

Analysis on Medical Negligence Under Consumer Protection Act 2019 And Indian Contract Act 1872

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ABSTRACT

Medical negligence occurs when medical care providers fail to fulfil their professional obligations. All healthcare practitioners must provide a standard of care to their patients. It may be considered medical negligence if they don't fulfil that duty. When patients go to a doctor, they expect to receive medical care using all of the doctor's expertise to solve their medical issues. The arrangement retains the fundamental components of a tort while taking the form of a contract. A physician has obligations to his patients, and any carelessness on the part of the physician may give rise to legal action. Before performing diagnostic procedures or administering therapeutic care, the physician must get the patient's informed consent. The Consumer Protection Act of 1986 covers the services provided by doctors, and patients can file complaints with the Consumer Courts¹ for resolution. Case laws are a valuable resource law for resolving different issues. Before the adoption of the Consumer Protection Act, claims of medical negligence were made under Contract law, and even today, damages can be made under civil law²; however, since implementing the Consumer Protection Act, the civil law remedy has become less critical. The doctor and the patient have a specific relationship, which can be oral, written, or implicit agreements agreed upon by the patient or his representatives and the doctor or hospital. Anyone who has suffered losses due to a doctor's negligence can register a complaint with the appropriate authority. Despite this, the council can sanction the doctor and revoke their registration for their careless actions, but it cannot compensate the victim of such misbehaviour. The Indian Medical Council has enforced stricter measures to raise the bar for medical ethics and practice standards for the past few years.

KEYWORDS: Medical Negligence, Consumer Protection Act of 1986, Consumer Courts, Contract Law, Civil Law, Doctor-Patient Relationship, Damages, Doctor's Negligence, Indian Medical Council, Medical Ethics, Practice Standards, Registration, Compensation, Malpractice

2. INTRODUCTION

The concept of medical negligence is a multifaceted narrative that has evolved over centuries. Its roots can be identified in ancient societies, where primary forms of legal responsibility were present For healthcare providers who harmed their patients. However, during the Middle Ages, medical practice often lacked formal regulation, leading to numerous cases of harm and disputes, yet with limited legal recourse.

¹ <https://ncdrc.nic.in/>

² https://www.indiacode.nic.in/bitstream/123456789/11087/1/the_code_of_civil_procedure%2C_1908.pdf

In the 18th and 19th centuries, formal medical licensing and professional organisations rose, marking an attempt to regulate the medical profession. Notable legal precedents, like *Donoghue v. Stevenson* (1932) in the UK³ and *Darling v. Charleston Community Memorial Hospital* (1965) in the US, helped establish the foundations of modern medical negligence law. In the 20th century, the complexity of healthcare systems and medical procedures spurred the development of medical malpractice insurance. Contemporary medical negligence law continues to evolve, adapting to changing healthcare practices and technologies and emphasising the importance of patient advocacy and safety. The history of medical negligence reflects an ongoing societal effort to balance patients' rights with healthcare providers' responsibilities in ensuring high standards of care.

In the current healthcare landscape, medical negligence continues to be a significant concern with wide-ranging implications. Integrating advanced medical technology while improving patient care has introduced new complexities and risks.

Medical professionals, including doctors, nurses, and other healthcare practitioners, are expected to adhere to a high standard of competence and provide appropriate treatment, diagnosis, and care to their patients. Medical negligence may be alleged when they deviate from this standard, and their actions or omissions result in patient harm.

Medical negligence cases can arise from various situations, including misdiagnosis, surgical errors, medication mistakes, improper treatment, and failures to obtain informed consent. These cases can have profound physical, emotional, and financial implications for the affected patients and their families.

To establish a medical negligence claim, several key elements must be proven, including a doctor-patient relationship, A violation of the expected level of care, causality, and resulting damages. This area of law is highly regulated and varies from jurisdiction to jurisdiction, making it crucial to consult with legal professionals experienced in medical malpractice cases.

3. DEFINITIONS

Medical negligence - Medical negligence occurs when the provider fails to meet the expected standard of care when treating a patient, resulting in harm, injury, or adverse consequences.

Consumer courts - Consumer courts, often known as consumer dispute resolution forums, are specialised judicial bodies established to resolve disputes between consumers and businesses. These courts aim to protect consumer interests and ensure fair and efficient resolution of consumer-related disputes.

Medical professionals - Medical professionals have undergone specialised education and training in medicine to diagnose, treat, and care for patients' health and well-being. These professionals include doctors (physicians), nurses, surgeons, pharmacists, dentists, and many other healthcare practitioners.

Patients - A patient is an individual who seeks or receives medical care, treatment, or services from healthcare providers. Under consumer protection law, a patient is an individual who receives medical services or healthcare-related goods and is considered a consumer.

Compensation - Compensation for medical negligence refers to the financial reparation or payment awarded to a patient or their family in a legal proceeding or settlement to address the harm, injuries, or losses suffered due to medical malpractice or negligence by healthcare providers.

Medical malpractice - Medical malpractice is any action or failure by a physician in the course of a patient's treatment that departs from the established standards of practice in the medical field and harms the patient.

³ Epstein, Richard A. "Medical Malpractice: The Case for Contract." *American Bar Foundation Research Journal* 1, no. 1 (1976): 87–149. <http://www.jstor.org/stable/827952>.

Damages⁴ - Damages are the quantification of loss suffered by the patients in the course of treatment. Damages claimed can be for property loss, medical malpractice, income loss, or any other legal violation.

4. RESEARCH METHODOLOGY

The research carried out is doctrinal research, and the chosen research approach is a descriptive analysis. Primary sources, such as laws, official reports, and statutes from various nations, are commonly consulted. In addition, secondary sources like books, articles, academic journals, websites, and other digital resources are also utilised for reference and research.

5. ISSUES

While the Consumer Protection Act offers specific provisions that allow patients who have experienced losses to seek compensation for damages, it does not address all the related aspects, such as the products and essential equipment used exclusively for commercial profit-driven purposes.

Suppose the medical equipment and tools used in healthcare do not meet the required standards or are damaged. In that case, this can potentially harm consumers, and the existing regulatory act does not provide adequate coverage for such situations, leaving manufacturers of such products unpunished.

It has been established that when doctors or hospitals provide services free of charge, those services do not meet the criteria for being considered "services" under the Consumer Protection Act. Consequently, in cases where services are provided for free, it is impossible to establish a basis for a medical negligence claim under the Consumer Protection Act. This exclusion denies recourse to individuals who have received free medical care and are dissatisfied with it.

The medical sector's failure to implement adequate rules and regulations and maintain proper standard measures has resulted in patients enduring losses and injustice.

Numerous judgements have stated that the term services mentioned under section 2(1)(o) of the Consumer Protection Act is not limited to the words said in that section but impliedly includes healthcare services. But, there is no explicit provision for safeguarding the interests of patients.

6. LEGAL REGIME

6.1 Law of Torts

A tort⁵ is a general civil wrong that covers various wrongful actions. In tort law, the legal system defines the duties that are generally owed to the public. When these wrongs occur, they can be addressed by seeking unquantified damages as a remedy. There are situations where both tort and contract liability may apply concurrently.

Historically, medical negligence cases were primarily addressed through tort law. The earliest recorded malpractice case in the UK⁶ dates back to the 13th and 17th centuries in the USA. In these instances, doctors were held accountable for their ignorance and the harm caused to patients. Even without an explicit agreement, doctors are implicitly responsible for fulfilling a minimum standard of care for their patients, a principle followed in India.

⁴ <https://www.sconline.com/blog/post/2018/01/30/revisiting-liquidated-damages-india/>

⁵ [https://legallaffairs.gov.in/sites/default/files/\(XI\)%20Liability%20of%20State%20in%20Tort.pdf](https://legallaffairs.gov.in/sites/default/files/(XI)%20Liability%20of%20State%20in%20Tort.pdf)

⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9761461/>

6.2 Consumer Protection Act

The Consumer Protection Act⁷ (COPRA) 1986 regulates private medical practices, a significant step towards regulating the private sector.

COPRA safeguards consumers' interests through the establishment of consumer councils. The main objectives of this Act include promoting and defending consumers' rights, ensuring their access to information, and protecting them from unfair trade practices. It also aims to ensure that relevant authorities fully address consumer concerns.

District, state, and national consumer protection councils have been set up to achieve these goals. These councils provide a prompt and uncomplicated resolution process, serving individuals who have hired or utilised services for payment as defined by the Act. The term "beneficiary" encompasses anyone receiving such services besides those contracted. The Act comprises services of all types provided to potential users.

Unlike the alternative, lengthy, and costly civil litigation process, COPRA offers consumers a more cost-effective and expedited recourse. Under the COPRA 1986, the redressal forums are explicitly endowed with the authority to summon witnesses, administer oaths for examination, and request the submission of documents and other evidentiary materials, similar to the powers held by civil courts.

6.3 Indian Contracts Act 1872

Contracts can include both explicit and inferred terms. The Act implies specific contract terms, even if they are not expressly stated. In the case of an agreement between a medical practitioner and a patient, there is an implied term that the practitioner will exercise reasonable care and skill in providing treatment. In cases involving medical professionals and patients. If a medical practitioner treating the patient fails to adhere to the implied duty of care and skill, it is understood as an implied obligation arising from the contract. When this duty is not upheld, it constitutes a breach of the contract.

In a breach, the patient may have a legal basis for claiming damages under the Indian Contract Act⁸. These damages here can include compensation for medical expenditure during the course, pain and suffering, and other losses resulting from the breach of the contract.

6.4 Medical Negligence under the Indian Penal Code

Section 304A of the Indian Penal Code⁹ pertains to the offence of causing a person's death through negligence. In cases where a medical practitioner's failure results in a patient's death, they may face a penalty of imprisonment that might be for a period maximum of two years, a fine, or both.

6.5 Medical Negligence under the Criminal Procedure Code

In criminal law, if it is established that a negligent act is committed with a guilty mind (Mens Rea), the individual responsible can face criminal penalties. However, due to an amended Code of Criminal Procedure¹⁰ (C.C.P.) in 1973, patients also receive compensation. To hold a doctor accountable under criminal law, proving an intention to act negligently is necessary. The Indian Penal Code also safeguards doctors who work in good faith.

⁷ https://ncdrc.nic.in/bare_acts/1_1_2.html

⁸ <https://liddashboard.legislative.gov.in/actsofparliamentfromtheyear/indian-contract-act-1872>

⁹ <https://liddashboard.legislative.gov.in/sites/default/files/A1860-45.pdf>

¹⁰ <https://liddashboard.legislative.gov.in/actsofparliamentfromtheyear/code-criminal-procedure-act-1973>

6.6 *The Medical Council of India*¹¹

The Medical Council of India (MCI) is a statutory institution entrusted with the duty of setting and upholding rigorous standards in medical education and accrediting medical qualifications in India. Information can be found about the Council, its officeholders, organisational structure, legislative acts, regulations, revisions, and related details.

It inspects and accredits medical colleges to ensure they adhere to established standards, regulates the medical profession by formulating ethical and professional guidelines, and approves medical courses and curricula.

The MCI conducts licensing examinations, like the National Eligibility-cum-Entrance Test (NEET), and maintains the Indian Medical Register, a comprehensive record of qualified medical practitioners.

It may mediate disputes among medical professionals, institutions, or organisations and promote medical research and the dissemination of medical knowledge, contributing to the overall well-being of the medical field in India.

7. INTERNATIONAL HEALTH LAWS¹²

7.1 *International Covenant on Economic, Social and Cultural Rights, ICESCR*¹³ (1966)

Article 12

The first clause of Article 12 recognises that all countries that are parties to the Covenant acknowledge the right of every individual to enjoy the highest possible standard of physical and mental health. In other words, people have a fundamental right to good health.

The second clause outlines the measures countries should take to realise this right to healthfully. These measures include:

- a. Reducing stillbirths and infant mortality rates and promoting the healthy development of children, which means ensuring that children have the best possible start in life.
- b. Improving environmental and industrial hygiene, emphasising the importance of clean and safe living and working conditions.
- c. Preventing, treating, and controlling various diseases, including epidemic, endemic, occupational, and other illnesses. This involves measures to protect the population from health threats.
- d. Establishing conditions that guarantee access to medical services and medical care when individuals are sick. In other words, it means making healthcare accessible to all, especially when people need it for their well-being.

These statements collectively emphasise the commitment of states to promote and protect the right to health and well-being of all their citizens, ensuring that they have access to healthcare, disease prevention, and healthy living conditions.

¹¹ Bangdiwala, S., Tucker, J. D., Zodpey, S., Griffiths, S. M., Li, L. M., Reddy, K. S., Cohen, M., Gross, M., Sharma, K., & Tang, J. L. (2011). Public Health Education in India and China: History, Opportunities, and Challenges. <https://doi.org/10.17615/f9yp-w923>

¹² <https://www.ohchr.org/en/special-procedures/sr-health/international-standards-right-physical-and-mental-health>

¹³ Moyo, P. T. (2020). The national health insurance bill: A measure to realise the right to access health care services. <https://core.ac.uk/download/534797592.pdf>

7.2 African Charter on Human and People’s Rights (1987)¹⁴

Article 16

Article 16 of the African Charter emphasises the right to health and places the State Parties' responsibility to protect their people's health and ensure access to medical attention when required. It reflects a commitment to the well-being of individuals within these countries.

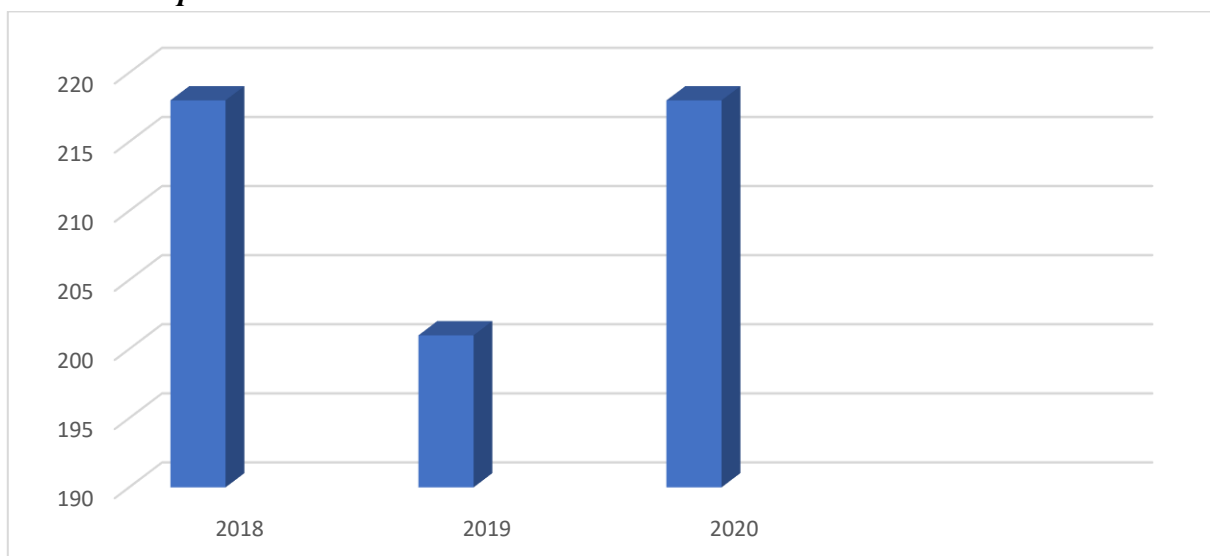
1. The first clause asserts that every individual has the right to avail of the maximum possible physical and mental health aid standard. In other words, people are entitled to good physical and psychological well-being.
2. The clause statement outlines the obligations of the State Parties to this charter. It requires these countries to implement measures to safeguard the health of their populations and facilitate the citizens' access to necessary healthcare services when needed. This means that governments are responsible for taking measures to safeguard and bring awareness about the health of their citizens, as well as providing medical care when necessary.

7.3 WHO

the right to health under WHO encompasses the freedom to choose one's health and body and protection from unwanted interference or harm.

These rights grant individuals autonomy and control over their health and well-being. This includes the ability to make decisions about one's own body and health, such as choices related to sexual and reproductive health. It also involves protection from interference, ensuring that individuals are free from actions that infringe upon their health and bodily integrity, such as torture or non-consensual medical treatment and experimentation. In essence, these freedoms guarantee personal autonomy and the right to make choices about one's health and body without external coercion.

7.4 The NCRB Report¹⁵



The NCRB report represents the number of deaths due to medical negligence in the years 2018, 2019 and 2020 in India.

¹⁴ Doctors without borders | The Practical Guide to Humanitarian Law. <https://guide-humanitarian-law.org/content/conventions/by-country/116-mauritania/>

¹⁵ <https://ncrb.gov.in>

This Report indicates that in 2020, India reported 133 cases of "deaths due to medical negligence." This number was higher than the 201 cases reported in 2019 and lower than the 218 cases reported in 2018, according to National Crime Records Bureau (NCRB) data. In essence, it highlights a rising trend in the number of cases where deaths are attributed to medical negligence over the years, with 2020 having more reported cases than the previous year but fewer than 2018.

8. LATEST JUDICIAL DECISIONS

8.1 *M.A Biviji v. Sunita & Ors.*¹⁶

Here, the Supreme Court noted that a stricter standard should be established for proving medical negligence. This ensures that healthcare professionals can concentrate on making the best treatment decisions based on their assessments without worrying about potential legal actions or harassment in critical medical situations.

8.2 *Hemant Gupta and V Ramasubramanian*¹⁷

In this case, The Supreme Court emphasised that doctors cannot be held responsible for medical negligence if a patient does not survive despite receiving treatment. The Court clarified that even the most skilled doctors cannot guarantee a patient's survival, as their role is to provide the best possible treatment but not to assure a patient's life.

8.3 *Smt. Savitri Devi W/O Khani Lal vs State Of U.P. Thru Home Secy.*

The evidential principle established in this case supports a claimant who, through no fault of their own, cannot provide evidence regarding how an accident occurred. When it is found that the defendant or their employees were in control of the situation, and the accident is the kind that typically wouldn't happen if those in power exercised due care, this lack of care becomes a reasonable inference in the absence of an explanation from the defendant, suggesting that the accident resulted from negligence.

8.4 *Harish Kumar Khurana v. Joginder Singh*¹⁸

The court emphasised that to establish negligence, there must be either substantial evidence available in the records or the presentation of relevant medical evidence. In the specific case at hand, aside from the allegations made by the claimants before the National Consumer Disputes Redressal Commission (NCDRC), there was a lack of medical evidence presented to demonstrate negligence on the doctor's part. The doctor explained his actions regarding the medical procedure and argued that there was no medical negligence. The court noted that the NCDRC's conclusion seemed to be based on assumptions rather than supported by concrete medical evidence. Whether the doctor's administration of anaesthesia was negligent could only have been determined if there was appropriate medical evidence on record.

8.5 *Bombay Hospital & Medical Research Centre v. Asha Jaiswal and Others*

The court's decision stated that a doctor should not be held accountable for medical malpractice solely because a patient's treatment or surgery did not succeed. The court discussed two primary interpretations

¹⁶ <https://www.livelaw.in/supreme-court/supreme-court-judgment-doctor-liability-medical-negligence-241051>

¹⁷ <https://www.hindustantimes.com/india-news/doctor-can-t-be-held-guilty-of-negligence-just-because-a-patient-died-supreme-court-101638298774413.html>

¹⁸ <https://www.sconline.com/blog/post/2021/09/13/medical-negligence-3/>

of the maxim "res ipsa loquitur": it serves as an exception to the general burden of proof, placing the responsibility on the plaintiff or the one making the claim, or it acts as a permissive inference based on the logical probability inferred from the circumstances of the accident. The court also acknowledged that even the most skilled professionals can experience failures, emphasising that *res ipsa loquitur*¹⁹ is the principle for evidence used in civil law, particularly in tort cases, and cannot be employed to establish negligence in criminal law. The court concluded that in cases where treatment is ineffective or a patient passes away during surgery, it should not be automatically assumed that the medical professional was negligent. Appropriate medical evidence must be provided to establish negligence, or the alleged failure must be so apparent that the principle of *res ipsa loquitur* could be applied, not merely based on perception.

9. ANALYSIS

Before the enactment of the Consumer Protection Act, the aggrieved patients in India claimed compensation under the Law of Torts and Fatal Accidents Act 1855²⁰, filing complaints in civil courts. Legal remedies were based on torts, and Section 1-A of the Fatal Accidents Act of 1855 became a lengthy and multi-court-involved process to implement. Of the tort cases in India during the 1970s, out of around 400 cases, only 350 were claims dealt with under the Motor Vehicles Act, and only 3 cases were with respect to medical negligence. This shows a lack of awareness among the public to file complaints against inadequate healthcare services. Alternatively, those with grievances would typically file a criminal complaint with the police or a private complaint with a judicial magistrate. Under the Indian Penal Code (IPC), even a competent doctor could potentially be held accountable for a patient's death, depending on the subjective judgment of a police officer. But Since the 1990s, there has been an increase in the number of cases filed against under medical negligence.

Medical negligence cases under the law of torts can be complex; therefore, the medical service providers have a crucial role in establishing the testimony for the standard of care and the breach thereof. If the court favours the plaintiff (the injured patient), they may be awarded damages as a remedy for the harm suffered due to medical negligence.

Since 1998, the Apex Court of India has passed four contradictory judgements concerning the framing of charges under Section 304-A of the Indian Penal Code against medical professionals facing allegations from patients.

The Consumer Protection Act 2019²¹ provides provisions to address complaints related to medical negligence. It acknowledges that patients are consumers with the right to receive medical services that meet established standards.

Despite the changing outlook, the Consumer Protection Act did not explicitly cover medical services, leading to instances where victims of medical malpractice struggled to obtain compensation. The Act's clause exempting services provided free of charge or under a personal service contract added to the problem. This brought services provided in government and private hospitals under different categories and further complicated matters, as government hospitals offered services free of cost, making it challenging to hold them accountable.

²⁰ Karunakaran Mathiharan. "Supreme Court on Medical Negligence." *Economic and Political Weekly*, vol. 41, no. 2, 2006, pp. 111–15. *JSTOR*, <http://www.jstor.org/stable/4417666>. Accessed 28 Oct. 2023.

²¹ <https://consumeraffairs.nic.in/acts-and-rules/consumer-protection>

The field of medicine is vast and encompasses various aspects, including pharmaceutical industries and different types of treatments such as allopathy, ayurvedic, Unani, and homoeopathy. The medications²² prescribed vary accordingly, and the standard of care needed differs for each case. Additionally, the complexities involved in diagnosing different diseases or disorders make establishing a uniform standard of care challenging. The patient's responsibility in following the prescribed treatment also plays a crucial role.

10. CONCLUSION

Reducing the growing number of malpractice cases does not solely depend on awarding compensation for damages or accusing medical practitioners. Instead, it requires a reformatory approach. The government may take steps such as establishing committees to set specific rules and guidelines or to create clear distinctions for the standard of care required for various medical acts. A medical practitioner failing to meet these standards can be considered a breach of duty under the Indian Contract Act. Patients who consult a doctor for treatment place their trust in the doctor or healthcare service provider, whether it's a hospital or an independent clinic. A contractual relationship exists, whether oral or written, and the fees paid by the patient serve as consideration. Therefore, it can be argued that the doctor is contractually liable for any damages caused.

Considering these numerous influencing factors, it is essential to examine both the actions and standards of responsibility from both the doctor's and patient perspectives when making decisions in cases of medical malpractice.

²² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2816487/>