
MEDICAL NEGLIGENCE IN INDIA: LEGAL ACCOUNTABILITY AND PATIENT PROTECTION IN THE TIME OF CONSUMER RIGHTS

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ABSTRACT

Medical negligence has begun to become analyzed under law in India because of the increased human rights awareness among patients, the proliferation of healthcare services, and the growth of consumer protection law. As healthcare systems continue to change as well as medical technology becomes more highly advanced, the expectation placed upon medical professionals has also become greater. Patients today are more enlightened about their legal rights and not afraid to look for accountability when medical services are less than acceptable. In this regard, legal measures have a significant role to play in ensuring that patients will be fairly treated and have an adequate remedy in case of a medical error.

The passage of Consumer Protection Act, 2019 has gone a long way in strengthening the lawful aspects involved in seeking legal solutions for any patient who suffers harm because of inadequate medical services. By treating healthcare as a service, the Act enables patients to go to consumer dispute redressal interventions in terms of compensation for negligence and deficiency. Moreover, there has also been a substantial reform in the criminal law with the repeal of Indian Penal Code, 1860 and replacement by Bharatiya Nyaya Sanhita, 2023. The new criminal law goes concurrently with approach towards penal liability of negligent act causing death or grievous hurt in a careful consideration of accountability and medical realities.

The paper examines the evolving concept of medical negligence within in India which targets committed towards the providers of health services. It examines the legislative clause of Consumer Protection Act, 2019 and Bharatiya Nyaya Sanhita, 2023, the share of the jurisdiction of the consumer dispute redressal commissions and the role of judicial precedents notwithstanding the Act of Others the standard of care that is expected from the medical professional. The paper also highlights medical documentation, consent and professional negligence as tools against claim of medical negligence. The conclusion of the study is that although enhanced protection of patients is necessary, the legal system also needs to ensure that medical professionals are able to do their job without the constant fear of being sued without just cause.

Keywords: Medical Negligence, Consumer Protection Act 2019, Bharatiya Nyaya Sanhita 2023, Healthcare liability, Patient Rights.

INTRODUCTION

Healthcare represents one of the most important sectors in any society since it is directly related to life protection of humans and their well-being. Doctors, nurses, hospitals and other individuals who play a role in the healthcare system are trusted with the responsibility of diagnosing illnesses, providing treatment and ensuring the patient recovers. Patients have a huge faith in medical practitioners and rely on these professionals employing reasonable care and skill while performing the treatment. The relationship between a doctor and patient is one based on trust, professional competence and ethical obligation. The patient-doctor relationship is based on trust, professional skills and ethical obligations. Mistakes do happen when it comes to medicine; this is due to everything being set in place and the healthcare providers really doing their best. When an individual fails to act to provide the standard of care and competency a reasonably skilled physician or other medical professional would exercise and the failure to do so results in a lack of dental care and causes further harm, it may be that the individual will get away with medical negligence. Medical negligence can have serious consequences not just on the physical well-being of the patients but can also create emotional anguish, financial loss and distrust in the healthcare system.

In India, the law relating to medical negligence has developed substantially in last couple of decades. In the past, patients mostly turned to civil lawsuits under the law of torts to obtain compensation for negligent medical treatment. These proceedings often were time-consuming, expensive, and complicated. The introduction of consumer protection legislation changed all this as it gave patients with deficient medical services a much quicker way to access a remedy. According to the definition contained in the report of IMSC, the medical negligence can be a case where a person suffers from an injury or any disease by the fault of a medical practitioner by neglecting the applicable standards of care and skill to him in that particular community. Consequently, the agreement

between the parties is one of skill and care rather than one of result. The doctor does not guarantee a successful outcome but rather a successful execution of his duty.

In the event that the patient's condition worsens, the medical practitioner shall not be liable when using reasonable skill and care. Therefore, failure to exercise due care, skill or knowledge as a professional is termed as professional negligence which results in damage due to breach of legal duty. In addition, it must also be proven that the doctor failed to use a reasonable degree of skill or care as would the ordinary competent doctor. Moreover, it is necessary to establish a causal link between the damage sustained and the carelessness.

To begin with, doctor-patient relationship is certainly a professional one. Furthermore, it is a relationship which can be implied where a patient visits the doctor or hospital demanding medical advice and treatment.

Due to the Consumer Protection Act, 2019 the patient can claim compensation for the negligence on the part of the hospital or doctor. This has become one of the important tools. The Act considers healthcare services to be a service for consideration and consequent hereof, patient filings were allowed with the consumer dispute redressal commissions. These commissions are being executed or processed.

Concept of Medical Negligence

Medical negligence is the failure of a healthcare professional to reasonably exercise care and skill involved in the diagnosis of a patient or in a medical treatment. The law assumes doctors to possess the knowledge and competence needed in their discipline and the ability to use that knowledge reasonably and judiciously in the treatment of patients; When a medical professional behaves in a way that doesn't meet the standard of medical practice, liability for negligence may result. It is important to understand that negligence does not refer to any unsuccessful treatment or unfavorable outcome. Medicine is not an exact science and even the most competent doctors cannot guarantee a successful result in all cases. Courts thus draw distinctions between actual negligence and an honest mistake of judgment based on good faith. A doctor can choose one of a number of methods of treatment, and the fact that the chosen treatment did not work is not necessarily an indication of negligence by the doctor.

Medical negligence may occur in a variety of different ways. Examples can be if a doctor fails to diagnose a patient properly due to his/her negligence in looking at the patient well, or a surgeon commits an error in performing surgery. Negligence can also arise when a doctor administers the wrong medicine to a patient, prescribes an inappropriate amount of medicine, did not watch over a patient after a medical operation or did not even seek consent before a medical procedure. Also in some cases, hospitals may be the culprits of medical negligence due to ineptitude of the infrastructure or people or due to failure to adhere to the relevant hygiene and safety protocols.

To prove the element of medical negligence, there are certain crucial ingredients that need to be proven. For any medical negligence claim to succeed, it must have certain essential elements. To commence, there must be a doctor-patient duty of care on the medical doctor. This duty is a contract between the doctor and his patient, and a contract between the hospital and a patient who is admitted to the hospital for receiving medical care. The second element involves demonstrating that the doctor violated that duty by not adhering to the standard of care a competent professional would have exhibited in a similar situation. The final element requires a patient to prove that the injury or injuries were directly caused by the breach of duty. Finally, there must be a physical injury, property damage, mental damage, loss of money or loss of happiness.

A claim of medical negligence must have all the elements to succeed. Generally, medical professionals' opinion is taken to decide whether the doctor's acts were less than an expected standard of care.

Consumer Protection Act 2019: medical Services.

Much legislation are playing important roles in the health of medical negligence cases in India. One of these is the Consumer Protection Act, 2019. This legislation has been enacted to safeguard the rights of the consumers. It will also provide an effective system to resolve the disputes of defective goods or services. When a product or service is provided for consideration, it will fall within the ambit of the Consumer Protection Act, 2019. The definition of service includes hospitals, clinics and medical practitioner services in the case of services 2019.

A patient that makes payments towards medical treatment is treated as a consumer under the Act. In case of defective services performed by a hospital or a doctor, in His/Her inadequacy or has been performed in a neglected way, the patient is entitled to complain before the consumer dispute redressal commission established. This practice has empowered patients to a massively great extent as it provides a relatively simple and more affordable solution than the more typical civil litigation utilized in the past.

When a service has any defect which means it indicates any fault, imperfection, shortcoming or inadequacy in the quality, nature or manner of performance which is required to be maintained by or under any law. Also, it includes such a nature of performance which a person is entitled to expect, if it is offered to him. Within the framework of healthcare, the underperformance can take shape in case the physician could not continue with the rules of medicine, inoculation, or fail to consider the important points of delivering the medical care within the context of the patient. The number of cases of medical negligence that have been heard in consumer forums over the years is appalling. Such cases usually cover matters such as surgical errors, misdiagnosis, omission of appropriate after-effects of surgery or late treatment. Consumer protection law has also led to improvement in the quality of medical services in India because health care providers are under scrutiny.

Jurisdiction over consumer redressal commissions.

Consumer dispute redressal is not like our usual courts as it has to deal specifically with consumer issues and nothing else. It is not concerned with a situation where there is a contractual dispute between two parties. This means that in such a case, an ordinary court would have more jurisdiction. The consumer dispute redressal system has established consumer courts, but the better term for them is consumer protections councils. These bodies belong to the Union government and are created to resolve the consumer disputes in a better way. It is to be noted that these bodies are neither independent of the government nor do they try cases.

Depending on the value of their claim, patients who believe they are wronged by negligent medical treatment can file complaints before distributions in front of these commissions. The commissions can award compensation, direct a refund of fees, direct a treatment correction or make any other relevant order. Consumer dispute resolution process is expected to be quite easy and not very complicated. Cases of complaints might be rendered usually without the problems of complex legal processes, and the commissions attempt to make prompt judgments. This ease of access has made consumer forums a more common form of redress deal to claims of malfeasance with regards to medicine.

This is the Medical Negligence Standard of Care.

The decision of the extent of standard medical care to be provided by medical practitioners is among the most crucial aspects of a medical negligence lawsuit. The normal criterion applied by a court to find out whether or not a doctor was acting reasonably under the circumstances is a criterion of the professionals in the industry and expert testimony. The most famous principle that courts often adhere to is the Bolam Test according to which a doctor who practices in a given way should not be negligent when such treatment lies on a responsible pedigree of medical viewpoints. That is, negligence may not exist when such an action or behavior by the doctor would not trouble an acceptable group of medical professionals.

But the Bolam Test does not provide a blanket immunity to physicians. Widely held medical practices may still be sought by courts as the basis of logical, reasonable and preponderant medical opinion. Judiciary also acts to see that the facilitators of healthcare give attention to ethical and professional standards required by the following regulatory organizations.

And in depth exploration of the Bolam Rule in Medical Negligence. Medical negligence enjoys a very special position in or before the law of torts. A medical professional is judged by his peers as opposed to applying the reasonable person philosophy as in regular cases of negligence. The institutional block of this system of law is the Bolam Rule referring to the landmark English case of Bolam v Friern Hospital Management Committee [1957].

The "Bolam Test" Formula

In giving his directions to the jury, Judge McNair phrased the test as follows:

The fact that a doctor has performed in conformity with a practice manifested to be generally good practice by a responsible body of medical men practising in that kind of art is no excuse to lay upon the doctor a charge of negligence.

To put it in less technical language the doctor is not negligent (even though a different group of doctors would think so) as long as a group of capable doctors would have performed the same act. The Mechanics of the Rule :

The power to judge with the Bolam Rule no longer rests with the judge but with the medical profession. In order to protect against an allegation of negligence, a physician should demonstrate:

Peer Support: That their steps are justified by a group of practising medical persons exercising so-aidership.
Professional Standards: They used to be a reasonably reliable specialist at that particular field would have acted. It

is necessary to mention that the body of opinion does not have to consist of the majority. One need only have a minority opinion, so long as it is a responsible opinion.

Hit and Miss and Doctor Knows best Period.

The Bolam Rule was criticized over the decades as being too doctor-friendly. Opponents pointed out that it gave the medics an opportunity to establish their own law. Provided that a doctor could locate at least some workmates who will agree with whatever they do, they might even get off the hook, even in cases where their practices were obsolete or in fact dangerous. It gave rise to what later became known as medical paternalism in which the court was reluctant to interfere with clinical judgment.

Evolution: The Reconstruction of Bolitho and the Iluo Bol, of imbad news, Bullo! eat this imbad news with a bowl! o! This infallibility of the Bolam Rule was tried and tested at Bolitho v. The City and Hackney Health Authority [1998]. The House of Lords in this instance made it clear that simply because an opinion, by a medical person, exists does not mean the court of law must accept it.

There was a logical basis requirement introduced by the Bolitho Amendment. The court has to be convinced that the medical body of opinion is logical and has considered the risks and the benefits. Even when the professional opinion is that such opinion is not subject to logical analysis, the judge may find the doctor negligent.

Duty to Disclose (Montgomery) Bolam.

Although Bolam still broadly applies to diagnosis and treatment it does not apply to informed consent any more. The case that established that material risks can be communicated to patients, Montgomery v Lanarkshire Health Board [2015], concerned a landmark ruling of the UK Supreme Court. The former, the Bolam Test (what a doctor thinks a patient ought to know) had been done away with in favor of the Patient-Centric Test (what a reasonable patient should want to know).

Comparative Application (India and Global)

The Bolam Rule still stands the test of time as the "Gold Standard" in most jurisdictions including India. In Jacob Mathew v. The Supreme court of India adopted the Bolam Test, official state of Punjab (2005) indicated that the only reason why a professional could be found liable due to their lack of skill or lack of skill exercised within reasonable competence. The Bolam Rule changed the medical law because it identified that medicine is an imprecise science where there could be varying views. It has been cut down by Bolitho rule of logic and Montgomery rule of consent change but its essence has been preserved: a doctor did not commit negligence by a procedure that failed or even because there is another doctor who would have done something differently. Only when they slip below the norm of a responsible group of their peers do they become negligent.

Criminal liability under Bharatiya nyaya sanhita, 2023.

Criminal liability can also occur where the medical negligence is so conduct that it constitutes a rash or reckless act that causes death or grievous injury. The Bharatiya Nyaya Sanhita, 2023

presumptem non relevanter in cineris regia: regulates such cases under the criminal law which is the latest. Clauses on causing death through negligence and causing hurt or grievous hurt due to negligent acts can apply to cases of gross clinical malpractice.

The courts have over and over again pointed out that defense through criminal prosecution against doctors must be administered only in situations that amount to gross negligence. Creating a barrier to criminal penalties should not be participantated by mere carelessness or some mere case of misinterpretation of judgment, since at times, medical professionals act under tough and stressful circumstances.

Notable Judicial Precedents.

The Indian courts have greatly helped clarify the principles applicable in medical negligence cases. Due to the numerous landmark verdicts given by courts, patient's rights and the obligation of healthcare providers have been defined. In numerous cases, the Supreme Court has stated that doctors shouldn't be made liable simply because a treatment has failed. Courts have made it very clear that patients should not suffer due to incompetence and negligence of medical practitioners. The influence of morally sound judgment in judicial decisions has focused on informed consent, professional competence, and the use of medical standards that have been outlined.

Informed consent and Patient Autonomy.

A part of legal medical treatment is informed consent. Prior to administering any form of medical procedure, physicians should discuss the type of treatment, the risks, potential complications and alternative solutions to the patient. It is then up to the patient to make a free choice to undergo the procedure with full understanding of these considerations.

Any lack of informed consent could in itself be negligence. This right is known to courts as patients can choose to make their own choices about their bodies and medical attention.

As such, openness and dialogue between patients and doctors is invaluable to upholding trust in the healthcare system.

Significance of medical records.

Medical records are important in malpractice trials. Correct documentation of diagnosis, treatment, prescriptions, test results and consent forms are used to assist the courts to find out whether proper care was being administered. Medical records are also valuable evidence in consumer courts and forums.

It is thus expected that the hospitals and doctors keep proper and precise records. Inadequate maintenance of records can raise concerns about the quality of treatment received and can cause negative assumptions about health care professionals.

Conclusion

Today, many doctors are operating without the proper license while they fraudulently obtain consent for treatment. According to the consumer forum, medical negligence includes a poor signature that alters over time, involvement in criminal activities, psychiatrist incompetence, and similar occurrences. As per the medical fraternity, the range of professional acts that a registered practitioner should perform is pretty broad. However, in some cases, it is the serious failure to follow the required standard of care which constitutes an act of negligence.

Court rulings have also elucidated the concepts surrounding medical negligence by further stressing on the reasonable practices on care, role of informed consent, and dependability of medical records. These changes are indicative of the increasing awareness of the role of accountability in healthcare as a way of sustaining confidence in the medical system by the populace. Meanwhile, the law system should not permit an unnecessary harassment or a pointless litigation of the doctors. Medical practitioners usually experience hard working conditions and need to make crucial decisions in times of emergency. As such, the legislation needs to maintain a balanced effect that discourages competent professionals in practicing medicine and at the same time encourage accountability in the profession.

At the final analysis, medical negligence law is not only to penalize medical error but to promote excellence in healthcare, patient entitlement, and safeguard and be just in the case of the patient and the medical personnel.

FOOTNOTES

- [1] Consumer Protection Act, 2019; Bharatiya Nyaya Sanhita, 2023.
- [2] Law of Torts, Ratanlal and Dhirajlal.
- [3] Section 2(42) of Consumer Protection Act, 2019.
- [4] Section 2(11) of the Consumer Protection Act, 2019.
- [5] Consumer Protection Act, 2019, paragraphs 34, 47, 58.
- [6] Bolam v Friern Hospital Management Committee (1957) 1 WLR 582.
- [7] Bharatiya Nyaya Sanhita, 2023, Section 106.
- [8] Condensed Number Representation 8 Jacob Mathew v State of Punjab(2005) 6 SCC 1.
- [9] V.P. Shantha vs Indian Medical Association (1995) 6 SCA 651.
- [10] Kusum Sharma vs Batra Hospital (2010) 3 SCC 480.

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- 1. Consumer Protection Act, 2019.
- 2 Bharatiya Nyaya Sanhita, 2023.
- 3 Jacob Mathew v State of Punjab (2005) 6 SSC 1.
- 4 Indian Medical Association v V.P. Shantha (1995) 6 SCC 651.
- 5 A case named Kusum Sharma v Batra Hospital (2010) 3 SSC 480.
- 6 Ratanlal and Dhirajlal, Torts Law.