

# **MEDICAL NEGLIGENCE AND LIABILITY IN PHYSIOTHERAPY TREATMENT: A LEGAL REVIEW**

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## **INTRODUCTION**

Physiotherapy plays a crucial role in enhancing mobility, reducing pain, and improving overall quality of life. As healthcare systems evolve, physiotherapists are taking on greater clinical responsibilities, working independently, and handling complex conditions. With this growing autonomy comes a proportional increase in legal accountability.

Medical negligence is no longer limited to doctors; physiotherapists can also face legal action if their treatment causes injury or fails to meet accepted professional standards. Many physiotherapists, especially students and new practitioners, may not fully understand their legal obligations. This paper aims to fill that gap by offering a clear and comprehensive legal perspective on physiotherapy negligence.

## **PROBLEM STATEMENT**

There is a noticeable lack of awareness among physiotherapists regarding legal duties, boundaries of practice, documentation standards, and the consequences of negligence. As a result:

- Patients are increasingly filing complaints under consumer protection laws.
- Physiotherapists may unintentionally commit errors that have legal implications.

- There is confusion about what constitutes malpractice, especially in manual therapy and electrotherapy.

This paper addresses these issues by providing structured legal insight.

## **OBJECTIVES**

The objectives of this research are to:

1. Define medical negligence in the context of physiotherapy.
2. Explain legal principles that determine liability.
3. Identify common physiotherapy-related negligence scenarios.
4. Analyses Indian legal frameworks relevant to physiotherapy practice.
5. Suggest preventive strategies to reduce medico-legal risks.

## **METHODOLOGY**

This study follows a qualitative legal review methodology, involving:

- Review of general medical negligence principles in Indian law.
- Interpretation of standard physiotherapy guidelines and ethical codes.
- Analysis of common physiotherapy malpractice incidents reported in medico-legal literature.
- Understanding patient rights, consent requirements, and consumer protection mechanisms.

No clinical data or patient samples were used.

## **UNDERSTANDING MEDICAL NEGLIGENCE**

Medical negligence occurs when a healthcare professional fails to provide the level of care that a reasonably competent clinician would have provided under similar circumstances. In physiotherapy, this includes both actions and omissions that cause harm to the patient. Negligence is evaluated not only on the mistake itself but also on whether the physiotherapist acted responsibly in preventing foreseeable risks.

### **The Four Key Legal Elements of Negligence:**

#### **DUTY OF CARE**

A physiotherapist automatically owes a duty of care to the patient once a therapeutic relationship is established. This means the therapist must act in the patient's best interest, use appropriate skills, and prioritize safety at all times. Duty of care includes correct assessment, safe treatment planning, and continuous monitoring.

## **BREACH OF DUTY**

A breach happens when a physiotherapist fails to meet the accepted professional standard of care. This could involve using outdated techniques, ignoring contraindications, or providing treatment without proper assessment. Even small deviations from standard practice may be seen as a breach if they put the patient at risk.

## **CAUSATION**

For a negligence claim to succeed, the patient must prove that the physiotherapist's action directly caused the injury. It must be clear that the harm would not have occurred without the therapist's mistake. For example, if a patient suffers burns due to incorrect electrotherapy intensity, the connection between action and injury is straightforward.

## **DAMAGE/HARM**

The patient must demonstrate actual injury, whether physical, functional, emotional, or financial. Harm may include increased pain, loss of mobility, extended recovery time, or additional medical costs. The severity of harm influences the extent of legal liability and compensation.

## **Examples of Negligence in Physiotherapy**

- **USING EXCESSIVE FORCE DURING MANUAL THERAPY:** Applying high-velocity or inappropriate techniques can lead to muscle tears, ligament sprains, nerve irritation, or even fractures. Manual therapy requires precision, and failure to follow proper methodology can cause severe complications.
- **APPLYING ELECTROTHERAPY WITHOUT CHECKING CONTRAINDICATIONS:** Patients with pacemakers, open wounds, pregnancy, or metal implants may be at high risk during electrotherapy. Ignoring contraindications can result in burns, heart disturbances, or worsening of the patient's condition.
- **LEAVING THE PATIENT UNATTENDED ON EQUIPMENT:** Patients using treadmills, balance boards, parallel bars, or weights require close supervision. Unattended patients may fall, faint, or misuse equipment, resulting in injuries for which the physiotherapist is responsible.

- **NOT INFORMING THE PATIENT ABOUT RISKS:** Procedures like manipulation, traction, or dry needling carry inherent risk. Failure to explain these risks may be considered negligence because the patient did not provide fully informed consent.
- **POOR EVALUATION BEFORE STARTING TREATMENT:** Inadequate assessment can result in treating the wrong condition or choosing an unsafe intervention. For example, applying traction without detecting a possible disc sequestration can worsen neurological symptoms.

## **LEGAL RESPONSIBILITIES OF PHYSIOTHERAPISTS**

Physiotherapists have both ethical and legal duties that ensure patient safety and quality of care. These responsibilities form the foundation of safe physiotherapy practice and protect clinicians from legal consequences.

### **I. Maintain Professional Competence**

Physiotherapists must keep their knowledge updated with current evidence-based practices. Using outdated or unproven techniques can be seen as negligence. Continuously improving skill sets through workshops, certifications, and clinical updates ensures that treatment is safe and effective.

### **II. Obtain Informed Consent**

Informed consent is a legal requirement and must be obtained before any treatment begins. The physiotherapist must explain the nature of the procedure, expected benefits, possible risks, and alternative options. Consent must be voluntary and the patient should have the right to decline or ask questions. Written consent is especially important for high-risk interventions.

### **III. Accurate Documentation**

Every session must include proper records of assessment findings, treatment procedures, patient responses, and progress. Good documentation helps physiotherapists defend themselves legally and shows that care was provided responsibly. Incomplete or missing notes are considered a red flag in medico-legal cases.

### **IV. Maintain a Safe Practice Environment**

A physiotherapist must ensure that the clinic environment and equipment are safe for patient use. This includes regular machine checks, clean surroundings, proper lighting, and adequate

space to prevent collisions or falls. Safety lapses that lead to injury can make the physiotherapist legally liable.

## **V. Work Within Scope of Practice**

Physiotherapists must perform only those procedures they are trained and licensed to do. Diagnosing fractures, prescribing medications, or performing invasive procedures without certification is illegal. Exceeding scope of practice can result in immediate legal action and charges of professional misconduct.

## **VI. Timely Referral**

If the patient's condition requires medical intervention beyond physiotherapy (e.g., suspected fracture, neurological deficits, severe infection), the physiotherapist must refer them to a specialist or emergency care. Failure to refer in time can worsen the patient's condition and be classified as negligence.

## **COMMON NEGLIGENCE SCENARIOS IN PHYSIOTHERAPY**

### **➤ Electrotherapy Burns**

Burns may occur when electrodes are improperly placed, intensities are too high, or the equipment is faulty. Failure to check skin condition and denying the patient's feedback during treatment increases the risk. Such injuries clearly indicate a lack of care and can lead to liability claims.

### **➤ Manual Therapy Injuries**

Manual therapy requires precise skill and understanding of biomechanics. Excessive force, wrong technique, or manipulations in contraindicated conditions (such as osteoporosis or acute inflammation) can cause serious injuries. This is one of the most commonly reported causes of negligence claims in physiotherapy.

### **➤ Lack of Supervision**

Patients performing therapeutic exercises may lose balance, experience fatigue, or execute movements incorrectly. Unsupervised exercise sessions, especially with elderly or neurological patients, can result in falls or joint injuries. Courts often view lack of supervision as a breach of duty.

### **➤ No Consent Before High-risk Procedures**

Procedures like dry needling, cervical manipulation, or traction require explicit informed consent because they carry higher risk. If a patient suffers an adverse event without prior

explanation, the physiotherapist may be held liable even if the technique was performed correctly.

➤ **Poor Record Keeping**

Missing or unclear documentation creates doubt about whether proper care was provided. In many legal cases, physiotherapists lose simply because they cannot prove what treatment was given. Proper records are considered evidence of responsible professional behaviour.

➤ **Exceeding Scope of Practice**

Physiotherapists must avoid performing medical tasks they are not legally authorized to do. Examples include diagnosing complex medical conditions, altering medication doses, or performing invasive procedures. Such actions can lead to serious legal consequences, including malpractice claims and professional disciplinary action.

## **LIABILITY OF PHYSIOTHERAPISTS UNDER INDIAN LAW**

Physiotherapists in India may face different forms of legal liability depending on the nature of the negligence and the type of harm caused. Liability is not limited to physical injury alone; it can include financial loss, emotional suffering, and long-term functional damage. Understanding these forms of liability helps physiotherapists practice more safely and maintain professional accountability.

- **CONSUMER PROTECTION ACT, 2019 (CPA) LIABILITY**

The Indian Parliament replaced the old CPA by the new CPA at 2019 which has the most advanced statutes to prevent the consumer rights and their welfare from the abuse by the market.

**According to Sec 2(42) of Consumer Protection Act, 2019** "service" to include any description of service made available to potential users, such as banking, insurance, transport, and entertainment, for a consideration".

### **CASE LAW:**

**Indian Medical Association v. V.P. Shantha (1995):** In this landmark case the SC held that medical services provided for consideration (payment of fees) fall under the Consumer Protection Act. This means patients are considered consumers, and doctors/hospitals are service providers. Under the Consumer Protection Act, physiotherapy services are treated as "medical services," meaning patients are legally considered "consumers." If a patient feels

that treatment was negligent, unsafe, or performed without proper skill, they can file a complaint in consumer court. Compensation can be awarded for physical harm, mental suffering, prolonged recovery, or financial expenses such as additional treatment costs. Physiotherapists may be held accountable even if the mistake was unintentional, as CPA focuses on customer rights and service quality. This is the most common legal route taken by patients in India.

- **CIVIL LIABILITY (COMPENSATION CLAIMS)**

Civil liability usually results in compensation (money damages) rather than punishment. If a hospital fails to provide proper treatment, the patient can claim damages under CPA for deficiency in service.

**CASE LAW:**

**The case of Kusum Sharma v. Batra Hospital (2010).** Is filed a case against the doctor & hospital.as a result judgement made that medical negligence and compensation made for him by hospital. Professional liability involves disciplinary action from physiotherapy councils, associations, or regulatory bodies (where applicable). A physiotherapist can be investigated if a complaint is filed regarding unethical behaviour, boundary violations, unsafe treatment, or practicing beyond their scope. Penalties may include suspension, revocation of membership, mandatory retraining, or warnings. Even if legal action is not taken in court, professional bodies can still discipline practitioners to maintain ethical standards in the profession. This ensures accountability within the physiotherapy community.

- **VICARIOUS LIABILITY (LIABILITY OF EMPLOYERS/CLINICS)**

Vicarious liability refers to if a nurse or doctor administered the wrong injection or treatment, the hospital shall be sued along with the nurse or doctor, it placed under criminal or civil liability under **section of 304A,337,338 act.**

**CASE LAW:**

**In India the case of Balram Prasad v. Kunal Saha (2013) :** In this case shows that One of the largest compensation awards in India for medical negligence. Hospital and doctors were held liable for negligence leading to patient's death. According to this if the physiotherapist is working under an institution's supervision or employment. If a patient is injured due to poor supervision, faulty equipment provided by the clinic, or lack of safety protocols in the workplace, the employer can be legally liable. This ensures that institutions maintain safe environments, provide proper training, and enforce clinical guidelines. It also protects patients from systemic negligence, not just individual mistakes.

- **CONTRACTUAL LIABILITY (BREACH OF SERVICE AGREEMENTS)**

Contractual liability refers to that the doctor should follow the binding agreement. If the doctor doesn't follow or fulfil the promise or duties, they can be held liable for breach of contract

Section 73 and 74 of the Indian contract Act, 1872 which deals with damage and compensation for the breach of contract.

**CASE LAW:**

**Indian Medical Association v. V.P. Shantha case placed even this act also.** The case arises that if doctor does not follow his session or his treatment he may be accused to this act. According to physiotherapy, if a physiotherapy package promises a certain number of sessions, specific rehabilitation milestones, or structured progress reports, failing to deliver these may be considered a breach of contract. Although less common than consumer cases, these disputes can arise in sports physiotherapy, corporate rehabilitation programs, or long-term therapy arrangements. Clear communication and accurate documentation help avoid such conflicts.

- **CRIMINAL LIABILITY (FOR GROSS NEGLIGENCE)**

Criminal liability refers to the legal responsibility. a person who breaking the law, which can lead to prosecution and punishment such as fines or imprisonment.

**Indian Penal Code (IPC, 1860)**

- **Section 304A** → Causing death by negligence (punishment up to 2 years + fine).
- **Section 337** → Causing hurt by a rash or negligent act (up to 6 months + fine).
- **Section 338** → Causing grievous hurt by a rash or negligent act (up to 2 years + fine).

**Bharatiya Nyaya Sanhita (BNS, 2023) replaces IPC**

- **Section 106(1)** → Causing death by negligence (similar to IPC 304A, punishment up to 2 years + fine).
- **Section 125** → Causing grievous hurt by rash/negligent act.
- **Section 125** → Causing hurt by rash/negligent act

**CASE LAW:**

**Jacob Mathew v. State of Punjab (2005, Supreme Court)** the patient died due to medical negligence Under criminal law, medical negligence is treated much more seriously than civil



liability. It applies only when the doctor's conduct shows gross negligence or recklessness. Criminal liability applies in rare but serious cases where the physiotherapist's actions are considered "grossly negligent." This means the mistake was extremely careless, reckless, or dangerous, showing complete disregard for patient safety. Examples include using malfunctioning electrical equipment knowingly, performing traction with unsafe force, or ignoring emergency symptoms during treatment. Criminal cases can involve charges under the Indian Penal Code, such as causing grievous hurt. While rare in physiotherapy, these cases carry severe consequences like fines, court trials, or imprisonment.

## **RISK MANAGEMENT & PREVENTION STRATEGIES**

**a) USE WRITTEN INFORMED CONSENT FORMS:**

Provide patients with clear information about the treatment, benefits, risks, and alternatives. Ensure they understand and voluntarily agree before starting therapy. Document the consent to protect both the therapist and the patient.

**b) MAINTAIN CLEAR AND DETAILED PATIENT RECORDS:**

Record assessments, treatment plans, progress notes, and patient responses accurately. Good documentation supports clinical reasoning and serves as crucial legal evidence if any dispute arises.

**c) STAY UPDATED WITH CLINICAL GUIDELINES:**

Regularly review current physiotherapy protocols, best-practice recommendations, and evidence-based standards. This helps ensure safe, effective treatments and reduces the risk of negligence claims.

**d) SUPERVISE HIGH-RISK EXERCISES:**

Closely monitor patients performing strenuous, advanced, or unstable movements. Immediate supervision helps prevent injuries, ensures proper technique, and allows timely correction of errors.

**e) FOLLOW SAFETY CHECKS FOR ELECTRICAL EQUIPMENT:**

Inspect machines (e.g., ultrasound, IFT, TENS) for proper functioning before use. Regular maintenance and calibration prevent equipment-related accidents and patient harm.

**f) COMMUNICATE OPENLY WITH PATIENTS:**

Explain treatment plans, expected outcomes, and possible side effects clearly. Encourage questions and maintain transparency to build trust and avoid misunderstandings.

**g) USE PROFESSIONAL INDEMNITY INSURANCE:**

Maintain valid insurance coverage to protect against legal claims and financial loss. It provides security and ensures the physiotherapist can continue practice even in case of unexpected disputes.

**h) PRACTICE ONLY WITHIN SCOPE:**

Provide treatments and interventions that fall strictly within your professional training, licensure, and competency. Avoid performing procedures you are not certified or adequately skilled to do. Staying within scope prevents clinical errors, protects patient safety, and reduces medico-legal liability.

## **DISCUSSION**

The findings show that most physiotherapy negligence cases arise from preventable factors such as poor supervision, inadequate explanation, and insufficient documentation.

Physiotherapists must recognize that modern healthcare is patient-centred and legally regulated. Understanding legal principles not only protects physiotherapists from litigation but also improves the quality and safety of patient care.

## **CONCLUSION**

Medical negligence in physiotherapy is a significant but preventable issue. By adhering to professional standards, ensuring patient safety, obtaining informed consent, and maintaining proper documentation, physiotherapists can greatly reduce legal risks. Legal knowledge should be considered an essential component of physiotherapy education and practice in India.