

Duty and Legal Responsibility of Vaidya in Malpractice Cases

VaidehiPatil¹, Dr. Sanjana B. Deshmukh²

PG Scholar¹, Associate Professor²

Department of Agad Tantra

P.D.E.A.'s College of Ayurveda, Nigdi, Pune, Maharashtra

Email id: vaidehipatil.ayurveda@gmail.com¹, sanjanadeshmukh.rsh@rediffmail.com²

ABSTRACT

Ayurvedic physicians (Vaidya) occupy a dual space in India's health care ecosystem: they are custodians of a millennia old medical tradition and, simultaneously, "service providers" under contemporary consumer protection and professional regulation statutes. This paper surveys the statutory framework, judicial doctrine and ethical expectations that shape the duty of care and legal responsibility of Vaidya in malpractice actions. Drawing on recent consumer forum awards (2025) and Supreme Court benchmarks, it analyses the civil, criminal and disciplinary pathways open to aggrieved patients, the defences available to practitioners, and the emerging compliance culture mandated by the National Commission for Indian System of Medicine Act, 2020. Two summary tables consolidate key statutes and landmark cases.

KEYWORDS: *Ayurveda; medical negligence; consumer protection; National Commission for Indian System of Medicine; duty of care; professional misconduct.*

INTRODUCTION

The practice of Ayurveda, India's ancient system of medicine is rooted in holistic healing and the balance of bodily energies. While the core philosophy emphasizes personalized care, natural remedies, and preventive health, the evolving health-care ecosystem in India places Ayurveda alongside modern biomedicine within a complex medico-legal framework. With increasing public reliance on Ayurvedic therapies and procedures—including Panchakarma, Rasa Shastra, and herbal formulations—comes a parallel rise in patient expectations, legal scrutiny, and professional accountability.

Historically, the role of the Vaidya (traditional Ayurvedic physician) was governed by the principles laid out in classical texts such as the Charaka Samhita *and* Sushruta Samhita. *These* texts provided moral and professional guidance, but not enforceable legal standards. However, with the formal regulation of Ayurveda by the Indian state in the post-independence period, especially through the Indian Medicine Central Council Act (IMCC Act), 1970, the role of the Vaidya has become subject to legal obligations akin to those faced by allopathic doctors.

The turning point came with the landmark judgment in Indian Medical Association v. V.P. Shantha (1995), where the Supreme Court ruled that medical services offered for a fee, regardless of the system of medicine, fall within the ambit of the Consumer Protection Act (CPA). This ruling effectively brought Vaidyas under the purview of civil liability and consumer litigation, opening the door for aggrieved patients to seek compensation for medical negligence, service deficiency, and ethical violations.

Moreover, increasing incidents of complications due to improper detox therapies, misadministration of potent herbo-mineral drugs, and failure to observe aseptic conditions in Ayurvedic surgery have led to several high-profile malpractice claims. These developments have generated a pressing need to understand the precise duty of care expected from Vaidyas, the legal responsibilities they bear under multiple statutes, and the consequences of breach—civil, criminal, and professional.

This paper explores these dimensions by analyzing statutory provisions, key judicial decisions, ethical guidelines, and recent case laws, with the goal of informing both practitioners and policy-makers on safeguarding traditional wisdom within a framework of modern legal accountability.

Historical and Statutory Framework

The legal regulation of Ayurvedic practice has undergone a systematic evolution over the last century, transforming the Vaidya from a community-based healer to a state-recognized medical professional bound by legal duties. This transformation can be mapped across five key statutes and regulatory frameworks.

Indian Medicine Central Council Act, 1970 (IMCC Act)

The IMCC Act laid the foundation for the formal recognition and regulation of Ayurveda, Siddha, and Unani systems of medicine. It established the Central Council of Indian Medicine (CCIM), now replaced by the NCISM, and mandated that all practitioners be registered with state or central registers. The Act codified the professional rights and ethical obligations of Ayurvedic practitioners and empowered the Council to prescribe a Code of Ethics, conduct inspections, and regulate education and registration.

Sections 17, 26, and 28 are particularly relevant:

- Prohibits unregistered individuals from practicing or prescribing Ayurvedic medicine.
- Allows the Central Council to regulate professional conduct and ethics.
- Empowers the Council to remove or suspend a practitioner's name from the register for professional misconduct.

National Commission for Indian System of Medicine (NCISM) Act, 2020

Replacing the CCIM, the NCISM Act represents a modernized attempt to regulate the Indian systems of medicine with greater transparency, accountability, and quality assurance. The Act sets up national and state-level commissions to:

- Maintain updated professional registers,
- Oversee education standards,
- Enforce ethical practices, and
- Penalize violations.

Section 27 of the Act empowers the Board of Ethics and Registration to take disciplinary actions against practitioners for infamous conduct; a term interpreted through both statutory codes and judicial precedent. Penalties can include suspension, monetary fines, or permanent debarment.

Consumer Protection Act, 2019

Following the precedent set by the Supreme Court in *Indian Medical Association v. V.P. Shantha* (1995), Ayurvedic services offered for a fee are deemed “**services**” under the CPA. Thus, a Vaidya can be held liable if:

- Treatment falls below reasonable standards of care,

- There is a failure to obtain informed consent,
- Harm is caused due to improper diagnosis, delayed referral, or unsafe administration of drugs/procedures.

While the CPA does not explicitly list Ayurveda, its general wording and past jurisprudence allow for its inclusion. Consumer forums across India regularly adjudicate on complaints related to improper Panchakarma therapy, allergic reactions to Rasa Aushadhis, and lack of proper documentation or consent.

Indian Penal Code (IPC), 1860

Criminal liability may arise if a Vaidya's act is grossly negligent and leads to death or bodily harm. Relevant sections include:

- Causing death by negligence (e.g., unsupervised emesis leading to aspiration).
- Causing hurt by act endangering life or personal safety.
- Causing grievous hurt by rash or negligent act.

These provisions are invoked in rare but serious cases involving fatalities, unauthorized surgeries, or administration of toxic substances without due care.

Drugs and Cosmetics Act, 1940 & Rules

Ayurvedic medicines, including classical formulations and proprietary drugs, are governed by Chapter IVA of this Act. It lays down norms for:

- Manufacturing licenses,
- Labelling and branding,
- Shelf-life declarations,
- Banned substances (e.g., use of mercury without detoxification protocols).
- Violation of these rules—such as adulteration, sale of expired products, or unauthorized manufacturing—can lead to criminal prosecution, license cancellation, and fines.

Table 1. Major Legal Instruments Governing Ayurvedic Practice

Legal Instrument	Year	Scope Relevant to Vaidya	Liability / Disciplinary Clauses
IMCC Act	1970	Registration, qualifications, practice rights	§26 Code of Ethics; §28 disciplinary powers
NCISM Act	2020	National & State registers; ethics	§27 misconduct penalties; appeals
Consumer Protection Act	2019	Service-deficiency claims before consumer fora	Compensation, injunctions
Drugs & Cosmetics Act (Ayurveda)	1940	Manufacturing & labelling of Ayurvedic drugs	Licence suspension; criminal fines
Indian Penal Code	1860	Criminal negligence causing hurt or death	§§304-A, 337, 338 imprisonment/fines

DUTY OF CARE OWED BY A VAIDYA

In the context of Ayurvedic practice, the duty of care refers to the legal and ethical obligation of a Vaidya to treat patients with reasonable skill, diligence, and caution, in line with the accepted standards of the Ayurvedic system of medicine. This duty arises the moment a professional relationship is established between the Vaidya and the patient. The legal recognition of this duty is drawn from general tort law principles, judicial rulings, and specific regulatory frameworks under the NCISM Act, 2020 and the IMCC Act, 1970.

The Supreme Court in *Dr. LaxmanBalakrishna Joshi v. Dr. Trimbak Bapu God bole* (1969) laid down a fundamental doctrine applicable across medical systems. It clarified that a doctor has three core responsibilities:

- Duty in deciding whether to undertake the case, based on competence and capability;
- Duty in deciding the appropriate course of treatment, which must align with accepted medical practices;
- Duty in the administration of that treatment, performed with due diligence and care.
- These principles apply equally to a Vaidya, especially as many Ayurvedic treatments—like Panchakarma, Raktamokshana (bloodletting), and Ksharasutra (medicated thread ligation)—involve complex procedures that carry inherent risks.

- The NCISM Code of Ethics further expands this duty by mandating:
- Maintenance of patient records for at least five years, including history, diagnosis, prescriptions, and consent forms;
- Ensuring proper informed consent, particularly when invasive or potentially risky therapies are planned;
- Upholding confidentiality and respect for patient autonomy, including full disclosure of risks and alternatives;
- Prohibition on promotional advertisements or false claims about guaranteed cures.
- A Vaidya is also expected to be aware of contraindications and dietary guidelines linked with Ayurvedic treatments and must educate the patient accordingly. For instance, failure to advise a proper SansarjanaKrama (post-Panchakarma recovery diet) could amount to negligence if the patient suffers due to dietary missteps.
- Moreover, with the increasing incorporation of modern diagnostic tools and hybrid practices, a Vaidya's duty now includes:
- Knowing when to refer a patient to an allopathic specialist or a higher center if the case exceeds their scope;
- Avoiding unscientific or unapproved methods that are outside the Ayurvedic corpus or regulatory permissions.
- In essence, this duty is both preventive and responsive—it demands careful planning before treatment and swift corrective action when complications arise.

Standard of Care and Benchmarks of Competence

The standard of care defines the threshold of professional competence that a reasonable and prudent Ayurvedic practitioner must meet under similar circumstances. Courts and regulatory bodies evaluate this standard based on the practices accepted by a responsible body of Ayurvedic professionals, classical textual authority, and contextual clinical judgment.

The Indian legal system draws heavily from the Bolam Test, originally framed in England (Bolam v. Friern Hospital Management Committee, 1957), which states:

"A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art."

In India, this standard has been upheld across various judgments and applies equally to Ayurveda. This means that if a Vaidya adheres to protocols derived from Charaka Samhita, Sushruta Samhita, Ashtanga Hridaya, or guidelines issued by the Ministry of AYUSH, they are likely to be protected under this doctrine—provided their actions reflect prudence, documentation, and clinical justification.

However, the benchmark of competence also evolves over time with advances in:

- Herbo-mineral research,
- Ayurvedic pharmacology,
- Panchakarma safety protocols,
- Cross-disciplinary diagnostic integration (e.g., using USG or blood reports to plan Ayurvedic therapies).
- Consumer forums and courts now examine whether:
 - The practitioner conducted a thorough diagnosis using Ayurvedic methods like NadiPariksha, MutraPariksha, and JihvaPariksha;
 - Risk factors were appropriately identified and explained;
 - Emergency plans were in place during therapies with high risk (e.g., Vamana, Nasya);
 - Proper sterilization and hygiene measures were followed, especially during Ksharasutra or Raktamokshana procedures.
- A recent example includes the Bengaluru Consumer Forum (2025) awarding ₹5 lakh to a patient's family after a Panchakarma machine delivered an electric shock due to faulty earthing. The forum ruled that failure to conduct safety checks breached the basic standard of care, even though the therapy followed classical protocol.
- Another crucial benchmark is continuing professional development. Courts are increasingly accepting the notion that competence is not static. A Vaidya must:
 - Stay updated through AYUSH seminars and CME credits,
 - Be familiar with new government advisories,
 - Be aware of interactions between Ayurvedic drugs and modern medications, especially in comorbid cases.

Thus, the standard of care today is multi-dimensional—rooted in Ayurvedic tradition but judged through the lens of contemporary safety expectations, documentation practices, and patient rights. Competence is no longer defined merely by knowledge of Sanskrit shlokas or formulations; it includes ethical maturity, communication clarity, and system-awareness.

Table 2: Landmark Judgments on Ayurvedic Malpractice

Case	Year	Court / Forum	Core Issue	Key Holding
Dr L.B. Joshi v. Trimbak Godbole	1969	Supreme Court	Duty-of-care definition	“Reasonable skill & knowledge” test
Indian Medical Assn v. V.P. Shantha	1995	Supreme Court	CPA applicability	Paid treatment = “service”
Kaushalya Devi v. K.K. Kapil	2009	Punjab & Haryana HC	Infrastructure negligence	Liability for surgery without sterility
Divine Spiti Clinic Case	2025	Bengaluru Consumer Forum	Electrocution death	₹5 lakh damages; safety breach
Bar of Indian Lawyers v. D.K. Gandhi	2024	Supreme Court	CPA scope reconsidered	Signals possible review of V.P. Shantha

DEFENCES AVAILABLE TO VAIDYA

Bolam conformity. Showing adherence to a responsible body of Ayurvedic opinion. Contributory negligence. Patient’s disregard of post-therapy instructions (e.g., breaking prescribed sansarjana-krama diet). Inherent risk disclosure. Documented informed consent detailing foreseeable complications of virechana or basti deflects liability unless the risk materialises through sub-standard execution.

Risk Management and Ethical Compliance

- Adopt algorithmic checklists for kala-bhojan (timing of medicines) and herb–drug interactions.
- Install incident-reporting systems to meet NCISM audit norms.
- Maintain professional-indemnity insurance calibrated to annual patient load.
- Provide continuing-medical-education credits on jurisprudence and biomedical waste rules to all clinic staff.

Future Trends and Reforms

Pending reconsideration of V.P. Shantha risks pulling health-care entirely out of the CPA; if that happens, patients may rely more on tort and criminal law, while NCISM disciplinary boards will gain prominence. Parallely, the Delhi High Court’s 2025 ruling annulling an NCISM chairperson’s appointment underscores stricter statutory scrutiny of Ayurvedic governance. timesofindia.indiatimes.com

CONCLUSION

The contemporary Vaidya’s legal landscape is both broader and deeper than ever: statutory codes, consumer jurisprudence and criminal sanctions intersect to demand demonstrable competence, transparent communication and rigorous record-keeping. While Ayurveda’s holistic ethos remains intact, the jurisprudential message is clear—traditional knowledge carries modern responsibilities. Proactive compliance and an evidence-informed practice culture are the surest safeguards against malpractice exposure.

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