients (especially in rural areas) regarding their healthcare rights, make stricter laws on medical negligence and provide financial protection to victim's families in case of medical negligence.

Medical negligence is a serious issue that requires vigilance and accountability within any healthcare system. While doctors and healthcare professionals strive to provide the best possible care to their patients, instances of negligence can occur. Any person can claim compensation under the provision of Act including negligent doctors. To get relief under C. P. Act, 1986 the complainant should be a consumer as defined in S - 2 (1) (d) of the act and the service" for the deficiency of which the complaint has been made should come within the circle of service as defined in S - 2 (1) (o) of the Act. As soon as he can prove that he is a consumer and that the act in question qualifies as "service" under the C. P. Act, 1986, the person attempting to file a lawsuit in the Consumer Forum for compensation under the Act may do so.