



## Legal Implications of Medical Negligence in India: A Critical Study

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### ABSTRACT :

Medical Negligence determination is subject to court jurisdiction. Nevertheless, the judges themselves not being experts call upon the expert medical opinion. The determination of negligence concept objectively pertains to absence of due care, breach of legal-moral duty, damage causation. However, the medical innovation that is constantly evolving with new experimentation comes in conflict with established law; thereby the test of reasonableness being subject to subjectivity. These kinds of issues make it extremely difficult to decide upon the negligence by the doctors. The paper examines the concept of negligence in medical profession on the basis of ratio-decendi of Indian Courts' judgements in line with the Indian Laws and the concept of 'reasonable man'.

**Keywords:** Courts, Doctors, Medical negligence, Law, Reasonable Man

### Introduction :

From a patient's perspective, a doctor may hold a position of utmost authority, akin to infallibility. However, it is essential to recognize that physicians, like all individuals, possess the capacity for error. Medical negligence, whether on the part of the doctor or support staff, can lead to significant consequences. In instances where gross negligence is suspected, it becomes crucial to ascertain the responsible party and the circumstances surrounding the negligence.

In jurisdictions adhering to the rule of law, such matters are adjudicated by the courts. Judges, while lacking medical expertise, must rely on expert testimony to inform their decisions. They apply fundamental legal principles, in conjunction with existing laws, to determine negligence. With the enforcement of Bhartiya Nyaya Sanhita (2023), legislature has provided a guiding light towards balancing patients' and doctors' interests. The courts use the 'standard of reasonable man' to achieve the purpose.

To gain a deeper understanding of the expectations placed upon physicians, it is beneficial to examine these principles through the lens of relevant court rulings and laws. As these issues directly impact the medical profession and influence how laws pertaining to medical professionals are interpreted, it is essential to address them from both the individual doctor's perspective and that of the employing institution, namely the hospital.

### Literature Review :

The paper emphasizing upon legal implication of medical negligence and required refinement has indulged into substantive law including Bhartiya Nyaya Sanhita (2024) and landmark judgements governing Indian Jurisdiction with the aim to address doctor-patient relationship.

### Legal Framework

**Negligence:** The legal concept of negligence encompasses three essential elements:

- The existence of a legal obligation, or duty of care, owed by the party against whom the claim is made (the defendant) to the party bringing the claim (the plaintiff), which must be applicable to the defendant's actions in question;
- A violation, or breach, of this duty of care; and
- The occurrence of actual harm, or damages, resulting directly from the breach of duty.[2]

In the landmark Bolam case,[6] it was held that the test of negligence has to be perceived from the perspective of a reasonable man. The concept of negligence thus centres on the standard of the 'reasonable man.'

**The Reasonable Man:** The judiciary has established that the standard of reasonableness is embodied by the 'ordinary person' or, alternatively, the 'reasonable person.' In the Bolam decision,[6] the court elucidated that:

*"In typical circumstances, the standard is often likened to the actions of the 'man on the street,' the ordinary individual. In one instance, the benchmark was described as the conduct of the 'man on the top of a Clapham omnibus,' also representative of the ordinary person."*

The reference to 'Clapham omnibus' warrants explanation. The Bolam judgment was rendered in 1957, when Clapham was an unremarkable suburb in south London, symbolizing 'ordinariness.' At the time, 'omnibus' denoted a public bus. Consequently, 'the man on the top of a Clapham omnibus' personified a hypothetical individual possessing average education and intelligence, yet lacking specialized knowledge.

Negligence by Medical Professional: In the context of the English language, a 'professional' refers to an individual who engages in a particular activity as their primary occupation or as a means of earning a livelihood. Such a person possesses knowledge of the specialized protocols, etiquette, and conventions associated with their given profession. The term 'professional' is distinguished from 'amateur,' denoting someone who pursues an activity for enjoyment rather than financial gain.[1] Thus, a professional in the context of a reasonable man would need to be judged through higher standards. Thus, a professional may be held liable for negligence on one of two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess.[7] However, he would not be 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.

The new law i.e., (BNS)[5], has explicitly provided aid to protect patients interests by penalizing medical negligence with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine for causing death.<sup>1</sup> Simultaneously, the act has immunized the doctors' impunity when act not intended to cause death, done by consent in good faith for person's benefit.<sup>2</sup>

### **Legal Implications and Suggestions**

#### **New Indian Law**

Bhartiya Nyaya Sanhita (2023)[5] is expected to significantly impact the medical practice in India. With the balancing regulations with practical realities being an issue, continuous deliberations of relevant stakeholders- healthcare providers, regulators and patients; is prerequisite to refine these laws and to ensure they achieve the intended outcomes without hampering medical practice.

#### **Duty**

Understanding negligence in medical practice requires clarity regarding the duties of doctors, assisting staff, and the hospital as a whole. Often, overlapping responsibilities make it difficult to distinguish between the duties of different individuals. Ultimately, a doctor is directly liable for their actions, while assisting staff share joint and several liability with the hospital. Ideally, explicit duties should be outlined for each role, although this is not easy to achieve perfectly. Nonetheless, attempting to delineate these duties can provide a framework for resolving confusion and failures.

#### **Risk and adventure**

A common issue is the tendency of some doctors to deviate from standard practices based on their experience. While innovation is not inherently wrong, unnecessary experimentation or risk-taking for adventure is unacceptable. Expertise should be aligned with reasonable and prudent conduct.

#### **Protocol**

Established guidelines, procedures, and protocols for routine or well-known treatments help ensure consistency in patient care. These guidelines should be documented and not followed blindly, allowing medical practitioners to exercise expert judgment. Failure to apply common sense constitutes negligence.

#### **General Practitioner vs. Specialist**

Challenges arise when a general practitioner treats a patient needing specialized care. Conversely, issues may occur when a general practitioner refers a patient to a specialist, potentially causing critical delays. The general practitioner plays a crucial role in ensuring the patient receives appropriate care, exercising discretion to provide optimal guidance based on the situation, including specialist availability and patient condition. While no strict rules exist, the doctor's decision should align with the facts and circumstances, guided by the common sense of a trained medical expert.

#### **Paper work**

Legal processes require meticulous documentation of treatment and reasoning. While the primary duty of a doctor is patient care, thorough documentation is crucial, as court cases may arise months or years later, relying heavily on case files. Although oral testimony from medical staff contributes to the evidence, documentary evidence takes precedence unless proven fraudulent. Transparency and providing patients with copies of medical records bolster confidence in the healthcare system. Unfortunately, some practitioners obscure information under the guise of trust, leaving patients vulnerable.

#### **Electronic Records**

<sup>1</sup> Bharatiya Nyaya Sanhita 2023 (India) s 106(1).

<sup>2</sup> *Ibid* at s 26.

The advent of electronic records has improved documentation, facilitating easy storage, retrieval, and minimizing errors through standardized entries. These privileges should be duly exploited.

### **Role of Judiciary :**

The Judiciary obliging its duty of checks and balances has significantly clarified the concept of medical negligence ensuring justice for doctor-patient relationship. Various landmark cases are as follows:

The Delhi High Court had elaborated upon the degree of negligence [8] in civil law into 3 categories:

- i. *lata culpa*, gross neglect
- ii. *levis culpa*, ordinary neglect, and
- iii. *levissima culpa*, slight neglect.

Not every instance of medical negligence will warrant sanctions. Slight neglect and ordinary negligence, as the terms imply, would not typically give rise to liability. Distinguishing between negligence that does and does not merit liability thus yields two categories. While the boundary between these categories will often be evident, challenges arise in cases where this line is blurred. In such instances, recourse is made to the legal standard established in Bolam which was subsequently affirmed in Jacob Mathew case.

Before we proceed further, let us have a look at the facts of the above mentioned two cases: Bolam and Jacob Mathew.

Bolam Case: [6]

In 1954, John Hector Bolam, a patient suffering from depression, underwent electroconvulsive therapy (ECT) at Friern Hospital. He received no muscle relaxants during the procedure, though nurses were present to prevent him from falling. Prior to consenting to the treatment, the hospital failed to inform him of the associated risks, specifically that he would not receive relaxants. Bolam subsequently fractured bones during the procedure and brought a negligence action against the hospital, seeking damages. Expert testimony revealed that the medical community accepted two practices: administering ECT both with and without relaxants. Similarly, there were differing practices regarding patient warnings, with some physicians providing warnings proactively and others only offering information when patients inquired about risks. The court ultimately held that the doctors and hospital had not been negligent.

Jacob Mathew Case:[7]

In the present case, the patient was admitted to CMC Hospital, Ludhiana, experiencing respiratory distress. It was reported that medical assistance was delayed for approximately 20 to 25 minutes. Subsequently, two medical practitioners, Dr. Jacob Mathew and Dr. Allen Joseph, attended to the patient, during which an oxygen cylinder was administered. Contrary to expectations, the patient's respiratory condition deteriorated. Despite attempts by the medical staff to keep the patient supine, it was discovered that the oxygen cylinder was empty. A replacement cylinder was procured; however, the patient had unfortunately succumbed by this juncture. The matter escalated to the Supreme Court of India, where it underwent extensive scrutiny concerning allegations of negligence. The Court meticulously examined the facets of negligence in contexts including civil, criminal, tortious liability, and professional conduct. Ultimately, the Court determined that the circumstances did not constitute criminal negligence or rashness on the part of the medical professionals or hospital staff.

The court in this judgement differentiated between civil and criminal liability in regard to medical negligence. [3]

### **Civil or Criminal Liability:**

The determination of a doctor's liability, whether civil or criminal, hinges on key legal principles. A fundamental component of criminal law is *mens rea*, which denotes a guilty mind or malicious intent. This raises the question of whether medical negligence—be it minor, ordinary, or gross—can incur criminal liability. [3] Given the necessity of *mens rea*, it is challenging to assert that a doctor acted with intentional negligence. This argument predominates in cases assessing criminal liability in medical negligence.

For example, in the case of Jacob Mathew, there was no evidence that the doctor or hospital staff deliberately connected an empty oxygen cylinder. Similarly, in the Bolam case, there was no intention of wrongdoing by the medical professionals involved. At no point did they possess a guilty mind.

In the 2004 Supreme Court case of Dr. Suresh Gupta, [9] the Court clarified the legal stance: when a patient dies due to medical negligence, the doctor is liable under civil law to provide compensation. Criminal liability, under Section 304A of the Indian Penal Code, 1860, arises only when negligence is so gross and the act so reckless that it endangers the patient's life.

The Court determined that, to establish criminal liability against a doctor, the negligence must rise to the level of "gross negligence" or "recklessness." This standard is considerably more stringent than that applied in civil liability cases. It is not merely the absence of ordinary care; rather, it must involve a profound deficiency in competence or a flagrant disregard for the patient's safety. The court said "...where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable." However, with the express provision of medical negligence in BNS, if found guilty, imprisonment could be mandatory. The future judgements shaping in light of BNS would have to take little help of previous judgements.

Martin D’Souza’s Case:[10] Notably, this case robustly defended the position of doctors relative to patients.

#### **Difficulties observed in Mathew guidelines**

The Supreme Court observed that there were difficulties in the application of principles as laid down in Jacob Mathew’s case. For instance:

1. “The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence is what the law requires.” (as per Jacob Mathew’s case)

The court observed that it is a matter of individual understanding as to what is reasonable and what is unreasonable. Even experts may disagree on certain issues. They may also disagree on what is a high level of care and what is a low level of care.

2. The Jacob Mathew case said that “simple” negligence may result only in civil liability, but “gross” negligence or recklessness may result in criminal liability. Now, what is simple negligence and what is gross negligence may not be so easy to be determined. Experts may not agree on this because the dividing line between the two is quite thin.

#### **Judges as lay men**

The Martin D’Souza judgment highlighted the difficulty or near impossibility of defining what constitutes "reasonable," "simple," or "gross" negligence. Essentially, the judgment acknowledged the judiciary's limitations in assessing the nuances of medical negligence.

At one place, the court observed:

Judges are not experts in medical science, rather they are lay men. This itself often makes it somewhat difficult for them to decide cases relating to medical negligence.

Essentially, the judgment acknowledged the judiciary's limitations in assessing the nuances of medical negligence.

#### **Police and Harassment of Doctors**

An important directive from the Supreme Court in Martin D’ Souza case was a warning to police officials not to arrest or harass doctors unless the facts clearly align with the parameters established in the Jacob Mathew case. Police officers were warned of potential legal consequences should they fail to adhere to these orders.

#### **Consumer Courts**

Additionally, the Court instructed consumer forums—at district, state, and national levels—and criminal courts to refer complaints against doctors or hospitals to a committee of doctors before issuing notices. Only if the committee identified a prima facie case of medical negligence would a notice be issued. [4]

#### **Critique**

These orders were surprising, as they could complicate the operations of consumer courts, criminal courts, and the police. The Consumer Protection Act does not provide for a preliminary report from a committee of doctors. While acknowledging the harassment faced by doctors and hospitals in the past 10-15 years, the pendulum should not swing too far in the opposite direction. Achieving a balance, as precisely addressed by another Supreme Court bench in the Kishan Rao case in March 2010, remains crucial. [4]

#### **Kishan Rao’s case[11]**

The Supreme Court's decision in Kishan Rao's case was significant, as it overturned the precedent set by Martin D’Souza and emphasized the purpose of the Consumer Protection Act: to streamline proceedings without the need for expert opinion at the outset. The Court allowed the appeal and ordered Nikhil Hospital to compensate Kishan Rao as initially determined by the District Forum.

#### **Critique**

This decision was bold, as it challenged the per incuriam status of the Martin D’Souza judgment. It reflects the tension between contradictory judgments by Supreme Court benches of equal size, leading to confusion about legal interpretations. A larger bench is needed to resolve these inconsistencies and provide clarity for both doctors and patients regarding the law. [4]

Minor Marghesh Case:[12] Marghesh was not in a critical condition upon admission, and the treatment led to unnecessary amputation. While Dr. Mehta and his hospital appeared liable, the Supreme Court remanded the case to the National Commission for expedited resolution.

The judgments highlight the challenges in the functioning of the National Commission and the importance of consumer courts exercising discretion.

In *Maharaja Agrasen Hospital case (2020)*, [13] the court said that the law imposes on a medical practitioner a duty to exercise reasonable care and skill in the provision of professional advice and treatment. That duty is a single comprehensive duty covering all the way in which a doctor is called upon to exercise his skill and judgement; it extends to the examination, diagnosis and treatment of the patient and the provision for information.[3]

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### Conclusion :

Negligence may involve the doctor, the staff, or both, typically resulting in joint and several liability for the doctor and hospital. Liability division depends on their mutual understanding. Courts rely on expert advice to determine negligence, except in clear protocol violations. Despite recent efforts to clarify this complex area, the law remains subjective, undermining certainty. More precise laws and judgments are needed to elucidate the concept of the "reasonable man," benefiting both legal and medical communities.

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