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MEDICAL NEGLIGENCE AND EVOLVING CRIMINAL LAW

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ABSTRACT

This article critically examines the evolution of legal standards governing medical negligence within the Indian context, with particular attention to the interplay between civil and criminal liability. Drawing on landmark judicial precedents and recent statutory reforms such as the Bharatiya Nyaya Sanhita, 2023, the discussion analyses the doctrinal shift distinguishing gross negligence from ordinary error, the role of expert opinion, and the impact of procedural obligations on both patients and practitioners. Emphasis is placed on the imperative for nuanced judicial scrutiny to safeguard patient rights without precipitating undue criminalization of medical professionals. The study also considers alternative models for dispute resolution and compensation, proposing reforms for a balanced, robust legal framework that promotes accountability while upholding the integrity of the medical profession.

KEY WORDS

Medical negligence, Criminal liability, Standard of Care, Gross Negligence, Expert opinion.

INTRODUCTION

Medical negligence is one of the contemporary issues of the nation. The noble profession of medical practice is still disgraced by medical negligence and malpractices. It refers to the failure of a registered medical practitioner to provide care that meets the standard reasonably expected from such a person, as a result of breach of duty, that is ordinarily exercised by a competent person in the same profession in such a circumstance. A patient trusting a doctor's knowledge and skill expects him to provide reasonable standard of care and service. This establishes a fiduciary relationship in the nature of a contract where the doctor and the patient had mutual duties towards each other. Consequently, negligence arises when there is a breach of duty on the part of the doctor.

We can define 'Medical negligence' as the improper or unskilled treatment of a patient by a medical practitioner. This includes negligence in taking care from a nurse, physician, surgeon, pharmacist, or any other medical practitioner. Medical negligence leads to 'Medical malpractices' where the victims suffer some sort of injury from the treatment given by a doctor or any other medical practitioner or health care professional¹. Section 304A IPC² deals with causing death by negligence. It states that “Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or both”. However, BNS 2023 in Section 106³ has increased the punishment to 5 years, on causing death by negligence in ordinary cases and up to 10 years, if death was due to rash driving. But for doctors, it is limited to 2 years. It states that “...if such act is done by a registered medical practitioner while performing medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine”.

LEGAL RECOURSE FOR PATIENTS SEEKING REDRESS

The Indian Medical Council Act, 1956 and the Dentists Act, 1948 regulates the medical profession in India. It has established the Medical Council of India (MCI) and the Dental Council of India (DCI) along with respective state councils for each. It prescribes the standards of professional conduct to be followed, contravening which, action on grounds of professional misconduct shall be taken. It has the authority to register qualified individuals as medical practitioners. Further, it exercises jurisdiction over medical malpractice by doctors and over any individual who falsely claims to be a registered medical practitioner under MCI or DCI. The MCI/DCI or the state councils can debar any person on being found guilty for any of the offences but it does not have the power to award compensation for the aggrieved party.

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 form of treatment; nor is he negligent merely because there is a body of opinion which would adopt a different technique⁴. Civil remedy for the aggrieved party arises in cases of a medical negligence when the treatment given by the doctor won't fall under the definition of 'services' under Consumer

¹<https://indiankanoon.org/doc/177519644/>

² Indian Penal Code, 1860, [Section 304A](#)

³ Bharatiya Nyaya Sanhita, 2023, [Section 106](#)

⁴ Bolam v. Friern Hospital Management Committee, 1957 WL 18238 (1957)

Protection Act, 2019. In case, the aggrieved party wants compensation for the loss or injury suffered by him by reason of any breach of duty or failure to meet the standards of professional conduct, he/she can initiate a civil proceeding against such doctor and claim an award of damages under law of Torts. However, the burden of proof is on the patient to prove negligence on part of the medical practitioner. Such a claim can be initiated on satisfaction of certain grounds. A person who holds himself out ready to give medical advice and treatment impliedly holds forth that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient, owes certain duties, namely, a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give, and a duty of care in the administration of that treatment. A breach of any of these duties gives a right of action of negligence against him. The medical practitioner has a discretion in choosing the treatment which he proposes to give to the patient and such discretion is wider in cases of emergency, but he must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care according to the circumstances of each case.⁵

The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of *mens rea* must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution. The word 'gross' has not been used in Section 304A of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in Section 304A of the IPC has to be read as qualified by the word 'grossly'⁶. Earlier medical malpractice under criminal law was dealt in Section 336 IPC 1860⁷, act endangering life or personal safety of others, Section 337 IPC⁸, causing hurt by act endangering life or personal safety of others, Section 338 IPC⁹, causing grievous hurt by act endangering life or personal safety of others. After the implementation of BNS 2023, all of the above provisions are collectively dealt under Section 125¹⁰, act endangering life or personal safety of

⁵ Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godhole, AIR 1969 SC 128

⁶ Jacob Mathew vs State of Punjab & Anr, AIR 2005 SUPREME COURT 3180

⁷ Indian Penal Code, 1860, [Section 336](#)

⁸ Indian Penal Code, 1860, [Section 337](#)

⁹ Indian Penal Code, 1860, [Section 338](#)

¹⁰ Bharatiya Nyaya Sanhita, 2023, [Section 125](#)

others. Further, Section 106 BNS 2023, specifically deals with causing death by negligence.

In India, complaints by consumers against unfair and restrictive trade practices in medical profession was lodged under Monopolies and Restrictive Trade Practices Act, 1969. However, this act was repealed and replaced by Competition Act, 2002. Currently, the medical negligence cases are being filed under Consumer Protection Act, 2019, provided that the 'medical service' that was provided to the patient falls under the purview of 'service' as defined in Section 2(1)(o)¹¹. It was construed by the Supreme Court that, the main clause itself is very wide. It applies to any service made available to potential users. The words 'any' and 'potential' are significant. Both are of wide amplitude¹². Service rendered to a patient by a medical practitioner (except where the doctor renders service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of 'service' as defined in Section 2(1)(o) of the Act¹³. Here the term 'free of charge' means services without any payment, such as those services given at a non-government hospital to all patients for free of cost irrespective of whether they are rich or poor. On the other hand, services rendered at government hospital where no charge is collected from anyone irrespective of whether they are rich or poor, then that will not be considered as a 'service' under the said Section. However, if the hospital provides services on payment of charges and also rendered free of charge, then that will be considered as a 'service' for the purposes of this Section. Similarly, 'contract of personal service' means services done under a master-servant relationship such as a medical officer being engaged to treat his employer.

The writ jurisdiction of High Court and Supreme Court can also be invoked in order to receive compensation in cases of medical negligence. Article 226¹⁴ and 32¹⁵ grants right to every citizen of India to approach the High Court and Supreme Court respectively, when there is a violation of their Fundamental Rights, provided the Courts have jurisdiction on the said matter. The Courts can award monetary compensation to the aggrieved party for the losses suffered by them due to the negligence of the hospital or the medical practitioner at fault.

¹¹ Consumer Protection Act, 2019, [Section 2\(1\)\(o\)](#)

¹² Lucknow Development Authority vs M.K. Gupta, 1994 AIR 787

¹³ Indian Medical Association vs V.P. Shantha & Ors, 1996 AIR 550

¹⁴ Constitution of India, 1950, [Article 226](#)

¹⁵ Constitution of India, 1950, [Article 32](#)

TEST FOR ESTABLISHING MEDICAL NEGLIGENCE

The Bolam Test from UK legal system was established in the famous Bolam v. Friern Hospital Management Committee (1957)¹⁶ where Mr. Bolam was admitted in the Friern Hospital for electro-convulsive therapy. He was not given muscle relaxants, nor restrained during the procedure which caused several injuries to him. He was also not informed about the risks involved in the medical procedure. He then sued the hospital management for the want of compensation due to negligence on their part. However, in that case the Court was of the view that it was not common for doctor to convey the risks involved in the medical procedure. Further, the Court sought expert opinion, who stated that they wouldn't have administered such muscle relaxants. Therefore, the Court held that the hospital management was not acting negligent and thus not liable to pay any compensation. But the test established was that a doctor will not be held liable for negligence if he had acted in accordance with a practice accepted by a responsible body of medical professionals.

The Bolitho Test arose from the case of Bolitho v City and Hackney Health Authority (1998)¹⁷ where a two-year old child suffering from Croup, a very contagious respiratory disorder was brought to the hospital for treatment. Initially the child was treated by some senior doctors and subsequently discharged. However, his condition worsened and was again admitted where he was being taken care by a nurse. Later the child died and the parents sued the hospital stating that their child could have been saved if a doctor had attended him. The Court sought expert medical opinion and five of them were of the opinion that they would have intubated the child and three of them stated that they wouldn't have intubated. Since there were genuine opinion that not intubating the child was also acceptable, the Court held that the hospital was not liable. The Court further held that a doctor will not be held liable for medical negligence if he had acted in accordance with a practice accepted by a responsible body of medical professionals. But the opinion of medical professionals will not be taken by the Court as such. It must be logical and rational.

The Standard of Care Doctrine from the US legal system is based on the reasonable person standard according to which, if the medical professional had exercised the same level of care, skill and diligence that a reasonably prudent person in a similar circumstance would have done, then such person is not liable for medical negligence. It is not based on high or low level of

¹⁶Bolam v Friern Hospital Management Committee [1957] 1 WLR 582

¹⁷Bolitho v City and Hackney Health Authority [1998] AC 232

care, rather, based on how an ordinary medical practitioner with similar training and experience would have done in a similar situation.

In Indian legal system, the Bolam Test and the Standard of Care Doctrine have been recognised by the Supreme Court, however the Bolitho Test is yet to get recognition.

JUDICIAL APPROACH AND LANDMARK CASES

Jacob Mathew vs State of Punjab & Anr¹⁸, it was decided that negligence is a breach of duty resulting in damage. However, as long as the doctor follows a practice that is acceptable by medical practice of that day and he cannot be held negligent merely because a better alternative course or method of treatment was available. Further, the Bolam test for determining medical negligence was upheld in this case. And, it was clarified that, for medical negligence to be a criminal offence, the negligence must be gross or very high in nature. If not, it only attracts a civil remedy.

Dr. Suresh Gupta vs Govt. Of N.C.T. Of Delhi & Anr¹⁹, it was held that, in cases of death of patient, the doctor will attract criminal liability only if the standard of proof shows recklessness and deliberate wrongdoing i.e. a higher degree of morally blameworthy conduct.

Indian Medical Association vs V.P. Shantha & Ors²⁰, the Court decided that the medical service provided will classify as 'service' under Section 2(1)(o) of Consumer Protection Act, 2019 unless it is a free of charge service or rendered under a contract of personal service. the Court further clarified that the medical practitioner is not immune from a claim for damages by the aggrieved party merely because he/she falls under the disciplinary control of Medical Council of India/ State Medical Councils.

Kusum Sharma & Ors vs Batra Hospital & Med. Research Centre²¹, after a through scrutiny of leading cases in India and United Kingdom in medical negligence, the Court held that, a medical practitioner will be held liable only when his conduct fell below the standard of a reasonably competent practitioner in his field. Further, negligence cannot be attributed to a

¹⁸Jacob Mathew vs State of Punjab & Anr, AIR 2005 SUPREME COURT 3180

¹⁹Dr. Suresh Gupta vs Govt. Of N.C.T. Of Delhi & Anr, AIR 2004 SUPREME COURT 4091

²⁰Indian Medical Association vs V.P. Shantha & Ors, 1996 AIR 550

²¹Kusum Sharma & Ors vs Batra Hospital & Med. Research Centre, 2010 (3) SCC 480

doctor as long as he exercises reasonable skill and competence. And, merely because he chooses one course of treatment over another, he will not be liable as long as this treatment is acceptable to the medical profession.

Balram Prasad vs Kunal Saha & Ors²², the Court with respect to the quantum of compensation, held that, it is not possible to quantify the amount in lieu of services rendered by the deceased wife/mother to the family. But for the purpose of award of compensation to the dependants, pecuniary estimate of the services rendered will have to be made. For which, the term 'service' will be given broad meaning including the personal care and attention given to the children as a mother and to the husband as a wife by the deceased woman. And the quantum of compensation to the dependants cannot be reduced merely because there is someother close relative like a grandmother who is volunteering to render the services which were earlier done by the deceased.

Martin F. D' Souza vs Mohd. Ishfaq²³, the Court directed that prior to issuance of notice to any doctor in pursuance of a complaint made against him in Consumer Forum (District/State/National) or Criminal Court, the matter must first be referred to a competent doctor or a committee of doctors specialised in the field relating to which medical negligence is attributed, only after a report submitted by them reflects a *prima facie* case of medical negligence, should the notice then be sent to the concerned doctor. This is to avoid unnecessary harassment to doctors who ultimately may not be found guilty.

Pt. Parmanand Katara vs Union of India & Ors²⁴, the petitioner, a human rights activist, filed a writ petition under Article 32 of the Constitution of India, concerning the death of a person who was injured in a road accident and subsequently not admitted in the nearest hospital for medical aid. The Court held that, Article 21²⁵ casts obligation on the State to preserve life. A life once lost, the *status quo ante* cannot be restored as resurrection is beyond the capacity of man. The Court directed that the life of the patient whether innocent or a criminal liable to be punished, must be saved by those in charge of the health of the community so that the innocent may be saved and the guilty be punished. Further, it was stated that all doctors have the professional obligation to extend their expertise in protecting life. The Court also gave

²²Balram Prasad vs Kunal Saha & Ors, AIR ONLINE 2013 SC 528

²³Martin F. D' Souza vs Mohd. Ishfaq, AIR 2009 SUPREME COURT 2049

²⁴Pt. Parmanand Katara vs Union of India & Ors, 1989 AIR 2039, 1989 SCR (3) 997

²⁵Constitution of India, 1950, [Article 21](#)

direction for publication of the same through national media, Dhoordarshan, All India Radio and through High Court and Sessions Judges.

APPLICATION OF RES IPSA LOQUITUR

Res ipsa loquitur is a legal maxim which means that “the thing speaks for itself”. This creates a presumption in cases where the negligent act of the Defendant had caused the injury or damage to the Plaintiff even without direct evidence for the same. The essential conditions for application of *res ipsa loquitur* is that the accident could not have occurred ordinarily if not for negligence, the object which caused the accident was under the exclusive control of the Defendant and that the Plaintiff did not in any way contribute to the accident. This principle is applicable in terms medical negligence also, where the Courts infer a rebuttable presumption in cases where the doctor had breached his duty of care towards the patient or had provided a treatment below par of the accepted standards.

In a case where negligence is evident, the principle of *res ipsa loquitur* operates and the complainant does not have to prove anything as the thing (*res*) proves itself. In such a case it is for the respondent to prove that he has taken care and done his duty to repel the charge of negligence²⁶. However, as stated in the case of Martin F. D’Souza²⁷, simply because the patient has not favourably responded to the treatment given, a doctor cannot be held liable for medical negligence by application of *res ipsa loquitur*, as no sensible professional would intentionally commit such an act or omission so as to result in harm or injury to the patient as it would put his professional reputation at stake.

It is also an established rule that the maxim *res ipsa loquitur* is only a rule of evidence in civil law, specially in Torts for establishing the onus of proof in cases of negligence and it cannot be used in determining liability for negligence in criminal law as stated in Jacob Mathew (*supra*)²⁸.

ROLE OF EXPERT OPINION

In Section 39 BSA, When the Court has to form an opinion upon a point of foreign law or of science or art, or any other field, or as to identity of handwriting or finger impressions, the

²⁶V. Kishan Rao vs Nikhil Super Speciality Hospital & Anr, <https://indiankanoon.org/doc/1920027/>

²⁷AIR 2009 SUPREME COURT 2049

²⁸AIR 2005 SUPREME COURT 3180

opinions upon that point of persons specially skilled in such foreign law, science or art, or any other field, or in questions as to identity of handwriting or finger impressions are relevant facts and such persons are called experts²⁹. For instance, when the question is whether the death of A was caused by poison, the opinions of the experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant³⁰.

Therefore, in cases of medical negligence, the Court requests an independent person with specialist knowledge in the relevant field in which the negligence has been committed, to answer technical questions as to determine whether there was any breach of duty on part of the doctor or if the treatment provided was below the acceptable standards, in order to make such medical practitioner liable for causing death or injury to the aggrieved party.

Generally, in a civil suit for medical negligence, expert opinion is not required. However, for a redressal under any Consumer Forum or in fixing criminal liability, the Court accepts expert evidence. In V. Kishan Rao case, the Court stated, before forming an opinion that expert evidence is necessary, the Fora under the Act must come to a conclusion that the case is complicated enough to require the opinion of an expert or that the facts of the case are such that it cannot be resolved by the members of the Fora without the assistance of expert opinion³¹. With respect to criminal liability, between ocular evidence or eyewitness and expert evidence, ocular evidence prevails because the statement given under an oath by the eyewitness is believed unless it is proved beyond reasonable doubt that it is unreliable.

A Court is not bound by the evidence of the experts which is to a large extent advisory in nature. The Court must derive its own conclusion upon considering the opinion of the experts which may be adduced by both sides, cautiously, and upon taking into consideration the authorities on the point on which he deposes. Whether such evidence could be admitted or how much weight should be given thereto, lies within the domain of the court. The evidence of an expert should, however, be interpreted like any other evidence³².

Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, issued by MCI imposes certain duties on the doctors for providing highest quality assurance in patient

²⁹ The Bharatiya Sakshya Adhinyam, 2023, [Section 39](#)

³⁰ The Bharatiya Sakshya Adhinyam, 2023, [Section 39, Illustration \(a\)](#)

³¹ <https://indiankanoon.org/doc/1920027/>

³² Malay Kumar Ganguly vs Sukumar Mukherjee & Ors, AIR 2010 SUPREME COURT 1162

care³³ and in exposure of unethical conduct³⁴. It requires every physician to safeguard the profession against admission of individuals lacking moral character or education required for the profession. Further, they must not employ or permit any attendant, who is neither registered or enlisted under the Medical Acts in force, to attend, treat or operate patients whenever professional discretion or skill is required. Also, every physician must expose any without fear or favour, any incompetent, corrupt, dishonest or unethical conduct of members in the profession.

EVOLUTION IN CRIMINAL LAW

The new Criminal Law, Bharatiya Nyaya Sanhita, 2023 marks a significant evolution in dealing with cases of death caused by negligence. The new Section adopts a distinctive approach for deaths caused by rash or negligent act not amounting to culpable homicide by general public, same act done by a registered medical practitioner, and death caused by rash and negligent driving of vehicle not amounting to culpable homicide. Formerly, Section 304A IPC³⁵, addressed causing death by negligence with similarity of treatment in all cases where no distinction was made between ordinary cases and those of medical negligence. The provision provided for a punishment with imprisonment extending up to two years or fine or both. However, Section 106 BNS³⁶, not only introduced a separate treatment for medical negligence by registered medical practitioners, but also increased the quantum of punishment. The said provision provides for an increased punishment to a maximum of five years for the general public, as opposed to the earlier law allowing a maximum of two years and with respect to registered medical practitioners, the maximum limit of imprisonment is two years. Further, unlike the earlier law with a provision to impose fine at the discretion of the Court, the present law has mandated fine in all cases. Therefore, irrespective of who commits the offence of causing death by negligence, both imprisonment and fine is mandatory. However, the term of imprisonment and the amount of fine will be decided by the Court on the basis of facts of each case in accordance with the said provision.

Indian Medical Council (Professional Conduct, Etiquettes and Ethics) Regulations, 2002, requires every physician to maintain copy of records of their patients for a period of three years

³³Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, Para 1.6

³⁴Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, Para 1.7

³⁵ Indian Penal Code, 1860, [Section 304A](#)

³⁶Bharatiya Nyaya Sanhita, 2023, [Section 106](#)

from the date of commencement of treatment according to the prescribed format³⁷. They also have the duty to provide a copy of the same within 72 hrs upon a request by the patient or their attendant or by any legal authority³⁸. A registered medical practitioner is also required to keep a copy of all medical certificates issued by him to his patients along with necessary details such as their signature/thumb impression, address and at least one identification mark³⁹. Besides, they are also required to maintain computerized medical records for quick retrieval⁴⁰. A reference to the same have been made in the case of Maharaja Agrasen Hospital⁴¹, stating violation of such duties shall attract disciplinary action and punishment for professional misconduct under Regulation 8⁴². All these records will serve as evidences of any case of medical negligence. Therefore, destruction of the same would amount to an offence punishable under Section 241 BNS, Destruction of document or electronic record to prevent its production as evidence⁴³.

The Supreme Court's directions in Lalitha Kumari case⁴⁴, states that registration of FIR is mandatory under Section 154 CrPC⁴⁵ where the information discloses the commission of a cognizable offence and in such cases no preliminary enquiry is permissible. However, in cases which do not indicate the commission of a cognizable offence, preliminary enquiry must be conducted prior to the registration of FIR in order to determine whether a cognizable offence is disclosed or not. Where it indicates a cognizable offence, FIR must be registered and a copy is to be provided to the complainant. If the inquiry does not indicate a cognizable offence, reasons for such decision must be recorded in station diary. Further, preliminary enquiry must be conducted within 7 days and in case of delay, reasons for the same must be recorded. But with the introduction of Section 173 BNSS 2023⁴⁶, certain changes in the former provision have been made. Sub-clause (3) of Section 173, permits a police officer to conduct a preliminary enquiry before registration of FIR for offences involving imprisonment between three to seven years, with the prior permission of a senior officer, not less than the rank of Deputy Superintendent of Police, for determining if a prima facie case exists or not.

³⁷Indian Medical Council (Professional Conduct, Etiquettes and Ethics) Regulations, 2002, Para 1.3.1

³⁸Indian Medical Council (Professional Conduct, Etiquettes and Ethics) Regulations, 2002, Para 1.3.2

³⁹Indian Medical Council (Professional Conduct, Etiquettes and Ethics) Regulations, 2002, Para 1.3.3

⁴⁰Indian Medical Council (Professional Conduct, Etiquettes and Ethics) Regulations, 2002, Para 1.3.4

⁴¹Maharaja Agrasen Hospital vs Master Rishabh Sharma, AIR ONLINE 2019 SC 1757

⁴² Indian Medical Council (Professional Conduct, Etiquettes and Ethics) Regulations, 2002, Para 8

⁴³Bharatiya Nyaya Sanhita, 2023, [Section 241](#)

⁴⁴Lalita Kumari vs Govt.Of U.P.& Ors, AIR 2014 SUPREME COURT 187

⁴⁵ The Code of Criminal Procedure, 1973, [Section 154](#)

⁴⁶Bharatiya Nagarik Suraksha Sanhita, 2023, [Section 173](#)

Consequently, for cases involving a punishment of less than three years imprisonment, preliminary enquiry cannot be sought prior to the registration of FIR, due to the express provision being made in Section 173 BNSS, thereby overriding the judgement in Lalitha Kumari case. Since, Section 106 BNS⁴⁷, provides a maximum period of imprisonment up to two years in cases of death caused by medical negligence, the medical practitioner cannot seek a preliminary enquiry before FIR registration.

Besides, in Section 200 CrPC⁴⁸, the Magistrate would examine the complainant and any witnesses if present, and the accused person has no role till cognizance was taken. However, with Section 223 BNSS replacing the former Section, no cognizance of an offence will be taken by the Magistrate without giving the accused an opportunity of being heard⁴⁹. This creates unnecessary trouble and waste of time for the doctors to be present at the Court and prove their points.

Earlier, Section 197 CrPC⁵⁰ requires prior sanction of the government for a court to take cognizance of offences allegedly committed by judged, magistrates and public servants while acting in their official capacity. It has been replaced by Section 218 BNSS⁵¹, which made an addition to the provision stating that if the government fails to decide on a sanction within 120 days, then such sanction is deemed to have given. Although the intent of the legislature was to make the government act within the given time frame, this also serves as a disadvantage to those who otherwise might have contested such grant or denial of sanction on grounds of administrative lapses or non-application of mind.

REMEDIES AND RIGHT OF APPEAL TO THE DOCTOR

In cases where the accused medical practitioner is of the opinion that the charges of medical negligence against him is of such nature that it requires a civil remedy or that the case is not of such a gross negligence so as to amount to a criminal liability, but FIR have been registered and subsequent proceedings have been initiated, such medical practitioner can approach the High Court for quashing the criminal proceeding against him under Section 528 BNSS⁵²

⁴⁷Bharatiya Nyaya Sanhita, 2023, [Section 106](#)

⁴⁸ The Code of Criminal Procedure, 1973, [Section 200](#)

⁴⁹Bharatiya Nagarik Suraksha Sanhita, 2023, [Proviso of Section 223](#)

⁵⁰The Code of Criminal Procedure, 1973, [Section 197](#)

⁵¹Bharatiya Nagarik Suraksha Sanhita, 2023, [Section 218](#)

⁵²Bharatiya Nagarik Suraksha Sanhita, 2023, [Section 528](#)

(formerly Section 482 CrPC⁵³). The aggrieved medical practitioner can move to the Supreme Court by way of a criminal appeal when the High Court denies such relief. The Supreme Court in Jayshree Ingole case⁵⁴, were of a view that the accused doctor has no committed a rash and negligent act as contemplated under Section 304A IPC, thus set aside the judgement passed by the High Court and quashed the criminal proceedings initiated against the appellant doctor.

According to Sub-Section (3) of Section 30⁵⁵, National Medical Commission Act, 2019, the aggrieved medical practitioner can appeal against the order of State Medical Council to the Ethics and Medical Registration Board. The decision of the Ethics and Medical Registration Board will be binding on the State Medical Council unless a second appeal is preferred under Sub-Section (4)⁵⁶ which states that A medical practitioner or professional who is aggrieved by the decision of the Ethics and Medical Registration Board may prefer an appeal to the Commission within sixty days of communication of such decision.

IMPACT OF CURRENT LEGAL SYSTEM IN MEDICAL NEGLIGENCE

Medical negligence being the complex intersection between medicine, law, and ethics is constantly evolving all over the globe. It is an unavoidable reality that every country faces, striving to bring a balance between the rights of patients to receive quality treatment and punishing the negligent acts of medical practitioners while protecting genuine doctors from unnecessary harassments.

It is noteworthy that the benchmark for evaluating cases of medical negligence is “reasonable standard of care”. However, the standard cannot be common at all times and places. Medical treatment differs according to geographical area, condition of the patient, qualification and skill possessed by the doctor and several other subjective factors. Therefore, medical profession cannot operate on the basis of a unified standard. This serves as a huge impediment for the Courts in distinguishing between actual error in judgement by the doctors and culpable negligence.

⁵³The Code of Criminal Procedure, 1973, [Section 482](#)

⁵⁴Dr. Jayshree Ujwal Ingole vs State of Maharashtra & Anr, AIR 2017 SUPREME COURT 2078

⁵⁵ National Medical Commission Act, 2019, [Section 30\(3\)](#)

⁵⁶ National Medical Commission Act, 2019, [Section 30\(4\)](#)

In the present times, the role of healthcare institutions has increased on a large scale apart from individual doctors treating patients. Therefore, two distinct liabilities, direct liability and vicarious liability, arise. When the negligence is attributable to an individual doctor, then direct liability applies. However, when a doctor employed in a hospital commits such acts of negligence, the hospital will be vicariously liable for the same. This dual responsibility reflects that the modern healthcare institutions must adopt systematic safeguards to prevent harm by not merely relying on the individual practitioner's competence.

One of the most important issues in medical malpractice is the lack of definition of the term 'gross negligence'. Civil liability arises when there is a breach of duty on part or a sub-standard care on the part of the medical practitioner and allows the petitioner to claim compensation. On the other hand, criminal liability arises in cases involving recklessness and gross negligence. This concept evolved from the case of Jacob Mathew⁵⁷, but until now, there is no single piece of legislature defining 'gross negligence'. This leads to difficulty in imposing liability on the medical practitioner at fault and sometimes leading to over-criminalization of medical malpractice.

Medical disputes often involve complex concepts which at times are difficult for the Judges to comprehend due to lack of medical background. This sometimes results in unjust outcomes. If qualified members with medical knowledge were admitted in the medical tribunal or as independent assessors, the verdict that follows could be more informed, just and fair.

No-fault compensation system allows for the provision of damages to the injured party without having to prove the negligence or fault of someone else. It emphasises a focus on addressing the harm rather than assigning the blame. This system has been in practice in countries like New Zealand, Sweden and Denmark allowing patients to claim compensation without having to prove medical negligence on the medical practitioner or on the hospital management. Adopting such alternative systems in Indian laws could result in delivering swift redressal mechanisms.

⁵⁷AIR 2005 SUPREME COURT 3180

CONCLUSION

The evolving jurisprudence on criminal liability in medical malpractice implies a pressing need for establishing effective safeguards against over-criminalization of medical professionals while balancing patient safety. The Supreme Court has consistently reaffirmed that only acts of gross negligence and recklessness must be criminalised and not honest errors of judgements or unavoidable medical complications. Such a distinction between criminal and civil liability is essential to preserve the integrity of medical profession while punishing every act eroding the trust on medical institution as well as protecting medical practitioners from arbitrary prosecutions. There is an urgent need for medical institutions to adopt rigorous safety protocols, transparent communications, and accountable grievance redressal mechanisms. Establishing alternative dispute resolution models like no-fault compensation systems and specialised medical tribunals can provide swift remedies and fair outcomes for both patients and healthcare providers. Ultimately, the goal must be to foster a balanced legal system preserving and promoting patient's right and honest doctors.



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