

MEDICAL NEGLIGENCE IN CONTEMPORARY INDIA: LEGAL LIABILITY, PATIENT RIGHTS AND EMERGING ACCOUNTABILITY UNDER THE CONSUMER PROTECTION ACT, 2019 AND BHARATIYA NYAYA SANHITA, 2023

Dr. Rahul Katiyar

Ph.D in Law

Shobhit Institute of Engineering and Technology, Merrut

Abstract

Medical negligence has now come into a prominent field of legal examination in India as the healthcare industry has been experiencing growth and the awareness of the patients is rising. The shift of the medical services to the consumer-oriented model has also enhanced the pressure on the accountability and transparency of the clinical practice. This paper will be a critical analysis of laws that regulate medical negligence in India with specific focus on the Consumer Protection Act, 2019, and the recently implemented Bharatiya Nyaya Sanhita, 2023. It discusses the changing legal principles of judicial rules on the determination of negligence, applicability of professional medical standards, role of informed consent, and medical documentation. The paper also examines the dilemma between ensuring the autonomy of the medical professionals and the protection of the rights of the patients. The article suggests a legal strategy that should be followed to protect patients and avoid unnecessary criminalisation of medical practice by analysing legal acts, case laws, and legal regulations.

Introduction

The healthcare systems are built on the principles of trust between the patients and the medical professional. When the patients make a visit to doctors, they do so on the understanding that the latter would be using his or her expertise with reasonable care and diligence. Nevertheless, in cases where medical care causes harm because of the deficiency of reasonable care, medical negligence enquires are in play.

The problem of medical negligence has attracted more concern in India in the past few decades witnessed by commercialization of health care, escalation of medical expenses and heightened awareness of patient rights. Courts have been requested to provide the limits of professional responsibility and at the same time protect doctors against unwarranted lawsuits.

The Indian legal system that regulates medical negligence is based on various sources such as the tort law, criminal law, professional standards and consumer protection laws. The understanding of patients as consumers in the healthcare system has had a very profound effect in the legal context of the system since it has allowed patients to pursue compensation under consumer dispute redressal laws. The legislation on medical negligence has also further evolved with the adoption of the Consumer Protection Act, 2019 and the Bharatiya Nyaya Sanhita, 2023 in place of previous criminal law provisions.

In this article, the author examines the idea of medical negligence in the modern Indian legal system and determines how the latest legislative developments affect the responsibility of medical practitioners.

Meaning and Scope of Medical Negligence

Medical negligence is a failure on the part of a medical practitioner to act with the level of care, skill and diligence that an ordinary competent medical practitioner would act under such a circumstance. It entails the actions that are below the accepted norms of the medical fraternity and cause harm to the patient.

The negligence in medical practice can occur in many different ways, including wrong diagnosis, surgical mistakes, neglect with patients, prescribing of the wrong medication, sterilization, or post-operative care. Nevertheless, not all errors made by medical practitioners amount to negligence. The law does acknowledge that medical science is one subject to uncertainty and that the results of the treatment cannot be always predicted in certain terms.

The courts consequently pay attention to whether the doctor was acting on a reasonable standard of professional practice. Liability would not be probable in case a medical professional has

done so based on accepted medical practice and that he/she made reasonable judgment even when the treatment ends up being unsuccessful.

Essential Elements of Medical Negligence

To achieve a valid legal action against medical negligence, a claimant ought to prove some basic elements. All these factors have their roots in general tort law principles.

- To begin with, the duty of care should exist. One duty will occur when a doctor accepts to diagnose or cure a patient. This association creates the legal duty to treat in the accepted medical standards.
- Second, the claimant should be able to establish that there was breach of duty. Violation The act of the doctor that does not adhere to the usual behavior of a reasonably competent medical practitioner.
- Third, causation needs to be proved. The claimant should prove that the breach of duty was the immediate cause of the injury on the patient.
- Lastly, real harm will need to be shown. A case of negligence will not be successful in the absence of provable harm despite the fact that the actions of the medical professional might be dubious.

Medical Negligence under the Consumer Protection Act, 2019

Consumer Protection Act 2019 is a great boost to legal redress in instances where patients have been harmed as a result of a careless medical practice. Under the Act, medical services done on a consideration basis are considered as a service.

The sub-clause (42) of the Act takes a wider concept of service to incorporate healthcare services that are offered by hospitals, clinics, and medical practitioners. The patients, who feel they are deficient in medical services, are thus able to complain before the relevant Consumer Disputes Redressal Commission.

Section 2(11) determines the meaning of deficiency, that is any fault, imperfection, shortcoming, or inadequacy in the quality, nature, or manner of performance that must be observed by law or by contract. In medical negligence, incompetence can be through diagnosis made improperly, absence of reasonable care or neglect of following the laid medical procedures.

The Act creates a three tiers system of consumer redressal of disputes through District Commissions, State Commissions and National Commission. Injuries caused by negligent medical services can be compensated by patients. The consumer forums are an affordable and easy to reach solution to the medical negligence victims due to the simplification of the process and reduced costs of litigation.

Criminal Liability under the Bharatiya Nyaya Sanhita, 2023

The Indian Penal Code has been superseded by the Bharatiya Nyaya Sanhita, 2023 and has brought newer provisions in the context of criminal negligence. Criminal negligence can be directed against medical experts where they have been found guilty of negligence that has led to severe injury or death.

Section 106 of Bharatiya Nyaya Sanhita is about the causation of death due to negligence. This is created in cases where one individual kills another due to a rash or negligent act that does not constitute culpable homicide. Though this is a general provision, it can be applied in the instances of gross medical negligence.

Nevertheless, Indian courts have continually insisted that only extremely high negligence cases should be subject to criminal prosecution of the doctors. Criminal negligence is not ordinary mistakes of judgment, medical disagreements, or failure to have an effective treatment outcome.

The judiciary has thus come up with safeguards that it has to seek independent medical opinion before pursuing criminal charges against the medical practitioners. This will guarantee that the doctors are not exempted to undue criminal harassment and still get to punish them in case of gross negligence.

The Bolam Rule in Medical Negligence: A Comprehensive Legal Analysis Introduction

Medical negligence is one of the most complicated areas of interplay between professionalism and legal responsibility in the field of tort law. Medical practitioners are expected to meet the requirements of their particular

vocation as opposed to the reasonable man on the Clapham omnibus, which is the standard in the case of ordinary negligence. The rule of law behind this standard, over half a century in duration, is the Bolam Rule, which was put in place in the historic English case Bolam v Friern Hospital Management Committee [1957]. This rule continues to be one of the foundations of medical jurisprudence in most common law jurisdictions, such as the United Kingdom and India.

The Facts of Bolam v Friern Hospital Management Committee

The case was filed against Mr. John Hector Bolam, a depressed patient undergoing the electro-convulsive therapy (ECT) in Friern Hospital. In the course of the treatment, Mr. Bolam did not receive any muscle relaxants and was not bound, which led to a severe hip fracture due to the severity of the convulsions.

Mr. Bolam filed a lawsuit against the hospital citing negligence by the doctors who did not offer relaxants or restraints. But medical evidence then revealed that there was a great gap between professional opinion; the one school of thought supported the use of relaxants, and the other thought that it raised the risk of cardiac arrest.

The McNair Direction

Justice McNair in his direction to the jury developed what is now known as the Bolam Test:

The defendant will be relieved of liability in negligence provided he has not acted contrary to a practice generally accepted by a responsible body of medical men who are expert in that specialized art.

Most importantly, the judge clarified that a doctor does not come under negligence just because there is a body opinion that would hold the opposing opinion. The doctor has fulfilled the legal standard of care as long as a body of peers that bears responsibility in the action is supportive.

The Mechanics of the Bolam Test

The Bolam Rule gave the medical profession the power of decision making, which was before the judiciary. Its operation is based on two major pillars:

Peer Recognition: The defendant should prove that his/her acts are conforming to an accepted professional practice.

There is No Right Way: Medicine is not a perfect science, which is recognized by the law. There can be several approaches which are valid in a variety of clinical situations. When a physician chooses one of these responsibility courses, then the physician is not subject to a liability, which may be the suboptimal result.

Criticisms and the Era of Medical Paternalism

The Bolam Rule has been criticized as being too much doctor-friendly. It was claimed by critics, as a form of conspiracy of silence or a guild mentality in which doctors were practically allowed to make their own law. In case a defendant can identify few individuals among others that they would testify that they would have done the same, the court was compelled to conclude in his/her favor. This saw the beginning of the medical paternalism period where the judge had been relegated to a mere bystander in technical medical discussions.

The Evolution: Bolitho and the Requirement of Logic

Bolitho v. House of Lords refined the absolute power of the Bolam Rule to a great extent. City and Hackney Health Authority [1998]. The court made clear that a body of opinion is not just a requirement but the opinion must be rational.

According to Lord Browne-Wilkinson, the court needed to be convinced that the medical body of opinion must be logically based and that it has taken the risk and the benefits into consideration. In case of a professional opinion, which is not subject to logical criticism, the judge has a right to determine that the body of opinion is not accountable and declare the doctor as negligent. This reversed the final authority to the court to become the ultimate adjudicator of what is considered to be the reasonable care.

Bolam in the Context of Informed Consent

The separation of diagnosis/treatment and informed consent is one of the biggest changes in the modern world. Although, the Bolam Rule continues to dominate a great deal of the way a doctor carries out surgery or even prescribes medication, it does not apply to the information disclosed to a patient.

The UK Supreme Court, in the case of *Montgomery v Lanarkshire Health Board* [2015], substituted the Bolam-based model of consent, the Doctor-Centric model, with the Patient-Centric model. The law has mandated that the doctors reveal all the material risks which are characterized as risks that a reasonable individual in the position of the patient would wish to know.

The Indian Perspective: Jacob Mathew and Beyond

- The Bolam Rule has been entrenched in the Indian law. In the landmark of *Jacob Mathew v. The Supreme Court of India* in the case of *State of Punjab (2005)* approved Bolam Test and noted that:
- The professional can only be held liable when he or she did not have the required skill or resort to it with reasonable competence.
- A mistake of judgment is not always negligence unless it is a mistake which no reasonably competent professional would commit.
- This cover is important in India so that doctors do not engage in defensive medicine, which consists of not undertaking risky yet essential operations because of the threat of lawsuits..

Challenges in the 21st Century

The Bolam Rule is challenged due to the growing data-based and AI-assisted approach of medicine. When an AI algorithm recommends a treatment course that is against a responsible unit of human medical men, which one is correct? These finer points are still being wrestled with by the legal system, however, the essence of Bolam, which is based on the professional expertise, is the beginning point of any medical negligence litigation.

The Bolam Rule was the result of the necessity to shield professional community against the unfairness of the benefit of hindsight or laypeople who are not aware of the intricacies of clinical practice. Although the Bolam "logic" condition and the *Montgomery* "consent" change have introduced the requisite layers of protection to the patient, the Bolam Rule continues to be the foundation of medical law. It means that under the conditions that a doctor behaves correspondingly to the competence and care of a professional colleague, he/she will not have to be under the omnipresent threat of legal liability.

Informed Consent and Patient Autonomy

Informed consent is what makes a key part of both ethical and legal medical practice. It is indicative of the fact that patients are entitled to make their choices related to their own bodies.

Doctors have to explain to the patient the type of medical treatment, risk and complications, and alternatives before they engage in any major medical procedure. Afterwards the patient should voluntarily accept the treatment.

Lack of informed consent can even be negligence. The courts have stated that the consent should be real, voluntary, and grounded on sufficient information. Written consent forms and adequate documentation of patient counselling have thus become invaluable protection in the contemporary day healthcare practice.

Importance of Medical Records and Documentation

Medical records are very important in deciding whether negligence has been involved. Medical records give a history of the diagnosis, treatment, medication and progress of the patient.

Medical documentation is often used in the process of assessing negligence claims in courts. Lack or poor records tend to contribute towards unfair inferences towards hospitals or physicians. Effective documentation enhances patient care as well as safeguards healthcare professionals against the allegation of falsity.

As more hospitals embrace electronic health records, documentation activities are slowly turning out to be better in hospitals. The digital record system is more transparent and facilitates a way of monitoring clinical decision-making and treatment outcomes.

Judicial Approach to Medical Negligence

There has been a restrained attitude by Indian courts when handling medical negligence cases. Judges understand that medicine is not a precise science and that physicians have to assume complicated decisions when under pressure.

The courts thus find it very useful when expert medical evidence is used to ascertain whether the actions of a physician were below the reasonable level of care. This is aimed at determining whether the medical professional has conducted him/herself in a way that would have been taken by a reasonably competent practitioner under such circumstances.

Simultaneously, courts have been highlighting the fact that patients have the right to a reasonable standard of care and that irresponsible behavior when safety of patients is concerned could not be accepted.

Challenges in Medical Negligence Litigation

There are a number of practical challenges concerning adjudication of medical negligence cases. The technical complexity of medical evidence can be considered one of the main challenges. Lawyers and judges tend to use expert evidence which is occasionally contradictory.

Inequality in knowledge between patients and healthcare professionals is another problem. The patients might lack the information they need to detect negligence or accumulate any evidence to prove their claims.

Also the fear of being sued has also given rise to defensive medicine where doctors prescribe unnecessary tests or procedures in order to shield themselves against possible lawsuits. These practices raise the cost of health care and they can have adverse implications on patient care.

Comparative Perspectives

A number of nations have come up with dedicated medical negligence systems. Medical negligence is largely dealt with in the United Kingdom under the tort law by civil litigation, and the National Health Service has well-organised systems of complaint investigation. Malpractice litigation is widespread in the United States and the compensation given is usually large in monetary terms. Some countries such as

New Zealand have implemented no-fault compensation schemes whereby patients get compensation against the injuries that they sustain during treatment without having to show negligence.

The research of such international strategies can be valuable in the enhancement of the Indian system. A moderate way, that is, allowing early resolution of differences, and transparency, can lead to a decrease in litigation, but provide compensation to injured patients fairly.

Role of Professional Regulatory Bodies

The medical practitioners in India are also governed by the professional bodies that lay down the ethical code as well as the disciplinary measures. These bodies are very effective in ensuring professional accountability.

Complaints of misconduct, negligence or unethical behavior may be investigated by professional councils. The disciplinary measures can involve either a warning, suspension of license or cancellation of registration in extreme cases. These mechanisms complement courts of law and help in upholding professional standards in the medical fraternity.

Impact of Technology on Medical Accountability

The current healthcare is more dependent on technology, e.g. electronic health records, telemedicine services, and digital diagnostic tools. The technologies have enhanced efficiency and transparency in the provision of healthcare. Nevertheless, they also lead to novel legal issues of responsibility and liability

To cite an example, mal-functioning diagnostic software, mistakes in entering data into digital records system or failure to follow proper protocols may lead to medical errors. These new challenges need to be accommodated by the legal systems with consideration that technological innovation should still be used to the advantage of patients.

Patient Awareness and Legal Literacy

The efficacy of the legal measures against medical negligence is highly dependent on the general consciousness. Patients need to know their rights which include the right to informed consent, medical records, and the right to compensation in case of negligent treatment.

The government agencies, health institutions and the civil society organizations have an important role to play in educating patients on legal literacy. Misunderstanding between the doctors and the patients can be greatly minimized through awareness programs, hospital grievance mechanisms and clear cut communication policy.

Conclusion

Indian medical negligence legislation has been an effort to create a fine balance between professional independence and patient safety. The legal system appreciates that physicians need to be free to some extent in making clinical decisions, but it demands patients to be treated in accordance with the accepted standards of care.

The Consumer Protection Act, 2019 has enhanced the rights of patients by offering easy methods of compensation. Likewise, the Bharatiya Nyaya Sanhita, 2023 defines criminal liability in instances of gross negligence that leads to the death or grievous injury.

Medical negligence is however not a problem which can be solved by legal enforcement. The prevention needs should focus more on better hospital management, professional ethics, documentation, and increased awareness of the patients and their rights.

To maintain trust in the healthcare system in India, a balanced legal system to encourage accountability and consider the sophisticated nature of medical practice is necessary.

Footnotes

1. Consumer Protection Act, 2019, Section 2(42).
2. Consumer Protection Act, 2019, Section 2(11).
3. Bharatiya Nyaya Sanhita, 2023, Section 106.
4. Jacob Mathew v. State of Punjab, (2005) 6 SCC 1.
5. Samira Kohli v. Dr. Prabha Manchanda, (2008) 2 SCC 1.
6. Martin F. D'Souza v. Mohd. Ishfaq, (2009) 3 SCC 1.
7. Malay Kumar Ganguly v. Sukumar Mukherjee, (2009) 9 SCC 221.

References

1. Consumer Protection Act, 2019.
2. Bharatiya Nyaya Sanhita, 2023.
3. Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.
4. Avtar Singh, Law of Medical Negligence and Compensation (Eastern Book Company).
5. Ratanlal & Dhirajlal, Law of Torts (LexisNexis).
6. Jacob Mathew v. State of Punjab, (2005) 6 SCC 1.
7. Samira Kohli v. Dr. Prabha Manchanda, (2008) 2 SCC 1.
8. Martin F. D'Souza v. Mohd. Ishfaq, (2009) 3 SCC 1.