

MEDICAL NEGLIGENCE and Patient's Rights in India

Prof. Dr. N. Murugavel



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Medical Negligence and Patient's Rights in India

Prof. Dr. N. Murugavel

Director, Faculty of Law

Former First Vice Chancellor,

Tamil Nadu National Law University.

Dr. M.G.R. Educational and Research Institute

Deemed University, Maduravoyal, Chennai



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Foreword



F

JUSTICE P. SATHASIVAM
Former Chief Justice of India
Former Governor of Kerala

Kadappanallur
Behavani, Erode
Tamilnadu-638311

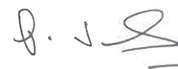
This book “*Medical Negligence and Patients Rights in India by Dr. N. Murugavel,*” is particularly relevant in the current scenario where the simultaneous increase in disease and population has been accompanied by growing negligence within medical practices. Despite the rising prevalence of such issues, there remain a significant lack of awareness among the public. Consequently, Justice is often denied to the society,

The author provides an elaborate discussion on professional ethics and societal responsibilities emphasizing the necessity to mitigate negligence in the medical field. The author also delineates the circumstances under which aggrieved patients can seek remedies and justice, elaborating on decided cases that highlight medical negligence and consumer rights.

The book addresses the duties and failures of both government and private medical institutions thereby guiding aggrieved individuals on their rights and claims.

The Comprehensive approach underscores the importance of accountability and ethical conduct in medical practice, aiming to enhance awareness and ensure justice for all.

The author has highlighted medical practices in ancient periods, legal jurisdictions, details about medical negligence, remedies, international rights, our Constitutional provisions, role of India Judiciary, provisions of Consumer Protection Act, 2019 liability of Doctors, *etc.*, which are highly useful information for all. My best wishes to the Author and Publishers for bringing this book at the appropriate time.



Justice P. SATHASIVAM

Foreword



Dr. H. V. Hande
**FORMER MINISTER OF HEALTH
GOVERNMENT OF TAMIL NADU**

44, LAKSHMI TALKIES ROAD
SHENOY NAGAR.
CHENNAI-600 303.

The book “*MEDICAL NEGLIGENCE AND PATIENTS' RIGHTS IN INDIA*”, written by my distinguished friend Prof Dr. N. Murugavel, former First Vice Chancellor of Tamilnadu National Law University, Tiruchirapalli, is a commendable work. The book, in a way, gives shape to the 'Welfare State' envisaged by Dr. B.R. Ambedkar et al, the founding fathers of our superb Constitution.

In the above context, it would be worthwhile to trace the genesis of the Indian Constitution. Between 9th December 1946 and August 1947, Dr. B.R. Ambedkar was only a member of the Constituent Assembly. A month before Independence, Pandit Nehru met Mahatma Gandhi to seek his permission to import the services of Sir Ivor Jennings, a Constitutional expert from England. Mahatma Gandhi rebuffed Pandit Nehru, saying “By next month (August 15th) we are sending the Britishers away and India is going to be free. Therefore, it would be ridiculous to seek the services of a foreigner. We have with us Dr. B.R. Ambedkar, who is already doing a good job in the Constituent Assembly. Use his services to a greater extent and also make him the Law Minister”. Pandit Nehru had no choice. Dr. B.R. Ambedkar became the Law Minister on 15th August 1947 and also the Chairman of the Constitution Drafting Committee, a fortnight later.

After Dr. B.R. Ambedkar took charge, the Constitution was drafted in such a way that India would become a 'Welfare State'. The author of this book gives meticulous details of the rights of the consumer in the Health Sector of a 'Welfare State'. This book of Prof Dr. N. Murugavel deserves to be bought and kept by every household, because it is not only a compendium of patients' rights during Medical negligence, but would also serve as a ready reckoner, at times of emergency for the consumer.

H. V. Hande

Dr. H. V. HANDE

Foreword



Dr. JUSTICE M. JAICHANADREN
Former Judge, High Court of Madras
Senior Advocate, Supreme Court of India
ARBITRATOR

No. 422, South 2nd Main Road,
Sri Kapaleeswarar Nagar,
Neelankarai,
Chennai-600 115.

This book “*Medical Negligence and Patient’s Rights in India*”, authored by Dr. N. Murugavel, Director, Faculty of Law, Dr. M.G.R. Educational and Research Institute, Chennai, is a highly valuable resource for both medical and law students, as it delves deeply into the complexities of medical negligence and patients' rights in India. The book explores a wide range of issues related to the duties, responsibilities, and ethical obligations of medical professionals, emphasizing that the foundation of healthcare lies in upholding professional ethics. This focus on ethics is crucial in a profession where the stakes are often life and death and where the trust between healthcare providers and patients forms the cornerstone of effective medical care.

Dr. Murugavel underscores the significance of legal frameworks in safeguarding the interests of patients while ensuring that healthcare providers are held accountable for their actions. The book also provides an extensive analysis of the laws governing medical negligence in India, offering a detailed look into how these laws are applied in real-world scenarios. This makes the text highly relevant for law students who seek to specialize in medical jurisprudence, as well as for medical students who must understand their legal and ethical responsibilities before entering the profession.

In addition to its educational value, the foreword touches on how government bodies and legal authorities can benefit from this book, particularly in the context of addressing medical negligence. Dr. Murugavel advocates for the creation of special tribunals dedicated to handling cases of medical negligence. Such tribunals, he argues, would lead to more efficient and specialized adjudication, ensuring that these cases are resolved more promptly and fairly, benefiting both patients and healthcare professionals. This suggestion reflects the pressing need for reforms in how medical negligence cases are handled in India, where delays in justice can have far-reaching consequences for the victims involved.



Dr. JUSTICE M. JAICHANADREN

Preface



Medicine exists at the intersection of science and society, a dynamic space where scientific discoveries translate into practices that profoundly affect human health. This transformation is not only about curing illnesses or prolonging life but also about safeguarding dignity, autonomy, and justice in healthcare. As medicine evolves, so too must the legal, ethical, and professional frameworks that guide it. This book seeks to delve deeply into these dimensions, offering a comprehensive exploration of the multifaceted issues surrounding medical negligence and patients' rights.

The historical trajectory of medicine reveals its enduring role as a cornerstone of human society. From ancient healers guided by moral codes to the scientifically driven practices of today, medicine has always been steeped in ethical considerations. The principles of beneficence, non-maleficence, autonomy, and justice, which continue to shape contemporary practice, have their roots in these historical foundations. Exploring these origins provides valuable context for understanding the enduring ethical dilemmas faced by healthcare professionals.

Medicine does not operate in a vacuum; it is bound by a legal framework designed to ensure accountability, equity, and safety. Laws regulating the medical profession balance the interests of practitioners, patients, and society, addressing issues as diverse as licensing, professional standards, and the ramifications of malpractice. Understanding these legal dimensions is critical not only for practitioners but also for patients seeking to navigate the complexities of modern healthcare.

Central to the discussion is the concept of medical negligence, a term that encapsulates the failure of a healthcare provider to meet the expected standard of care. This standard, though rooted in tradition, evolves alongside medical advancements and societal expectations. By examining what constitutes negligence and the circumstances under which it arises, this book sheds light on a critical issue at the heart of the doctor-patient relationship.

Informed consent represents another cornerstone of ethical medical practice. At its core is the recognition of patient autonomy—the right of individuals to make decisions about their own healthcare. Legal frameworks surrounding consent emphasize the importance of transparency and communication in treatment, underscoring the critical interplay between ethics and law.

Patients' rights have gained prominence globally, with international declarations setting benchmarks for their protection. These rights, encompassing dignity, confidentiality, and access to information, form the backbone of equitable healthcare. This book explores these international standards, offering a

comparative perspective that enriches the understanding of how patient rights are upheld across different jurisdictions.

In India, the constitutional guarantee of the right to health underscores the state's responsibility to provide accessible and quality healthcare to all citizens. This mandate intersects with policies, resource allocation, and legal protections, raising important questions about equity and accountability in healthcare delivery.

The emergence of consumer protection laws as a safeguard for patients has added a new dimension to medical accountability. By recognizing patients as consumers of medical services, these laws empower individuals to seek redressal for grievances, particularly in cases of negligence. This book examines the intersection of consumer rights and medical practice, providing practical insights into the remedies available to aggrieved patients.

Comparative analyses, such as those between India and the United Kingdom, enrich the discussion on medical negligence and patient rights by highlighting both universal challenges and context-specific solutions. These comparisons illuminate best practices and potential areas for reform.

Judicial decisions play a pivotal role in shaping the legal landscape of medical practice. Landmark cases offer insights into how courts interpret negligence, set precedents, and influence healthcare standards. By examining these decisions, the book provides a nuanced understanding of the evolving relationship between law and medicine.

Real-world examples of medical negligence, coupled with discussions on institutional responsibilities such as the vicarious liability of hospitals, underscore the complexities of accountability in healthcare. These narratives highlight the need for a balanced approach that considers both patient welfare and the realities of medical practice.

For readers seeking a deeper engagement with the legal texts that underpin these discussions, the book includes appendices featuring key legislations such as the Consumer Protection Act, 2019, and the Indian Medical Council Act, 1956. These references offer a practical toolkit for navigating the intricacies of medical law.

This book is both a guide and a reflection, aiming to foster a deeper understanding of the shared responsibilities of medical practitioners, patients, and society in upholding ethical, professional, and legal standards. It is an invitation to engage with the challenges of modern healthcare, where the pursuit of science and the imperatives of humanity converge.

Prof. Dr. N. Murugavel

Acknowledgment



I express my gratitude to my esteemed brother, Dr. A.C. Shanmugam, B.A.B.L., FRCPS (UK), FIMSA, EX. M.P/MLA Founder Chairman of Dr. M.G.R. Educational and Research Institute (Deemed to be University), Maduravoyal, Chennai, and Mr. N.R. Sivapathy, Advocate and former Minister of the Tamil Nadu Assembly.

I am deeply grateful to my respected mentor, the late Dr. M. V. Nagarajan, Ex. Director, Distance Education, Madurai Kamaraj University, for his unwavering support and guidance from the very start of this work. His insightful discussions on the subject were invaluable.

I also extend my heartfelt thanks to my family, especially my wife, Dr. T.R. Dhanalakshmi, M.B.B.S., D.G.O. (Retired, Zonal Officer of Greater Chennai Corporation), whose valuable insights and encouragement greatly supported me throughout this work.

It is essential for society to have confidence and security in accessing medical relief and in recovering from illnesses, with health guaranteed under Article 21 of the Indian Constitution. I extend my deepest thanks to all who contributed to this work and respectfully urge the government to consider reviewing or repealing existing legislation and enacting necessary amendments. Furthermore, establishing dedicated courts or tribunals to ensure prompt remedies and justice for all is of utmost importance.

Finally, I offer my best wishes to law and medical students, who are the future pillars of society, as they strive to bring confidence and excellence to their fields. I extend my heartfelt thanks to Publishers, Sultan Chand & Sons for their partnership and am hopeful for continued collaborations in the future.

Sincerely,
(Sd.)

Prof. Dr. N. Murugavel

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About the Book

The field of medicine stands at the intersection of science and society, translating scientific advancements into clinical practice that profoundly impacts human health. As medicine evolves, so do the legal, ethical, and professional dimensions that govern it. This book aims to provide a comprehensive exploration of these facets, with a particular focus on medical negligence and patients' rights.

Salient Features

This book provides a comprehensive exploration of medicine's role and legal framework.

- Chapter I introduces the evolution of medicine and its ethical foundations.
- Chapter II examines medical practices in ancient periods.
- Chapter III addresses the legal dimensions of medical practice.
- Chapter IV defines medical negligence.
- Chapter V discusses the standard of care expected from practitioners, and
- Chapter VI emphasizes the importance of patient consent.

Later chapters explore patient rights, international standards, consumer protection laws, and remedies for medical negligence. The text also delves into the liabilities of hospitals, criminal charges against doctors, and landmark cases related to medical negligence.

About the Author

Prof. Dr. N. Murugavel completed his schooling at Sri Thiyagi Subramania Sastriyar Higher Secondary School, Arni, and pursued his undergraduate studies at Pachaiyappa's College, Chennai, followed by B.L. and M.L. degrees from Madras Law College and a Ph.D. in Law from the University of Madras. With over eight years of legal practice, including at the High Court of Madras, he transitioned to academia, serving for over 30 years as a Junior Professor and Professor of Law in government law colleges across Tamil Nadu, including Coimbatore, Chennai, Madurai, and Chengalpattu. He was the founding Vice-Chancellor of Tamil Nadu National Law University, Tiruchirappalli, and currently serves as the Director of the Faculty of Law at Dr. M.G.R. Educational and Research Institute, Chennai. He has contributed as a Member Adviser in the Main Interview Board of Civil Services for the UPSC and has held significant roles, such as Vice President of the Society for the Prevention of Cruelty to Animals, Member of the Rotary Club, and the Indian Society of Criminology. A core committee member for the Common Law Admission Test (CLAT), he has also served as Chairperson, Coordinator, and Peer Team Member for the NAAC, visiting numerous universities across India, and has been an academic committee member for several institutions.



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Email : sultanchand74@yahoo.com

info@sultanchandandsons.com



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