

## Revolution in Informatics Medical Education and Research for Health Financing and Health Insurance: Trends in Advancement of Health Technology Safety and Legal Provisions Concerning Medical Malpractices

Dr. Bhupinder Singh,  
Sharda School of Law, Sharda University, Greater Noida

**Abstract:** Healthcare for the public is really significant and its proper delivery will enhance the protection and care of all people's. Medical malpractice and negligence on the part of hospital, practitioners and medical staff put in danger the life of patient's. The current interest in global health has much focused on potentially catastrophic threats to the public's health which includes- emerging infectious diseases, bioterrorism and chronic diseases caused by human lifestyle for e.g., high-calorie diet, tobacco, and sedentary lifestyle. Healthcare insurance is a key component for saving huge amount on the part of hospital treatment and expenses. Public health law at global and national level focused on the Government's responsibility to advance the public's healthcare; The population outlook; Communities participation; Strong organisation, legislative, policies, programs mechanism. The field of law that deals with applying common and statutory law to hygiene and sanitary science concepts is known as public health law. Given the larger priority being put by Indian forums on the value of human life and suffering, perhaps appropriately so, the need for such knowledge is greater than it was in the past. The goal of judicial forums is to strike a cautious balance between the autonomy of a doctor to make decisions and the rights of a patient to be treated fairly, even though they are attempting to identify delinquents and delinquency in cases of medical negligence. In the adjudication process, judicial forums frequently provide doctors with enough latitude and expressly acknowledge the complexity of the human body, the imprecision of medical science, the inherent subjectivity of the process, the real possibility of judgmental error, and the significance of the autonomy of the doctors. The relaxed behaviour by the people, by the hospital authorities and the government officers who check these places has resulted in the relaxed behaviour of the doctors, which is the main reason that the number of cases of medical negligence is increasing. If the common people with the support of the government impose rules on these hospitals and also see to it that these rules are implemented, then there is a chance that the standards of our hospitals would improve and automatically the skill and knowledge of specialized and authorized doctors would be used to the fullest. There must be societal and legal action on the part of the authorities and awareness on the part of the public is required for the proper functioning of the medical practices.

**Keywords:** Informatics Medical Research, Malpractices, Health Insurance and Financing, Health Technologies, Legal Provisions

### 1. Introduction

Happiness, livelihood, mental wellbeing, and many other aspects of a life full of contentment and accomplishment are all dependent on good health. Indeed, public health is the most significant economic and societal value, and public health priorities should not often be compromised in favour of other goals. Personal medical facilities are an essential component of a healthy society as however, medication is just one factor in overall wellbeing, and it is most likely a minor one. Medical care accounts for almost all national health spending with just a small amount going to population-based public health programs. The current interest in global health has much focused on potentially catastrophic threats to the public's health which includes- emerging infectious diseases, bioterrorism and chronic diseases caused by human lifestyle for e.g., high-calorie diet, tobacco, and sedentary lifestyle. Public health law at global and national level focused on the Government's responsibility to advance the public's healthcare; The population outlook; Communities participation; Strong organisation, legislative, policies, programs mechanism. The field of law that deals with applying common and statutory law to hygiene and sanitary science concepts is known as public health law. The creation of conditions that enable people to live healthier and safer lives can be aided by legislation.<sup>1</sup>

India is a place where various systems of medicine are practised. The legislature however recognizes five main systems, namely allopathy, ayurvedic, unani, siddha and homeopathy. In order to practise medicine, the practitioner has to have a recognized qualification from a recognized institute. In all other cases, the practice of medicine is prohibited. The law does not recognize an inherent right to practise medicine, but is subject to national and state laws. The people in need of

---

<sup>1</sup> Singh, B. (2019). Affordability of Medicines, Public Health and TRIPS Regime: A Comparative Analysis. *Indian Journal of Health & Medical Law*, 2(1), 1-7.

urgent medical help turn to the nearest hospital for emergency medical care. However, the sad reality remains that frequently, such people in urgent need of medical attention are turned away for a host of reasons. Ironically, theoretically, every person is entitled to emergency medical care in India. However, in practice, the picture is completely different. This post looks at the judicial approach on the issue of emergency medical care, and the legislative and political will of the State to give effect to the right to emergency medical treatment.<sup>2</sup>

A physician can be charged with criminal negligence when a patient dies from the effects of anesthesia during, an operation or other kind of treatment, if it can be proved that the death was the result of malicious intention, or gross negligence. Before the administration of anaesthesia or performance of an operation, the medical man is expected to follow the accepted precautions. In such cases, the physician should be able to prove that he used reasonable and ordinary care in the treatment of his patient to the best of his judgment. He is, however, not liable for an error judgment. The law expects a duly qualified physician to use that degree of skill and care which an average man of his qualifications ought to have, and does not expect him to bring the highest possible degree of skill in the treatment of his patients, or to be able to guarantee cures. It has long been recognized that criminal liability of a physician may result from a high degree of negligent conduct.<sup>3</sup>

## **2. Magnitude of the Problem of Medical Negligence**

Medical negligence<sup>4</sup> gives rise to civil and criminal liability. It is a sub species of this tort like- civil wrong which falls within the larger species of professional negligence. Under our law, medical negligence, like other forms of negligence, is a criminal offence for which a doctor can even be imprisoned. As regards civil wrongs, an aggrieved person can claim compensation either through a civil suit or a complaint lodged with consumer forum. Since the enactment of Consumer Protection Act, 1985 there has been a significant rise in medical negligence cases being filed and now the amended Consumer Protection Act, 2019 enhance the protection for the patient's in medico-legal cases. In one sense, the passing of this law has given a boost to consumers for approaching courts in respect of negligence. Before we go into substantial aspects of medical negligence it is important to see how the Courts have interpreted the Consumer Protection Act and its jurisdiction. Doctors have raised a number of concerns regarding the applicability of Consumer Protection Act. Wide ranging issues from applicability of the Act to medical practitioners, the nature of medical services which would be covered by the Act, the nature of consumers (i.e. patients) who would be covered by the Act have been litigated.

## **3. Statutory Provisions at National Level**

Sections 80 and 88 of the Indian Penal Code, 1860 contain defences for doctors accused of criminal liability. Under Section 80 which says about "*accident in doing a lawful act*" held nothing is an offence that is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution. According to Section 88, a person cannot be accused of an offence if she/ he performs an act in good faith for the other's benefit, does not intend to cause harm even if there is a risk, and the patient has explicitly or implicitly given consent.

## **4. Services of Healthcare at Different Levels**

Healthcare in India features a universal health care system run by the constituent states of India. The Constitution charges every state with "raising the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties". The National Health Policy was endorsed by the Parliament of India in 1983 and updated in 2002. Parallel to the public health sector, and indeed more popular, is the private medical sector in India. Both urban and rural Indian households tend to use private medical sector more frequently than public sector.

### **A. Prevalence of the Health system**

---

<sup>2</sup> Available at: <http://blog.medicallaw.in/supreme-court-of-india-on-emergency-healthcare/>

<sup>3</sup> Available at:

[http://www.medindia.net/indian\\_health\\_act/consumer\\_protection\\_act\\_and\\_medical\\_profession\\_indian\\_penal\\_code\\_and\\_medical\\_negligence.htm](http://www.medindia.net/indian_health_act/consumer_protection_act_and_medical_profession_indian_penal_code_and_medical_negligence.htm)

<sup>4</sup> It is defined as want of reasonable degree of care or skill or willful negligence on the part of medical practitioner in the treatment of patient with whom a relationship of professional attendance is established, so as to lead to bodily injuries or to loss of life.

The healthcare services in India extend from the national level to village level. From the total organization structure, we can slice the structure of healthcare system at national, state, district, community, PHC and sub-centre levels. All the organizational levels necessary for an efficient Health for All Strategy are present.

**National level** - The Union Ministry of Health and Family Welfare makes up the organisation at the federal level. Two Secretaries, one for Health and Family Welfare and the other for Indian System of Medicine and Homoeopathy (ISMH), are in charge of the ministry's three departments, which are Health, Family Welfare, and Indian System of Medicine and Homoeopathy. The Directorate General of Health Services, which is led by the Director General of Health Services (DGHS), provides technical assistance to the Department of Health.

**State level** - The organisation handled by the State Department of Health and Family Welfare in each State, which is led by a Minister. The Secretary/Commissioner of Health and Family Welfare, who is a member of the Indian Administrative Service cadre, is in charge of the Secretariat. Overall, the organisational structure that the State has selected is consistent with the design of the Central Government. A Director of Health Services oversees the State Directorate of Health Services, which is the state department of health and family welfare's technical division. The State Directorate of Health Services' organisational structure varies from region to region, nevertheless. However, each programmer officer below the director of health services deals with one or more subjects regardless of their position title. There are supporting categories with both technical and administrative workers for each State Directorate. The State's Directorate of Medical Education and Research, which was previously united with the Directorate of Health Services, has once more demonstrated a propensity to preserve a distinct identity. The Director of Medical Education is in charge of this Directorate and directly responsible to the State's Health Secretary or Commissioner. The positions of Director (Ayurveda) and Director (Homoeopathy) have been established in some states.

**District level** - To unify the management of all healthcare providers in a district, states have reorganised their health service institutions. A link between the State and regional structure on the one side and the peripheral level structures, such as PHC and sub centres on the other, is provided by the district level structure of health services, which is a middle level management organisation. It gets information at the State level and transmits it to the Periphery with the necessary adjustments to fit local requirements. In doing so, it assumes managerial responsibilities and raises numerous general, organisational, and administrative challenges with the management of health services. The Chief Medical and Health Officer (CM & HO) or District Medical and Health Officer (DM & HO) is the district official with overall control. These officials, sometimes known as DMOs or CMOs, are in charge of the district's overall health and family welfare programmes. They are in charge of carrying out the programmes in accordance with the directives and decisions made at the State and Centre levels of government. Programmer officers provide assistance to these DMOs and CMOs. The quantity of these officers, their areas of expertise, and their standing within the State Civil Medical Services cadre vary from one State to the next. Because of this, each State has a different structure of reporting and control over these programme officer positions.

The 73rd and 74th constitutional amendments have given the powers to the local bodies in some States of India. In the process, different states have adopted different stakeholders for the benefit of health services, with the help of community participation, which gives stress on safe drinking water and sanitation at village level. The Panchayats and Municipalities are given the power to look after the welfare of the people. Although the form taken by local government differs widely from one country to another as does its relationship.<sup>5</sup>

## **5. Judicial Trend**

Medical malpractice is professional negligence by act or omission by a health care provider in which the treatment provided falls below the accepted standard of practice in the medical community and causes injury or death to the patient. The wide range of applicability of the Consumer Protection Act, 1985 the nature of medical services also covered by this Act. The Supreme Court has observed in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*,<sup>6</sup> that it is the constitutional obligation of the State to provide adequate medical services to the people, particularly to the children. The Government discharges this obligation by running hospitals and health centres, which provide medical care to the person seeking to avail of those facilities.

---

<sup>5</sup> Jerome M. Seidman, *The Child: A Book of Reading* 50 (1969).

<sup>6</sup>(1996) 4 SCC 37.

Similarly, the Supreme Court in the case of *Spring Meadows Hospital v. Harjo Ahluwalia*,<sup>7</sup> concerned with the rights of a parent when a child dies due to medical negligence. It was argued by the hospital that the parents were not consumers under the Act so could not get any relief. The Court rejected this argument and observed that even parents were covered under the Act and there was nothing in the law which prevented the parents as well as the child from recovering damages.

The National Commission in *K.G. Krishnan v. Praveen Kumar(minor)*,<sup>8</sup> held that the nurse was the employee of the doctor and as such the doctor was vicariously liable for her negligence and directed the doctor to pay compensation when the minor was admitted to a hospital with fever. He was given a paracetomal injection by the nurse in such a way that his right side was paralysed.

A 26-year-old woman died within 12 hours of delivering a baby at a private hospital. The family has filed a complaint against the doctor for medical negligence. The deceased had no history of medical illness and appeared to be fine before the delivery. The husband of the lady alleged that before the delivery the doctor had said that they had to do another surgery along with the delivery as there was some problem in her abdomen. "She delivered a baby but after the second operation she could not survive," he added. He alleged that there was some medical negligence in this case and demanded a fair enquiry. He also demanded action against the responsible person. "Doctors had clearly told us that she was quite healthy throughout her pregnancy. There may be some lapse during the operation that led to her death," Sanjeev said. An official from the Civil Lines police station said the statements of the family members would be recorded and a board would be formed to conduct the post-mortem.<sup>9</sup>

Doctors in our society enjoy more respect than any other profession. They are at times treated in par with god because of their capability to save the lives of near and dear ones. Patients and their families place immense respect, trust and faith on the doctors and when they approach a doctor they expect him to treat the patient with all the knowledge and skill that the doctor possesses in order to bring relief to his medical problem. Normally, a doctor is not responsible to anyone for failing to save the life of his patient as it is totally beyond his will and control. The issue generally arises when the doctor, due to mistakes done by him out of ignorance or carelessness causes some harm to the patient he is treating. The doctor should have either known better before taking up the treatment or knowing the fact that he does not possess sufficient knowledge should have refrained from taking the particular line of treatment.

The medical profession is considered a noble profession because it helps in preserving life. A patient generally approaches a doctor or a hospital based on the reputation. When a patient approached a doctor his expectations are two-fold: doctors and hospitals are expected to provide medical treatment with all the knowledge and skill at their command and secondly they will not do anything to harm the patient in any manner either because of their negligence, carelessness, or reckless attitude of their staff. Though a doctor may not be in a position to save his patient's life at all times, he is expected to use his special knowledge and skill in the most appropriate manner keeping in mind the interest of the patient who has entrusted his life to him. Therefore, it is expected that a doctor carry out necessary investigation or seeks a report from the patient.<sup>10</sup>

The burden of proof of negligence, carelessness, or insufficiency generally lies with the complainant. The law requires a higher standard of evidence than otherwise, to support an allegation of negligence against a doctor. In cases of medical negligence the patient must establish her/ his claim against the doctor. The burden of proof of negligence, carelessness, or insufficiency generally lies with the complainant. The law requires a higher standard of evidence than otherwise, to support an allegation of negligence against a doctor. In cases of medical negligence the patient must establish her/ his claim against the doctor because even though the 'right to life' is an absolute right in the law of torts, some situations arise in which this right becomes a qualified right and it is essential for the plaintiff to prove not only that he suffered from a special injury but also to prove that the act of the doctor was performed negligently.<sup>11</sup>

---

<sup>7</sup>(1998) 4 SCC 39.

<sup>8</sup>(2003) 2 CPJ 125.

<sup>9</sup> *The Tribune*, Saturday, May 3, 2014: "Woman dies after delivering baby".

<sup>10</sup> Pandit, M. S., and Shobha Pandit. "Medical Negligence: Coverage of the Profession, Duties, Ethics, Case Law, and Enlightened Defense - A Legal Perspective." *IJU* 3 (2009): 372–378

<sup>11</sup> Available at: <https://www.tandfonline.com/doi/abs/10.1080/01947648609513462?journalCode=ulgm20>

In the case of *State of Haryana v. Smt Santra*,<sup>12</sup> the Supreme Court has pointed out that liability in civil law is based upon the amount of damages incurred; in criminal law, the amount and degree of negligence is a factor in determining liability. However, certain elements must be established to determine criminal liability in any particular case such as the motive of the offence, the magnitude of the offence and the character of the offender.

## **6. Conclusion and Way Forward**

In India almost every day there is a case of medical negligence which is seen. It is seen in the big as well as in the small hospitals, clinics, dispensaries etc. Due to this a number of people are suffering in our country. The most common type of medical negligence is seen in operations and during the delivery of the child etc. a number of cases has been filed against doctors who negligently leave their surgical instruments in the body of the patient etc, still a number of doctors leave their instruments in the stomach of the patient which could be fatal. In India doctors are treated as gods, hence when some kind of negligent acts are carried out by them, they think that it was the wish of god and don't make the doctor responsible for this. Illiteracy is another big factor that is not letting our people to know what kinds of wrongs are being committed in our country. The environment in the hospitals like the cleanliness etc. is also not maintained by most of the hospitals not only in the rural region but also in the urban region which results in the spread of communicable diseases faster and easier.

India is regarded as the world's largest democracy, with a multiparty parliamentary representation system in place. In a democratic system, the government is chosen by the people and for the people in order to meet their requirements. The political parties compete in a general election every five years to prove their legitimacy and ability to form a government. While doing so, the political party issues a manifesto to the public as a reference document that discusses the likely services and advantages that will be provided to the people after the party establishes a government. For every country to progress toward growth and wealth, it must first ensure that its citizens are healthy. A healthy nation helps to economic progress and the status of gross morbidity and mortality indices reflects a country's position. To promote continuous growth across many sectors, the government establishes its vision and develops policies and plans for service delivery. A policy is defined in the health sector as a collection of choices, strategies and activities that are necessary or to be conducted in order to attain a specified set of health goals. Regardless of their views, political parties are devoted to protecting and promoting health, as well as providing people with inexpensive and effective health care. During elections, public figures offer speeches in light of their manifestos to educate the audience so that they may make an educated decision. The manifesto encompasses all aspects of development and acts as an official reference document for a political party's understanding of the breadth and character of services it will provide to the public. It also alluded to the nature of the enabling environment for effective policy translation. By the 1990s, India had developed a fragmented healthcare system, with the wealthy relying on private hospitals and those at the bottom of the economic pyramid relying on low-quality public hospitals. This study investigates the validity of the democracy benefits and finds that the impact of democracy on health in terms of women's health during pregnancy, newborn mortality rates, child healthcare, accessibility of food and vegetables, healthcare infrastructure, medicines, old age health needs and many more. It explores why and how political parties and democracy is thought to influence a country's health and human development outcomes.

The relaxed behaviour by the people, by the hospital authorities and the government officers who check these places has resulted in the relaxed behaviour of the doctors, which is the main reason that the number of cases of medical negligence is increasing. If the common people with the support of the government impose rules on these hospitals and also see to it that these rules are implemented, then there is a chance that the standards of our hospitals would improve and automatically the skill and knowledge of specialized and authorized doctors would be used to the fullest. Thus a doctor who deals with a patient with the intent of acting as a healer establishes a doctor-patient relationship immediately, and from that moment on, he has a legal obligation to exercise a duty of skill and care. Any breach of this duty is ground for a negligent action. There must be societal and legal action on the part of the authorities and awareness on the part of the public is required for the proper functioning of the medical practices.

---

<sup>12</sup> AIR 2000 SC 3335