



MEDICAL NEGLIGENCE IN TELEMEDICINE: LEGAL CHALLENGES IN INDIA

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ABSTRACT

Innovations in technology and the healthcare sector have paved the way for the rise and expansion of telemedicine. Telemedicine provides healthcare services by virtual means to patients living in rural and urban areas to provide medical care. A remarkable growth of telemedicine was seen post-COVID-19 pandemic. Failure to take proper care, errors, or neglect treatment of a patient by a medical professional refers to medical negligence. Even when liability is addressed from several angles, the issue of accountability of the platform in case of negligence by doctors is still unclear and unresolved. The negligent actions of doctors and their liability fall under the law of tort and the intermediary liability framework. This paper explores legal challenges associated with medical negligence in telemedicine in India, analyzing key regulations, judicial precedents, and policy gaps. It also examines the responsibilities of healthcare professionals, the role of informed consent, data protection, liability issues, and potential reforms to strengthen legal safeguards.

Keywords: Medical Negligence, Telemedicine, Liability, Informed Consent, Healthcare, Privacy, India.

INTRODUCTION

‘Telemedicine’ is derived from the Greek and Latin words ‘tele’ meaning ‘distance’ and ‘mederi’ meaning ‘to heal’¹ i.e., healing from a distance.

As per the World Health Organization telemedicine is understood as “*the provision of health services by health professionals, where distance is a critical factor, using information and communication technologies to exchange valid information for the purposes of diagnosis, treatment and prevention of disease and injury, research and evaluation, and to facilitate the*

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¹ Rahman P and Mehnaz S, ‘International Journal for Multidisciplinary Research (IJFMR)’ [2024] SSRN Electronic Journal <<https://www.ssrn.com/abstract=5054029>> accessed 18 March 2025

*continuing education of health professionals, with the aim of safeguarding the health of individuals and communities*².

Similarly, the American Telemedicine Association (ATA) also defines telemedicine as “*A natural evolution of healthcare in the digital world*”³.

The COVID-19 pandemic has caused a drastic change in the normal operations of society. In particular, the Healthcare industry faced immense challenges, i.e., starting from the strain of the virus to the relationship and interactions between doctor and patient, everything was affected. A stringent nationwide lockdown was implemented by the government of India to combat the COVID-19 pandemic. This led the outpatient departments in numerous government and private medical colleges to either cease their operations or reduce their outpatient services. As per the Constitution of India, the state governments are assigned to look over the healthcare services as it is their responsibility as provided under Schedule 7 of the State list, which mentions “*Public health and sanitation; hospitals and dispensaries*”⁴. Telemedicine acts as a bridge in filling the gap by giving access to healthcare services in rural regions and individuals who are unable to move or travel, such as senior citizens. It removes geographic barriers to delivering healthcare services. It has the potential to minimize costs and improve time efficiency for both patients and caregivers. Regardless of the location, doctors and hospitals can access and seek opinions from specialists from anywhere. With telemedicine, patients can connect and interact with doctors regularly and conveniently for better follow-ups, and this may enhance the doctor-patient relationship, leading to better health outcomes. Telemedicine has the capability to deliver better medical services for the general public at large. Due to the virtual nature of telemedicine, limitations exist as it requires reliable infrastructure and the need for technical expertise. Also, consultations in telemedicine reduce personal engagement between doctors and patients and lack the physical examination, which is necessary for a complete and accurate diagnosis. A key issue with telemedicine is that there is no standardized or uniform path of conducting consultations, and patients are not given a consent form regarding their participation in treatment. The study of telemedicine has not yet been integrated with Medical education as a subject. Along with the lack of clarity on accountability in negligence cases, telemedicine raises concerns about privacy, confidentiality, security of

² Florea DM and others, ‘Dr. Andrea Elena Neculau Dr. Anca Maria Lăcătuș Dr. Marius Mărginean Dr. Dana Fărcășanu’

³ Chellaiyan VG, Nirupama AY and Taneja N, ‘Telemedicine in India: Where Do We Stand?’ (2019) 8 Journal of Family Medicine and Primary Care 1872

⁴ Sharma C, Sony R and Mathew M, ‘Integrated Healthcare Delivery and Telemedicine: Existing Legal Impediments in India’ (2021) 2 Legal Issues in the Digital Age 98

patient information, and treatment. Telemedicine faces legal ambiguity as well, particularly in matters of medico-legal issues, and no health insurance policy in India currently accounts for or includes telemedicine⁵.

AN UNDERSTANDING OF MEDICAL NEGLIGENCE IN TELEMEDICINE

Medical negligence refers to improper, careless, or negligent treatment of a patient by a healthcare professional. In legal terms, medical negligence is a breach of the duty of care that results in damage or injury to the patient. The absence or lack of clinical expertise can be deemed as negligence. Indian courts rely on the Bolam test. It is the standard originating from English law⁶.

According to Black's Law Dictionary, "*negligence is defined as any act or omission which, in the absence of argument or evidence, can be declared negligent as being contrary to the principle of common prudence*". Texts from ancient times, such as Manusmriti, Kautilya's Arthashastra, Charaka Samhita, and Sushruta Samhita, mention instances of medical negligence⁷.

There are four essential criteria that must be met to prove negligence in a medical malpractice case. Negligence is determined by four key legal factors: duty of care, breach of duty, causation linking the breach to harm, and the damages incurred. These principles apply universally to all negligence cases, regardless of medical speciality or clinical level⁸.

There are basically two types of Medicolegal Negligence, which are handled in the court⁹ -

Civil medicolegal negligence occurs when a patient or their family takes the matter to a civil court, usually to claim compensation for any harm or injury caused due to a doctor's carelessness. On the other hand, **criminal medicolegal negligence** involves more serious cases

⁵ Ateriya N and others, 'Telemedicine and Virtual Consultation: The Indian Perspective' (2018) 31 The National Medical Journal of India, 215

⁶ Ibid.

⁷ Nagpure D and others, 'Medical Negligence with Special Reference to Act of Commission and Omission: A Narrative Review' [2024] JOURNAL OF CLINICAL AND DIAGNOSTIC RESEARCH
<https://www.jcdr.net/article_fulltext.asp?issn=0973-709x&year=2024&month=May&volume=18&issue=5&page=JE01-JE06&id=19396> accessed 13 March 2025

⁸ Cypher RL, 'Demystifying the 4 Elements of Negligence' (2020) 34 Journal of Perinatal & Neonatal Nursing 108

⁹ Nagpure D and others, 'Medical Negligence with Special Reference to Act of Commission and Omission: A Narrative Review' [2024] JOURNAL OF CLINICAL AND DIAGNOSTIC RESEARCH
<https://www.jcdr.net/article_fulltext.asp?issn=0973-709x&year=2024&month=May&volume=18&issue=5&page=JE01-JE06&id=19396> accessed 13 March 2025

where legal action is taken in a criminal court. In such situations, the patient or their family seeks punishment for the doctor, holding them legally responsible for their negligent actions.

LEGAL FRAMEWORK

1. TELEMEDICINE PRACTICE GUIDELINES¹⁰

To establish a clear legal and ethical framework for telemedicine including definitions, technology used, specific elements of telemedicine, duties and responsibilities, etc. The Board of Governors of the former Medical Council of India (MCI), in collaboration with NITI Aayog, developed and issued telemedicine guidelines to structure and regulate the practice of telemedicine effectively.¹¹

2. CONSUMER PROTECTION ACT¹²

Section 2 - In this Act, unless the context otherwise requires,—

(42) “Service” means service of any description that is made available to potential users and includes, but is not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

This section also includes healthcare services and the compensation can be claimed through this Act. Further, Sections 17, 34 and 47 provide jurisdiction on the basis of claims.

3. BNS, 2023¹³

Section 106 - 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 five years, and shall also be liable to fine; and if such act is done by a registered medical practitioner while performing a medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

¹⁰ Telemedicine Practice Guidelines, 25 March 2020

¹¹ Dash S, Aarthy R and Mohan V, ‘Telemedicine during COVID-19 in India—a New Policy and Its Challenges’ (2021) 42 Journal of Public Health Policy 501

¹² The Consumer Protection Act, 2019.

¹³ The Bharatiya Nyaya Sanhita, 2023.

Explanation.— For the purposes of this subsection, “registered medical practitioner” means a medical practitioner who possesses any medical qualification recognised under the National Medical Commission Act, 2019, and whose name has been entered in the National Medical Register or a State Medical Register under that Act.

(1) Whoever causes the death of any person by rash and negligent driving of a vehicle not amounting to culpable homicide, and escapes without reporting it to a police officer or a Magistrate soon after the incident, shall be punished with imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine.

Further, **Sections 337** and **338** provide for punishment.

Along with the above Acts, the Information Technology (IT) Act, 2000 deals with Data Protection and Cybersecurity which concerns Healthcare services, Indian Medical Council (Professional Conduct, Etiquette, and Ethics) Regulations, 2002 deals with confidentiality, a reasonable degree of skill and care and Digital Personal Data Protection Bill, 2022 deals with the implications for Telemedicine.

CASE LAWS

1. **Deepa Sanjeev Pawaskar and Another Vs. State of Maharashtra**¹⁴

A woman who had given birth a day earlier visited the hospital again due to severe vomiting. A nurse examined her, and the doctor prescribed medicine over the phone without a direct examination. Her condition worsened, and she sadly passed away from pulmonary embolism. The Bombay High Court held the doctor accountable for negligent treatment of prescribing medicine without properly diagnosing her condition¹⁵.

2. **Kunal Saha Vs. Advanced Medical Research Institute (AMRI), Kolkata**¹⁶

In this case, US-based Indian doctor Kunal Saha sued 3 doctors and AMRI Hospital, Kolkata, for negligence that led to his wife Anuradha Saha’s death on 28 May 1998. She was diagnosed with a rare skin condition, TEN, but her treatment remained the same, and she received improper care. A landmark judgement was passed by the Apex Court as it awarded the highest compensation to Kunal Saha, the deceased’s husband. This case has been remarkable in the history of medical negligence cases in India. In 2009, Rs 1.7 crore

¹⁴ 2018 SCC OnLine Bom 1841

¹⁵ Pai SN and others, ‘Understanding the Medico-Legal Aspects of Telemedicine in India’ 15 Cureus e42431

¹⁶ AIR 2000 SC 3335.

was awarded by the National Consumer Disputes Redressal Commission (NCDRC) to Kunal, but unsatisfied with the decision of the court, Kunal moved to the Supreme Court. The SC judges blamed the doctors for their negligence and thereby awarded a compensation of Rs 11 crore, which is the highest compensation awarded in history¹⁷.

LEGAL CHALLENGES

1. Informed consent issues.

The virtual nature of telemedicine makes it difficult to ensure informed consent, as patients and doctors do not meet in person, and technological barriers like poor or unstable network connectivity can hinder communication¹⁸.

2. Standards of care.

The quality of care provided in telemedicine is influenced by the physician's field of expertise and the technological medium for communication¹⁹.

3. The Doctor-Patient Relationship.

Trust and communication during consultations become challenging due to the digital environment which is crucial in respect of maintaining a strong doctor-patient relationship. The doctor-patient relationship is vital for good healthcare and a fundamental part of effective treatment²⁰.

4. The rights of the Patients.

A patient has the right to access their electronic medical records, be informed about healthcare safety standards, and verify the legitimacy of their provider. There is a need for awareness among the patients about the complaint mechanisms available if they experience any issues during the consultation²¹.

¹⁷ Surbhi Aggarwal, 'REPERCUSSIONS OF MEDICAL NEGLIGENCE IN INDIA' <<https://www.schooloflegaleducation.com/wp-content/uploads/2019/08/REPERCUSSIONS-OF-MEDICAL-NEGLIGENCE-IN-INDIA.pdf>>

¹⁸ Nath KV, 'THE LEGAL AND ETHICAL IMPLICATIONS OF TELEMEDICINE' (2024) 3

¹⁹ Aneja J and Arora S, 'Telemedicine and Ethics: Opportunities in India' [2021] Indian Journal of Medical Ethics 314

²⁰ Nath KV, 'THE LEGAL AND ETHICAL IMPLICATIONS OF TELEMEDICINE' (2024) 3

²¹ Ateriya N and others, 'Telemedicine and Virtual Consultation: The Indian Perspective' (2018) 31 The National Medical Journal of India 215

5. Product liability.

Any harm that is caused to a patient due to a defective medical product falls under the manufacturer's liability highlighting that there is a need for strict quality control²².

6. Patient Privacy and Data Security

Ensuring the security of sensitive patient information in telemedicine is crucial because it relies too much on digital systems for the storage and transmission of sensitive patient data²³.

RECOMMENDATIONS

1. The legal framework could be strengthened by amending Telemedicine Practice Guidelines to bring clarity in cases of liability issues. Also, establishing jurisdictional rules can change many aspects.
2. Data security and privacy need to be ensured by enforcing the Personal Data Protection Bill to safeguard patient records including health history, etc. It is necessary to mandate encryption and cybersecurity standards for telemedicine platforms due to vulnerability.
3. Improvement in patients' awareness and informed consent is required to standardise consent forms, making it mandatory before virtual consultations by the patient. Disclosure of limitations in Telemedicine platforms should be clear and understandable in a language known to the patient.
4. Jurisdictional clarity is important for future conflicts between parties. Defining it, providing legal provisions that specify the application of jurisdiction on the basis of the patient's location. As it can become an issue while using such technology cross-border, therefore, legislation may develop a uniform approach to the telemedicine liabilities i.e. harmonizing the rules and regulations.

CONCLUSION

Telemedicine, being an increasing healthcare service, requires clarity in the legal framework. Transformation takes place when the maximum happiness of the maximum number of people is considered. India's regulations need to address risks caused by medical negligence, safety of the patient needs to be ensured while fostering innovation. Strengthening liability provisions, enhancement of data protection laws concerning personal data, and growth in public awareness

²² Ibid 215

²³ Nath KV, 'THE LEGAL AND ETHICAL IMPLICATIONS OF TELEMEDICINE' (2024) 3

about the rights of patients can result in the formation of a more secure telemedicine ecosystem. As technology is evolving, the law needs to catch up with the fast pace of the increase in technology, specifically in the healthcare sector, where the right to health is a fundamental right.