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## AN OVERVIEW ON MEDICAL NEGLIGENCE

*Priyansi Panigrahi<sup>1</sup>*

### ABSTRACT

Medical professionals are regarded as being second to God. They offer comfort to people afflicted with a range of illnesses and afflictions as well as humanitarian assistance. Physicians and other health care providers are held in high regard because of their immense contributions to mankind; in fact, medicine has long been seen as a noble profession. The dynamic between a doctor and patient has evolved with time, however, many cases involving individuals who suffered as a result of medical professionals' mistakes and careless actions have surfaced over the past few decades. The majority of legal systems have established several guidelines and precepts to address the growing number of conflicts and legal problems that arise between physicians and patients. Public awareness of medical negligence in India is growing. Hospital managements are increasingly facing complaints regarding the facilities, standards of professional competence, and the appropriateness of their therapeutic and diagnostic methods. After the Consumer Protection Act, 1986, has come into force some patients have filed legal cases against doctors, have established that the doctors were negligent in their medical service, and have claimed and received compensation. As a result, a number of legal decisions have been made on what constitutes negligence and what is required to prove it.

**Keywords:** Medical professionals, public awareness, negligence, humanitarian.

### INTRODUCTION

Medical professionals are treated as next to God. They provide humanitarian services and gives solace to individuals suffering from various diseases and disorders. Due to their great service to humanity, the doctors and medical professionals are treated with reverence and since the ancient times the medical profession has been considered as a noble profession. However,

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<sup>1</sup> Priyansi Panigrahi, 4<sup>th</sup> year Law student of Xavier Law School, XIM University Bhubaneswar, Odisha.

with the passage of time, there has been a change in the doctor-patient relationship. During the last few decades, a number of incidents have come to light in which the patients have suffered due to the error and inadvertent conduct of doctors. Due to the increasing conflicts and legal disputes between the doctors and patients, most of the legal systems have developed various rules and principles to deal with such inadvertent behaviours of doctors. This has led to the development of a new branch of jurisprudence, i.e. medical negligence. Hence, any negligence on part of the medical professional would be treated as either a tort of negligence or a deficiency in service under Consumer Protection Act, 1986.<sup>2</sup> As a result, the judiciary does not examine medical negligence alone; rather, the technical advice of subject-matter specialists is given significant weight when resolving cases involving medical negligence brought against physicians. With a focus on the judiciary's interpretation of consumer protection law, this study examines the introvert investigation of negligence in the medical profession in the context of current legislation.

In India, patients can seek legal recourse for medical negligence by filing a complaint with the relevant state medical council, consumer court, or civil court. The complaint must provide details of the medical negligence, including the nature of the harm caused, the medical practitioner's breach of duty, and the damages suffered by the patient.<sup>3</sup> It is crucial to remember that not every negative medical outcome can be attributed to medical malpractice. Because medicine is not a precise science, there are several variables that might lead to a poor result. It is necessary to demonstrate that the medical practitioner violated their duty of care by not offering treatment that complied with the necessary standard in order to prove medical negligence.

## MEANING OF MEDICAL NEGLIGENCE

Medical malpractice, is known as medical negligence, is the legal term for when a healthcare provider fails to fulfil the necessary standard of care with the necessary degree of competence and expertise. A healthcare provider's act of commission or omission may result in this failure, which might cause harm or injury to the patient.

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<sup>2</sup> Bratin Kumar Dey, Medical Negligence: An Overview, Vol 25 No 1, BJOHNS, PG01, (26<sup>th</sup> may.2024, 11:14am),

[https://www.researchgate.net/publication/343553543\\_Medical\\_Negligence\\_An\\_Overview#:~:text=Medical%20negligence%20is%20the%20failure%20of%20a%20medical.practice%20that%20results%20in%20harm%20to%20the%20patient.](https://www.researchgate.net/publication/343553543_Medical_Negligence_An_Overview#:~:text=Medical%20negligence%20is%20the%20failure%20of%20a%20medical.practice%20that%20results%20in%20harm%20to%20the%20patient.)

<sup>3</sup>Legalserviceindia,<https://www.legalserviceindia.com/legal/article-10686-medical-negligence-laws-in-india.html> (26<sup>th</sup> may. 2024, 11:20am).

It is essential to acknowledge that not every unfavourable consequence of medical intervention stems from medical malpractice. A negative outcome from medical therapy can be caused by a variety of circumstances, as the field is not exact. It must be demonstrated that the medical practitioner violated their duty of care by neglecting to administer therapy that satisfied the required standard.

Medical personnel must give care that satisfies the required standard of care in order to prevent medical negligence, which is a major problem that can have catastrophic repercussions for patients. Patients have the right to pursue legal action and compensation for their damage in cases of medical malpractice.

To put it simply, negligence is the absence of appropriate care and caution. It is a duty breach brought on by the failure to take action that a reasonable person would have taken in light of the factors that typically govern how human affairs are conducted. It might also mean acting in a way that someone else would not have done in a wise and reasonable manner. The three main elements of carelessness are "resulting damage," "breach," and "duty." These meanings might vary depending on the situation and are fairly subjective. It is impossible to consider if pulling a victim from an assaulting animal might injure their limbs while doing so. Physicians may also encounter such circumstances. When a medical professional discovers a patient in a critical state, they might have to try a rudimentary type of emergency surgery in an attempt to preserve their life. In these situations, carelessness is not present.

Hon'ble Supreme Court in *Kusum Sharma & Ors. v. Batra Hospital & Medical Research Centre and Ors* wherein it was defined as “22. Negligence. - Duties owed to patient. A person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who consulted by a patient., owes him certain duties, namely, a duty of care in deciding whether to undertake the case; a duty of care in deciding what treatment to give; and a duty of care in his administration of that treatment. A breach of any of these duties will support an action for negligence by the patient”.<sup>4</sup>

There are 3 components of medical negligence

- The presence of a legal obligation

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<sup>4</sup> Kusum Sharma & Ors. v. Batra Hospital & Medical Research Centre and Ors, 2010 (3) SCC 480.

- Violation of the law
- Damage resulting from this violation

In *Vinod Jain vs. Santokba Durlabhji Memorial Hospital and Ors.* the Hon'ble Supreme Court observed that the test for negligence shall be from the view point that a doctor who has been accredited with a special skill or competence but does not possess highest expert skill it would in such case be sufficient that he exercises skill of an ordinary competent man under similar scenario. This is primarily done for greater good of the community at large, to prevent the doctors from thinking about their own safety instead of the safety of the patients.<sup>5</sup>

### **EXAMPLES OF MEDICAL MALPRACTICE**

Here are a few examples of medical negligence:

- incorrect medication administration.
- carrying out the incorrect or unsuitable kind of surgery.
- not providing appropriate medical guidance.
- leaving any foreign objects, such sponges or bandages, within the patient's body following surgery.

### **TYPES OF MEDICAL NEGLIGENCE**

Medical malpractice can happen in a variety of ways. It usually happens when a medical practitioner departs from the necessary level of care. Thus, we may state that any kind of departure from the acknowledged norms of medication and treatment is seen as medical negligence, and if it results in harm to the patient, the hospital, other staff members, and/or the surgeon performing the surgery may all be held accountable.

“Some of the common categories of medical negligence are as follows:

- Wrong diagnosis – When someone goes to a hospital, clinic or medical room, etc. the first step after admittance is the diagnosis. Diagnosing symptoms correctly is critical and important to provide medical care to any patient. However, if a patient is not treated properly due to any mistake in diagnosis, the doctor can be made liable for any further injury or damages caused as a result of the wrong diagnosis.

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<sup>5</sup> Vinod Jain v. Santokba Durlabhji Memorial Hospital and Ors, AIR 2019 SC 1143.

- Delay in diagnosis – A delayed diagnosis is treated as medical negligence if another doctor would have reasonably diagnosed the same condition in a timely fashion. A delay in diagnosis can cause undue injury to the patient if the illness or injury is left to worsen with time rather than being treated. Obviously, any delay in the identification and treatment of an injury can reduce the chance of recovery for the patient.
- Error in surgery – Surgical operations require an enormous level of skill and it should be done with due care and caution because even the slightest mistakes can have profound effects on the patient. The wrong-site surgery, lacerations of any internal organ, severe blood loss, or a foreign object being left in the body of the patients, all this comes under Surgical error.
- Unnecessary surgery – Unnecessary surgery is usually associated with the misdiagnosis of patient symptoms or a medical decision without proper consideration of other options or risks. Alternatively, sometimes surgery is chosen over conventional treatments for their expediency and ease compared to other alternatives.
- Errors in the administration of anaesthesia – Anaesthesia is a risky part of any major medical operation and requires a specialist (anaesthesiologist) to administer and monitor its effect on the patient. Prior to any medical procedure requiring anaesthesia, the anaesthesiologist has to review the patient's condition, history, medications, etc. to determine the most suitable of all the medicine to use. Anaesthesia malpractice can happen even during the pre-operation medical review or during the procedure itself.
- Childbirth and labour malpractice – Childbirth is a difficult event for a woman and it becomes worse if not handled properly by the doctors and nurses. There are many instances of medical negligence during childbirth including the mishandling of a difficult birth, complications with induced labour, misdiagnosis of a newborn medical condition, etc.
- Long-Term negligent treatment – Medical negligence can also occur in subtle ways over the course of a long treatment period. Usually, the negligence can take the shape of a failure to follow up with treatment, or a doctor's failure to monitor the effects of the treatment properly”<sup>6</sup>.

## **ESSENTIALS OF MEDICAL NEGLIGENCE**

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<sup>6</sup> Richa Singh, Medical Negligence in India, blog. ipleader, (26<sup>th</sup> may.2024, 12:16 pm), <https://blog.ipleaders.in/medical-negligence-india/> .

To establish medical negligence, certain essential elements must be proven. These essentials include:

- **Duty Of Care:**  
The healthcare professional must have had a duty of care to the patient. This means that they had a legal obligation to provide care that meets the expected standard of care.
- **Breach Of Duty:**  
Healthcare professional must have breached their duty of care by failing to provide treatment that met the required standard. This breach of duty can occur through an act of omission or commission.
- **Causation:**  
The breach of duty must have caused harm or injury to the patient. It must be shown that the harm or injury was a direct result of the healthcare professional's breach of duty.
- **Damage:**  
The patient must have suffered harm or injury as a result of the healthcare professional's breach of duty. This harm or injury can be physical, emotional, or financial.<sup>7</sup>

## **DUTY OF CARE**

A standard of care outlines the proper course of action and dosage regimen in accordance with the specifications that a physician must consider when treating his patients. Neither the greatest nor the lowest level of care should be provided.

The degree in this case refers to the standard of care that a regular healthcare provider in the same locality with the same education and experience would provide under comparable conditions. This is a crucial issue in situations of medical misconduct; if the response is "no," and the subpar care caused you harm, you have the right to sue for medical malpractice

The Hon'ble Supreme Court in *Dr. Laxman Balkrishna Joshi Vs. Dr. Trimbak Babu Godbole* had observed that every doctor must exercise reasonable standard of care that are set out in the profession. Any breach towards these duties shall hold him liable for medical negligence.<sup>8</sup>

The National Consumer Disputes Redressal Commission in *Chandigarh Clinical Laboratory vs Jagjeet Kaur* upheld the findings of the District and State commission wherein the appellant

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<sup>7</sup> Richa Singh, Medical Negligence in India, blog. ipleader, (27<sup>th</sup> may.2024, 11:25am), <https://blog.ipleaders.in/medical-negligence-india/>.

<sup>8</sup> Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Babu Godbole, 1969 AIR 128.

was directed to pay the complainant a compensation of Rs.25,000 along with cost of F Rs, 2,000. The appellant laboratory had issued the patient with wrong reports for which the Hon'ble Commission held that the appellant had "duty of care" to give accurate to the patient and failure of the appellant to take due care s shall amount to medical negligence.<sup>9</sup>

In situations involving medical negligence, a doctor has a duty of care to take precautions to ensure that a patient is not harmed. In general, physicians have a duty to look after their patients. For a duty of care to be established, there are conditions. They are listed in the following order: A doctor is not expected to treat every patient, but when one is, he has an obligation to treat them with appropriate care and in compliance with established guidelines. It is appropriate for a physician or clinical professional to advise a patient to see another healthcare provider. On the other hand, a medical practitioner should attend to the patient in an emergency.

A doctor needs patience because he cannot function without it. The patient's information should be kept private and confidential. But in some situations, he may divulge the information if he believes it is his responsibility to do so. For instance, someone can inform others about a sickness that is hazardous to people and is spreading by becoming public. A doctor or physician can choose who he wants to treat, but in an emergency, he can't refuse to treat the patient. However, once a medical expert takes on a case, they are unable to leave it without notifying the patient's family. A medical professional who is temporarily or permanently registered should never knowingly engage in careless behaviour that causes his patients to get subpar treatment. When a doctor with expertise in a particular area of medicine is called in to treat a patient when the treating physician is unavailable, the acting physician is allowed to bill for their services. However, they must obtain consent from the patient to leave when the treating physician arrives.<sup>10</sup>

## **WHEN DOES LIABILITY ARISES**

When a hospital or medical practitioner fails to provide the required level of care and the patient suffers as a result, they will be held accountable for all measures taken against them. The complainant will have the burden of proving negligence. In order to proceed, they must first prove that the accused had a duty of care and that obligation was breached.

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<sup>9</sup> Chandigarh Clinical Laboratory vs Jagjeet Kaur, IV (2007) CPJ 157 NC.

<sup>10</sup> Richa Singh, Medical Negligence in India, blog. ipleader, (26<sup>th</sup> may.2024, 12:52pm), <https://blog.ipleaders.in/medical-negligence-india/>.

The State Consumer Disputes Redressal Commission of Jharkhand in *Jagdish Prasad Singh v. Dr. A.K. Chatterjee* directed the opposite party to pay a sum of Rs. 25,000 to the complainant as compensation for his mental agony and physical harassment and Rs. 5,000 as litigation cost. It was observed that the accused had failed to take due care to return the precise findings in the reports. Whether harm came to the patient or not would not be the criteria for case against negligence.<sup>11</sup>

Nonetheless, the legal doctrine of "ipsa loquitur," or "things speak for themselves," is used by the courts in certain situations. Under these circumstances, it is assumed that the healthcare provider has behaved negligently or below the required standard of care. It is assumed under this premise that the damage could only have resulted from the medical professional's carelessness. Putting this theory into reality would entail that the judge's carelessness has already occurred. Now, it is the doctor's responsibility to provide evidence to the contrary. Operating on the incorrect patient or leaving an item within the patient's body are two instances.

### **RES IPSA LOQUITUR**

The Latin maxim “**res ipsa loquitur**” means that “the thing speaks for itself.” In terms of medical malpractice, it refers to the cases where the doctor’s treatment was far below the set standards of care under that negligence is assumed.

The doctrine assumes the following:

- Nature of injury gives the clue that without negligence it could not have happened.
- There was no involvement of the patient himself in the injury in any way.
- The injury happened under the circumstances which were under the supervision and control of the doctor.

It means that by applying the principle the judge has accepted that the negligence has occurred. After this, the doctor will have to rebut this thing and if he fails to do so then the patient would be considered as successful in the case of medical negligence.”<sup>12</sup>

*Spring Meadows Hospital and Anr. v. Harjol Ahluwalia (1998)*: The National Consumer Disputes Redressal Commission (NCDRC) used the legal doctrine of res ipsa loquitur in this instance to address a surgical patient who had urethral injuries during the procedure. According

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<sup>11</sup> Jagdish Prasad Singh v. Dr. A.K. Chatterjee, 23 October, 2008.

<sup>12</sup> Richa Singh, Medical Negligence in India, blog. ipleader, (26<sup>th</sup> may.2024, 01:04pm), <https://blog.ipleaders.in/medical-negligence-india/>.



to the NCDRC, the hospital had the burden of demonstrating that they were not responsible because the kind of harm would not often occur in the absence of negligence.<sup>13</sup>

***Poonam Verma v. Ashwin Patel and Ors. (1996)***: The concept of res ipsa loquitur was used in this instance by the Supreme Court of India to a surgical patient who had sustained a facial nerve damage during the procedure. The court determined that the defendant had the burden of proving they were not careless since the harm was the kind that would not often happen in the absence of negligence.<sup>14</sup>

***Jacob Mathew v. State of Punjab (2005)***: The Supreme Court ruled in this decision that res ipsa loquitur might be used in medical negligence proceedings when the harm was severe enough to not happen in the absence of carelessness and the circumstances of the injury indicated that the healthcare provider was at fault.<sup>15</sup>

## **HOW TO DEMONSTRATE A “RES IPSA LOQUITUR CASE**

The injured person must demonstrate that the doctor disregarded the established standards of care that doctors are required to follow, therefore violating the duty of care. The testimony of an expert is required to demonstrate the breach. Expert testimony about the standard of care is not truly necessary in res ipsa negligence proceedings. The following actions must be taken in order to establish a res ipsa case:

- We all know that a case clearly fits into the category of res ipsa situations if it appears that it could never have occurred without the doctor's carelessness.
- The doctor always had control over the tools or treatment plan that resulted in injury.
- The injury was the one which the injured person couldn't assume voluntarily.

## **SOME EXAMPLES OF RES IPSA MEDICAL CASES**

Some common scenarios of res ipsa cases are given below:

- Leaving some object inside the body of the patient after surgery.
- If a wrong patient gets operated.
- If the wrong part of the patient gets operated.

## **CHALLENGES FACED BY THE VICTIMS OF MEDICAL NEGLIGENCE**

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<sup>13</sup> Spring Meadows Hospital and Anr. v. Harjol Ahluwalia, SCALE 456 (SC).

<sup>14</sup> Poonam Verma v. Ashwin Patel and Ors., 1996 SCC (4) 332.

<sup>15</sup> Jacob Mathew v. State of Punjab, (2005) 6 SCC 1.

Medical malpractice victims must overcome several obstacles that have practical, emotional, financial, and legal ramifications. Their lives as well as the lives of their families may be significantly and permanently impacted by these obstacles. The difficulties are as follows:

### **1. Legal Challenges**

- **The Challenge of Proving Negligence:** Proving that a healthcare professional violated the standard of care is frequently necessary to establish medical negligence. This entails obtaining copious medical records, hearing from experts, and frequently dealing with well-funded legal teams that represent healthcare facilities.
- **Statute of Limitations:** Depending on the jurisdiction, victims have a deadline for filing claims. This can be especially difficult if the consequences of the carelessness take time to manifest.
- **Professional Opinion:** Acquiring reliable expert witnesses to bolster a negligence lawsuit might pose challenges and incur significant costs. These specialists must give strong evidence that the provider's activities were inadequate and directly harmful.
- **Burden of Proof:** It is the victim's responsibility to provide evidence of the carelessness. Meeting this standard can be challenging, particularly if healthcare providers and their insurers are fighting the claim and could do so vehemently.

### **2. Financial Challenges**

- **Medical Expenses:** As a result of the need for extra treatments to address the injury caused by the carelessness, victims may face significant medical expenditures. These expenses can be quite costly, and insurance may not always cover them.
- **Legal charges:** Filing a medical negligence lawsuit entail paying hefty legal expenses, which include expert witness fees, court charges, and legal representation. These costs can add up to a significant financial burden, especially if the case takes years to resolve.
- **Loss of Income:** If a victim's injuries prevent them from working, they may suffer a loss of income. The fact that certain impairments brought on by medical malpractice are chronic or irreversible may make this worse.
- **Compensation Delays:** The legal procedure can drag on for years, even in cases when a victim finally receives a settlement or judgements.

### **3. Emotional and Psychological Challenges**

- **Trauma and Stress:** Medical negligence may be a traumatic event that results in stress, anxiety, and despair. As victims revisit their traumas and worry about the verdict, the legal procedure itself may make them feel worse.
- **Faith Issues:** A victim of medical negligence may find it more difficult to seek follow-up care or additional medical attention as a result of their diminished faith in medical professionals and the medical system at large.
- **Isolation and Stigma:** If a victim's injuries are obvious or have a major influence on their way of life, they may feel alone and stigmatised. They may also experience miscommunication or a lack of assistance from those who may not completely get what they are going through.

#### **4. Practical and Daily Life Challenges**

- **Quality of Life:** When medical negligence results in injuries, the victim's quality of life can be severely compromised. This is because the injury may cause chronic pain, incapacity, or the need for continuous medical care or rehabilitation.
- **Caregiving Requirements:** Some victims need long-term care, which can put a heavy load on family members or mean employing paid carers, which raises costs.
- **Accessibility Issues:** Depending on the severity of their injuries, sufferers may need to spend money and cause disruptions in their homes by building ramps or buying specialised equipment.

#### **5. Social and Relational Challenges**

- **Family dynamics:** Managing medical negligence can be taxing on relationships within the family, causing tension and discord as members share the financial and emotional burden.
- **Social assistance:** Due to friends' and acquaintances' inability to relate to them on a deep level or their discomfort in providing assistance, victims may discover that their networks of social support are growing smaller.

As a result, those who suffer from medical negligence must deal with a wide range of difficulties that have an impact on almost every part of their life. To tackle these obstacles, all-encompassing support networks are needed, such as financial aid, legal aid, psychiatric therapy, and useful carer support. Without these tools, the path to healing and justice may be extremely difficult.

## ADJUDICATION LIABILITY IN MEDICAL NEGLIGENCE IN INDIA

### Medical council of India

A person who has been wronged may bring a negligence complaint against a physician to the relevant State Medical Council, which has the authority to take action by suspending or cancelling the physician's registration. The Indian Medical Council Act, 1956, however, does not grant them the authority to make up compensation to the injured party. The accused must submit a complaint to the council that includes a detailed description of all the pertinent facts and information about the situation at hand. The accused will then have 30 days from the council to file his response. The council will ask both sides to provide proof to back up their assertions if they are not pleased with the response.<sup>16</sup>

### Civil law and negligence

Individuals who provide medical advice and treatment implicitly imply that they are qualified to do so, that is, that they are skilled in choosing a course of action, determining what has to be done, and carrying it out. A medical professional is said to be making an "implied undertaking" in this situation. The Supreme Court ruled in the *State of Haryana v. Smt Santra* case that all physicians "have a duty to act with a reasonable degree of care and skill".<sup>17</sup> Unless they fall under one of the exclusions outlined in the *Indian Medical Association v. V P Santha* case, doctors practicing in India may be held accountable for their services either directly or indirectly.<sup>18</sup> If a doctor doesn't charge for their services, they are not responsible for them either directly or indirectly. Therefore, receiving free medical care at a government hospital, non-governmental hospital, health centre, pharmacy, or assisted living facility would not be classified as a "service" under the definition given in Section 2 (1) (0) of the Consumer Protection Act of 1986. But since nobody is flawless, even the most accomplished medical professional might misidentify the real nature of an illness. A doctor is only liable for negligence if it can be demonstrated that they committed an error that no other physician working with reasonable care would have made. A mistake in judgement is only considered negligent if it could not have been made by a reasonably competent professional working with ordinary care and possessing the standard abilities that the defendant claims to have.

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<sup>16</sup> Priya Adlakha and Nihit Nagpal, medical negligence in India, ssrana, last page, (27<sup>th</sup> may. 2024, 10:47) [https://ssrana.in/articles/medical-negligence-india/#\\_ftn7](https://ssrana.in/articles/medical-negligence-india/#_ftn7) .

<sup>17</sup> State of Haryana v. Smt. Santra, (2000) 5 SCC 182: AIR 2000 SC 3335

<sup>18</sup> Indian Medical Association vs V P Santha. AIR 1996 SC 550

## **Criminal Negligence**

According to Section 304A of the Indian Penal Code of 1860, an individual who causes another person's death by hasty or careless actions that do not constitute culpable murder faces a two-year jail sentence, a fine, or both. The Supreme Court noted in the Santra case that whereas culpability in criminal law is determined by the degree and quantity of carelessness, liability in civil law is based on the amount of damages sustained. To assess criminal culpability in a given case, however, a few criteria must be shown, including the offender's character, the offense's severity, and its motivation.

The Supreme Court made a distinction between recklessness, rashness, and negligence in *Poonam Verma v. Ashwin Patel*.<sup>19</sup> A person who unintentionally violates a positive responsibility via an act of omission is considered negligent. Someone who acts rashly is aware of the potential repercussions yet naively believes that they won't happen as a result of their actions. Even if a reckless individual is aware of the repercussions, they don't give a damn whether their actions cause them. Criminal culpability shouldn't apply to any behaviour that isn't reckless or intentional misbehaviour. Therefore, unless it can be demonstrated that a doctor was careless or incompetent, showing such a disdain for the life and safety of his or her patients, the doctor cannot be held criminally liable for the death of the patient.

Doctors who are accused of criminal culpability have defences under Sections 80 and 88 of the Indian Penal Code. Nothing that is done by accident or misfortune, without any criminal purpose or knowledge, in the course of doing a lawful act in a lawful way by lawful means, and with appropriate care and caution, is considered an offence under Section 80 (accident in completing a legitimate act). A person cannot be charged with a crime under Section 88 if they act in good faith for the benefit of others, do not intend to cause damage even if there is a danger, and have the patient's express or implicit agreement.

### **How can technology empower patients with better access to their medical data and more transparent information about their healthcare, enabling them to make informed decisions and recognize potential negligence?**

Through enhanced access to their medical records and more clear information about their treatment, technology may greatly empower patients. Consequently, this empowers patients to identify any neglect and make well-informed decisions. Here are a few ways that technology

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<sup>19</sup> Poonam Verma v. Ashwin Patel, (1996) 4 SCC 332.

can help accomplish these objectives:

### **1.EHRs and PHRs, or electronic health records and personal health records**

- **Centralised Access:** Patients have centralised access to all of their medical history, including diagnoses, treatments, prescriptions, and test results, thanks to EHRs and PHRs. Patients may better understand their health and follow the progress of their care with this all-inclusive picture.
- **Interoperability:** Patients may access their information from many providers in one location with improved interoperability across healthcare systems, which lessens fragmentation and enhances continuity of treatment.

**2.Patient Portals and Mobile Health Apps:** Real-time updates on doctor visits, test results, medication refills, and other vital health information are provided by patient portals and health apps. Patients are always informed about their current health state thanks to this rapid access.

- **Direct Communication:** These platforms frequently provide secure messaging tools that let patients speak with their doctors face-to-face and ask inquiries regarding their treatment.

### **3. Remote Monitoring and Telemedicine**

- **Virtual Consultations:** With telemedicine, patients may consult virtually with their doctors, which eliminates the need for in-person visits and facilitates discussion of health issues, advice, and treatment plan follow-up.
- **Remote Monitoring Devices:** Real-time tracking of vital signs and other health parameters is possible using wearable technology and remote monitoring tools.

**4. Health Information Transparency Tools:** Patients may select the best care alternatives by using online tools and applications that evaluate healthcare providers based on patient ratings, treatment outcomes, and pricing. This openness may draw attention to possible instances of carelessness or inadequate treatment.

- **Quality indicators:** Patients may evaluate the calibre of treatment they receive by using platforms that offer data on hospital and physician performance indicators, such as infection rates, readmission rates, and patient satisfaction scores.

### **5. Data analytics and artificial intelligence**

- **Personalised Health Insights:** AI-powered systems are able to examine current health data and medical history to offer suggestions and personalised health insights. Patients are better able to comprehend possible hazards and make more educated choices as a result.
- **Predictive analytics:** This technique can spot trends and patterns in medical data that might

## **6. Blockchain Technology**

- **Safe Data Sharing:** Medical records may be shared in a transparent and safe manner thanks to blockchain technology. Patients maintain privacy and lower the possibility of illegal access or manipulation by having control over who gets access to their data.
- **Immutable Records:** Data cannot be changed once it is recorded because to blockchain's immutable nature. This offers a trustworthy medical history audit trail, which is useful in locating and substantiating instances of carelessness.

## **7. Learning Materials and Guidance**

- **Health Literacy:** Patients may get a better understanding of their problems, available treatments, and the healthcare system by using online educational materials such as articles, videos, and interactive tools.
- **Decision Support Tools:** By offering evidence-based information, identifying possible dangers, and guiding patients through difficult medical decisions, decision support tools

## **8. Ethical and Regulatory Aspects**

- **Regulations Regarding Data Privacy:** Maintaining adherence to data privacy laws such as GDPR and HIPAA safeguards patient data and fosters confidence in the use of digital health technologies.
- **Use of AI Ethics:** Creating moral standards for the application of AI in healthcare guarantees that these tools be applied sensibly, improving patient security and confidence. Patients may take a more proactive part in their treatment by utilising these tools, which will enhance their capacity to identify and react to possible carelessness. Better health outcomes, more satisfaction with care, and a more open and responsible healthcare system are all a result of this empowerment.

## CONCLUSION

Medical negligence is a serious issue in India that can result in harm to patients, loss of life, and emotional distress for their families. The legal framework for medical negligence in India is based on the Indian Penal Code, the Consumer Protection Act, and various judgments by the Supreme Court and High Courts. Medical professionals have a legal and ethical duty to provide the best possible care to their patients and to avoid any harm caused due to negligence. Patients also have the right to seek compensation for any harm caused due to medical negligence. The Supreme Court of India has delivered several landmark judgments related to medical negligence that have established important principles, including the Bolam Test, the applicability of the consumer protection act to medical services, and the duty of doctors to disclose all material risks to their patients. It is crucial for medical professionals to be aware of their legal and ethical obligations and for patients to be informed of their rights to ensure that medical care is provided in a responsible and accountable manner. Ultimately, the goal of the legal framework for medical negligence in India is to ensure that patients receive safe and effective medical care that upholds their dignity and wellbeing. Medical negligence is a complex issue, and it requires a multifaceted approach to address it effectively. The legal framework, combined with ethical guidelines and patient awareness, can help ensure that patients receive the best possible medical care and that medical professionals are held accountable for their actions.<sup>20</sup>

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<sup>20</sup> Legalserviceindia, <https://www.legalserviceindia.com/legal/article-10686-medical-negligence-laws-in-india.html> (27<sup>th</sup> may. 2024, 11:49am).