

Doctors Under Legal Scanner During COVID: 19 Pandemic: Overview on Medical Negligence in India

Asst.Prof.Ketki Dalvi¹

¹Asst. Prof. Ketki Dalvi, TMV'S LokmanyaTilak Law College, Pune 411037

* Corresponding author details

Abstract

The COVID-19 epidemic has brought the healthcare sector into sharp focus like never before. Medical professionals are hailed as "Corona Warriors," but on the other side, there have been allegations of patients not receiving medical attention and safety protocols not being followed, endangering the lives of both medical staff and patients.

Any medical professional is aware that even a minor error in judgement can lead to dangers and risks that could ultimately result in a person's loss of life.

The standards of an average practitioner in the class to which a surgeon or anesthetist claims to belong will be used to evaluate them. Specialists need a higher degree of aptitude.

Medical negligence is a serious violation of human rights since it directly affects the "right to life" and the "right to healthcare." In India, increasing numbers of cases of medical misconduct frequently go unpunished since there is no judicial response. As a result, the public's trust in those who offer medical treatment completely diminishes.

There are other matters that need to be addressed, such as whether COVID-19 increased the possibility of medical malpractice claims, the causes of the current rise in medical malpractice cases and the requirement for legislative framework modification to address the problems.

Keywords: COVID19, Pandemic, Negligence, Medical negligence, Right to life, Human rights

Introduction

The severe acute respiratory syndrome coronavirus-2 (SARS-CoV-2), also known as the novel corona virus of 2019 (2019-nCoV), struck the world with a powerful wave of terror and wreaked devastation with its quick spread. The virus was originally identified as causing illness in Wuhan, China, in December 2019, and thanks to its capacity for rapid spread, it was able to penetrate international boundaries and go global on March 11, 2020. Acute respiratory distress syndrome and pneumonia are two symptoms that patients with this disease's severe effects face. If the condition worsens, it may also cause numerous organ failures and eventual death. [1]

It is important to remember that reports of medical negligence incidents existed prior to the COVID 19 issue. An estimated 2,25,000 persons are believed to have died as a result of medical error, including surgical mistakes, inappropriate doses, and misdiagnoses. According to statistics, approximately 12,000 individuals die each year as a result of needless surgery.[2]

The proliferation of healthcare providers with inadequate infrastructure and the lack of adequate skills and knowledge among healthcare workers are two factors contributing to the increase in medical negligence lawsuits. Even worse, the Medical Council of India, the regulatory agency, has been negligent in upholding strictly specified norms for diagnoses and treatment. The regulator is frequently observed turning on its heels and defending healthcare providers from their misbehavior. Patients and their families are turning to the legal system more frequently as a result. However, due to their lack of subject area competence and the lack of clear norms, even the courts are unable to deliver uniform justice. [3]

“The law on medical negligence has to keep up with the advances in the medical science as to treatment as also to diagnostic...Duty of the doctor is to prevent further spread of infection...Blood tests and cultures should be regularly performed to see if the infection is coming down.”.

Before COVID19, the Supreme Court clarified the situation, making it clear what constitutes medical negligence and when a doctor can be held accountable for the said wrongdoing.

Failure to act in accordance with the standard, reasonable, competent medical measures at the time would not constitute negligence, the court said in *Malay Kumar Ganguly v. Sukumar Mukherjee*.^[4]

A medical professional must, however, use the level of care, competence, and knowledge that is reasonable for him. Medical malpractice would occur from failing to diagnose a patient correctly and then administering the incorrect treatment.

The aforementioned decision was a turning point since it developed the law around medical negligence and recognized the risks to a patient's health that might result from an incorrect diagnosis and medication.^[5]

Definition of Negligence and Medical Negligence

Negligence: Definition

In the legal system, "negligence" is a type of tort or civil violation that also violates criminal and consumer laws. Which suggests that a behaviour is wrong since it doesn't meet the legal standard expected of a reasonable person to safeguard people from potentially dangerous or harmful behaviours. Any irresponsible behaviour towards another party gives that person the right to compensation for any harm to their relationships, wealth, property, or mental and physical health.^[6]

B. Alderson J provided the timeless concept of negligence in his illustrious utterance in 1856. In the case of **Blyth V. Birmingham Waterworks Company** he opined that ‘The omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. The defendants might have been liable for negligence, if unintentionally, they omitted to do that which a reasonable person would have done, or did that which a person taking reasonable precautions would not have done.’ ^[7]

Medical Negligence : Definition

Any action or inaction that appears to depart from the generally accepted level of medical care that a practitioner provides for their patient is considered to be a case of medical negligence. When a practitioner is employed in a certain profession, it is assumed that they will have the knowledge and abilities necessary to perform their obligations. It requires a great deal of care and responsibility to work in the medical field, where concerns about life and death and the stakes are often very high.[8]

For instance, if an accountant makes a mistake, money would be lost, but if a doctor makes a mistake, a life could be lost. A doctor is constantly expected to be perfect because patients regard them as gods and trust them to heal them, and because medical errors might result in fatalities.

When patients receive incorrect, careless, or negligent treatment, it is referred to as medical negligence. When medical professionals fail to carry out their duties with the requisite level of care, it is referred to as medical negligence or malpractice. Under the tort law, Indian Penal Code, Indian Contracts Act, Consumer Protection Act of 1986, and many other statutes, negligence is a crime.

Evolution of Indian Laws Regulating Medical Negligence

The practice of medicine has been governed by core values and a legal framework since the Ancient time. To protect the sick individual from negligent doctors, extensive steps were implemented in our smritis, including Manusmriti, Yajnavalkya Smriti, Narad Smriti, and Brahma Smriti.

Later on in medieval period when Unani medicines were introduced that time also medical practice was regulated through certain rules. [9]

The idea of negligence or medical negligence was comparable to that of English law under British control, and the punishment or liability for professional misconduct or negligence from the physician was handled in accordance with Law of Tort. [10]

The central and state health ministers conducted a number of conferences on health following India's 1947 declaration of independence. Then, a number of commissions and committees were established to keep an eye on, analyze, and recommend ways to advance developments while

addressing the difficulties the healthcare system was facing in each state as it related to public health care and services in both rural and urban areas.

The ever-evolving advances in the international legal framework on medical negligence have not been well-received by the Indian legal system. Most medical malpractice claims at originally only fell under the ambit of a criminal offence, and claims were brought under the Indian Penal Code to deal with complicated circumstances of patients' bodies being harmed.[11]

The Supreme Court of India's 2005 ruling in the historic Jacob Matthew [12] set the ultimate parameters for the country's medical malpractice regulations. This decision not only established the rules governing medical negligence, but it also gave the claimants access to remedies by allowing them to seek compensation for their losses and file a criminal complaint to hold the doctors accountable for their actions. [13]

Characteristics of Medical Negligence

Negligence is a violation of a legal obligation.

A medical professional, such as a doctor, has obligations to his or her patients that were outlined by the Supreme Court in the case of **Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Babu Godbole and Anr.** [14] A medical professional, has obligations to his or her patients for the purpose of providing advice and treatment. The patient has the right to file a claim for negligence if any of these obligations are broken. These tasks include:

- The responsibility or obligation to exercise caution in deciding whether or not to take on a special case.
- The responsibility of exercising care in selecting what therapy or treatment a patient should have in a given situation.
- The responsibility to appropriately provide the treatment.

Every doctor or medical practitioner owes a duty of care to the patients they treat, and when they break that duty, the patients suffer harm, giving them the right to sue for negligence. The

Supreme Court ruled in **State of Haryana v. Smt Santra** [15] that every single health professional has a duty to operate with a reasonable level of care and expertise. [16]

Rights of Patients:

There are certain rights to every patient.

- Right to Know or get the information about his/her health condition
- Right to access and review documents pertaining to their medical condition
- Right to seek medical attention in an emergency
- Informed Consent
- Right to privacy, human dignity, and secrecy in relation to their illness
- Right to receive medical care without facing any type of discrimination
- Right to chose any alternative treatment if there are options accessible to address their disease
- Right to be heard and to look for justice for his illness or disease

Misconduct by Physician will be considered as medical misconduct when he Abuses professional position. In short they shouldn't try to engage in misbehaviour while acting in their professional capacity. Professional misconduct includes engaging in adultery, improper behaviour, or continuing an improper association with a patient.

When he performs any procedure without first getting the patient's permission. It is required to take consent of patient's, or the patient's spouse, parent, or guardian in the event of a minor, as the case may be.

Medical malpractice in India during COVID-19

The COVID-19 pandemic has devastated the whole world, including India. With a population of more than 1.3 billion, the nation has been battling to stop the virus's spread, and the healthcare system has been under a lot of stress. Medical negligence has grown to be a major issue in India during this trying time, with many patients suffering injury as a result of healthcare personnel not providing the necessary level of care.

In India, medical malpractice has expanded during the COVID-19 outbreak. The healthcare system is under tremendous strain, and healthcare providers are dealing with unusual problems and circumstances. Typical instances of medical malpractice at COVID-19 in India include:

1. Inadequate infrastructure: The amount of COVID-19 cases in India has been difficult for the country's healthcare system to manage, and inadequate infrastructure has been a major source of worry. In many hospitals, there are insufficient beds, ventilators, or other critical pieces of equipment, and healthcare workers must do their duties under challenging circumstances.

2 India has a scarcity of healthcare professionals, with a nurse to patient ratio of just 1:670 and a doctor to patient ratio of just 1:1,457. The inability to find enough healthcare professionals has made it challenging to treat COVID-19 patients properly. [17]

3. Lack of knowledge and experience: The knowledge and expertise required to address the COVID-19 epidemic are lacking among many healthcare professionals in India. Since COVID-19 is a new virus, many medical professionals are unsure of the best ways to diagnose and treat its victims.

4. A scarcity of personal protective equipment (PPE), such as masks, gloves, and gowns, is affecting healthcare personnel in India. Lack of PPE has made it challenging to treat COVID-19 patients properly and exposed healthcare workers to the risk of catching the virus.

5. Overcrowding and a lack of social distance: Patients share beds and wards in a lot of hospitals and healthcare institutions in India. Lack of social isolation has increased the danger of Covid-19 transmission and made it challenging to give patients the treatment they need.

6. Poor treatment of COVID-19 patients: In a few instances, Indian healthcare professionals have treated COVID-19 patients improperly, causing injury or even death. While some patients received the incorrect prescription, others did not get the required follow-up care. [18]

Laws affecting medical profession in case of medical negligence in India

Medical personnel are required to abide by the Indian Medical Council (Professional Conduct,

In certain cases criminal liability also applied in Medical negligence cases. Despite this, there are still other laws which affect the medical field in India. These laws safeguard the rights of the patients by preventing medical malpractice or negligence. They are as under

- **Article 21 of the Indian Constitution** – It states that no person shall be deprived of the right to life and personal liberty except according to the procedure established by law.
- **Article 32 of the Indian Constitution** – It speaks about the Right to Constitutional Remedies. The apex court is given authority to issue directions, orders or writs and is considered as the protector and guarantor of Fundamental Rights.
- **Article 41 of the Directive Principles of State Policy** – The State can, within its jurisdiction, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.
- **Article 42 of the Directive Principles of State Policy** – The State can make provisions for securing just and humane conditions of work and for maternity relief.
- **Article 47 of the Directive Principles of State Policy** – The State can regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State can endeavor to bring about prohibition of the consumption of intoxicating drinks and of drugs which are injurious to health except for medicinal purposes.[20]

Section 52 of Indian Penal Code – Anything which is done without due care and attention cannot be considered as an act done in good faith.

Section 80 of Indian Penal Code – Anything which is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution is not an offense.

Section 81 of Indian Penal Code – Anything which is done merely by reason of it is being done with the knowledge that it is likely to cause the harm, if it is done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property is not an offense.

Section 88 of Indian Penal Code – No person can be accused of an offense if he/she performs an act in good faith for the benefit of the other person, does not intend to cause harm even if there is a risk and the patient has explicitly or implicitly given consent.

Section 304-A of Indian Penal Code – A person who commits a rash or negligent act which amounts to culpable homicide will be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. [20]

Section 337 of Indian Penal Code – A person who commits a rash or negligent act which threatens human life or personal safety of others will be punished with imprisonment of either description 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 Indian Penal Code – A person who commits a rash or negligent act which threatens human life or personal safety of others will be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both. **Section 304-A of Indian Penal Code** – A person who commits a rash or negligent act which amounts to culpable homicide will be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

To obtain financial redress in negligence cases, medical negligence cases are brought under civil law in India. As a result, the remedy is sought under Indian laws governing torts and consumer protection. Only when patients wish to hold the petitioner accountable for medical malpractice do they turn to the criminal justice system under the IPC.

Covid 19 Cases in India.

The High Courts and the Supreme Court of India have rendered decisions in a number of cases of medical malpractice that occurred during COVID-19. Here are a few noteworthy instances:

Nalanda Medical College and Hospital v. Shiv Kumar,^[21] in this instance, a COVID-19 patient allegedly died at a hospital in Bihar as a result of medical malpractice. The Patna High Court ordered an investigation after the patient's relatives filed a lawsuit against the institution. The investigation showed that the hospital had not treated COVID-19 patients according to the correct procedures. The hospital was found guilty of medical malpractice by the court, and it was ordered to compensate the patient's family.

In re Fortis Hospital v. Aruna Oswal^[22] In this instance, a COVID-19 patient who had been hospitalised and died as a result of alleged medical malpractice. The Punjab and Haryana High Court ordered an investigation after the patient's relatives filed a lawsuit against the institution.

The investigation showed that the hospital had not treated COVID-19 patients according to the correct procedures. The hospital was found guilty of medical malpractice by the court, and it was ordered to compensate the patient's family.

Mohammed Salim V/s The Union of India ^[23] In this instance, a COVID-19 patient who was denied hospital admittance and later died as a result of claimed medical malpractice. The Kerala High Court ordered an investigation after the patient's relatives filed a lawsuit against the institution. The investigation showed that the hospital had not treated COVID-19 patients according to the correct procedures. The hospital was found guilty of medical malpractice by the court, and it was ordered to compensate the patient's family.

In Re: The Proper Treatment of COVID-19 Patients and Dignified Handling of Dead Bodies.^[24] The subject of medical malpractice and improper handling of dead bodies during COVID-19 in India was brought up in this case by the Supreme Court on its own initiative. The national and state governments were given various orders by the court to make sure that the correct procedures for COVID-19 treatment and management of dead remains were followed. The court also ordered the governments to pay the families of COVID-19 patients who passed away as a result of medical malpractice compensation.

These incidents show how crucial it is to hold hospitals and other healthcare organisations responsible for medical malpractice during COVID-19 in India. In cases of medical malpractice, the courts have been crucial in making sure that patients receive the care they need and that their families are compensated.

Conclusion

In conclusion, the COVID-19 pandemic has significantly strained India's healthcare system, resulting in instances of medical malpractice. For their actions or inactions during the pandemic, doctors have come under scrutiny from the legal system, and some charges have been brought against them. A stronger healthcare system in India is required, with greater facilities and training for medical workers, as seen by the rise in cases of medical negligence during the epidemic.

Not only can medical malpractice affect patients, but it also undermines patient confidence in their doctor. In order to avoid medical malpractice and give patients the treatment they need, it is crucial for healthcare workers to take all reasonable safeguards.

In order to address the issue of medical negligence during COVID-19, the Indian government has taken various actions, including strengthening the penalty for such behaviour and establishing standards for the care of COVID-19 patients. To solve the fundamental problems in the healthcare system that lead to medical negligence, there is still much work to be done.

In conclusion, the COVID-19 pandemic has emphasized the value of a strong and dependable healthcare system, with qualified medical staff, enough facilities, and patient safety-focused policies. It is hoped that the pandemic's lessons may result in improvements to India's healthcare system and lessen the likelihood of future instances of medical negligence.

Violation of laws and regulations - Medical personnel are required to abide by the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, which outline their obligations and responsibilities.

References

- [1] Manupatra. (n.d.). Articles – Manupatra. <https://articles.manupatra.com/article-details/PUBLIC-HEALTH-CHALLENGES-DURING-COVID-19>
- [2] Vaishnavi, S. (2019, June 6). Medical Negligence and Indian legal perspective - iPleaders. iPleaders. <https://blog.iplayers.in/medical-negligence-2/>
- [3] Suveer Gaur, & Suveer Gaur. (2020). COVID-19 and Medical Negligence: The need for comprehensive guidelines. Bar And Bench - Indian Legal News. <https://www.barandbench.com/columns/covid-19-and-medical-negligence>
- [4] AIR 2010 SC 1162
- [5] Suveer Gaur, & Suveer Gaur. (2020b). COVID-19 and Medical Negligence: The need for comprehensive guidelines. Bar And Bench - Indian Legal News. <https://www.barandbench.com/columns/covid-19-and-medical-negligence>
- [6] Li, M., & Wang, J. (2023). The impact of social media on the spread of misinformation. Journal of Management, 59(3), 811-833.:
<http://14.139.185.167:8080/jspui/bitstream/123456789/454/1/LM0320003>
- [7] Admin, & Admin. (2020, September 4). Blyth v. Birmingham Waterworks Co. | Case Brief for Law Students | Casebriefs. CaseBriefs. <https://www.casebriefs.com/blog/law/torts/torts-keyed-to-prosser/negligence/blyth-v-birmingham-waterworks-co/>
- [8] Medical Negligence during COVID-19 Pandemic #newvoices. (2021, October 18). Justice Adda. <https://www.justiceadda.com/post/medical-negligence-during-covid-19-pandemic>
- [9] Gledhill, A. (1964). The Republic of India: The Development of its Laws and Constitution (2nd ed.). London: Stevens & Sons.
- [10] Bolam, J. H. (1957). Bolam v. Friern Hospital Management Committee. 1 WLR 583.
- [11] Merlyn, & Merlyn. (2023, March 6). Medical Negligence Act In India. Merlyn Law Firm - Best Lawyers In Chennai | Advocate In Chennai. https://merlynlawfirm.com/evolution-of-laws-of-medical-negligence-in-india-2/#_ftn3
- [12] Jacob Matthew V State of Punjab & Anr. (2005) 6 SCC 1
- [13] Ibid
- [14] 1969 AIR 128
- [15] (2000) 5 SCC 182

- [16] Vaishnavi, S. (2019b, June 6). Medical Negligence and Indian legal perspective - iPleaders. iPleaders. <https://blog.iplayers.in/medical-negligence-2>
- [17] Kalantri, S. P. (2022, July 20). 5 reasons India's 'Missing Middle' is struggling to access quality healthcare. Times of India. Retrieved from <https://timesofindia.indiatimes.com/blogs/voices/5-reasons-indias-missing-middle-is-struggling-to-access-quality-healthcare/?source=app&frmapp=yes>
- [18] Patel, R. B., & Patel, B. B. (2022b). An analysis of the COVID-19 situation in India in terms of testing, treatment, vaccine acceptance and national economic performance. International Journal of Public Health, 67. <https://doi.org/10.3389/ijph.2022.1604975>
- [19] Constitution of India | Legislative Department | India. (n.d.). Retrieved from <https://legislative.gov.in/constitution-of-india/>
- [20] advocatekhoj.com. (n.d.). Indian Penal Code, 1860 | Bare Acts | Law Library | AdvocateKhoj. Copyright 2023, [advocatekhoj.com](https://www.advocatekhoj.com). <https://www.advocatekhoj.com/library/bareacts/indianpenalcode/index.php?Title=Indian%20Penal%20Code,%201860>
- [21] 2014 (14) SCALE 663
- [22] (2013) 10 SCC 733
- [23] W.P. (Civil) 793 of 2017
- [24] In Re: The Proper Treatment of COVID 19 Patients and Dignified Handling of Dead Bodies in the Hospitals etc. (2020, December 18). (37 SCC 1). Supreme Court of India.