
Judicial Response to Medical Negligence and Vicarious Liability in India

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Abstract:

This research paper critically examines the changing judicial response to medical negligence and vicarious liability in India. As the healthcare sector rapidly expands in both public and private areas, courts are increasingly tasked with handling complex claims involving ethical breaches, diagnostic errors, and systemic medical failures. Key to this legal evolution are landmark cases, especially the Supreme Court's ruling in *Kamineni Hospitals v. A. Pratibha (2023)*, which reaffirms the non-delegable duty of care that institutions owe to patients. The study shows how Indian courts have gradually moved from a strict application of the *Bolam Test*, based on English common law, to a more rights-focused, patient-centered approach. This approach emphasizes informed consent, transparency, and the right to health under Article 21 the Constitution of India. The paper explains how vicarious liability has become an essential doctrine to ensure that institutions are held accountable, making hospitals liable for the actions of independent consultants or contracted staff. Using judicial precedents, data from consumer forums, and legal frameworks from the UK and USA, the paper provides a clear understanding of the current legal environment. It concludes with policy recommendations aimed at improving patient safety, judicial efficiency, and healthcare governance in India.

Keywords:

Medical, Negligence, Vicarious, Liability, Indian, Judiciary, Patient, Rights, Response, Constitution.

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Introduction:

The **Indian Constitution** guarantees the *right to life and personal liberty* under **Article 21**. Over the years, the courts have expanded the meaning of this article to include the **right to health and medical care** as a crucial part of the right to life. In the case of *Paschim Banga Khet Mazdoor Samity v State of West Bengal*,ⁱ the Supreme Court stated that the **State has a duty to provide proper and timely healthcare** to everyone who needs it. This means that access to safe, quality, and ethical medical treatment is not just a government policy but a **fundamental constitutional right**. With the rapid growth and privatization of healthcare, along with the increased use of technology and the gap between urban and rural healthcare facilities, the number of **medical negligence cases has gone up**. These cases involve issues like incorrect surgeries, wrong diagnoses, refusal of emergency treatment, and failure to obtain proper consent from patients. The courts now face a challenging task, they must resolve these disputes while protecting the basic rights of patients and addressing the influence of large hospitals and healthcare companies.

In this context, **Indian courts have become guardians of patient rights**. They strive to balance doctors' freedom to perform their duties with the need to ensure patient safety and respect. One important principle that the courts have adopted is called **vicarious liability**. Under this principle, hospitals, nursing homes, and healthcare companies can be held **responsible for the mistakes made by their doctors, nurses, or other staff members**, even if those individuals are independent contractors and not full-time employees. This principle matters because most patients trust the institution as a whole, not just individual doctor. It ensures that patients are not left without justice because of technical differences in how staffs are employed

Present Scenario of Healthcare and Negligence:

India's healthcare system operates with a dual model, which means there is a large public health network along with a growing number of private hospitals. The government runs programs like the *Ayushman Bharat – Pradhan Mantri Jan Arogya Yojana* (AB-PMJAY) to provide health

coverage for all.ⁱⁱ However, significant issues remain, including a shortage of doctors and nurses, outdated hospital facilities, vast differences between states, and confusion over responsibilities between hospitals and doctors. Even though the government is spending more money on health, the quality of care is still very different across the country. The *NITI Aayog Health Index 2023* revealed that many states still struggle with problems such as high infant mortality rates, inadequate ambulance and emergency services, and a lack of advanced medical care. As a result, cases of medical negligence have risen, and public trust in hospitals and doctors has declined.ⁱⁱⁱ

Some common examples of medical negligence are stated in the leading case titled as *Kusum Sharma v Batra Hospital*^{iv} as under:

- Wrong diagnoses or delayed treatment leading to serious harm or death.
- Surgical errors, such as operating on the wrong body part or leaving instruments inside a patient.
- Incorrect medication use, which can cause adverse reactions or overdoses.
- Treatments given without the patient's consent, violating informed consent rules.

The growth of big corporate hospitals and the business-like way healthcare is run has made the situation worse. Patients often feel like they are treated as customers rather than human beings who deserve proper care. People who are poor and live in rural areas usually get lower quality treatment or are refused care altogether. Due to these problems, more patients are turning to the courts for justice. *The Consumer Protection Act 2019*, which replaced the old 1986 law, states that medical services fall under Section 2(42).^v This means that doctors, hospitals, and clinics can be taken to consumer courts for negligence. Consequently, there has been an increase in cases filed with District, State, and National Consumer Commissions against hospitals and doctors for poor service. At the same time, the Digital Health Mission and online treatment platforms (telemedicine) have introduced new challenges. Mistakes can occur during online consultations, such as incorrect diagnoses or inadequate follow-up with patients. These situations complicate determining legal responsibility, especially when the doctor and patient are located in different states or countries.^{vi}

In the leading case of *Jacob Mathew v State of Punjab*^{vii} stated that as healthcare becomes more modern and business-oriented, it is very important for doctors and hospitals to follow proper medical rules and legal duties. Strong **government checks** and **timely court decisions** are needed to protect patients' rights while also giving doctors the freedom to do their job properly

Judicial Response to Medical Negligence in India:

In recent decades, Indian courts have significantly influenced the development of medical negligence law. Earlier approaches were mainly based on traditional common law doctrines. Now, the judicial responses focus on patient rights, accountability, and access to justice. Through various landmark judgments, the Supreme Court and High Courts have established legal standards that reflect constitutional principles under Article 21 and consumer protection laws.^{viii} Instead of relying only on professional judgment as a defense, the courts now hold healthcare providers with object to care standards, particularly in cases involving vulnerable patients, undisclosed risks, and serious procedural mistakes as decided in the case *Samira Kohli v Dr Prabha Manchanda*.^{ix}

In the case of *Jacob Mathew v. State of Punjab*, the Hon'ble Supreme Court of India clarified the difference between civil and criminal negligence in medical practice. The Court stated that for criminal liability under Section 304A of the Indian Penal Code (now reflected in *Section 106 of the Bharatiya Nyaya Sanhita, 2023*), there must be proof of gross negligence or recklessness, not just an error in judgment. The Court adopted the *Bolam Test*, from *UK law*, which considers whether the healthcare professional acted according to a practice accepted by a responsible body of medical experts in that field. This case still guides lower courts in assessing culpability, ensuring that medical professionals are not subjected to baseless criminal prosecution.

In case of *V. Kishan Rao v. Nikhil Super Speciality Hospital*^x marked a progressive shift away from depending heavily on expert testimony. The Supreme Court held that when negligence is clear, such as giving the wrong medication or discharging a patient too soon, courts do not need to rely on expert medical opinions to prove liability. This made it easier for complainants, especially in consumer forums, and allowed patients to seek justice even with limited access to medical experts.

In the leading case *Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole*,^{xi} this early but influential case outlined the three duties of care expected from every medical practitioner:

- Duty in deciding whether to take on the case,
- Duty in choosing the right treatment, and
- Duty in administering that treatment.

The Court emphasized that breaching any of these duties, resulting in harm, could lead to liability in tort or under consumer protection law. This case is a key reference in medical negligence cases and is frequently cited in both civil and consumer forums.

Vicarious Liability in Healthcare Law:

The doctrine of **vicarious liability** is an important part of law of Torts. *Winfield and Jolowicz*^{xii} defined that "if someone acts through another person, it is as if they acted themselves." In healthcare, this rule is very important because patients usually trust the hospital or clinic more than any single doctor. This means that hospitals, clinics, and healthcare systems can be held responsible for mistakes made by their staff, even if the hospital itself did not directly do anything wrong. This rule applies whether the person at fault is a full-time employee or a consultant hired on contract. If the mistake happens while they are working for the hospital or providing care in the hospital, the hospital can still be held liable. Courts also say that hospitals have a **non-delegable duty of care**, meaning they cannot escape responsibility by blaming individual doctors or nurses.

In the case *Spring Meadows Hospital v Harjot Ahluwalia*,^{xiii} In this case, a child suffered permanent brain damage because a nurse gave the wrong injection. The Supreme Court held both the hospital and the doctor responsible. It said hospitals cannot avoid liability by blaming their staff. Patients trust the hospital as a whole, not just the doctor.

In the case *Savita Garg v National Heart Institute*,^{xiv} the Supreme Court said that once a hospital admits a patient, it is fully responsible for their care, even if the mistake was made by a consultant

or employee. The court explained that patients and their families often do not know if a doctor is an employee or an independent consultant, so the hospital must take full responsibility.

In the recent case, Kamineni Hospitals v A Pratibha,^{xv} the Hon'ble Supreme Court of India upheld a decision against Kamineni Hospital. A contractual orthopedic consultant failed to follow proper post-surgery care, and the hospital argued he was not an employee. The Court rejected this argument and ruled that once a patient is admitted, the hospital is legally and ethically responsible for the quality of care provided. This case made it clear that hospitals cannot escape liability even when third-party or contractual doctors are involved.

The Indian courts have made it clear that patient welfare is more important than hospital technicalities. They have mentioned as under:

- Hospitals are the main service providers under consumer law;
- Patients cannot be expected to know if a doctor is an employee or a consultant;
- Healthcare providers must keep the same standard of care for everyone, no matter who is treating the patient.

These decisions also stop hospitals from shifting blame while still making money from patient care. This makes the whole system more accountable and focuses on patient safety, not just individual mistakes.

Remedies granted in response to judiciary:

The changing approach of the courts toward **medical negligence** and **vicarious liability** has shaped key legal principles and brought clear changes to the healthcare system. Important rulings, especially from the **Supreme Court** and the **National Consumer Disputes Redressal Commission (NCDRC)**, have influenced both the number of cases filed and the way healthcare institutions operate.

In the last ten years, there has been a big rise in legal actions against doctors and hospitals as under:

- According to *National Consumer Disputes Redressal Commission (NCDRC) Annual Reports (2015–2023)*, more than **12,000 medical negligence cases** were filed in District, State, and National Consumer Forums during this period. This shows that patients are more aware of their rights and have better access to complaint mechanisms.^{xvi}
- The average compensation in these cases ranged between **₹2 lakh and ₹25 lakh**, depending on the seriousness of the injury, the level of negligence, and the documents supporting the claim.
- In several landmark cases, courts have given **large compensation amounts**. For example, in the *Dr Arvind Gupta fertility negligence case*,^{xvii} the **Uttar Pradesh State Consumer Commission** awarded over **₹10 lakh** in damages because hormone therapy was given by an unqualified doctor.
- In *Kamineni Hospitals v A Pratibha (2023)*, the **Supreme Court** confirmed a large compensation award, making it clear that hospitals are responsible for mistakes made by contractual specialists and strengthening patient-friendly legal standards.

This rise in the number of cases and the higher compensation amounts show that courts are ready to hold healthcare providers responsible for their actions.

Impact of judicial response:

The impact of court decisions on **medical negligence** and **vicarious liability** has been wide-reaching. These rulings have pushed both **policy changes** and **clinical improvements** in hospitals and healthcare institutions as under:

- **Risk Management Protocols:** According to *National Consumer Disputes Redressal Commission, Annual Report 2023*, many large hospitals have set up internal audit committees, systems for handling patient complaints, and legal compliance offices to reduce the chances of negligence claims.

- **Informed Consent Practices:** In the leading case *Samira Kohli v Dr Prabha Manchanda*,^{xviii} After court observations in cases of surgeries or treatments done without proper patient consent, hospitals now ask patients or their relatives to sign detailed consent forms. The focus is no longer just on getting a signature but on making sure patients understand the risks and other treatment options.
- **Medico-Legal Training for Staff:** Hospitals and medical colleges now give regular training to doctors, nurses, and administrators about legal duties, proper documentation, standards of care, and ethical decisions. This ensures healthcare workers are not only skilled but also legally aware.
- **Legal Scrutiny of AI-based and Telemedicine Platforms:** With the growth of digital health technologies like AI diagnostic tools and teleconsultations, courts are now starting to examine liability for mistakes. The **Telemedicine Practice Guidelines (2020)**^{xix} provide some rules, but court intervention is important in cases involving AI errors or treatment by unqualified online practitioners.

Conclusion and Suggestions:

The Indian judiciary has played a very important role in developing the law and guidelines on **medical negligence** and **vicarious liability**. Through its decisions, the courts have protected the **right to life under Article 21 of the Constitution of India** and strengthened the ethical foundation of healthcare in India. From early cases like *Dr Laxman Balkrishna Joshi v Dr Trimbak Babu Godbole* to recent decisions like *Kamineni Hospitals v A Pratibha*, the courts have made it clear that **healthcare is a legal right**, not a charity, and that accountability must follow authority in healthcare settings. One major development has been the clarification of **vicarious liability**. Hospitals and healthcare institutions are now held responsible even when a negligent doctor is a consultant or independent contractor. This ensures that systemic problems, such as poor training or lack of proper procedures, cannot be ignored or shifted onto individuals. The courts have also strengthened the concept of **informed consent**, as seen in *Samira Kohli v Dr Prabha Manchanda*. Indian courts now require doctors to explain major risks and alternatives so that patients can make

independent and informed decisions about their care. For new technologies like **telemedicine and AI-based diagnostics**, the courts are beginning to develop fresh legal frameworks. The law must continue to evolve to ensure accountability without discouraging medical innovation.

In short, the judiciary has become not only a forum for resolving disputes but also a strong protector of **medical ethics, patient dignity, and systemic reform**. Ongoing legal reforms in this area are essential to maintain public trust in healthcare and to uphold the rule of law.

Suggestions:

To improve accountability and patient safety while helping healthcare providers meet their legal duties, the following reforms are suggested:

- (i) **Mandatory Liability Insurance for All Healthcare Professionals:** According to **National Medical Commission**, Guidelines for Professional Indemnity Insurance (2023), all doctors, nurses, and healthcare workers involved in patient care should be required to have professional indemnity insurance. This would:
 - Ensure patients are compensated in cases of proven negligence.
 - Protect healthcare professionals from unbearable financial losses.
 - Motivate better adherence to care standards.

The **National Medical Commission (NMC)** should make this mandatory during registration and renewal.

- (ii) **Establishment of a Medical Grievance Ombudsman in Every District:** Each district should have an independent ombudsman with medical expertise. This would:
 - Provide quick, affordable complaint resolution for patients.
 - Reduce the burden on consumer courts and State Medical Councils.
 - Focus on mediation and patient satisfaction before formal litigation.

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- (iii) **Introduction of Uniform Standard Treatment Guidelines (STGs):** The absence of national clinical protocols causes inconsistent medical care. The **Ministry of Health and Family Welfare**,^{xx} along with **AIIMS, ICMR, and NMC**, should create Standard Treatment Guidelines that:
- Clearly define treatment methods for common illnesses.
 - Be used as benchmarks by courts to evaluate negligence.
 - Help patients understand the minimum standard of care they should receive.
- (iv) **Creation of Special Medical Negligence Benches in Consumer Forums:** Dedicated benches in District, State, and National Consumer Forums should handle medical negligence cases. These benches should:
- Include members with expertise in medicine, law, or hospital management.
 - Ensure faster, more uniform decisions across the country.
 - Improve the quality of judgments in complex cases involving surgical errors, wrong diagnoses, or lack of consent.
- (v) *Promotion of Legal Literacy Programs for Patients and Healthcare Workers:* Lack of awareness of rights and duties often prevents justice. According to the Bar Council of India and National Health Mission, Legal Literacy in Healthcare Initiative Report (2022) to address this:
- Awareness campaigns and workshops should be organized in hospitals, rural health centers, and medical colleges.
 - Information about informed consent, patient rights, and complaint procedures should be widely shared.
 - Multilingual guides and mobile apps should be developed to educate both patients and healthcare workers.

Footnotes:

- ⁱ (1996) 4 SCC 37.
- ⁱⁱ Ministry of Health and Family Welfare, *Annual Report 2022–23* (Government of India 2023) 17.
- ⁱⁱⁱ NITI Aayog, *Health Index 2023: Healthy States Progressive India* (Government of India 2023) 6.
- ^{iv} (2010) 3 SCC 480.
- ^v Consumer Protection Act 2019, s 2(42).
- ^{vi} Telemedicine Practice Guidelines 2020, issued by the Board of Governors, Medical Council of India.
- ^{vii} (2005) 6 SCC 1.
- ^{viii} *Indian Medical Association v V.P. Shantha* (1995) 6 SCC 651.
- ^{ix} (2008) 2 SCC 1.
- ^x (2010) 5 SCC 513.
- ^{xi} AIR 1969 SC 128.
- ^{xii} (19th edn, Sweet & Maxwell 2014) 913.
- ^{xiii} (1998) 4 SCC 39.
- ^{xiv} (2004) 8 SCC 56.
- ^{xv} Civil Appeal No 4834 of 2023 (SC).
- ^{xvi} National Consumer Disputes Redressal Commission, *Annual Report 2023*.
- ^{xvii} Complaint No 67/2021, Uttar Pradesh State Consumer Disputes Redressal Commission (10 January 2023).
- ^{xviii} (2008) 2 SCC 1.
- ^{xix} Issued by the Board of Governors, Medical Council of India.
- ^{xx} *Draft Standard Treatment Guidelines (2022)*.

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