



International Journal of Medical Justice

Journal Homepage: <https://www.ijmj.net>



Scientific Correspondence:

Medical Malpractice in India: An Emergence of Increasing Concern

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Article History:

Date of Submission: Thursday August 22, 2024.

Date of Start of Review Process: Friday August 23, 2024

Date of Receipt of Reviewers Report: Saturday September 28, 2024.

Date of Revision: Thursday November 21, 2024

Date of Acceptance: Sunday December 1, 2024

Date of Publication: Tuesday December 10, 2024

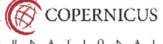
Date of Online Availability: Tuesday December 24, 2024

Digital Object Identifier [DOI]: 10.5281/zenodo.14254169

Available Online: Tuesday December 10, 2024

Website Archive: <https://www.ijmj.net/archive/2024/2/IJMJ-2024-222.pdf>

Citation: 1. Imran Sabri. Medical Malpractice in India: An Emergence
of Increasing Concern. International Journal of Medical Justice. 2024
Dec10;2(2):104-19.

Indexing: OpenAIRE,  INTERNATIONAL Scientific Indexing,  LetPub INDEX  COPERNICUS INTERNATIONAL 

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Abstract: As awareness regarding patients' rights continues to expand, the increase in instances of medical malpractice has prompted India's medical regulatory bodies to remain vigilant, with bereaved patients and advocates asserting that the pursuit of justice is fraught with challenges. Medical malpractice, characterized as the failure of a healthcare provider to uphold an acceptable standard of care, remains a pressing issue in India. Notwithstanding the availability of legal avenues, numerous obstacles impede the effective prosecution of medical malpractice cases within the country. The data indicates that the annual incidence of medical malpractice in India reaches 5.2 million cases. The frequency of such incidents has escalated by 110%; meanwhile, litigation has surged by 400%. This paper reviewed the frequency of medical malpractice occurrences, the existing legal framework designed to address these issues, and the difficulties encountered in obtaining compensation. It further deliberates on potential strategies to enhance patient safety and diminish the prevalence of malpractice

incidents. The conclusion drawn is that medical malpractice represents a significant challenge in India, adversely impacting both patient safety and trust in the healthcare system. Legal actions regarding medical malpractice should serve to deter negligence while ensuring that victims receive compensation that is equitable, prompt, cost-effective, and readily accessible. To bolster patient safety and mitigate malpractice risks, a variety of solutions warrant exploration.

Key Words: Medical Malpractice, India,

Introduction: Medical malpractice is a significant concern in India, with implications for both patients and healthcare providers. The issue of medical negligence is complex, involving challenges in proving negligence and its long-term effects. One notable consequence is the practice of defensive medicine, where healthcare professionals may undertake unnecessary treatments or even refuse to provide treatment altogether to mitigate the risk of potential negligence liabilities. This practice arises from the uncertainty and fear associated with medical malpractice suits, ultimately

impacting the cost of medical care and the quality of healthcare services provided [1]. With awareness of patients' rights growing, a rise in medical malpractice has put India's medical regulators on alert, as grieving patients and campaigners say finding justice is an ordeal [16]. The term "medical malpractice" has been an increasingly frightening one to patients, doctors, and insurers as well. In recent months, the spectre of physician strikes, astronomical damage awards, soaring liability insurance premiums, and allegations of poor-quality medical care have stirred debate in state legislatures, in the Congress, in the press, and in scholarly journals. The global medical malpractice crisis is real, and the problems which created the crisis remain with us [17]. The term "medical negligence" is an omnibus one, which has come in vogue to refer to wrongful actions or omissions of professionals in the field of medicine, in pursuit of their profession, while dealing with patients. It is not a term defined or referred to anywhere in any of the enacted Indian laws [18]. India's healthcare system is vast and complex, catering to

a large and diverse population. However, concerns regarding medical malpractice are widespread. This paper examines the various aspects of medical malpractice in India, including its prevalence, legal considerations, and ongoing challenges. Doctors, private hospitals, pharmaceutical, and insurance companies are making a buck at the cost of individual patients and corporations who provide the healthcare benefits to their employees in a largely unregulated healthcare market [22].

Despite the extensive focus on medical malpractice in developed countries, there is a lack of literature on this topic in developing countries like India. Given that developing countries represent a significant portion of the global population, understanding how they handle medical malpractice disputes and the challenges patients may face is crucial for addressing this issue effectively. [2]

1.1. Definition of Medical Malpractice

Medical malpractice, in the context of the Indian healthcare system, is defined as the failure of a medical professional to provide a standard level of care that

results in harm, injury, or death to a patient. This definition encompasses a wide range of scenarios, including misdiagnosis, surgical errors, medication mistakes, and lack of informed consent. The legal aspect of medical malpractice in India confers the victims the right to claim compensation, and the next of kin may claim rights to due process [1]. Proving medical negligence can be challenging for patients, as it requires demonstrating that the healthcare provider deviated from the accepted standard of care, leading to the patient's injury or harm. This difficulty in proving negligence can significantly impact a person's life, as it involves their health and livelihood.

The concept of defensive medicine is closely related to medical malpractice, as it involves doctors performing unnecessary treatments on patients to avoid possible negligence liabilities. This practice is driven by the fear of facing or being taken action upon due to the uncertainty surrounding medical malpractice suits and the cost of malpractice insurance. Defensive medicine not only affects the cost of medical care but also

leads to overutilization of certain medical specialties, as seen in the case of emergency medicine in Romania [3]. Understanding the definition and implications of medical malpractice is crucial in addressing the growing concern it poses in the Indian healthcare system.

Prevalence of Medical Malpractice: Estimating the exact number of medical malpractice cases in India is difficult due to underreporting. Media reports suggest Over 5.2 million medical malpractice cases filed in India annually, while official statistics from the National Crimes Records Bureau are significantly lower [16]. A study published in The BMJ [16] revealed a high rate of negligence in adjudicated surgical malpractice cases, with obstetrics and gynecology being the most affected specialties.

Legal Framework: India's healthcare system has to account for and regulate private (individual and corporate), public, and not-for-profit hospitals within its framework. In addition, the Indian government is bound to ensure universal access to healthcare [19]. India's legal system addresses medical malpractice through both

criminal and civil law. Additionally, the Consumer Protection Act allows patients to seek compensation through consumer courts [16, 17].

In India, special consumer courts handle the cases. Awards are restricted to actual damages [21].

2. Historical Overview of Medical Malpractice in India

Historically, the Indian healthcare system has grappled with malpractice issues, with significant events and periods leaving a lasting impact on the current landscape. A study by Hanganu, Iorga, Muraru, and Ioan [3] highlights the multifaceted nature of medical malpractice, emphasizing the acceptability of family-centered newborn care models among providers and receivers of care in a public health setting in India. Additionally, malpractice claims related to diagnostic errors in hospitals have been a pertinent issue, reflecting the challenges within the healthcare system. Furthermore, Brown [4] discusses how the late nineteenth century saw a shift in the perception of medical negligence.

3. Current Scenario

The prevalence of medical malpractice complaints and cases in the country has raised

concerns about patient safety and the quality of healthcare services. While there is a growing awareness of the issue, the lack of comprehensive data and analysis hinders a complete understanding of the patterns and outcomes of medical malpractice cases in India [3]. The need for medico-legal training for healthcare staff to emphasize the duty of care and adherence to patient charters is crucial in mitigating the risks associated with medical malpractice in India [5].

3.1. Statistics and Trends

The data indicates that the annual incidence of medical malpractice in India reaches 5.2 million cases. The frequency of such incidents has escalated by 110%; meanwhile, litigation has surged by 400%. Merely 46% of healthcare providers adhere to ethical guidelines. A staggering 80% of fatalities resulting from medical errors can be attributed to surgical errors. Additionally, 70% of deaths occurring in emergency situations arise from mismanagement. The highest rates of malpractice are observed in Punjab (24%), followed by West Bengal (17%), Maharashtra (16%), and Tamil Nadu (11%) [23].

Proving medical negligence in India poses significant challenges for patients [1]. This difficulty in proving negligence has led to the practice of defensive medicine among medical practitioners, where unnecessary treatments are performed to avoid potential negligence liabilities. The fear of facing lawsuits and uncertainty due to the present value of malpractice insurance has prompted doctors to resort to defensive medicine, ultimately impacting the cost and quality of healthcare in India.

4. Factors Contributing to Medical Malpractice

Medical malpractice in India is influenced by a multitude of factors that contribute to its occurrence. Systemic deficiencies, such as inadequate infrastructure, understaffing, and lack of resources, play a significant role in creating an environment where malpractice incidents can arise. Additionally, individual behaviors of healthcare professionals, including poor communication, lack of informed consent, and defensive medicine practices, also contribute to the occurrence of medical malpractice. Research has shown

that while some defensiveness is necessary in the current medical context, an excessive defensive approach can erode the ethical practice of medicine, emphasizing the need to strike a balance between different approaches to modern medicine [3,6]. Understanding these factors is crucial in devising effective strategies to prevent and address medical malpractice in India.

4.1. Lack of Regulation and Oversight

The lack of effective regulation and oversight in the Indian medical system has led to significant implications for medical practices and patient care. The absence of stringent governance has resulted in a climate where medical malpractice can occur with limited repercussions, impacting patient safety and well-being. This lax oversight has also contributed to the phenomenon of defensive medicine, where healthcare providers may resort to unnecessary treatments or even refuse to provide necessary care in an effort to mitigate the risk of negligence liabilities. This defensive approach is a direct response to the uncertainty and fear stemming from the prevalence of medical

malpractice suits and the unpredictable nature of malpractice insurance in the medical industry 1.

The historical context of medical regulation in India further complicates the issue, with the transition from the Medical Council of India (MCI) to the National Medical Commission (NMC) in 2018 aiming to address issues of corruption and inefficiency. However, the power balance between central and state governments, as well as the fragmentation of regulatory functions, has created a disconnect between training regulation, health systems, and population health needs in India 7. This lack of cohesive governance has perpetuated the challenges associated with medical malpractice and the need for effective oversight in the Indian healthcare system.

5. Types of Medical Malpractice

Medical malpractice in the Indian healthcare system encompasses various types of incidents that can lead to patient harm. These include but are not limited to misdiagnosis, surgical errors, medication errors, and failure to obtain informed consent. Misdiagnosis, for instance, can result from a

range of factors such as inadequate medical history taking, improper diagnostic testing, or misinterpretation of test results 5. Surgical errors may involve performing the wrong procedure, operating on the wrong body part, or leaving surgical instruments inside the patient's body 3. Medication errors, on the other hand, can occur due to incorrect prescription, administration, or monitoring of medications, leading to adverse drug reactions or treatment complications. Furthermore, failure to obtain informed consent from patients before treatment or procedures can also constitute medical malpractice, as it violates the patient's right to make informed decisions about their healthcare. Understanding these types of medical malpractice is crucial for developing effective preventive measures and improving patient safety in the Indian healthcare context.

6. Impact on Patients and Healthcare System

Medical malpractice has far-reaching implications for both patients and the healthcare system, encompassing medical, financial, and emotional dimensions. One significant

impact is the phenomenon of defensive medicine, which arises from the fear of legal action and uncertainty due to malpractice insurance. This defensive approach leads to doctors performing unnecessary treatments on patients to avoid potential negligence liabilities, as the cost of defensive medicine is perceived as lower than facing a lawsuit. As a result, there is an increase in healthcare costs, and patients may receive unnecessary treatments, leading to potential harm and financial burden. Moreover, the fear of legal action and the unpredictability of court verdicts negatively impact medical practitioners, leading to a shift in practice patterns and a reluctance to provide certain treatments, ultimately affecting the quality of care and patient outcomes 1. Furthermore, the civil liability system's impact on physicians' practice patterns has been observed through statistically significant correlations between increases in malpractice premium levels and the frequency of specific diagnostic procedures. This suggests that the threat of malpractice liability influences medical decision-making and may lead to changes in practice

patterns, such as an increase in Cesarean sections. However, it is important to note that physician practice patterns are also influenced by direct patient demand and professional recommendations, indicating that the actual marginal impact of the malpractice system on care levels is not entirely clear 8.

6.1. Financial Consequences

Medical malpractice can have significant financial consequences for both patients and healthcare providers. In cases where malpractice occurs, patients may face increased medical expenses, loss of income due to prolonged or worsened health conditions, and the need for additional medical treatment to address the effects of the malpractice. This financial burden can be particularly challenging for patients who may already be dealing with the physical and emotional impact of the malpractice incident [1].

Healthcare providers also experience financial implications as a result of medical malpractice, including increased insurance premiums and potential legal costs associated with defending malpractice claims. The rise in insurance premiums can place a strain on healthcare providers, leading to

concerns about the sustainability of private healthcare and potentially impacting the overall healthcare system [3].

7. Legal Framework and Remedies

The legal framework and available remedies for medical malpractice in India are crucial aspects of addressing malpractice issues and providing avenues for redressal. Currently, the response to medical errors often involves legal intervention, with attorneys taking over and the focus shifting to limiting information flow and making the better argument [9]. However, it is essential to refocus on medicine's core values and develop a healing-centered framework to better serve the needs of all parties affected by medical error. This approach aims to address not only medical errors but also quality of care, patient compensation, and other issues within the current system.

Moreover, there is a growing discussion about the readiness of India for a no-fault liability system in healthcare, which could offer streamlined compensation processes for medical injuries. However, challenges such as

administrative complexities, delays in claim processing, and concerns regarding fairness and transparency need to be carefully addressed to ensure successful implementation [10]. Additionally, the adoption of a no-fault liability system would require reforms to legal frameworks and procedures, as well as mechanisms for adjudicating claims fairly and transparently. Balancing no-fault liability with existing legal norms and principles of justice, addressing disparities in access to healthcare services, and raising awareness among the population about their rights are crucial considerations for the successful implementation of such a system in India.

7.1. Laws and Acts Governing Medical Malpractice

In India, the legal framework governing medical malpractice is primarily defined by the Indian Medical Council Act, 1956, and the Consumer Protection Act, 1986. The Indian Medical Council Act establishes the Medical Council of India, which regulates medical education and practice in the country. It sets standards for professional conduct, qualifications, and ethics for medical

practitioners. On the other hand, the Consumer Protection Act provides a mechanism for addressing grievances related to medical services, allowing patients to file complaints against healthcare providers for deficiency in services or medical negligence 11. Additionally, the Supreme Court of India has emphasized that criminal prosecution of medical professionals should only occur in cases of gross negligence, providing a level of protection for doctors against frivolous complaints 12. These legal provisions and judicial interpretations play a crucial role in shaping the landscape of medical malpractice in India, impacting the rights and responsibilities of both patients and healthcare providers.

8. Role of Medical Professionals and Institutions

In the context of medical malpractice in India, the role of medical professionals and institutions is crucial in preventing and addressing malpractice incidents. The ethical, professional, and institutional dimensions of accountability and duty play a significant role in this regard. 13 emphasize that despite the

technological progress in medical science, errors often stem from the mindless application of unexamined habits and the interference of unexamined emotions, rather than a lack of knowledge. This underscores the importance of promoting a culture of mindfulness and self-reflection among medical professionals to reduce malpractice incidents.

3 highlight the need for special undergraduate training and periodic updates for doctors to address challenges in the doctor-patient relationship. They found that certain medical specialties, such as obstetrics and gynecology, emergency medicine, general surgery, and orthopedics, were frequently involved in malpractice complaints. This underscores the importance of targeted interventions and training programs tailored to the specific needs of different medical specialties to prevent and mitigate medical malpractice. Moreover, redirecting patients to primary care through health policies could alleviate the overutilization of emergency medicine, thereby reducing the likelihood of malpractice incidents in this setting.

9. Preventive Measures and Quality Assurance

Preventive measures and quality assurance protocols play a crucial role in mitigating medical malpractice. In the context of the Indian health system, it is essential to strike a balance between the interests of medical professionals and patient safety. 6 emphasize the need for a joint responsibility of health professionals, the common man, government, judiciary, and administration to achieve this balance. They argue that while some defensiveness is necessary in today's context, an excessive defensive approach can erode the ethos of medical practice. This highlights the importance of implementing preventive measures that prioritize patient safety without unduly burdening healthcare providers.

Moreover, 14 point out that efforts to prevent medical malpractice have been slow and ineffectual in some contexts. They underscore the need for improved information gathering, dissemination of best practice standards, and meaningful evaluation of these reforms to ensure improvements in patient safety. This suggests that proactive approaches, such as

adequate training for physicians and robust evaluation of regulatory changes, are crucial components of effective preventive measures and quality assurance in the healthcare system.

10. Public Awareness and Patient Education

Public awareness and patient education play a crucial role in addressing the issue of medical malpractice. Informed consent and patient engagement through shared decision-making have been identified as key factors in reducing hidden health system costs and improving patient empowerment. Research has shown that the level of awareness about medical malpractice among surgeons and surgical trainees is relatively low, emphasizing the need for revised curriculum and training programs focused on medical ethics, malpractice, and litigation issues. Additionally, the practice of complete disclosure of errors and adherence to safety protocols such as the surgical safety checklist have been highlighted as measures to prevent medical errors and improve patient safety 3 15.

These findings underscore the importance of enhancing public awareness and patient education

to empower individuals with knowledge about their rights and responsibilities in healthcare settings. By equipping patients and the public with a better understanding of medical malpractice, informed consent, and patient engagement, it is possible to improve patient outcomes and contribute to a safer healthcare environment.

11. Ethical Considerations in Medical Practice

Ethical considerations play a crucial role in the landscape of medical practice, particularly in the context of addressing issues related to malpractice. The ethical principles and professional conduct of healthcare providers are foundational in ensuring the delivery of high-quality and safe medical care. As highlighted by 6, the interests of medical professionals cannot be overlooked, especially when they are making bold and evidence-based decisions in emergency situations. This underscores the importance of giving the benefit of doubt to doctors who take risks to save patients' lives. Moreover, 13 emphasize the significance of preventing medico-legal issues by acknowledging that errors in healthcare often stem from

unexamined habits and emotions rather than a lack of knowledge. This underscores the need for a balanced approach involving health professionals, the public, government, judiciary, and administration to navigate the complexities of modern medicine while upholding ethical standards.

12. Comparative Analysis with Global Practices

Understanding how jurisdictions in developing countries handle medical malpractice disputes and the obstacles patients might encounter is crucial for informing policy and resource allocation in these contexts. Additionally, examining variables associated with patient complaints and malpractice claims in other countries can offer valuable lessons for preventing and addressing medical malpractice in India [3].

By drawing parallels and contrasts with global practices, this comparative analysis aims to enrich the discourse on medical malpractice in India, offering a broader perspective that can inform policy, regulation, and healthcare delivery in the country.

Challenges in Addressing Malpractice: Despite legal

recourse, several challenges hinder effective action against medical malpractice in India. These include:

- **Difficulties in Proving Negligence:** The burden of proof lies with the patient, who often lacks medical expertise to establish negligence.
- **Lengthy Legal Process:** Medical malpractice cases can drag on for years, discouraging patients from pursuing claims.
- **Doctor-Patient Power Imbalance:** Patients may hesitate to challenge doctors due to social and cultural factors.

Potential Solutions: To improve patient safety and reduce malpractice, various solutions can be explored:

- **Strengthening Regulatory Bodies:** Empowering medical councils to effectively investigate and penalize negligence.
- **Improved Medical Education:** Integrating patient safety and communication skills into medical education.
- **Promoting Transparent Communication:** Encouraging open communication between

doctors and patients to build trust.

- **Developing Alternative Dispute Resolution (ADR) Mechanisms:** Facilitating faster and less expensive claim settlements.

13. Recommendations for Policy and Practice

In considering recommendations for policy and practice reforms to address medical malpractice in India, it is crucial to assess the readiness and implications of implementing a no-fault liability system in healthcare. According to 10 , while such a system could streamline compensation processes and expedite redress for medical injuries, challenges such as administrative complexities, delays in claim processing, and concerns regarding fairness and transparency must be addressed. Additionally, the diverse healthcare system in India presents disparities in access to services, variations in quality of care, and limited awareness about rights and recourse mechanisms, necessitating comprehensive reforms to legal frameworks and procedures to accommodate the shift away from fault-based liability. Moreover, 6 emphasize

the importance of striking a balance between the interests of medical professionals and the responsibilities of healthcare stakeholders, including the government, judiciary, and administration, in addressing defensive medicine practices within the Indian health system. These recommendations highlight the need for a multifaceted approach to policy and practice reforms, considering the unique context and practices among Indian patients and healthcare providers, as well as the broader healthcare landscape.

14. Conclusion and Future Directions

In India, medical malpractice is a major problem that affects patient safety and faith in the medical establishment. Medical malpractice actions should deter medical negligence and compensate victims in a manner that is fair, speedy, cost-effective and accessible. A multifaceted strategy is needed to address this issue, including bettering medical education, promoting better doctor-patient communication, and enacting legal reforms. India may strive toward a healthcare system that puts patient safety first and reduces the incidence of medical

malpractice by putting these suggestions into practice.

Further conclusion, this review has shed light on the pressing issue of medical malpractice in India. We emphasize the need for comprehensive research and intervention in this domain, especially in developing countries. The complexities of handling medical malpractice disputes and the obstacles faced by patients in proving negligence have been highlighted, underscoring the importance of understanding how these jurisdictions handle such cases [2]. Additionally, the rise in medical negligence claim rates and the challenges in accessing medical records after a malpractice accusation have been discussed, pointing to the potential negative impact on patients' lives and access to medical care 1.

Moving forward, future research and interventions should focus on addressing the barriers to justice faced by patients, as well as the underlying causes of defensive medicine practiced by healthcare professionals in response to malpractice fears. It is imperative to explore potential solutions to mitigate the adverse effects of medical malpractice on both patients and

healthcare providers in India and other developing countries. This will contribute to the advancement of healthcare systems and the protection of patients' rights in the face of medical malpractice challenges.

Financial support and sponsorship: Nil.

Conflicts of interest: There are no conflicts of interest

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