



## FROM CLINICS TO COURTROOM: A COMPARATIVE STUDY OF MEDICAL NEGLIGENCE IN INDIA AND THE USA

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### ABSTRACT

*Medical negligence is a serious problem that affects patient safety, professional responsibility, and the administration of justice. It is situated at the nexus of healthcare and law. This study compares and contrasts the intricate legal environments around medical malpractice in India and the United States of America. The study looks at how medical negligence cases go from clinics to courts, emphasizing the judicial methods, legal systems, and quality of care that influence how cases are decided in each nation. The research looks at important legislation, famous cases, and the function of expert witnesses to determine how various legal cultures affect how medical negligence cases turn out. This study discusses the difficulties associated with having a dual system of criminal and civil responsibility in India. It also examines the effects of consumer protection legislation and the obstacles to timely justice access. Comparatively, the examination of the American system concentrates on the complexities of tort law, the function of insurance against medical malpractice, and the impact of differing state laws on the results of court cases. The study attempts to determine the benefits and drawbacks of each legal system in dealing with medical negligence via this comparative perspective. In the end, the study aims to offer insights that may help guide legislative changes, improve patient safety, and encourage a more equitable method of settling medical negligence cases throughout the globe.*

**Keywords:** Medical Negligence, Healthcare, Clinics, Standard of Care, Timely Justice Access.

### INTRODUCTION

Medical negligence has always been a source of concern. The term refers to circumstances in which medical personnel do not deliver the expected level of care. In severe circumstances,

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this might possibly result in the patient's death or lifelong disability. However, not every fatality is caused by a negligent professional. The topic of healthcare reforms in India and the United States of America has been a subject of controversy in recent times. An important part of that is the problem of medical malpractice. The negligence or malpractice usually involves a medical error. This might have to do with the therapeutic process, medicine, diagnosis, or aftercare. Medical malpractice laws may provide patients with compensation for losses brought on by inadequate care. The National Consumer Dispute Redressal Commission (NCDRC) emphasizes 'material on record'. Until there is sufficient proof, the immediate presumption of medical misconduct is incorrect. Medical negligence cannot be used as the only basis for launching a complaint or seeking compensation. It fully depends on the harm inflicted on a patient and the proper justification for that damage. Medical Negligence is a common expression used to describe medical malpractice. Both are distinct words. Not every instance of medical negligence results in a medical malpractice case. Medical negligence is only one crucial factor in proving a medical malpractice case; it is not the entire picture.

Medical malpractice was a recognized offense under Roman law, which flourished and expanded to continental Europe about 1200 AD. Medical malpractice lawsuits initially surfaced in the United States in the 1800s and were increasingly common. But prior to the 1960s, medical malpractice lawsuits were rare and had less impact on medical practice. Because medical malpractice litigation is a common occurrence, surgeons are likely to confront it at some time in their careers. After a lawsuit is filed, the opposing physician must negotiate a foreign legal environment where the parties' goals, professional conduct, and procedures diverge from those employed in the practice of medicine.

### **WHAT IS MEDICAL NEGLIGENCE?**

According to the rules that normally guide how human affairs are conducted, negligence is defined as a breach of duty brought on by a failure to take action that a reasonable man would do, or by acting in a way that a sensible and intelligent guy would not. As a professional, a doctor might be held accountable for negligence if one of two things happens: either he lacked the required expertise that he claimed to have, or he failed to utilize the skills that he did have with acceptable competence in a specific circumstance. The Supreme Court has approved the BOLAM Rule as the primary criteria for medical negligence in the case *Jacob Mathew v. State*

of Punjab <sup>1</sup>and this was also said in the judgment of Bolam v. Friern Hospital Management Committee<sup>2</sup>.

So basically medical negligence is said to be an action or omission on the part of a healthcare provider that no prudent and reasonably competent healthcare provider would have taken. Consequently, when providing care for a patient, a medical professional is expected to act with a reasonable level of skill and adhere to standard medical procedures and skills.

The claim for compensation for medical negligence is based on the following:

- Patient's care is the doctor's responsibility.
- The duty has not been performed to the required standard.
- The patient in question has suffered loss or injury as a result of the duty breach.

Patients may be able to obtain compensation for harm resulting from subpar care according to medical malpractice legislation. The Medical Negligence Center reports that each year in the US, there are anywhere from 15,000 to 19,000 lawsuits alleging medical negligence against physicians. States and countries may have different laws and norms regarding medical malpractice. There are expectations placed on hospitals, physicians, and other forms of health care providers to deliver a specific level of care. A patient may suffer injuries for which the professional is not entirely responsible. Nonetheless, in the event that the patient suffers harm or injury as a result of the health provider's deviation from the standard of care that is often anticipated in comparable circumstances, they will be held legally accountable.

Medical malpractice requires certain elements to be present, according to US malpractice attorneys:

- **Not meeting the appropriate standard of care:** Healthcare providers are required by law to follow specific guidelines, failing which they risk being charged with negligence.
- **Negligence leads to an injury:** There cannot be a claim if a patient believes the physician was careless but no harm or injury happens. The patient must demonstrate that carelessness resulted in damage or harm and that it would not have occurred in the absence of negligence.
- **The injury must have damaging consequences:** The patient has to demonstrate that the hurt or injury brought on by the medical negligence caused a significant amount of damage.

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

<sup>2</sup> Bolam v. Friern Hospital Management Committee (1957) 1 WLR 582

## MEDICAL NEGLIGENCE LAWS IN INDIA

### ❖ CONSUMER PROTECTION ACT,1986

The country's consumer lawsuit landscape underwent an immense shift with the passage of the Consumer Protection Act. In order to allow for better protection of the rights of consumers, the Consumer Protection Act was passed into law in 1986. Consumer grievances are resolved through a time-bound, parallel dispute resolution process established by the Consumer Protection Act. The Act has grown to be a powerful instrument in the hands of customers who are unsatisfied with the products and services they have purchased because of the straightforward and accessible processes. The issue of medical malpractice is one of the significant and emerging areas of consumer law. Nearly all medical malpractice claims have been filed under the CPA's provisions since it was formed.

In this case, the Supreme Court expanded the CPA's jurisdiction to include the medical field. The subject before the Supreme Court was whether a medical practitioner may be regarded as performing a service and if this service falls within Section 2 of the Consumer Protection Act, 1986.<sup>3</sup>

The court under this case held that:

- Section 14(1) (d) of the Consumer Protection Act, 1986 deals with a consumer's loss or harm resulting from the other party's carelessness and is eligible for compensation, and this also applies to medical professionals.
- The principles of the standard of care required for medical practitioners laid down in bolam case<sup>4</sup> were upheld.
- A medical professional's diagnosis, consultation, medicinal and surgical treatment provided to a patient would be considered "service" under the definition of "service" in Section 2(1)(o) of the Consumer Protection Act,1986.
- The services provided by medical practitioners remain within the scope of the Indian Medical Council Act, despite their membership in the medical profession and subjectivity to disciplinary action by the Medical Council of India and/or State Medical Councils established under the Act's provisions.

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<sup>3</sup> Indian Medical Association vs. V. P. Shantha (1995) 6 SCC 651

<sup>4</sup> Bolam v. Friern Hospital Management Committee [1957] 1 W.L.R. 582:

- It is necessary to distinguish between a "contract of personal service" and a "contract for personal services." A medical professional's service to a patient cannot be considered provided under a "contract of personal service" if there is no master-servant connection between the patient and the professional. This type of service is provided in accordance with a "contract for personal services" and is not covered by the Act's Section 2(1) (o) excluding clause on the definition of "service."
- The term "contract of personal service" as used in Section 2(1)(o) of the Consumer Protection Act refers to more than only agreements for the employment of domestic helpers; it also includes hiring a medical officer to provide medical care to the employer. A medical officer's service to his employer under the terms of his employment contract would not fall under the definition of "service" as that term is defined in Section 2(1)(o) of the Act.
- Section 2(1)(o) of the Act does not define "service" as anything that is provided free of charge by a medical professional who is employed by or affiliated to a hospital or nursing home, or by a medical officer who provides free services to all patients. A little fee paid to the hospital or nursing home for the sole purpose of registering would not change the status.
- The definition of "service" as it appears in Section 2(1)(o) of the Act does not apply to services provided at non-government hospitals or nursing homes, where all patients—rich and poor—receive free care and no payment of any kind is collected from clients. The status would remain unchanged if a small fee was paid to the hospital or nursing home only for the purpose of registering.
- The definition of "service" as stated in Section 2(1) (o) of the Act includes services provided in non-government hospitals and nursing homes where clients are expected to pay fees.
- The definition of "service" as stated in Section 2(1)(o) of the Act would include services provided at non-government hospitals and nursing homes where fees must be paid by those who can afford them and those who cannot afford them but are given free of charge. This would apply even if the services are given to those who cannot afford them. Free service would likewise qualify as "service" under the Act, with the recipient acting as the "consumer."
- The provision of services at a government hospital, health centre, or dispensary where all patients—rich or poor—are provided with free care falls outside the definition of "service" as stated in Section 2(1) (o) of the Act. The method of payment of a nominal fee for the hospital's or nursing home's registration purposes alone will not change this.
- If the person using the service has an insurance policy for medical care, under which the insurance company pays for diagnosis, consultation and medical treatment, then the service

provided by the medical professional, hospital, or nursing home cannot be considered free of charge. This is because the service would fall under the definition of "service" as defined in Section 2(1) (o) of the Act.

- Similarly, where an employee's employer pays for his family's medical care as part of his employment contract, any services provided by a doctor, hospital, or nursing home to that employee and his family would not be considered free of charge and would fall under the definition of "service" under Section 2(1)(o) of the Act.

Jacob Mathew v. State of Punjab<sup>5</sup> is another significant case that followed. In this case, the petitioner filed a Special Leave to Appeal with the Supreme Court of India in opposition to the orders made by the High Court of Punjab and Haryana dismissing the petition for quashing the FIR and related proceedings. The complainant said that after being brought to a hospital in Ludhiana, his father had trouble breathing and was eventually given medical attention—but this was after a significant amount of time had passed. The oxygen cylinder was discovered to be empty upon the doctor's arrival. A full oxygen cylinder was eventually provided, but no plans were made to get the second cylinder working. A doctor announced that the patient had passed away in the interim. The Complainant filed an FIR, leading to the registration of an offence under Section 304A of the Indian Penal Code. The petitioner submitted a revision in opposition to the allegations being brought against them, and it was denied. A petition to quash the FIR and the ensuing procedures was submitted by the petitioner. After reviewing Indian judicial precedents on criminal negligence, the Supreme Court reached certain conclusions and established guidelines regarding the prosecution of medical professionals. The Supreme Court thoroughly addressed the law pertaining to (i) negligence as a tort; (ii) negligence as a tort and as a crime; (iii) negligence by professionals; and (iv) medical professionals and criminal law. In order to determine whether section 304A IPC applied to the facts of the case at hand, the Supreme Court used the Bolam Rule.

The Supreme Court has addressed the distinction between carelessness under criminal and civil law and provided justification for its rulings. According to Their Lordships, the impact of evidence, or proof, in criminal and civil procedures differs significantly. In civil proceedings, the burden of proof is only a preponderance of the evidence, and the defendant need not be given the benefit of the doubt; however, in criminal proceedings, the proof of guilt must be strong enough to persuade the court a reasonable man beyond any reasonable doubt. In cases

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<sup>5</sup> Jacob Mathew v. State of Punjab (2005) 6 SCC 1

where negligence is a necessary component of the offense, the prosecution must prove that the negligence was willful or egregious rather than just the result of a mistake in judgment.<sup>6</sup>

#### ❖ INDIAN PENAL CODE, 1860

Within the framework of criminal procedures, the law of medical malpractice has evolved around Sections 52, 80, 81, 88, 90, 91, 92, 304-A, 336, 337, and 338 of the IPC. The Supreme Court ruled that, in order to establish culpability in criminal procedures, the level of carelessness must be greater than that which establishes liability in civil proceedings.

<sup>7</sup>Therefore, in order for a doctor to be found guilty in a criminal prosecution, it is necessary to demonstrate that their carelessness was egregious enough to constitute recklessness. However, in the event of civil culpability, the complainant may just need to demonstrate that the doctor failed to exercise reasonable care in conformity with established norms. Acts performed with permission and in good faith for the benefit of another person but not with the intent to cause death are excluded under Section 88 of the Chapter on General Exceptions Section 92 exempts actions carried out in good faith for an individual's benefit without that person's permission, even if the individual has not given their consent to be harmed by the actions. Some conversations made in good faith are exempt from criminal prosecution under Section 93.

It has long been accepted that the degree issue affects the ability to distinguish between criminal and civil law carelessness. When discussing Section 304A of the IPC in *Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra*<sup>8</sup>, Sir Lawrence Jenkins's legal declaration from *Emperor v. Omkar Rampratap*<sup>9</sup> was referenced with acceptance. To impose criminal liability under Section 304A, Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans*; it is not enough that it may have been the *causa sine qua non*.

There are three available reported rulings from 1996. A three-judge bench decided *Indian Medical Association v. V.P. Shantha and Ors.*<sup>10</sup> The main question that needed to be decided by the Court was whether a doctor provides "service" and if so, whether they may be sued for

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<sup>6</sup> **Syad Akbar v. State of Karnataka** MANU/SC/0275/1979

<sup>7</sup> *Martin F. D'Souza v. Mohd. Ishfaq* (2009) 3 SCC 1

<sup>8</sup> **Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra** MANU/SC/0093/1964

<sup>9</sup> **Emperor v. Omkar Rampratap** 4 Bom LR 679

<sup>10</sup> *Indian Medical Association vs VP Shantha is* (1996 AIR 550)



"deficiency in service" in a forum under the Consumer Protection Act of 1986. The Court discussed the distinctions between a "profession" and an "occupation," particularly with regard to the discharge of responsibilities and the potential for carelessness. The Court observed that medical practitioners are not immune from negligence-based contracts or tort lawsuits. In discerning professional liability from occupational responsibility, the Court has cited previous cases, specifically *Jackson & Powell*, and has articulated the following criteria, partially paraphrased from the authorities. In the matter of professional liability, professions differ from occupations for the reason that professions operate in spheres where success cannot be achieved in every case and very often success or failure depends upon factors beyond the professional man's control. In devising a rational approach to professional liability which must provide proper protection to the consumer while allowing for the factors mentioned above, the approach of the Courts is to require that professional men should possess a certain minimum degree of competence and that they should exercise reasonable care in the discharge of their duties. In general, a professional man owes to his client a duty in tort as well as in contract to exercise reasonable care in giving advice or performing services.<sup>11</sup>

In the case of *Poonam Verma v. Ashwin Patel and Ors.*,<sup>12</sup> the patient was administered an allopathic medication by a physician who was registered as a medical practitioner and was only permitted to practice homeopathy. The individual passed away. The fact that the doctor, who was only allowed to practice homeopathy, violated a statute prohibiting him from practising in any other medical speciality and that he entered a prohibited area by prescribing an allopathic medicine to a patient who died as a result, he was found to have been negligent and was therefore liable to pay the deceased woman's widow for her husband's death. The Bombay Homeopathic Practitioners' Act, 1959 clause states that a practitioner licensed under that Act may only practice homeopathy and defines "homeopathy" as the homeopathic medical system.

In *Achutrao Haribhau Khodwa and Ors. v. State of Maharashtra and Ors.*<sup>13</sup>, the court observed that the medical field is inherently interdisciplinary, meaning that physicians possess varying levels of expertise and that several, permissible alternative treatment plans are accessible. A doctor cannot be considered negligent as long as he is carrying out his responsibilities to the best of his abilities, with reasonable care and prudence. If the doctor takes a course of action that is approved by the medical community, he won't be held accountable only because he

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<sup>11</sup> *Jackson & Powell on Professional Negligence*, 3rd Edn., paras 1-04, 1-05, and 1-56).

<sup>12</sup> *Poonam Verma v. Ashwin Patel and others* (1996) 4 SCC 332

<sup>13</sup> *Achutrao Haribhau khodwa and others v State of Maharashtra and others* [(1996) 2SSC 634



preferred it over the other options. In one instance, a mop was accidentally left in the female patient's belly when she had surgery. She had a second operation due to peritonitis, but she did not have a chance of survival. Because the surgeon could not provide a convincing reason for why the mop had been left within the woman's abdomen, liability for carelessness was placed on him. It was decided that in a case like this, the *res ipsa loquitur* doctrine applied.

#### ❖ **The Indian Medical Council Act, 1956**

A person can only practice medicine after receiving recognition under the Indian Medical Council Act of 1956. Doctors are expected to abide by certain norms laid out by the Indian Medical Council. The regulations include the following:

- Medical Ethics Code
- Duties and Responsibilities of Physicians
- Preservation of morality and appropriate medical procedures
- Retention of Health Records
- Prescription and use of medications with the names of generic

It is also anticipated that professionals would not violate any regulations pertaining to the medical area. It also outlines the obligations that physicians have to one another, to their patients, and to provide consultations. If a doctor engages in professional misconduct or commits any crimes, they will be found guilty by a court of law of crimes including moral turpitude or criminal acts.

In this case, the respondent sustained a hand fracture. He approached the appellant, who presented himself as a licensed medical professional. The respondent's hand was wrapped by the appellant, who also prescribed certain medications. Even though he was eventually seen by another physician, the injury to his hand had already become irreversible. It was determined that the appellant lacked the necessary medical training to treat the respondent. He was ordered by the Supreme Court to compensate the respondent with Rs. 80,000.<sup>14</sup>

The appellant graduated from the Board of Electrohomoeopathy Systems of Medicines in Jabalpur, Madhya Pradesh, with a Bachelor of Medicine degree in electrohomoeopathy. According to the Indian Medical Council Act of 1956, he lacked any recognized medical qualifications. Nevertheless, he carried out a three-month pregnancy termination on a patient

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<sup>14</sup> Md. Suleman Ansari (D.M.S.) v. Shankar Bhandari (2005) 12 SCC 430

who passed away in the clinic from shock as a result of not receiving an anaesthetic. The Supreme Court upheld his conviction but modified it to 1.5 years of hard labour under Section 314/34 IPC and a fine of Rs. 25,000 that must be paid to the deceased's mother.<sup>15</sup>

### **MEDICAL NEGLIGENCE LAWS IN UNITED STATES**

Unlike many other nations, medical malpractice law has historically been the province of the individual states in the United States rather than the federal government. Patients must demonstrate that their injuries were caused by inadequate medical care in order to receive financial compensation for injuries resulting from medical negligence. The "statute of limitation," which is a legally mandated time frame that differs from state to state, is the deadline for filing an accusation of medical negligence. The court determines the amount of money that will be compensated when the injured party proves that carelessness caused the harm. Damages account for noneconomic losses like pain and suffering in addition to real economic losses like lost income and future medical costs. In order to safeguard oneself against medical malpractice and unintended damage, physicians who operate in the United States typically carry medical malpractice insurance. In certain cases, having this insurance is necessary to be employed by a medical group or to have hospital privileges.

Any act or omission by a doctor while treating a patient that departs from the recognized standards of care in the medical community and results in harm to the patient is considered medical malpractice. Tort law is a body of law that creates and provides remedies for civil wrongs that are distinct from contractual duties or criminal wrongs. The Norman word for "wrong" is "tort."<sup>16</sup> Generally speaking, "negligence" is defined as behavior that does not meet an accepted norm; in tort law, the most widely applied standard is the concept of a "reasonable person." This concept is a legal construct that was developed to give the law a benchmark of reasonable behaviour that a person in comparable situations would engage in or refrain from engaging in order to safeguard another individual from a foreseeable danger of harm.

Medical responsibility does not apply to those who offer their services to others who are hurt or unwell; this exemption is represented by legislation known as "Good Samaritan" statutes, which serve to allay the fears of onlookers who may be sued or prosecuted for unintended harm or wrongful death. Good Samaritan laws in the US differ from state to state and outline who is

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<sup>15</sup> Surendra Chauhan vs. State of Madhya Pradesh, AIR 2000 SC 1436

<sup>16</sup> White GE. Tort Law in America: An Intellectual History. New York, NY: Oxford U Press; 2003.

shielded from responsibility as well as the conditions under which this protection is granted. Although a few jurisdictions, including Vermont and Minnesota, establish a responsibility to provide appropriate help to an injured individual at the point of an emergency, good samaritan legislation generally does not force anybody to aid a victim. This obligation is often a small infraction, and it can be fulfilled by dialling 911 for assistance.

Good Samaritan laws have several broad concepts, despite variations in their implementation. The concept of imminent danger may have an impact on the applicability of these rules; hence, if a bystander chooses to save a victim if there isn't an immediate danger and does so at the expense of harm, a court may find that the rescuer acted carelessly and needlessly. The judicial hierarchy and organization are identical throughout all states, despite the fact that the names of the various tribunals may alter. Each state in the union has trial courts wherein civil cases are filed and heard. Additionally, most states have an appeals court system, with the state supreme court having the last say on legal matters. The venue, also known as the site of the alleged wrongdoing, and the residences of the individuals involved serve as guidelines for the filing location of the case. Unlawful venue dismissals occur when a case is filed in the incorrect court.

Typically, state trial courts receive lawsuits claiming medical misconduct. It is believed that certain trial courts have jurisdiction over medical negligence matters, meaning they have the legal right to hear the case and provide a decision. Each state's authority and place of jurisdiction are governed by laws. A patient who feels wronged may be able to file a lawsuit in more than one trial court since certain towns may be situated in two judicial districts. A federal district court is where the lawsuit is filed if the negligence claim includes the federal government working through a clinic that receives federal funding or a facility run by the Veterans Administration. There is one of these federal district courts in every state.

The right to a jury trial is recognized as a basic constitutional right in the United States. In a jury trial, a group of people selected from the general public is asked to weigh the evidence put up in the case and render a verdict. Juror selection is governed by court regulations and involves the involvement of attorneys from both parties. Both sides are aware of the jurors' demographic details, and they can often remove a certain percentage of jurors to ensure the jury panel is unbiased. A bench trial is a case in which the final judgment is made by a judge or a panel of judges, as opposed to a jury trial. If the matter isn't settled before trial, a doctor in the US may almost always anticipate a jury trial for medical malpractice claims.

In order to successfully file an action for medical malpractice in the United States, the individual alleging malpractice must often demonstrate four factors or legal criteria. These components are as follows:

- (1) The treating physician has a legal obligation to offer care or treatment to a patient;
- (2) The treating physician violates this obligation by failing to follow professional standards;
- (3) There is a causal connection between the treating physician's negligence and the patient's injury; and
- (4) there are damages resulting from the harm caused that allow the legal system to provide redress.

There was a legal obligation owed to the patient, which is activated anytime a patient and health care practitioner create a professional connection. The basic tenet of legal responsibility is that everyone has an obligation to treat others with appropriate care in a civilized society. Damages are the legal term for medical negligence cases. A damages estimate usually follows a medical malpractice lawsuit. Courts handling cases involving medical malpractice will decide how much money damages to award the wounded patient since it is simple to compute and manage monetary damages. In medical malpractice cases, punitive damages are extremely uncommon. Courts save them for particularly heinous acts that society has a specific interest in discouraging.

## **CONCLUSION**

The aforementioned essay, which was analyzed based on careful monitoring of the “Medical Negligence in India and USA” provides a clear understanding of its legal frame and how it works. In order to highlight the universal nature of the law and make it more understandable, there are some standards that are set. Due to their distinct legal, healthcare, and regulatory systems, India and the USA treat medical negligence differently, yet it is nevertheless a serious problem in both nations. In India, patient rights are frequently prioritised over other issues, such as overcrowding in public hospitals, a lack of funding, and a slow legal system. Consumer protection regulations, criminal laws, and civil processes oversee the legal process for medical malpractice in India; nonetheless, there are still issues with accessibility and the length of time it takes to obtain legal redress.

In contrast, the USA has a more structured legal environment, with stringent malpractice insurance requirements and robust compensation systems in place. Litigation is more common, and healthcare providers operate under a greater burden of risk management to avoid costly lawsuits. The American system tends to focus on swift legal redress and compensation, though it has faced criticism for escalating healthcare costs due to the high incidence of litigation.

In the end, India and the USA must work to strike a compromise between patient rights and the necessity of shielding medical personnel from pointless legal actions. Effectively addressing medical negligence necessitates ongoing reforms that prioritize prompt justice for impacted individuals, improved oversight of healthcare standards, and heightened accountability among medical professionals.