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RESEARCH PAPER

A Critical Study on Medical Negligence in India: A Judicial Approach

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Abstract

The exact definition of medical malpractice or negligence is not available in any of the enacted laws and the legal framework for medical negligence in India is based on tort law. Being a professional a doctor may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to possess or he did not exercise, with reasonable competence, in a given case, the skill which he did possess.

Medical negligence law holds healthcare professionals accountable when failure to meet acceptable standard of care causes patient injury or death involving both civil liability (negligence actionable in tort) and criminal liability (negligence punishable as a crime).

The present paper aims to present a detailed study and analyze medical malpractice from a legal perspective and to discuss the legal tests for determining medical negligence and its legal framework in India along with the Indian courts approach to medical negligence cases.

This paper concludes with a suggestion that healthcare professionals would be best protected from frivolous and unjust prosecutions if they adhere to ethical standards like Hippocratic Oath and strictly follow its core principles such as beneficence and non-maleficence.

1. Introduction

The exact definition of medical negligence is not available in any of the enacted laws, and the legal framework for medical negligence in India is primarily based on tort law. The jurisprudential concept of negligence defies any precise definition. Eminent jurist and leading judgments by courts have assigned various meanings to negligence.

The concept as has been acceptable to Indian jurisprudential thought is well-stated in the law of tort[1]. It is the breach of a duty caused by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do.

[1] Ratanlal and Dhirajlal, *The Law of Tort* (GP Singh ed, 24th edn, 2002) 441–42.

The definition involves three constituents of negligence: "duty", "breach" and "resulting damage", that is to say:

1. The existence of a duty to take care, which is owed by the defendant to the complainant;
2. A breach of such duty; and
3. Damages, which is both causally connected with such breach and recognized by the law, has been suffered by the complainant.

If the complainant satisfies the court on the evidence that these three ingredients are made out, the defendant shall be held liable in negligence.

In *Syad Akbar case*[2], the Supreme court has pointed out with reasons the distinction between negligence in civil law and in criminal law.

In civil proceedings, a mere preponderance of probability is sufficient and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the court, as a reasonable man, beyond all reasonable doubt. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based on an error of judgment.

In *Balchandra Waman Pathe case*[3], it has been held that while negligence is an omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard all circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.

The court further expressed the opinion that the factor of grossness or degree does assume significance while drawing distinction between negligence actionable in tort and negligence punishable as a crime. To be latter, the negligence has to be gross or of a very high degree.

2. Negligence by Professionals

In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skills or skilled persons generally. Any reasonable man entering into a profession which requires a particular level of learning to be called a professional of that branch, impliedly assures the person dealing with him that the skill which he professes to possess shall be exercised with reasonable degree of care and caution. He does not assure his client of the result.

Judged by this standard, a professional may be held liable for negligence on one of the two findings:

1. Either he was not possessed of the requisite skill which he professed to have possessed, or

[2] *Syad Akbar v State of Karnataka* (1980) 1 SCC 30.
[3] *Balchandra Waman Pathe v State of Maharashtra* (1968) Mh LJ 423.

2. He did not exercise, with reasonable competence in the given case, the skill which he did possess.

The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession.

The question then arises as to what is an acceptable standard of conduct, the competence of the defendant is to be judged by the lowest standard that would be regarded as acceptable.

Defining negligence by professionals, generally and not necessarily confined to doctors, is to be found in the opinion of McNair J. in *Bolam case*[4] in the following words:

> "Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham Omnibus because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill…. A man need not to possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art."

3. Medical Malpractice or Negligence

Medical Negligence occurs when a healthcare professional neglects to provide appropriate treatment, take appropriate action or gives sub-standard treatment that causes harm, injury or death to a patient.

The medical negligence normally involves a medical error. This could be in diagnosis, medication dosage, health management, treatment or aftercare.

In order to make the doctor liable for negligence, the following legal elements need to be proved by the plaintiff in the court of law:

- The doctor should owe the duty of care to the patient.
- There needs to be a breach of such duty of care by the medical professionals.
- This breach of duty of care should result in injury or loss to the patient.

If the complainant succeeds in proving all these, only then does the medical professional become liable for medical negligence and the resulting damages. Thus, the onus of proving negligence or the burden of proof clearly lies with the complainant in most of the cases.

4. Medical Negligence Law in India

In India, medical negligence is primarily addressed under both criminal and civil laws, with the primary legal framework being the Indian Penal Code (now BNS) for criminal cases and tort law for civil liability.

Consumer Protection Act, 2019 enacted by the Parliament is the preferred choice and is a testament to India's commitment to providing consumers with a robust and contemporary

[4] *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582, 586.

framework for their protection, which provides a forum for addressing complaints of medical negligence especially concerning "deficiency in services" provided by doctors and hospital.

5. How Medical Negligence Is Assessed

As the exact definition of medical negligence is not available in any of the enacted laws and the legal framework for medical negligence in India is primarily based on tort law. The jurisprudential concept of medical negligence also defies any precise definition. Eminent Jurists and leading judgments have assigned various meanings to negligence. A review of judicial opinion leads to a statement of the law for assessing medical negligence in India. Key principles and cases are given below:

1. Doctrine of Res Ipsa Loquitur
2. Bolam Test
3. Jacob Mathew Test

5.1 Doctrine of Res Ipsa Loquitur

"The thing speaks for itself" is the gist of the maxim. Res Ipsa Loquitur is a rule of evidence which in reality belongs to the law of torts. Inference as to negligence may be drawn from proved circumstances by applying the rule if cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant.

The essentials of this maxim are as follows:

- The defendant owes a duty of care towards the plaintiff which he has breached.
- There is a significant degree of injury caused to the plaintiff.

The doctrine of Res Ipsa Loquitur assumes the following:

- Nature of injury gives the clue that without negligence it could not have happened.
- There was no involvement of the patient himself in the injury in any way.
- The injury happened under the circumstances which were under the supervision and control of the doctor.

It means that by applying the principle the judge has accepted that the negligence has occurred. After this, the doctor will have to rebut this thing and if he fails to do so then patient would be considered as successful in the case of medical negligence.

Examples of Res Ipsa Loquitur:

- In *Achutrao case*[5], the court noticed that in the very nature of medical profession, skills differ from doctor to doctor and more than one alternative course of treatment are available, all admissible. Negligence cannot be attributed to a doctor so long as he is performing his duties to the best of his ability and with due care and caution. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

[5] *Achutrao Haribhau Khodwa v State of Maharashtra* (1996) 2 SCC 634.

It was a case where a mop was left inside the lady patient's abdomen during an operation. Peritonitis developed which led to a second surgery being performed on her, but she could not survive.

Liability of negligence was fastened on the surgeon because no valid explanation was forthcoming for the mop having been left inside the abdomen of the lady. The doctrine of *Res Ipsa Loquitur* was held applicable in a case like this.

The case arose from a death caused by a doctor leaving a mop inside a patient's body during a sterilization operation, leading the court to set aside the High Court's judgment and restore the trial court's judgments and ordered the State to pay damages.

- In *Nikhil Super Speciality Hospital Case*[6], that is, *V Kishan Rao v Nikhil Super Speciality Hospital*, the Supreme Court addressed medical negligence and the necessity of expert evidence. The court ruled that there cannot be a mechanical requirement for expert testimony in every medical negligence case and that Consumer Forums have discretion to decide if expert evidence is needed on a case-by-case basis. This decision made it more accessible for ordinary patients to seek redressal for similar cases of negligence.

Court's ruling: The Supreme Court established that in straightforward cases of medical negligence Consumer Forums can use the facts presented to decide the case without requiring a formal expert witness.

Impact: The judgment changed the landscape of medical negligence litigation by empowering Consumer Forums to handle simpler cases more efficiently and clarifying that the doctrine of Res Ipsa Loquitur (the thing speaks for itself) can be applied in such medical negligence cases.

5.2 Bolam Test

Bolam Test, emerged from Bolam case, established a standard of care for assessing medical negligence based on peer professional opinion. The legal test states that "A doctor is not negligent if his/her actions are consistent with a practice accepted as proper by a responsible body of medical professionals skilled in that particular area."

The brief facts of the case: Bolam case is an English tort law case that lays down the typical rule for assessing the appropriate standard of reasonable care in negligence cases involving skilled professionals such as doctors.

Facts: John Hector Bolam, a voluntary patient at a mental health institution, suffered a fractured hip during Electro Convulsive Therapy (ECT). He claimed the doctors were negligent for not warning him about the risk of fracture, not offering relaxants or restraints and other reasons.

Verdict: The defendant hospital won the case. The Judge ruled that the doctors were not negligent because they acted in accordance with a responsible body of medical opinion.

Subsequent Development: An essential component of an action in negligence against a doctor is proof that the doctor failed to provide the required standard of care under the circumstances.

Traditionally the standard of care in law has been determined according to the Bolam Test. But Bolam test has been criticized for relying too heavily on medical testimony.

[6] *V Kishan Rao v Nikhil Super Speciality Hospital* (2010) 5 SCC 513.

Hence *Bolitho*[7] amendment was made to the Bolam test, which requires that the standard of care must be justified on a logical basis. The court tests the medical evidence offered by both parties.

Bolitho test states that a doctor is not negligent if his/her actions are consistent with a practice accepted as proper by a responsible body of medical opinion, provided the court finds such an opinion to be logical.

5.3 Jacob Mathew Test

Jacob Mathew Test emerged from *Jacob Mathew Case*[8]. In this case the Supreme Court restated the idea from the Bolam case and held that one of the two things that can determine whether a professional is considered negligent is either he/she did not possess the required skill or, in a particular instance, he/she did not exercise the skill he did possess with reasonable competence.

The court stated that the standard of an ordinary competent person using ordinary skill in that specific profession is used to determine whether or not the accused was negligent.

It is impractical to anticipate that each professional will reach the pinnacle of proficiency in their respective domain.

Even though a highly qualified professional might have better attributes, this should not be the only criteria used to evaluate the performance of the professional who is being accused of negligence.

The court reaffirmed, the principle established in *Dr Suresh Gupta's case*[9], maintaining that mere lack of care or an error of judgment does not amount to criminal negligence.

In the *Jacob Mathew* case the Supreme Court set a condition to prosecute a medical professional for medical negligence. The Supreme Court observed:

> "To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the facts and circumstances no medical professional in his ordinary senses and prudence would have done or fail to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was not likely imminent."

In this landmark judgment, the Supreme Court of India laid down guidelines to ensure that medical practitioners are not unjustly harassed by criminal prosecution, till such time guidelines are framed by the government in this regard.

Guidelines and general principles for assessing medical negligence, as under:

1. A simple lack of care, an error of judgment or an accident is not a proof of negligence on the part of medical professional. So long as a doctor follows a practice acceptable to the medical profession of the day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused follows.

[7] *Bolitho v City and Hackney Health Authority* [1997] 3 WLR 1151.
[8] *Jacob Mathew v State of Punjab* (2005) 6 SCC 1.
[9] *Dr Suresh Gupta v Government of NCT of Delhi* (2004) 6 SCC 422.

2. A professional may certainly be held liable for negligence on one of the 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. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession.
3. To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something, which in a given facts and circumstances, no medical professional in his ordinary senses and prudence, would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.
4. The maxim Res Ipsa Loquitur (the thing speaks for itself) is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed into service for determining per se the liability for negligence within the domain of criminal law. Res Ipsa Loquitur has, if at all, a limited application in trial on a charge of criminal negligence.
5. The test for determining medical negligence as laid down in Bolam's Case holds good in its applicability in India.
6. Statutory Rules or Executive Instructions incorporating certain guidelines governing the prosecution of doctors need to be framed and issued by the government of India and/or State governments in consultation with the Medical Council of India (MCI). Until this is done private complaints must be accompanied by the credible opinion of another competent doctor supporting the charge of rashness or negligence on the part of the accused doctor. In the case of police prosecutions, such an opinion should preferably be from a doctor in government service qualified in that branch of medical practice. Doctors accused of rashness or negligence may not be arrested simply because charges have been levelled against them; this may be done only if it is necessary for furthering the investigation or for collecting evidence or if the investigating officer fears that the accused will abscond.
7. The Supreme Court in the *Jacob Mathew* case restated the idea from the Bolam Case and held that one of the two things that can determine whether a professional is considered negligent is either he did not possess a requisite skill, or, in a particular instance, did not exercise the skill he did possess with reasonable competence. The court stated that the standard of care of an ordinary competent person using ordinary skill in the specific profession is used to determine whether or not the accused was negligent.

6. Conclusion

While the Consumer Protection Act enacted by the Parliament is the preferred choice for initiating action against erring medical professionals, prior to its enactment and even now, there are numerous legislations which can be utilized to initiate actions against erring medical professionals as for example, Indian Medical Council Act, 1956 and Dentist Act, 1948, Civil

Court, Indian Penal Code, 1860 (BNS), Writ Jurisdiction[10] of the Supreme Court and the High Courts etc.

The *Jacob Mathew* case serves as a central reference point in medical jurisprudence, delineating the boundaries of criminal liability for medical negligence. The Supreme Court made sure that medical practitioners are shielded from excessive harassment while yet being held accountable for actual cases of extreme carelessness by making a distinction between civil and criminal negligence and establishing a higher standard for the criminal negligence.

Finally, this paper suggests that doctors would be best protected from frivolous and unjust prosecutions if they (doctors) provide reasonable care and uphold the ethical standards like Hippocratic Oath and strictly follow its core principles such as beneficence and non-maleficence. These principles often summarized as "do good" and "do no harm", oblige doctors to act in the patient's interest. Because the negligence and consequently negligence claims can arise only when these core ethical principles are violated.

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[10] Constitution of India, arts 32, 226.