

# Evolving Jurisprudence on Medical Negligence under The Consumer Protection Act, 2019

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## ABSTRACT

This paper explores the evolution of medical negligence laws in India, particularly in the context of the consumer protection act 2019. The landmark judgment in the case of Indian Medical Association v. VP Shantha<sup>1</sup> in 1995 brought the medical profession under the ambit of the Consumer Protection Act, 1986. Later, the 1986 Consumer Protection Act was abolished, and the 2019 Consumer Protection Act took its place. The study tracks significant court rulings that have influenced how medical negligence is interpreted, emphasizing seminal cases like Jacob Mathew v. State of Punjab<sup>2</sup> and Vishaka v. State of Rajasthan that set important precedents for the standard of care and the informed consent doctrine. It looks at how these changes have affected patient rights, giving people the capacity to demand responsibility and payment for inadequate treatment. In addition to offering insights into the difficulties experienced by Indian medical practitioners, this essay attempts to critically examine the legal precedents and guiding principles underlying medical malpractice negligence.

**Keywords:** Medical, Dental, Negligence, Healthcare, Consumer Protection and Patient.

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## 1. MEDICAL NEGLIGENCE

Medical negligence is defined as the failure to use reasonable expertise in accordance with accepted norms and common circumstances. It was also described as the deliberate carelessness or lack of a reasonable level of care and expertise on the part of medical professionals in treating a patient with whom a professional attendant relationship was formed, resulting in the patient's physical harm, permanent impairment, or death. The harmed customer must demonstrate the following elements in front of the court in order to establish carelessness.

- i. The doctor breached the duty of care,
- ii. The doctor owed him duty of care of a particular standard of professional conduct,
- iii. The patient (Plaintiff) has suffered any injury due to his breach and cause actual damage and the doctor's conduct was directly and approximate cause damage.

Let us now discuss these essentials in details.

### i. Duty of care to the plaintiff

Holding someone accountable for every negligent act they commit, or even for every negligent conduct that results in harm, would be ridiculous. He may only be held negligent if he has a legal obligation to exercise caution. The responsibility to take care is the obligation to refrain from doing or not doing something that may reasonably and likely result in harm to others. This obligation is due to those to whom harm could be reasonably and likely to be expected if the duty is not upheld. Instead of protecting against mere possibilities, the responsibility is to protect against probabilities. The court established the reasonable man standard for foreseeability in *Fardon v. Harcourt Rivington*. In **Fardon v. Harcourt Rivington**<sup>3</sup>, The reasonable man standard was established by the court to determine foreseeability. Taking precautions is negligent if the likelihood of danger materializing is reasonably obvious; however, if the danger is merely a possibility that would never occur to a reasonable man, then failing to take extraordinary precautions is not negligent.

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<sup>1</sup> Indian Medical Association vs. V.P. Santha 1995 SCC (6) 651.

<sup>2</sup> Jacob Mathew v. State of Punjab (2005) 6 SCC 1.

<sup>3</sup> (1932) 146 LT 391

## ii. Breach of Duty

Breach of Duty is a legal concept commonly used in negligence claims under tort law. It refers to a situation where someone who has a legal duty of care fails to act as a reasonable person would in similar circumstances, thus potentially causing harm to another party. This involves failure to conform to the accepted medical practice or standards expected from an ordinarily competent doctor in that field of medicine. It may result from errors in diagnosis based on symptoms, improper treatment or lack thereof, not referring to a specialist, failing to warn patients of risks involved and more.

## iii. Harm Caused

The breach of duty should result in an injury, monetary loss or harm experienced by the patient. Physical, mental and psychological suffering all constitute recognized forms of injury. In medical negligence cases, harm caused refers to the injury, worsening of condition, or loss a patient suffers due to a healthcare provider's failure to meet the standard of care. Harm must be directly linked to the negligent act or omission for the case to be legally valid.

## 2. VICARIOUS LIABILITY AND HOSPITAL NEGLIGENCE

The article also discusses the legal principle of culpable negligence, which holds companies liable for the carelessness of their employees. It examines the laws that control hospital negligence and examines instances in which hospitals have been held accountable for the conduct of their medical personnel. A doctor has obligations to his patients who come to him with illnesses or unwellness; failing to fulfill these obligations amounts to negligence. Even if there is harm, it must be the immediate and direct outcome of the duty breach. Breach of duty is defined as failing to do something that a reasonable doctor would do or acting in a way that a reasonable doctor would not. It is already commonly known that medical facilities and physicians that provide medical. It is now well-established fact that hospital and doctor providing medical service are covered under the Consumer Protection Act, 2019.

In case **V. Kisan Rao v. Nikhil Super Specialty Hospital**<sup>4</sup> the Mxim resipsaloqiter is applicable to instance of medical negligence giving rise to deficiency in medical service in terms of sec. 2 (1) (g) in which instance the complainant is absolved of liability of prove anything else and the respondent is burdened with the liability for proving that he has taken care and caution in the discharge of his duty. In a negligence case, the patient must demonstrate that the doctor not only owed them a duty of care, but also that he violated that obligation. Violating the duty of care entails either doing something that a reasonable doctor would not do or failing to do something that a reasonable doctor would do. Additionally, it is noted that any harm must be the direct and immediate consequence of the duty violation. Physicians are held accountable for patient deaths without taking into account their disabilities and limits in doing their jobs.

## 3. RESEARCH OBJECTIVES

The Research Objectives of this Research Paper are:

- i. To Determine how medical negligence comes under consumer protection.
- ii. To Conduct comprehensive study on medical negligence.
- iii. To Determine if a doctor's actions constitute medical negligence.

## 4. THE ORIGIN OF MEDICAL NEGLIGENCE

The Bolam test has been the basis of testing medical negligence since 1957. This test came into being from a landmark High Court judgment given by Justice McNair, in **Bolam v Friern Hospital Management Committee**<sup>5</sup>. Bolam, the plaintiff, was receiving electroconvulsive therapy to cure his mental illness. The plaintiff alleged that the doctor had violated his duty by failing to treat him with any relaxant medications, which resulted in a serious fracture. According to the defendant, there is a little danger of mortality if the relaxant medication is administered, and there is little risk of fracture if it is not. The doctor did not violate his duties, according to the High Court's ruling in favor of the Friern Hospital Management Committee.

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<sup>4</sup> SCC 513, 2010.

<sup>5</sup> Bolam v. Friern Hospital Management Committee [1957] 1 WLR 583.

## 5. IMPLICATIONS OF CONSUMER PROTECTION ACT, 2019 ON MEDICAL SECTOR

- i. **Deficiency of Services** under the Consumer Protection Act, 2019. The section 2(11) of Consumer Protection Act, 2019 defines deficiency as any fault, imperfection, shortcoming, or inadequacy in the quality, nature and manner of performance required to be maintained under any law or undertaken to be performed by a person under a contract or otherwise in relation to any service.
- ii. **Medical services as services:** The Consumer Protection Act, 2019, explicitly includes medical services within the definition of services, as defined in Section 2(42). This means that patients can file complaints against medical professionals under the Act for negligence.
- iii. **Consumer:** The Section 2(7) of Consumer Protection Act, 2019 defines A patient paying for medical services is a consumer and has the right to seek redressal for deficiencies in services

## 6. LIABILITY OF DOCTORS

In India, medical negligence is subject to three distinct categories of legal penalties that are legally recognized. They are:

- i. Civil Liability,
- ii. Criminal Liability,
- iii. Disciplinary Measures

**i. Civil Liability:** In general, the legal system that permits people to seek monetary compensation in a civil court or through a consumer protection forum is referred to as civil responsibility. Lawsuits for medical misconduct are occasionally brought by those who, if they are still alive, have a legal claim to the deceased patient's estate or benefits. Establishing the liability of a careless doctor and pursuing damages on behalf of the harmed party are the main goals of these lawsuits. In *Balram Prasad v Kunal Saha & Ors*<sup>6</sup>, for the death of a patient from medical negligence by doctors and a private hospital. This judgment sparked debate about how medical negligence compensation should be calculated

**ii. Criminal Liability:** Some claim that the recently passed *Bhartiya Nyaya (Second) Sanhita (BNSS)* offers some protection for physicians, it actually stipulates that a certified medical practitioner who dies as a result of carelessness faces a maximum two-year imprisonment sentence and a fine. Section 106, which formerly permitted a maximum sentence of five years in prison, has been modified by the BNSS to require a two-year jail sentence and a fine for death caused by the carelessness of a certified medical practitioner. This indicates that doctors who cause deaths as a result of their carelessness are still subject to criminal prosecution under the new legislation.

**iii. Disciplinary Measures:** A medical license may be suspended or revoked as a result of disciplinary action taken in cases of medical malpractice. Medical personnel who engage in professional misconduct, including medical negligence, may be subject to disciplinary action from the Medical Council of India (MCI) or State Medical Councils in addition to criminal culpability. The Indian Medical Council (IMC) (Professional Conduct, Etiquette, and Ethics) Regulations, 2002, which were developed in accordance with the IMC Act, 1956, regulate disciplinary actions taken against medical professionals. Healthcare workers who engage in professional misconduct may face disciplinary action from the IMC and State Medical Councils.

Medical negligence is one of the many acts that fall under this category of wrongdoing. A medical practitioner may be suspended or have their name permanently removed from the medical register as part of disciplinary proceedings, which would prevent them from practicing medicine. It's crucial to remember that medical negligence may fall under the larger category of professional misconduct, and the particulars of each case dictate the disciplinary actions that are taken.

## 7. JUDICIAL DECISIONS ON MEDICAL NEGLIGENCE IN INDIA

The Judicial Decisions regarding Medical Negligence in India are:

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<sup>6</sup> Supreme Court of India. *Balram Prasad vs Kunal Saha & Ors* on 24 October, 2013. Civil Appeal No. 2867 of 2012[Cited 2020 Aug 7]. Available from: <https://indiankanoon.org/doc/35346928/>

- i. In **State of Haryana v. Smt Santra**<sup>7</sup>, The Supreme Court has decided that in order to protect their patients, all medical personnel must use a reasonable amount of prudence. Only when a physician fails to use the level of reasonable care that would be anticipated of a physician with average competence may they be held liable.
- ii. In case of **Indian Medical Association v. V P Shantha**<sup>8</sup>, In this instance, the court expands the CPA's purview to include the majority of government and commercial institutions as well as independent and hired medical and dental professionals, with the exception of those involved in certain welfare-related activities. The Court decided against the Indian Medical Association, holding that patients are either recipients of a paid service, consumers under the Act, or pay for the treatment as part of a contractual duty. Patients cannot be seen as customers, nevertheless, if the service is provided completely free of charge, unless paying patients are cross-sponsoring it (as at charitable hospitals, for example).
- iii. This development emerged during the adjudication in case of **Bar of Indian Lawyers v. D. K. Gandhi**<sup>9</sup>, According to the NCDRC, legal services are considered "services" under the Consumer Protection Act when a charge is paid. Under the Act, advocates who fail to provide adequate assistance may be held accountable. Professional services (such as those rendered by physicians and attorneys) are covered under the Consumer Protection Act, which is a welfare law.

## 8. DEFENCES AVAILABLE TO MEDICAL PRACTITIONERS

- i. No negligence (acted as per accepted standards): when a physician took the course of action that a reasonable, skilled expert in the area would have taken in the same or comparable situation. This is about whether such acts adhered to recognized professional standards, not merely about avoiding mistakes.
- ii. Contributory negligence by the patient: Depending on how much the patient contributed to the damage or harm, the doctor's or hospital's culpability may be diminished or even removed in contributory negligence situations.
- iii. Informed consent taken appropriately: After being fully informed of all pertinent information, a patient (or research participant) willingly consents to a proposed medical intervention or study participation through an ethical and legal process.

## 9. SUGGESTIONS

- i. Standardized Medical Expert Panels: Ad hoc opinions are frequently used by courts, which results in conflicting rulings. Therefore, under consumer forums, qualified panels of medical specialists should be established to assess negligence claims prior to a court decision.
- ii. Clear Definition of Medical Negligence: Lack of clarity in the definition of negligence, particularly the distinction between negligence and mistake of judgment. According to Supreme Court standards, a legislative definition of medical negligence should be included by CPAs (e.g., *Jacob Mathew v. State of Punjab*).
- iii. Mandatory Mediation for Low-Value Claims: Overburdened forums with minor complaints. In order to lessen the court burden and encourage speedy settlements, pre-litigation mediation should be implemented for claims under a specific threshold (such as ₹5 lakhs).
- iv. Awareness Programs for Patients and Doctors: Legal provisions are misused or underutilized as a result of ignorance. Therefore, frequent awareness campaigns outlining patient rights and physician obligations should be held in hospitals and legal aid clinics.
- v. Separate Guidelines for Government Hospitals: Because of issues about sovereign immunity, suing public hospitals under the CPA is complicated. Therefore, maybe by a unique provision, the extent of CPA application to government-funded services should be made clear.

## 10. CONCLUSION

The Consumer Protection Act 2019 might be seen of as an improved version of the old Act that it replaced, one that is relevant to the current times. It is a consumer-centered Act that covers all aspects of life that influence the customer so that he or she feels safe and protected from any and all sorts of deception or discrimination. When someone who sells anything intentionally or carelessly does something improper that causes clients to stop buying from them, they are accountable and

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<sup>7</sup> DECIDED ON 2000

<sup>8</sup> (1995) 6 SCC 651

<sup>9</sup> (2019) 4 CPJ 34 (NC)

will be penalized, either by disciplinary action, criminal culpability or compensation. Similar treatment is also given to physicians and other medical professionals. When they intentionally or carelessly cause injury to a patient, they are either held criminally liable, forced to compensate the sufferer or frequently subject to disciplinary punishment.

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