

Role of Medicolegal Assistance by Medical Defence Unions to Indian Allopathic Doctors Fighting Malpractice Allegations: A Critical Analysis

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Abstract

The increasing number of malpractice allegations against Indian allopathic doctors has led to a growing need for medicolegal assistance. Medical Defence Unions (MDUs) play a crucial role in providing support to doctors facing such allegations. In the evolving medical landscape, allopathic doctors in India increasingly face the daunting challenge of malpractice allegations. The Medical Defence Union (MDU), a non-profit organization originating in the United Kingdom, has a long-standing history of providing medicolegal assistance to healthcare professionals. This research article explores the potential application of the MDU's model to the Indian context, focusing on the type of support it provides and its impact on doctors' professional lives. The paper discusses the similarities and differences between the medico-legal climates of the UK and India, the significance of professional indemnity, and the psychological impact of malpractice claims on doctors. The findings suggest that a structure similar to the MDU in India could offer substantial support to Indian allopathic doctors, mitigating the legal and emotional challenges associated with malpractice allegations. It examines the medicolegal assistance provided by MDUs to Indian allopathic doctors, highlighting the benefits, challenges, and future directions. Through a comprehensive review of existing literature, case studies, and expert opinions, this article provides an in-depth analysis of the role of MDUs in supporting doctors in medicolegal issues.

Keywords: Medical Defence Unions, Medical Council, medicolegal assistance, malpractice, medical negligence, doctors, lawyers, patients, healthcare professionals.

INTRODUCTION

The Indian healthcare system has witnessed a significant rise in malpractice allegations against allopathic doctors in recent years. These allegations can have devastating consequences on a doctor's career, reputation, and mental well-being.

Medical Defence Unions (MDUs) play a crucial role in providing medicolegal assistance to doctors facing such allegations.¹ This article examines the medicolegal assistance provided by MDUs to Indian allopathic doctors, highlighting the benefits, challenges, and future directions.

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The medical profession, by its very nature, involves risks that can occasionally lead to adverse outcomes, despite the best efforts of healthcare providers.²

Medical malpractice refers to an unintended injury resulting from medical mismanagement, encompassing both medical mishaps and medical errors. While often indistinguishable, these two concepts have distinct definitions. A medical mishap is an adverse event that occurs despite proper treatment, whereas a medical error is a preventable adverse event resulting from a medical practitioner's act or omission that deviates from widely accepted standards of care. In other words, medical mishaps are unforeseen outcomes despite appropriate care, whereas medical errors are the result of substandard care that falls short of expected professional norms.

In India, the rising awareness among patients regarding their rights, coupled with an increase in litigation, has made malpractice allegations a significant concern for allopathic doctors. These allegations not only threaten the professional reputation and financial stability of doctors but also have a profound psychological impact.

History & Origin of MDUs

In the United Kingdom, the Medical Defence Union (MDU) has been a cornerstone in providing medico-legal support to healthcare professionals since its inception in 1885. Founded in response to the wrongful conviction of Dr. David Bradley,³ for alleged assault by a female patient under his care. The MDU has evolved to offer a comprehensive range of services, including professional indemnity, legal representation, and emotional support.⁴ With around 200,000 members, the MDU's role in the medical community is indispensable.⁵

This research paper examines the MDU's model of medicolegal assistance and considers its relevance and potential application in the Indian context. By analyzing the services provided by the MDU, the article aims to highlight the benefits such an organization could bring to Indian allopathic doctors facing malpractice allegations. Furthermore, the paper will explore the regulatory and legal frameworks that govern medico-legal practices in India and compare them with those in the UK, drawing insights into how Indian doctors can be better supported in their professional journey.

The Role of the Medical Defence Union (MDU)

The MDU has established itself as a vital institution for medical professionals in the UK by

offering a wide range of services aimed at protecting doctors from the repercussions of malpractice claims. The organization provides professional indemnity, ensuring that doctors are financially covered in the event of a successful claim against them. This indemnity is crucial as it prevents the personal financial ruin of doctors who might otherwise be liable for significant compensation payouts.

Moreover, the MDU offers legal representation in various settings, including disciplinary hearings, coroner's inquests, and criminal investigations related to professional practice.⁶ This support is invaluable, as legal proceedings can be complex, time-consuming, and emotionally draining. The MDU's legal team, which includes experienced medico-legal experts, works diligently to defend its members, often going beyond what might be expected to secure a favorable outcome.

One of the key aspects of the MDU's support is the provision of medico-legal advice, which is available 24/7 through an emergency helpline. This service ensures that doctors have access to expert guidance whenever they need it, whether they are dealing with an immediate crisis or require advice on a routine matter. This continuous access to expert advice helps doctors navigate the legal complexities of their profession more effectively, reducing the likelihood of mistakes that could lead to claims.

The MDU also helps doctors respond to patient complaints, which, while less severe than malpractice claims, can still have significant professional consequences. By assisting in the drafting of responses and providing strategic advice, the MDU helps doctors manage these situations in a way that minimizes damage to their reputation.

The Indian Medico-Legal Context

In India, the medico-legal landscape is markedly different from that in the UK. The Indian healthcare system is characterized by a mix of public and private providers, with varying levels of regulatory oversight.⁷ The rise in patient awareness and consumer rights has led to an increase in malpractice claims, often fueled by a lack of trust in the healthcare system.⁸

Indian doctors face unique challenges, including inadequate legal protection, a lack of uniform professional indemnity coverage,⁹ and a complex regulatory environment. While there are organizations that provide some level of legal support to doctors, these are often limited in scope

and effectiveness compared to the comprehensive services offered by the MDU in the UK.

The absence of a robust medico-legal support system in India means that many doctors are left to navigate the legal system on their own, which can be overwhelming and detrimental to their practice. The financial burden of defending against malpractice claims, coupled with the potential damage to professional reputation, can be devastating.¹⁰

Potential Application of the MDU Model in India

Given the challenges faced by Indian allopathic doctors, the implementation of a system similar to the MDU could provide significant benefits. Such a system would need to be tailored to the specific needs and regulatory environment of India but could offer comprehensive support, including professional indemnity, legal representation, and continuous access to medico-legal advice.

A key aspect of the MDU model that could be particularly beneficial in India is the provision of professional indemnity. Currently, many Indian doctors either do not have sufficient coverage or are unaware of the importance of such coverage. A structured approach to professional indemnity, supported by a dedicated organization, could protect doctors from the financial risks associated with malpractice claims.

Furthermore, the legal representation and medico-legal advice offered by an organization like the MDU could help doctors navigate the complexities of the Indian legal system. This support would not only assist in defending against claims but also in preventing them by ensuring that doctors are aware of best practices and legal requirements.¹¹

Benefits of Medicolegal Assistance:

MDUs offer various benefits to doctors facing malpractice allegations, including:

1. **Professional indemnity:** MDUs provide financial protection to doctors against legal claims, ensuring they can defend themselves without financial burden.
2. **Medico-legal advice:** MDUs offer expert advice on legal and medical aspects of the case, helping doctors understand their position and prepare their defence.
3. **Representation:** MDUs provide representation in legal proceedings, ensuring doctors receive fair treatment and their interests are protected.

4. **Emotional support:** MDUs offer emotional support and counseling to doctors, helping them cope with the stress and anxiety of facing malpractice allegations.

Challenges Faced by MDUs:

Despite the benefits, MDUs face several challenges in providing medicolegal assistance to Indian allopathic doctors, including:

1. **Increasing number of malpractice allegations:**

The rising number of allegations puts a strain on MDU resources, making it challenging to provide adequate support to all members. Tragically, numerous incidents have been documented where healthcare professionals (HCPs) have experienced severe emotional distress, including depression, anger issues, and in some cases, suicidal deaths, following accusations of negligence and the ensuing investigation.¹² These devastating consequences highlight the profound impact of such allegations on the mental health and well-being of HCPs.

2. **Lack of awareness:** Many doctors are unaware of the benefits and services offered by MDUs, leading to delayed or foregone assistance.¹³

3. **Limited resources:** MDUs often have limited resources, making it difficult to provide comprehensive support to doctors facing complex or high-stakes allegations. Overseas doctors transitioning face significant challenges, including a lack of understanding about the structure and culture of Medical Defence Unions (MDUs).¹⁴ The substantial differences between the healthcare systems and medical laws of their country of origin can lead to difficulties in navigating the medico-legal landscape.¹⁵ Despite growing efforts to support overseas doctors, a crucial aspect that appears to be neglected is ensuring they have access to adequate medico-legal protection. This oversight leaves them vulnerable and without sufficient support in the event of medical negligence claims or legal issues, further complicating their transition to practicing medicine.

CASE STUDIES

This section presents three hypothetical cases of allopathic doctors who received medicolegal assistance from MDUs while fighting malpractice allegations.

- **Case 1:** A surgeon faced allegations of negligence during a surgical procedure. The MDU provided medico-legal advice, representation, and emotional support, resulting in the case being dismissed.
- **Case 2:** A general practitioner faced allegations of misdiagnosis. The MDU offered professional indemnity, medico-legal advice, and representation, leading to a successful defence.
- **Case 3:** A specialist faced allegations of inappropriate treatment. The MDU provided emotional support, medico-legal advice, and representation, resulting in a settlement in favour of the doctor.

Expert Opinions

This section presents hypothetical expert opinions from MDU representatives, legal experts, and doctors who have received medicolegal assistance from MDUs:

1. "MDUs play a vital role in supporting doctors facing malpractice allegations. Our assistance helps doctors navigate the complex legal system and ensures they receive fair treatment." - MDU Representative.
2. "The increasing number of malpractice allegations is a growing concern. MDUs must enhance their resources and services to meet the rising demand for medicolegal assistance." - Legal Expert.
3. "I received invaluable support from my MDU during a difficult time. Their assistance helped me defend my practice and reputation." - Doctor.

Case Studies and Their Implications

To understand the impact of the MDU's support, it is useful to consider case studies from the UK.¹⁶ One such case involves a consultant general surgeon who faced a negligence claim for allegedly failing to offer a patient surgical intervention. The case went to trial, and the surgeon, with the support of the MDU's legal team, successfully defended himself. The surgeon later reflected on how the experience, though stressful, was educational and highlighted the importance of documentation and communication in medical practice.

Another case involved a GP who was accused of negligence for not recognizing a lung condition linked to long-term antibiotic use. The GP was supported by expert evidence provided by the MDU, and the case was dismissed quickly at

trial. The GP emphasized the emotional toll of the process and the crucial role of the MDU in providing support.

These cases illustrate the profound impact that medico-legal support can have on doctors' professional and personal lives. The stress of facing a malpractice claim can be overwhelming, and the outcome of such cases can hinge on the quality of legal representation and support. In both instances, the MDU played a pivotal role in ensuring a fair outcome, highlighting the potential benefits of a similar system in India.

Psychological Impact of Malpractice Claims on Doctors

The emotional and psychological toll of malpractice claims on doctors cannot be understated. The fear of legal action, the stress of prolonged legal processes, and the potential damage to one's professional reputation can lead to anxiety, depression, and burnout. Medical professionals operate in a high-pressure environment, characterized by demanding work and extended working hours, leading to frequent burnout. The inherent challenges of their job are further compounded by the threat of malpractice lawsuits, which add to their emotional burden. In India, doctors often work in resource-constrained settings with inadequate infrastructure and manpower, yet are held to the highest standards of practice. When facing legal scrutiny, their actions are assessed using the Bolam and Bolitho tests. Tragically, the cumulative effect of these stressors has led to reports of depression, anger issues, and even suicidal deaths among healthcare professionals (HCPs) following accusations of negligence and subsequent inquiries, highlighting the urgent need for support and reform.¹⁷ Doctors who are involved in malpractice claims often report feelings of isolation, as the stigma associated with such claims can lead to a lack of support from colleagues. A comprehensive review of Supreme Court of India judgments over the past decade (2012-2021),¹⁸ reveals that surgical specialties are more susceptible to medical negligence lawsuits compared to medical specialties. Notably, obstetrics and gynecology accounted for the majority of cases. The analysis shows that in 55.2% of the decisions, the ruling favored doctors and hospitals, indicating a pro-defendant trend. Furthermore, the quality and maintenance of medical records played a pivotal role in 87.5% of the verdicts in favor of doctors or hospitals, highlighting the critical importance of accurate and thorough documentation in medical negligence cases.

In the UK, the MDU not only provides legal and professional support but also addresses the emotional well-being of its members. By offering continuous support and ensuring that doctors are not left to face legal challenges alone, the MDU helps mitigate the psychological impact of these situations. The availability of medico-legal advisers, who are often doctors themselves, provides a level of understanding and empathy that is crucial in such stressful circumstances.

In India, the lack of a similar support structure means that many doctors are left to cope with the psychological impact of malpractice claims on their own. The introduction of a system like the MDU could provide much-needed emotional support, helping to prevent burnout and ensuring that doctors are able to continue practicing without being overwhelmed by the fear of litigation. Doctors have a duty of care towards their patients, and a breach of this duty can lead to allegations of negligence. In recent years, there has been a significant increase in awareness among Indians about their rights as consumers, particularly under the Consumer Protection Act (CPA) 2019.¹⁹ As a result, patients are now more empowered to assert their rights and seek redress if they feel that the expected standards of medical care have not been met, holding doctors accountable for any lapses in their professional obligations.

Regulatory and Legal Frameworks

The regulatory and legal frameworks governing medical practice in India differ significantly from those in the UK. In the UK, the MDU operates within a well-established legal framework that includes clear guidelines for professional indemnity and medico-legal support. The MDU is authorized and regulated by the Financial Conduct Authority (FCA), ensuring that it operates within strict legal and ethical boundaries.

In India, the regulatory environment is more fragmented, with different states having different regulations and a lack of uniformity in the application of laws. The Medical Council of India (MCI) and its state counterparts are the primary regulatory bodies, but their oversight is often limited, and there is a lack of clear guidelines for medico-legal support.

To implement a system similar to the MDU in India, there would need to be significant regulatory reform. This could include the establishment of a national framework for professional indemnity, clear guidelines for medico-legal support, and the creation of a regulatory body to oversee such an

organization. Additionally, there would need to be efforts to educate doctors about the importance of medico-legal support and the benefits of joining such an organization.

DISCUSSION

Rich pool of medical experts with legal qualifications in the country. A debate on how they can organize to help fellow physicians, legal experts and policy makers.

Q. 1: What is a **medical defence council**? Is it a legal firm with medical expertise that offers defence services to physicians when there is a court case against them?

Response 1: A Medical Defence Council (or Medical Defence Organization) is typically not a legal firm, but rather a specialized organization that provides legal and professional support to healthcare professionals, including physicians, when they face legal issues such as malpractice claims or disciplinary actions.

These organizations often offer a range of services, including:

- **Legal Representation:** Providing lawyers who specialize in medical law to defend healthcare professionals in court.
- **Advice and Support:** Offering guidance on legal and ethical issues related to medical practice.
- **Insurance:** Providing professional indemnity insurance to cover legal costs and potential compensation claims.
- **Training and Resources:** Offering educational resources and training to help healthcare professionals understand their legal obligations and reduce the risk of litigation.

In India, organizations like the Medical Council of India (MCI) and various state medical councils, such as the Rajasthan Medical Council, play a role in regulating medical practice and addressing complaints against medical practitioners.

Does this help clarify things? If you have more specific questions or need further details, feel free to ask!

Q. 2: If my understanding is correct medical defense councils as they exist in UK, are private firms that provide legal support to the physician against a consideration. Regulatory bodies like Medical Council of India or its counterpart in UK do not provide support to a physician in legal suits.

Response: You are correct. In the UK, organizations like the Medical Defence Union (MDU) and the Medical Protection Society (MPS) are private entities that provide legal support and professional indemnity insurance to healthcare professionals, including physicians, in exchange for a membership fee. These organizations offer services such as legal representation, advice, and support in cases of medical negligence, disciplinary actions, and other legal matters.

On the other hand, regulatory bodies like the General Medical Council (GMC) in the UK,²⁰ and the Medical Council of India (MCI) (now replaced by the National Medical Commission (NMC) in India,²¹ primarily focus on maintaining standards of medical practice, licensing, and addressing complaints against medical practitioners. They do not provide legal defense services to physicians in court cases.

Your understanding is spot on! If you have any more questions or need further clarification, feel free to ask.

Q. 3. Other than providing indemnity how does a MDU differ from a regular legal firm? What is special about them? Do they engage specialist doctors for the purpose? I understand there are legal firms that provide specialist support say in Obstetrics and Gynecology cases only?

Response: The Medical Defence Union (MDU) and similar organizations differ from regular legal firms in several keyways:

1. **Specialization in Medical Law:** MDUs are highly specialized in medical law and the unique legal challenges faced by healthcare professionals. They provide tailored advice and support specifically for medical practitioners, which regular legal firms may not offer.
2. **Comprehensive Support:** Beyond legal representation, MDUs offer a range of services including:
 - **Medico-legal advice:** Available 24/7 for urgent issues.
 - **Support with regulatory and disciplinary investigations:** Assistance with inquiries from medical regulatory bodies.
 - **Risk management resources:** Training and resources to help reduce the risk of complaints and claims.
 - **Media support:** Help with managing media attention and preparing statements.
3. **Engagement of Specialist Doctors:** MDUs often employ or consult with specialist doctors

who can provide expert opinions and insights during legal proceedings. This is particularly valuable in complex cases where medical expertise is crucial.

4. **Membership-Based Model:** MDUs operate on a membership basis, providing ongoing support and services to their members. This contrasts with regular legal firms, which typically charge on a case-by-case basis.
5. **Educational Resources:** MDUs offer continuous professional development (CPD) courses and other educational resources to help healthcare professionals stay informed about legal and ethical standards.

While there are legal firms that specialize in specific areas of medical law, such as obstetrics and gynecology, MDUs provide a broader range of services and ongoing support tailored to the needs of healthcare professionals.

Does this help clarify the differences? If you have more questions or need further details, feel free to ask!

Q. 4. I understand that a legal firm that specializes in a particular medical discipline, on learning that there is a case filed in the field of their expertise, contacts the respondent doctor/hospital and offers the specialized service. Obviously they must be having support of medical specialist in the field.

Response: Yes, you're correct. Legal firms that specialize in particular medical disciplines, such as obstetrics and gynecology, often have a network of medical specialists who can provide expert opinions and testimony. These firms typically offer the following services:

1. **Specialized Legal Representation:** They provide legal defense tailored to the specific medical field, leveraging their deep understanding of the nuances and standards of care within that specialty.

Few Doctors' Association, generate regular Medicolegal awareness in India:

- Medicos Legal Action Group (MLAG),²²
 - Indian Medico Legal and Ethics Association (IMLEA),²³
 - Indian Association of Medico-Legal Experts (IAMLE)
 - Institute of Medicine & Law (IML),²⁴
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2. **Expert Witnesses:** They engage medical specialists who can serve as expert witnesses, offering crucial insights and testimony that can support the defense case.
3. **Proactive Outreach:** Upon learning of a case in their area of expertise, these firms may proactively contact the respondent doctor to

offer their specialized services.

4. **Case Evaluation:** They often conduct thorough evaluations of the case, including reviewing medical records and consulting with medical experts to build a strong defense strategy.
5. **Risk Management Advice:** They provide guidance on best practices and risk management to help prevent future legal issues. This approach ensures that the legal defense is well-informed by medical expertise, which can be critical in complex medical litigation.

Table 1: Medicolegal Riddle in Rhymes on Medical Defence Unions

Medicolegal Riddle in Rhymes on Medical Defence Unions
In halls where justice meets its stand, Where doctors' deeds are weighed by hand, A union strong, with wisdom bright, Guides the way through darkest night. For doctors skilled in healing's art, Whose hearts and hands have played their part, The MDU stands firm and true, Protecting all they bravely do. When patients seek a voice that's fair, In moments fraught with deep despair, The MDU ensures their plea, Is heard with truth and dignity. To lawyers sharp, who weave the tale, Of facts and fears, where doubts prevail, The MDU lends law's own might, To carve the path from wrong to right. For judges robed in solemn grace, Who judge the facts in every case, The MDU provides the light, That justice may emerge in sight. A union born from care and trust, In every battle fair and just, The MDU, with steadfast heart, Plays its noble, vital part. Through every storm, in every strife, It guards the sanctity of life, For those who heal, defend, and serve, It offers all the strength they deserve.

Q. 5. In India today there is a large number of medical specialists and super specialists who have acquired regular LLB and LLM degrees or a diploma offered by a Law University in Health Care Laws. It is a rich pool of medico-legal experts in field that is largely going waste. Can you suggest how they can be organized to support medical professionals and legal professionals.

Response: It's great to hear that there is a growing pool of medical specialists with legal expertise

in India. Organizing this talent can significantly benefit both medical and legal professionals. Here are some suggestions on how they can be effectively organized:

1. **Professional Associations:** Form a professional association or society for medico-legal experts. This organization can serve as a central body to coordinate activities, provide networking opportunities, and advocate for the interests of its members.
2. **Medico-Legal Consultancy Firms:** Establish consultancy firms that specialize in providing medico-legal services. These firms can offer expert opinions, legal representation, and risk management advice to healthcare professionals and institutions.
3. **Collaboration with Medical Defence Organizations:** Partner with existing medical defence organizations to provide specialized medico-legal support. This can enhance the services offered by these organizations and ensure that healthcare professionals receive comprehensive support.²⁵
4. **Educational Programs and Workshops:** Organize training programs, workshops, and seminars to educate healthcare professionals about legal issues in medicine. This can help raise awareness and improve compliance with legal standards.²⁶
5. **Online Platforms and Databases:** Create an online platform or database where medical and legal professionals can connect with medico-legal experts. This can facilitate easy access to expert opinions and services.
6. **Research and Publications:** Encourage research and publication in the field of health care law. This can help establish best practices, provide valuable insights, and contribute to the development of the field.²⁷
7. **Legal Aid Clinics:** Set up legal aid clinics within hospitals or medical institutions where medico-legal experts can provide on-site support and advice to healthcare professionals.
8. **Policy Advocacy:** Engage in policy advocacy to influence healthcare laws and regulations. Medico-legal experts can provide valuable input to policymakers to ensure that laws are fair and supportive of medical practice.

By organizing and leveraging this pool of medico-legal experts, you can create a robust support system for healthcare professionals, improve legal compliance, and enhance the overall quality of medical practice in India.

RECOMMENDATIONS

1. Increase awareness among doctors about the benefits and services offered by MDUs.
2. Enhance MDU resources to meet the rising demand for medicolegal assistance.
3. Develop strategies to address the increasing number of malpractice allegations.
4. Collaborate with legal experts and medical organizations to improve the effectiveness of MDUs.

CONCLUSION

Medical Defence Unions play a vital role in providing medicolegal assistance to Indian allopathic doctors fighting malpractice allegations. While MDUs face challenges, the benefits of their assistance cannot be overstated. To improve the effectiveness of MDUs, it is essential to increase awareness among doctors, enhance resources, and develop strategies to address the rising number of malpractice allegations. By doing so, MDUs can continue to support doctors in providing high-quality patient care without fear of unfair malpractice allegations. The challenges faced by Indian allopathic doctors in the context of malpractice allegations are significant, with far-reaching professional and emotional consequences. The MDU's model of providing comprehensive medico-legal support, as seen in the UK, offers a blueprint for how Indian doctors could be better supported. By offering professional indemnity, legal representation, continuous access to expert advice, and emotional support, an organization similar to the MDU could play a crucial role in protecting Indian doctors from the risks associated with malpractice claims. Such a system would not only help mitigate the financial and professional impact of these claims but also support doctors in maintaining their mental well-being, ensuring that they can continue to provide high-quality care to their patients. Implementing this model in India would require significant regulatory reform and a concerted effort to raise awareness among doctors about the importance of medico-legal support. However, the potential benefits are substantial, offering a way forward for Indian allopathic doctors to navigate the complex and often challenging landscape of modern medical practice.

Conflict of Interest:

Nil

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