

## LAW RELATING TO EMERGENCY MEDICAL AID TO CITIZENS IN INDIA

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The Covid-19 pandemic in India has highlighted the need for improved emergency medical care. Despite doctors' advice, patients are often denied admission to hospitals due to critical conditions, leading to thousands of deaths due to a lack of ICU beds and oxygen. The government's duty is to provide medical aid to its citizens, but not providing adequate medical aid violates their right to life.

Medical negligence, also known as medical malpractice, is a significant issue that affects healthcare systems, patients, and professionals worldwide. It involves the failure of a healthcare provider to provide adequate care that meets accepted standards, leading to harm to the patient. The causes of medical negligence can be human factors such as fatigue, stress, inadequate training, or systemic issues within healthcare institutions.

The consequences of medical negligence are profound and multifaceted, including physical pain, emotional distress, financial burdens, and emotional toll on patients and families. Trust in healthcare systems and providers is eroded, leading to disillusionment and reluctance to seek medical help. Legal proceedings arise from medical negligence, providing justice and financial redress, while holding healthcare providers accountable and deterring future occurrences.

To address medical negligence, healthcare institutions must prioritize patient safety through quality improvement initiatives, adherence to clinical guidelines, and continuous professional development. A culture of open communication, transparency, and accountability is crucial for fostering a safe healthcare environment where errors are reported, analyzed, and used as learning opportunities to prevent recurrence.

Regulatory bodies play a vital role in overseeing healthcare practices and enforcing standards to minimize risks associated with negligence. They should promote best practices, monitor compliance, and support healthcare providers to deliver safe and effective care. Education and awareness are also vital components in combating medical negligence. Patients should be empowered with information about their rights, treatment options, and

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effective communication with healthcare providers, while healthcare professionals should prioritize patient-centered care, empathy, and effective communication to build trusting relationships and reduce the likelihood of errors.

The Indian government has not created a database of hospitals and nursing homes with Intensive Care Units and the number of ICU beds in each. A survey has not been conducted to understand the proportionate need for critical care hospitals and ICU beds in India. In cases of infectious diseases, such as COVID-19, ICU beds in Negative-pressure isolation rooms are required to confine pathogens and prevent the release of patient-generated pathogens into adjacent spaces.

There is no national Health Care Policy implemented by the Government of India. The Supreme Court of India has dealt with the issue of providing medical care to an injured person in an emergency, holding that medical aid to preserve their life is the obligation of both the state and doctors. This case was related to accident victims who were refused primary medical aid by hospitals, making it a medico-legal case. Prompt and quality healthcare at a time of urgency can mean the difference between life and death. Article 21 of the Constitution of India, 1950 preserves the right to life for all persons. This also extends to your right to access emergency medical care. The Indian Supreme Court in Pt. Paramanand Katara v/s Union of India & others, 1989(4) SCC286, addressed the issue of providing medical care to emergency patients. The court ruled that medical aid to an injured person is the obligation of the state and doctors, particularly for accident victims who were refused primary medical aid by hospitals.

## **INTRODUCTION**

Medical negligence is a significant issue in healthcare, affecting patients, providers, and the entire system. It is crucial to address medical negligence to ensure patient safety and well-being. Healthcare providers have a duty to deliver care that meets accepted standards and prioritizes patient interests. When negligence occurs, it can lead to devastating consequences, such as unnecessary harm, prolonged illness, or irreversible damage.

Systemic scrutiny of medical negligence encourages continuous quality improvement in healthcare delivery. Healthcare institutions must implement rigorous error prevention procedures, enhance training programs, and foster a culture of accountability and transparency. This helps mitigate risks, improve patient outcomes, and build public trust in

the healthcare system.

Additionally, addressing medical negligence is vital for legal and regulatory frameworks governing healthcare. Legal proceedings provide compensation to affected individuals and establish precedents for future medical practices and policies.

The societal impact of medical negligence is significant in shaping healthcare policy and public health initiatives. By identifying and rectifying systemic issues contributing to negligence, policymakers can implement reforms aimed at improving healthcare access, quality, and equity. Addressing disparities in healthcare delivery and promoting patient-centered care are essential components of a robust response to medical negligence.

### **CONCEPT OF MEDICAL NEGLIGENCE**

Medical malpractice occurs when a healthcare professional or provider neglects to provide appropriate treatment, omits appropriate action, or provides substandard treatment, causing harm, injury, or death to a patient. This negligence can result from errors in diagnosis, treatment, aftercare, or health management, resulting in harm, injury, or death to the patient. The standard of care is a set of medical standards that healthcare professionals must adhere to to provide acceptable treatment. If the standard of care is not met, negligence may be established. A medical malpractice claim must be valid, not just because a healthcare professional violated the standard of care. The patient must also prove that the injury would not have occurred without negligence. If an injury without negligence or negligence that did not cause an injury is not a case, there is no case. Medical malpractice lawsuits are expensive to litigate, often requiring extensive testimony from medical experts and extensive deposition. To be viable, the patient must demonstrate that significant damages resulted from the injury due to medical negligence. If the damages are small, the cost of pursuing the case might be greater than the eventual recovery.

### **UNDERSTANDING ARTICLE 21 OF THE INDIAN CONSTITUTION**

Article 21 of the constitution grants every person, including foreigners, the fundamental right to life and personal liberty. These rights are given paramount importance by the courts and are considered more important than other aspects of the political and social order. The Legislature, Executive, and Judiciary are more sensitive to these rights than other aspects of daily existence.

Collective rights of the people are enforced through Public Interest Litigation under Articles 32 and 226, highlighting the importance of these rights. Article 21's early application was limited by literal interpretation, but its scope has expanded through liberal interpretation, aligning with international understanding. Protection against arbitrary privation of life now encompasses not only physical injury/death but also the right to live with human dignity, including all aspects of life that make a man's life meaningful and worth living. Citizens detained as under-trials or convicts are entitled to the benefits of the guarantee, subject to reasonable restrictions. The state cannot violate their rights merely because they are detained, as they remain human beings. Article 21 protects foreigners for life and liberty but does not cover the right to reside or stay in India, despite its protection for life and liberty. It has been held in the case of *Sarbananda Sonowal v. Union of India*, (2005) that the power of the Government to expel foreigners, when necessary, is absolute and unlimited, and there is no provision in the Indian Constitution fettering its discretion.

### **MEDICAL ETHICS IN INDIA**

1. A physician shall uphold the dignity and honor of his profession
2. The medical profession's primary goal is to serve humanity, with financial gain being a secondary consideration. Physicians must be upright, educated in healing, pure in character, and diligent in caring for the sick. They should be modest, sober, patient, and prompt in fulfilling their duty.
3. Doctors with recognized qualifications by the Medical Council of India and registered with the Council of India/State Medical Councils are allowed to practice the Modern system of Medicine or Surgery, while those with qualifications in any other system of Medicine are not allowed to practice the Modern system of Medicine.

### **IMPORTANCE OF MEDICAL LAW**

Medical law, also known as health law or healthcare law, is a crucial tool in regulating healthcare practices, protecting patient rights, and shaping policies. It ensures patients have rights such as informed consent, confidentiality of medical information, and the right to refuse treatment, which maintains trust between patients and healthcare providers. Medical law also establishes standards and regulations for healthcare professionals, including licensing requirements, scope of practice, and professional conduct.

Medical ethics are codified into legal standards, covering issues like euthanasia, abortion, reproductive rights, and handling sensitive medical information. Medical law governs malpractice liability, establishing a legal framework for patients to seek compensation for injuries caused by medical negligence.

Medical law influences healthcare policies at local, national, and international levels, addressing issues like healthcare financing, insurance coverage, access to healthcare services, and public health initiatives. It regulates medical research involving human subjects, ensuring ethical conduct and respect for participants' rights. It also addresses intellectual property rights related to medical innovations and discoveries.

Medical law also addresses global health issues, such as pandemics, international health regulations, and cross-border healthcare issues. It provides guidelines and regulations for end-of-life care, including the legality of advance directives, palliative care, and assisted suicide or euthanasia in permitted jurisdictions. Regulations under medical law ensure the safety, efficacy, and quality of medical devices and pharmaceutical products, including approval processes, labeling requirements, and monitoring of adverse effects.

## **THE LAW FOR DOCTORS IN INDIA**

Medical professionals in India face numerous legal risks in their practice, but the Indian legal system provides protection to ensure they can provide quality care without fear of legal consequences or harassment. This article discusses the legal protection of doctors in India, including relevant acts and case laws. The Indian Medical Council Act, 1956 serves as the primary legal framework for doctors in India, establishing the Medical Council of India (MCI) to regulate medical education and practice, providing legal protection for doctors in the country.

## **MEDICAL NEGLIGENCE UNDER IPC**

Section 304A, IPC reads as, “304A. Causing death by negligence- Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

## **EVIDENCE FOR MEDICAL NEGLIGENCE**

To prove medical negligence, you need to establish a patient-doctor relationship, the doctor did not provide the appropriate standard of care, and you were harmed. It's challenging to distinguish between poor quality care and not meeting the standard level of care. An experienced medical malpractice attorney can assess your case and determine if you have grounds to sue for damages.

Libby Zion's tragic death: the day medicine changed forever-

In this case, In 1984, 18-year-old college freshman Libby Zion was admitted to New York Hospital with a high fever and unexplained movements. She was treated with meperidine and haloperidol, leading to cardiac arrest and death. An investigation by her parents found that the residents who treated her were overworked and the attending physician never physically examined her. The medical malpractice case, which went to trial in 1994, blamed both New York Hospital and Libby Zion for concealing her cocaine use. The Bell Commission, a grand jury investigation, recommended significant changes to resident work hours and supervision. In 2003, these recommendations were made mandatory by the Accreditation Council for Graduate Medical Education, limiting work hours to 80 per week, limiting shifts to 24 hours, and calling for enhanced resident supervision.

## **MEDICAL MALPRACTICE**

Medical malpractice occurs when a healthcare provider fails to meet the expected standard of care, resulting in harm or injury to a patient. This can be in the form of misdiagnosis, surgical errors, medication mistakes, or inadequate treatment. Patients may suffer from prolonged suffering, worsened conditions, or even death. Cases involve complex legal and medical issues, requiring expert testimony to establish the standard of care and deviation. Compensation may cover medical expenses, lost wages, and pain and suffering. Preventing malpractice involves rigorous training, adherence to protocols, and effective communication among healthcare teams to minimize errors and ensure patient safety.

## **DIFFERENCES BETWEEN MEDICAL ERROR AND NEGLIGENCE**

Medical errors are primarily categorized into intent and foreseeability, with medical errors being unforeseeable and often unintentional, while negligence involves a failure to act

competently and responsibly, which a reasonable professional would have foreseen and acted differently. Medical errors and negligence can lead to legal claims, with medical error claims focusing on systemic issues and patient impacts, and negligence claims demonstrating a breach of duty of care and a direct link between negligence and harm caused. Compensation and damages in medical errors and negligence cases aim to cover medical costs, lost wages, and pain and suffering. However, the extent and nature of compensation may vary, with negligence often involving higher culpability and potentially resulting in punitive damages.

### **COMPENSATION FOR MEDICAL NEGLIGENCE**

Compensation for medical negligence, also known as medical malpractice, is a crucial aspect of civil law that addresses the harm caused to patients by healthcare providers' negligence. It aims to alleviate the financial, physical, and emotional burdens resulting from the incident. Medical expenses, including additional treatments, surgeries, medications, and rehabilitation, are a significant component of compensation. Loss of income is another critical aspect, as it may include wages or income lost during the recovery period or potential future earnings if the injury results in long-term or permanent disability.

Pain and suffering compensation acknowledges the physical pain, emotional distress, and diminished quality of life experienced by the patient due to medical negligence. It seeks to quantify and provide recompense for the intangible losses endured by the patient and their loved ones. Loss of consortium compensation addresses the impact of injuries on the patient's relationships with their spouse, family members, or other significant individuals. Punitive damages may be awarded in certain cases to punish the healthcare provider for reckless or egregious conduct and deter similar behavior in the future. However, punitive damages are not awarded in every case and are typically reserved for situations involving intentional misconduct or gross negligence. Determining the appropriate compensation for medical negligence involves a thorough assessment of the specific circumstances of the case, including the nature and extent of the injuries, financial losses, and emotional toll on the patient and their family. Expert testimony from medical professionals often plays a crucial role in establishing the standard of care that should have been provided and demonstrating how the healthcare provider deviated from that standard, resulting in harm.

## **THE FOUR PRINCIPLES OF NEGLIGENCE**

The four principles of negligence in healthcare include duty of care, breach of duty, damage, and cause. A healthcare professional must demonstrate that they had a duty of care towards their client, breached that duty through their actions or inaction, caused the client's injury or loss that a reasonable person would have foreseen, and caused the damage or loss due to the breach of duty.

### **DUTY OF CARE**

Healthcare staff have a duty of care to ensure the safety and well-being of their clients, which includes providing treatment and advice with reasonable care and skill. They are also obligated to take reasonable steps to prevent foreseeable harm from occurring to clients, as recognized by the Caxton Legal Centre (2018) and Slater and Gordon (2015).

### **BREACH OF DUTY**

A breach of duty in healthcare involves establishing a standard of care that a reasonably competent healthcare professional would have followed in the same situation. This standard is based on factors such as predicting the risk of harm, determining the severity of the risk, and taking precautions against it. The court considers the likelihood of harm occurring if precautions were not taken, the seriousness of the risk, the burden of taking precautions, and the potential net benefits of the activity that exposed others to the risk.

The standard of care is set by the court, meaning even if a practice is common or accepted by other healthcare professionals, the court may still consider it negligent. For example, a nurse may be found negligent if they give medications two hours late in the workplace.

Breaches of duty in healthcare can include misdiagnosis, delayed diagnosis, overlooking symptoms, failing to warn clients about risks, incorrect prescription or administration of medicines, surgical mistakes, failure to follow infection control procedures, bleeding control, use of non-sterile equipment, failure to monitor vital signs during procedures, unsafe procedures, anesthesia mistakes, prenatal and childbirth mistakes, inadequate care before or after a procedure, and failing to take the client's medical history into account.

In summary, a breach of duty in healthcare involves establishing a standard of care that a reasonably competent healthcare professional would have followed in the same situation.



## **DAMAGE**

Clients may experience various types of damage or loss, including illness, medical, legal, income, pain, suffering, future earning ability, enjoyment of life, infection, injury, permanent disability, childbirth harm, and death.

## **CAUSATION**

Healthcare professionals are not considered negligent if the harm caused by a breach of duty is directly linked to the breach. If the harm was not solely due to the breach, the health professional would not be found negligent, as it would not have occurred on his own.

## **CONCLUSION**

Medical negligence is a significant issue in healthcare systems, affecting patients, families, and providers. It breaches the trust patients place in healthcare professionals to provide competent and compassionate care, leading to physical harm, emotional distress, and financial burdens. Compensation for medical negligence aims to address these impacts by covering medical expenses, loss of income, intangible harms, and the impact on relationships.

Medical expenses include additional treatments, surgeries, medications, and rehabilitative services, particularly in cases of long-term care or specialized treatments. Compensation also addresses the financial strain patients may experience due to their injuries, reimbursing lost wages and considering future earnings potential. Intangible harms include pain and suffering, mental health, relationships, and overall well-being.

In cases of loss of consortium, compensation may be awarded to address the impact on the patient's relationships with their spouse, family members, or significant others. Compensation for medical negligence is not just about financial restitution but also about accountability and ensuring that healthcare providers uphold the highest standards of care. It emphasizes the importance of patient safety and continuous improvements in healthcare practices.

Preventing medical negligence requires a concerted effort from all stakeholders within the healthcare system, including ongoing education and training for healthcare providers, robust reporting systems, and fostering a patient-centered approach. While compensation cannot

fully erase the harm caused, it represents a crucial step toward healing and justice for patients and their families.

