



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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E.MBA, LL.M, PH.D, PGDSAPM

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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CONSUMER PROTECTION AND MEDICAL NEGLIGENCE: ADDRESSING MATERNITY MALPRACTICES

AUTHORED BY - N UMACHITRA & DR. SM. AZIZUNISAA BEGUM

ABSTRACT

Medical negligence in maternity care is a critical issue that directly impacts the lives of both mothers and infants, often resulting in irreversible harm or loss. Within the framework of consumer protection law, patients are increasingly recognized as consumers entitled to safe, ethical, and competent healthcare services. The Consumer Protection Act in India provides a legal avenue for victims of maternity malpractices to seek accountability and compensation. However, the unique complexities of maternal healthcare—such as delayed diagnosis, improper treatment, inadequate facilities, or negligent conduct during childbirth—make establishing negligence a challenging task. Judicial precedents have played a pivotal role in defining the scope of liability of medical professionals and institutions, balancing the rights of patients with the need to protect practitioners from frivolous claims. This paper critically examines the interplay between consumer protection mechanisms and maternity negligence cases, highlighting common lapses in obstetric practice and their legal consequences. It also explores reforms and best practices to strengthen accountability, such as specialized medical tribunals, patient awareness, improved grievance redressal systems, and adherence to global standards of maternal healthcare. By addressing maternity malpractices through robust consumer protection measures, the study underscores the need to safeguard reproductive rights and ensure justice in maternal health.

Keywords: Consumer Protection, Medical Negligence, Maternity Malpractice, Patient Rights, Maternal Healthcare, Legal Accountability.

INTRODUCTION

When we or someone we care about is sick, we call a doctor right away. People see them as people who defend health, ease pain, and dedicate their lives to benefit others. But what happens when this job, which most people trust, doesn't do its job right? Is there a method for people who are hurt to get justice? Who is to blame in these situations? The laws of medical negligence answer these questions. In India, tort law mostly deals with medical negligence because it is a civil wrong.¹ A civil wrong occurs when someone does anything that hurts someone else's rights. The individual who was hurt has the right to get legal help.²

The legislation protects patients against doctors who are reckless, but it also protects professionals from being falsely accused of being careless. A lot of the time, people make these claims in secret so they don't have to pay for medical care or bother healthcare workers. This event not only damages reputations, but it also makes doctors less likely to make tough but necessary choices during therapy. When we talk about medical negligence, we need to think about two things: how to keep patients safe from doctors who are careless and how to keep doctors safe from false or malicious claims.³

HISTORICAL BACKGROUND OF MEDICAL NEGLIGENCE

People have always had a lot of respect for the medical field. It's the duty of doctors, whether they work for a hospital or a private practice, to take care of their patients. There are still cases of suspected medical negligence, even if they work hard.⁴ These days, people hear them in civil, criminal, and consumer courts. The Consumer Protection Act of 1986 in India currently protects these kinds of claims. This law lets patients get money for problems with medical care. People used to think that being reckless with medicine was a crime instead of a tort, like it is now. In ancient societies, the legal systems relied heavily on local conventions and traditions to control doctors. Tribal and communal rules made doctors responsible in a way that often made it hard to tell the difference between criminal and professional obligation.

¹J.K. Manson, *Forensic Medicine for Lawyers*, 2nd edn., Butterworth's Publications, London, 1983.

²J.M.M. Datta and M.K. Sahray, *Code of Hammurabi Law Relating to Surgeons in Ancient World*, Vol. 17, 1968 Edition.

³K.A. Deville, *Medical Malpractice in Nineteenth-Century America: Origins and Legacy*, NYU Press, New York, 1990.

⁴Lewis L. Laska and Katherine Forrest, *Faulty Data and False Conclusions: The Myth of Skyrocketing Medical Malpractice Verdicts*, Commonweal Institute, 1991.

This notion is widespread in ancient Indian medical texts. In classical literature, the word "mithya," which means deception, inaccuracy, inappropriateness, or illusion, was used to talk about bad medical care. The Sushruta Samhita, a significant text on ancient Indian medicine, suggested that physicians who erred could face punishment. If the victim was of greater social position, the penalty was usually worse. This shows that doctors were held accountable for their conduct even in ancient times. But the way they were held responsible was very much shaped by the social and hierarchical standards of the time.⁵

The Yajnavalkya Smriti, another important early Indian legal treatise, also made it clear what would happen to people who acted irresponsibly in the medical field. It said that the worst punishment for being careless with medical care was a fine of up to 1000 pana, especially if someone died or was gravely harmed. This shows that Indian law had the idea of proportional punishment, where damages or fines were based on how bad the harm was. Over the years, the method that medical negligence is dealt with has evolved a lot. People used to assume it was a felony that could get you in trouble. It is now a civil wrong in India under tort law and is also protected by laws that protect consumers. This historical tendency shows how much people still respect doctors and how much they want them to be held accountable when that trust is broken.⁶

Elements of Medical Negligence

A claim of medical negligence must demonstrate several crucial elements to be legally valid. These are:

- **Duty of Care:** A doctor is in charge of taking care of all of their patients. This duty is both moral and legal, and it means that the patient should get the greatest care possible based on their situation. But the amount of care isn't always the same; it depends on the situation and how good the doctor is at their job.⁷
- **Breach of Duty of Care:** A breach happens when a healthcare worker doesn't give the level of care that is anticipated in a certain situation. This could be an act of omission, which means the doctor didn't do something they should have, or an act of commission, which means they did something they didn't have to do.

⁵ Jonathan Montgomery, *Doctor's Handmaiden: The Legal Contribution*, Oxford Publication, London, 2002.

⁶ C. Havighurst, 'Private Reform of Tort-Law Dogma: Market Opportunities and Legal Obstacles', *Law and Contemporary Problems*, 1986.

⁷ A.M. Dugdale and M. Stanton, *Professional Negligence*, Sweet & Maxwell Publication, London, 1989.

- **Causation:** There needs to be a direct connection between the careless behaviour and the injury that the patient got. The healthcare provider cannot be held responsible until this relationship exists.
- **Damage:** The patient must demonstrate that the physician's negligence caused actual harm, affecting their physical health, mental well-being, or financial situation. There must be clear proof of damage for the claim to be valid.

It's crucial to remember that not every bad medical outcome is the result of carelessness. Medicine is a tough field, and even the finest doctors can mess up or run into trouble. So, the law says you have to show proof of negligence, not just a bad result.⁸

Medical Negligence under Consumer Protection Law

The Supreme Court's ruling in *Indian Medical Association v. V.P. Shantha (1995⁹)* to add medical services to the Consumer Protection Act (CPA), 1986, was one of the most major changes to Indian law. This important decision let patients register complaints with consumer forums against hospitals and doctors for "deficiency in service." But a lot of doctors and nurses don't agree with this way of thinking at all. Many experts say that comparing healthcare to other services for consumers makes the work less respectable. Medical care is different from things and services for sale because it entails risks, unknowns, and choices that could mean life or death.¹⁰ Doctors are worried that the CPA's broad authority makes them more likely to be sued for no good reason, typically to get hospitals to drop unpaid bills. Even if they are found not guilty, healthcare workers might have their reputations and feelings harmed a lot. In the US and other places, nevertheless, consumer law doesn't include cases of medical negligence. Each state has its own standards about malpractice. These rules tell you things like how long you have to file a claim, how much money you can get in damages, and what you need to do before going to court. Indian law might be more effective if it used a similar system, where disciplinary organisations and expert courts, not consumer forums, deal with claims of medical malpractice.

⁸ Angela Roddey Holder, *Medical Malpractice Law*, 2nd edn., A Wiley Medical Publication, New York, 1978.

⁹ *Indian Medical Association vs V.P. Shantha & Ors* 1996 AIR 550

¹⁰ Lewis L. Laska and Katherine Forrest, *Faulty Data and False Conclusions: The Myth of Skyrocketing Medical Malpractice Verdicts*, Commonweal Institute, 1991.

Code of Conduct and Professional Oversight

The Indian Medical Council Act of 1956 led to the Indian Medical Council (Professional Conduct, Etiquette, and Ethics) Regulations, 2002, which set rules for doctors in India. These rules say that doctors can't break the law, accept bribes, or do things that aren't right. The State Medical Councils and the Medical Council of India (formerly the National Medical Commission) can punish doctors who break the law by suspending them or taking them off the medical register. This collection of guidelines makes it clear that statutory authorities need to be stronger so they can do more to deal with carelessness and wrongdoing. The Bar Council of India is in charge of attorneys in a way that is comparable to how doctors are controlled. If medical councils became the principal places where negligence claims were made instead of consumer forums or civil courts, doctors would have more freedom in how they do their jobs while still being held responsible.¹¹

Medical Negligence as Professional Misconduct

When you put doctors and attorneys next to one other, you might see an interesting difference. The Supreme Court ruled in *Bar of India Lawyers v. D.K. Gandhi PS National Institute of Communicable Diseases (2024)*¹² that lawyers are not protected by the Consumer Protection Act because their employment is distinct from other people's. The Court made it plain that the CPA was not supposed to regulate professional services. Instead, it was meant to protect people from bad business practices and bad goods.¹³ If the same reasoning holds for solicitors, why should it not extend to physicians? Both occupations need people who have strong morals, specialist expertise, and a sense of obligation to the country. But customers may still sue physicians, but they can't sue lawyers. Some people think that this unfair treatment hurts the credibility of the medical field and stops doctors from taking the risks they need to take to save lives. It also takes a lot of medical knowledge to tell if a doctor broke the "duty of care." Even though courts are good at law, they aren't necessarily the right place to make tough decisions about therapy. Groups of medical professionals who know all about diagnosis, treatment alternatives, and risk assessment are better able to answer these questions.

¹¹C. Havighurst, 'Private Reform of Tort-Law Dogma: Market Opportunities and Legal Obstacles', *Law and Contemporary Problems*, 1986.

¹² of Bar of India Lawyers v. D.K. Gandhi PS National Institute of Communicable Diseases and Anr. CIVIL APPEAL NO. 2646 OF 2009

¹³ J.M.M. Datta and M.K. Sahray, *Code of Hammurabi Law Relating to Surgeons in Ancient World*, Vol. 17, 1968 Edition.

The Legal Landscape in India

There is not currently a clear law in India that deals with medical negligence. There are a number of different ways to deal with cases:

- Tort law sees negligence as a civil wrong.
- The Consumer Protection Act sees patients as customers of services.
- The Bharatiya Nyaya Sanhita Section 106 says that being reckless and killing someone could be a crime.

Medical regulatory bodies file cases of professional misconduct.¹⁴ This way of doing things, which is split up, makes things ambiguous and causes jurisdictions to cross over. Patients can file claims under civil law, consumer law, and criminal law at the same time. This means that doctors have to deal with various lawsuits for the same behaviour. This kind of thing makes things harder for judges and doctors.¹⁵

THE WAY FORWARD

Indian policymakers need to come up with a fair plan to make sure that people obtain justice and that doctors aren't bothered to fix these issues. Things that could be done are:

- Specialised courts: Set up medical courts with groups of experts to examine into cases of carelessness. These groups would have both doctors and lawyers on staff, so the cases would be heard fairly.
- The Consumer Protection Act should not apply to doctors, just like it doesn't apply to attorneys. Most of the time, medical councils should be in charge of how they act.
- India needs a clear set of laws about medical negligence that encompasses all three types of punishment: civil, criminal, and disciplinary.
- Protection against Frivolous Litigation: Patients who file false or malicious lawsuits should have strong protections in place. If this happened, people would be less likely to abuse the legal system.
- Strengthening Medical Councils: Regulatory organisations need to have the tools and power to quickly and fairly deal with professionals who do wrong.

¹⁴ J. Arthroplasty, 'Medical Malpractice in Hip and Knee Arthroplasty', 1991.

¹⁵ C. Havighurst, 'Private Reform of Tort-Law Dogma: Market Opportunities and Legal Obstacles', *Law and Contemporary Problems*, 1986.

Conclusion

India's law on medical negligence is trapped between two goals that don't function well together: protecting patients' rights and giving doctors the freedom to do their jobs. Patients should be able to sue doctors when they are truly irresponsible, but doctors shouldn't have to worry about being sued for no reason. The Hippocratic Oath reminds doctors of their moral duties, but the law also needs to make sure that doctors can trust and feel safe conducting their tasks.

India may find a fair balance by making regulatory organisations stronger, setting up specialised tribunals, and protecting doctors from lawsuits from patients. These changes would make sure that the legislation still protects patients and that doctors may make important decisions without worrying about what the law says. The medical field must eventually uphold its integrity, as it pertains not to goods or services, but to the most sacred of values—human life.

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