
CRIMINAL NEGLIGENCE IN MEDICAL PRACTICE: A CRITICAL REVIEW OF THE FAILING PERINATAL CARE SYSTEM IN INDIA

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ABSTRACT

It has been continually reinstated through various landmark judgements and several legislations that criminal culpability, particularly when it pertains to the practice of medicine, is a difficult charge to prove. This is in large part due to the complexity of the very subject matter around which this profession revolves. The contention is that the human body responds with varying levels of adaptability, often to the same course of treatment and an adverse outcome, even if it extends to the causing of death, may not always suffice in bringing forth a successful prosecution for medical negligence. This perspective has been amply echoed by the lawmakers as is evidently reflected in the recently passed BNS which awards a significantly reduced sentence to medical practitioners in lieu of any negligent act on their part as compared to the general punishment awarded for the same. However, even with due consideration given to the precarious nature of the medical profession, the need for accountability is of utmost importance in instances of blatant negligence in discharging what is one's legal duty; specifically when a human life is at stake.

The perinatal care system in India in particular continues to languish as a result of such gross oversight as the victims are often not in the position to advocate for themselves, thus imposing a greater responsibility on the healthcare providers to ensure their safety, failing which they should be held liable for the same. The central questions which this paper seeks to answer are:-

1. How and to what extent has the legal framework granted immunity to medical practitioners in lieu of any negligence on their part while exercising their legal duty?
2. What role has medical negligence played in adding to the failing perinatal care system in the country particularly in relation to maternal mental health?
3. What role has medical negligence played in adversely impacting the rate of maternal and infant mortality?

This paper aims to carefully dissect how medical negligence has elevated the rate of maternal and infant mortality, thus contributing to the deteriorating state of prenatal and postnatal care in the country as well as attempts to recommend measures focused on improving India's overall perinatal care framework.

Keywords: Medical Negligence, Medical Practitioners, Perinatal Care, Maternal and Infant Mortality.

I. Introduction

Criminal negligence in medical practice refers to any act or omission committed by a medical professional during the course of treating his patient which is in contravention to what a reasonably competent medical practitioner with ordinary skills would do under similar circumstances¹. The standard to which healthcare providers are held is thus not that of extreme proficiency but rather of a man of ordinary competence possessed with similar skills in that profession². One could contend, in light of the high benchmark laid down for prosecuting a medical professional for negligence on his part under the criminal law, that healthcare providers have perhaps been accorded too much immunity - an argument further supported by the fact that even a successful conviction for this offence would amount to imprisonment of merely two years as prescribed in Section 106(1) of the BNS (2023) as compared to a higher sentence of five years for the general public.

The country's healthcare system has long failed in attending to the concerns of the new and expecting mothers and their infants, particularly when it relates to addressing issues relating to maternal mental health which continue to be criminally misdiagnosed. By critically examining the heightened risk of pregnancy related morbidity which has resulted due to the failure to exercise reasonable care by medical practitioners, this paper calls for a greater degree of liability to which the healthcare providers should be held, particularly when it extends to causing harm to those entrusted in their care who, for the most part, may not be able to decide the best course of treatment for themselves due to their vulnerable state and have to rely solely on their professional skill and expertise.

II. Pertinent Legislations

- a) The Bharatiya Nyaya Sanhita (2023) which replaces the Indian Penal Code contains

¹ Bolam v Friern Hospital Management Committee, 1957 1 WLR 582.

² Jacob Matthew v State of Punjab & Anr, 2005 6 SCC 1.

certain provisions which relates to the prosecution of medical professionals under the criminal law, namely:-

- b) Section 106(1) which deals with any rash or negligent act committed by a registered medical practitioner.
- c) Though not directly related to criminal negligence, certain general defences may provide protection to medical professionals against criminal prosecution under certain circumstances particularly the provisions under the defence of consent as given in:-
 - Section 26 which deals with situations where the act causing harm to the person is done with consent for his benefit in good faith.
 - Section 30 which deals with situations where the act causing harm to the person is done in good faith for the person's benefit without his consent.

b) The Consumer Protection Act (1986) which deals with civil suits initiated against medical practitioners for medical malpractice, namely:-

- 1. Section 2(1)(o) which constitutes the services rendered to a patient by a medical practitioner by way of consultation, diagnosis and treatment within its definition of the term "service"
- 2. Section 14(1)(d) which deals with situations where compensation is to be awarded for any loss or injury suffered by the consumer due to negligence by the opposite party, including medical practitioners.

c) The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation Act (2002) which lays down a code of ethics to be followed by the medical practitioners as well as prescribes the professional standards expected of them, particularly the provisions under:-

- 1. Section 2(4) under Chapter 2 which states that the patient should not suffer any harm or damage caused due to any wilful act of negligence on the part of the medical professional.
- 2. Section 7(5) under Chapter 7 which deals with conviction in a court of law for any criminal act committed by the physician which constitutes professional misconduct.

3. Chapter 8 which deals with punishment and disciplinary action for such professional misconduct as decided by the Medical Council of India and/or State Medical Councils.

III. Exemption From Culpability

The Supreme Court has laid down that in order to affix liability under criminal law, the degree of negligence to be proved should be so “gross” as reflects complete apathy to the condition of the patient³, further reiterating how it differs from civil liability which can be proved by simply showing mere incompetence by a medical professional in exercising ordinary care in accordance with the accepted standards⁴. Thus, given the challenges incurred in successfully proving a charge of medical negligence in criminal law, medical professionals, for the most part, are tried under the Consumer Protection Act for any injury caused to a patient owing to negligence on their part⁵ ever since the ruling of the Supreme Court in the landmark case of **Indian Medical Association v V.P. Shantha (1995)**⁶ which brought the services rendered by medical practitioners within the purview of the definition of ‘service’ as defined in Section 2(1)(o) of the Act. Taking into account these judgments; as well as how even a conviction for civil liability would only amount to paying compensation to the aggrieved party⁷, which may or may not be accompanied by disciplinary action as decided by the Medical Council of India (now the National Medical Commission) and/or the State Medical Councils⁸, medical practitioners have been exempted to a great extent from culpability under the criminal law for any negligence in the performance of their duty. While it is true that a surgeon cannot be held liable for each and every case which results in harm or even death caused to the patient particularly if it is done in good faith for the person's benefit with or without his consent- an aspect already covered by Sections 26 and 30 of the BNS under the Chapter of General Defences which accords enough immunity to the medical professionals for decisions taken by them under unprecedented situations; instances where a charge of criminal negligence, has resulted in successful conviction given the high standard established for its prosecution under the criminal law, should be dealt with harshly. A lighter sentence in this regard would only set a negative precedent among the masses.

³ Suresh Gupta v NCT Govt of Delhi, 2004 6 SCC 422.

⁴ Martin F D'Souza v Mohd. Ishfaq, 2009 3 SCC 1.

⁵ The Consumer Protection Act, 1986 (Act 68 of 1986), s 14(1)(d).

⁶ 1995 6 SCC 651.

⁷ *Supra* 5.

⁸ The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, s 8.

The legal framework in India still heavily borrows from the Bolam Test⁹ which lays down that a medical practitioner will not be held to be negligent if his actions are in accordance with a practice endorsed and deemed as proper by a responsible body of medical professionals. While passing references to the Bolitho test- which emphasizes on professional opinions to substantiate “logical analysis”- have been made by the Supreme Court in its previous judgments¹⁰, it hasn't been formally adopted by the Indian Judiciary though it has stated that the ‘responsible body of opinion’ should not be “illogical”. However, given the rising number of cases of medical negligence in the country the need to adopt a hybrid and patient-centric approach in order to ensure that instances of gross negligence are penalized has become even more pressing than before.

IV. The Failing Perinatal Care System in India - How Medical Negligence has been a Principal Actor

The declining state of maternal and neonatal care in the country can be substantially attributed to clinical ineffectiveness and inefficiency in the provision of essential health services by healthcare service providers, putting both the mothers and their infants at a greater risk of suffering from complications which can eventually result in long-term damage or even death as revealed by a study reviewing specialty-based negligence across five states in South India that of the total 1317 cases filed on medical negligence and deficiency in services, Obstetrics and Gynecology departments reported the highest number, accounting for nearly 347 (26.34%) cases with postoperative and intraoperative complications, tubectomy failure, maternal death, issues related to birth asphyxia, neonatal deaths and traumatic injuries caused to the newborn being identified as the common reasons for filing litigation suits¹¹. Additionally, the inability to diagnose congenital foetal abnormalities like absence of arms and lower limbs, intrapartum and intrauterine hypoxia, inadequate resuscitation of the baby without calling pediatrician to delivery room, undue delay in conducting a cesarean section causing irreversible brain damage in an already hypoxic fetus and omission to remove swabs from the vagina or abdominal cavity or monitoring of PPH were also cited as factors amounting to negligence¹².

⁹*Supra* 1.

¹⁰Samira Kohli v. Dr Prabha Manchanda, 2008 2 SCC 1.

¹¹ Surakshith L.Gowda, Ambarisha Bhandiwad and N.K. Anupama, “Litigations in Obstetric and Gynecological Practice: Can it be prevented? A Probability to Possibility” 66(s1) *Journal of Obstetrics and Gynaecology of India* (2016), available at: <<https://share.google/x8RJU90Zs6bDO2cg>> (last visited on July 06, 2025).

¹² *Ibid*.

1. Physical Aspects

Inadequacy in the provision of Ante-Natal Care Services (ANC) has been widely observed particularly when it pertains to failure in conducting thorough medical examination which includes urine and blood sampling, timely ultrasounds and fetal monitoring resulting in wrong or non-diagnosis of chromosomal and neural anomalies in the foetus as well as health complications such as hyper-tension, gestational diabetes, pre-eclampsia and ectopic pregnancy in the mother, non-investigation of hematological aspects particularly in high-risk pregnancies and non-advice regarding proper lifestyle recommendations, nutrition and immunization during pregnancy for tetanus, whooping cough and diphtheria. A study reviewing data collected by four National Family Health Surveys from 1999-2021 regarding the quality of ANC care across 36 states and union territories found that more than 40% of pregnant women complained of receiving inadequate ANC services with significant inequalities existing between the various states regarding the quality of ANC; namely Uttar Pradesh and Bihar which made up for more than half of the total population receiving deficient ANC services¹³. Additionally, the rise in claims of caesarean negligence resulting in postoperative complications for both the mother and the child eventually leading to adverse maternal and infant outcomes further reflect the worsening plight of the expectant mothers and their infants¹⁴.

1. Mental Health

Perinatal mental health has long been one of the most unaddressed facets of the healthcare system- an argument further solidified by the fact that it remains largely absent in national maternity and mental health policies and programmes which are predominantly focused on improving the physical aspects of maternal and neonatal healthcare even though several studies have continually reported that 1 in 5 women in India are most likely to suffer from perinatal common mental disorders such as postpartum depression, somatoform, anxiety and adjustment

¹³ Hwa Young Lee, Akhil Kumar, Anoop Jain, et al., "Trends in the quality of antenatal care in India: Patterns of change across 36 states and Union Territories, 1999–2021" *Journal of Global Health* (2024), available at: <<https://share.google/joXsJEKOCBOwEIYHW>> (last visited on July 08, 2025).

¹⁴ Manoj Bhimrao Patekar, Ajinkya Vinod Rayate, Sangharatna Mahajan Kamble and Amol Balwant Shinde, "Examining Compensated Cases of Negligence in Caesarean Sections and it's Legal Implications- A Case Series" 9(2) *IP International Journal of Forensic Medicine and Toxicological Sciences* (2024), available at: <https://www.researchgate.net/publication/382265305_Examining_compensated_cases_of_negligence_in_caesarean_sections_and_it's_legal_implications-_A_case_series> (last visited on July 08, 2025).

disorders¹⁵. The inability to correctly identify and attend to the mental needs of expecting mothers has often led to their psychological concerns being ignored or misdiagnosed as mere stress or ‘baby blues’ resulting in severe repercussions for both the mother and the child.

V. Impact on Maternal and Infant Mortality

India records one of the highest maternal deaths in South Asia, ranging between 214 and 300 maternal deaths per 100,000 live births¹⁶ which puts it on the backfoot of achieving the Sustainable Development Goal of reducing the rate of maternal deaths to 70 per 100,000 live births by 2030¹⁷. Despite reports published by the Ministry of Health and Welfare claiming an overall reduction in maternal and neonatal deaths, it does not account for the substantial regional variations relating to maternal morbidity or the sheer lack of Skilled Attendants at Birth resulting in traumatic injuries to the newborns and putting the mothers at an increased risk of developing infections or hemorrhaging¹⁸ with a rise in institutional deliveries being accompanied with performing caesarean section without due consultation or evidence ultimately leading to an elevated rate of maternal and infant mortality¹⁹.

VI. Case Examples

The Obstetrics and Gynaecological Departments have recorded the second highest number of litigation suits alleging medical negligence in the country, accounting for nearly 21% of the total 135 cases in which negligence was proved²⁰. Some of these cases as heard by the National

¹⁵ Harish Kalra, Thach Tran, Lorena Romero, et al., “National Policies and Programs for Perinatal Mental Health in India: A Systematic Review” 91 *Asian Journal of Psychiatry* (2023), available at: <<https://www.sciencedirect.com/science/article/pii/S1876201823003933>> (last visited on July 08, 2025).

¹⁶ Nilu Nagdev, Felix Akpojene Ogbo, Mansi Vijaybhai Dhami, Thierno Diello, et al., “Factors associated with inadequate receipt of components and non-use of antenatal care services in India: A regional analysis” 23(6) *BMC Public Health* (2023), available at: <<https://share.google/IXWF2ihWk1DthH6wl>> (last visited on July 08, 2025).

¹⁷ Nicholas J Kassebaum, Ryan M Barber, Zulfiqar A Bhutta, Lalit Dandona, Peter W Gething, et.al., “Global, regional, and national levels of maternal mortality, 1990–2015: a systematic analysis for the Global Burden of Disease Study 2015” 388(10053) *The Lancet* (2016), available at: <[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)31470-2/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)31470-2/fulltext)> (last visited on July 08, 2025).

¹⁸ Saraswathi Vedam, Reena Titoria, Paulomi Niles, Kathrin Stoll, et al., “Advancing Quality and safety of perinatal services in India: Opportunities for effective midwifery integration, Health Policy and Planning” 37(8) | *Health Policy and Planning* (2022), available at: <<https://share.google/xn2dASfcCKvnxNwXI>> (last visited on July 09, 2025).

¹⁹ Priyanka Singh, Gulfam Hashmi and Prafulla Kumar Swain, “High prevalence of cesarean section births in private sector health facilities- analysis of district level household survey-4 (DLHS-4) of India” 18(613) *BMC Public Health* (2018), available at: <<https://pmc.ncbi.nlm.nih.gov/articles/PMC5946478/>> (last visited on July 09, 2025).

²⁰ Sanjay Sukumar, “Medical negligence in cases decided by the National Consumer Disputes Redressal Commission: A five-year retrospective review” VIII(3) *Indian Journal of Medical Ethics* (2023), available at:

Consumer Disputes Redressal Commission are:-

1. Dharani v. Government of Puducherry & Anr²¹.

In this case, a pregnant woman who had undergone a caesarean section while delivering her baby had to be readmitted to the hospital with abdominal pain after being discharged a week ago. On seeing no significant improvement even after two weeks of treatment, the woman sought a second opinion wherein she was referred to another hospital where she underwent an emergency operation. It was found during the operation that a foreign object (pad) was present in her abdomen which had damaged her intestinal loops forming an abscess, causing her to require a subsequent jejunal resection and anastomosis.

After considering the histopathology report, the National Commission held that this was a clear case of *res ipsa loquitur*, stating that there was reasonable lack of skill and care on the part of the doctor who performed the caesarean section and ordered for a monetary compensation of Rs. 5,00,000 to be awarded to the aggrieved.

1. Thavarmal (Deceased) & Ors. v. Sheela Maternity Hospital and Fracture Clinic & Anr²².

In this case, a pregnant woman, after delivering her child, suffered from excessive bleeding which could not be controlled by the attending doctors, who referred her to another centre where she eventually died due to internal haemorrhage.

The National Commission held that the attending doctors should have performed a hysterectomy to stop the excessive bleeding rather than refer the deceased to another facility and try to shrug off responsibility from their shoulders, citing it to be a clear case of negligence on their part and ordered a monetary compensation of Rs. 5 Lakhs to be paid to the deceased's family.

<<https://ijme.in/articles/medical-negligence-in-cases-decided-by-the-national-consumer-disputes-redressal-commission-a-five-year-retrospective-review/?galley=html>> (last visited on July 09, 2025).

²¹ 2016 1 CPR 33

²² 2015 II CPJ 134 NC.

2. Alka Shrivastava & Anr. v. Base Hospital & Anr²³.

In this case, a woman gave birth to a female child with marked anomalies such as spina bifida, meningomyelocele and hydrocephalus even though previous scans conducted till the 21st week of her gestation had reported no such foetal abnormalities. Negligence was alleged by the petitioner in regard to failure to diagnose the foetal anomalies in due time.

It was concluded, based on expert opinion, that the spina bifida detected during the 35th week of gestation was quite large and could have been detected during the 21st week if reasonable care had been exercised while performing the scans. It was also found that the scans were performed by a gynaecologist and not qualified radiologists with the USG reports not being in the standard format, thus making the doctors guilty of breach of duty owing to negligence and a monetary compensation of Rs. 5.05 Lakhs being ordered by the National Commission to be paid to the Complainant.

VII. Conclusion

Despite various government initiatives and policies aimed at improving maternal and infant health, India still contributes more to the global rate of maternal and neonatal mortality than most developing countries²⁴; a statistic made even more alarming when combined with the growing claims of medical malpractice pertaining to the perinatal care unit. A careful review of the suits filed have further revealed how most civil cases where negligence is proved are settled by way of monetary compensation and even conviction under the criminal law only amounts to serving a reduced sentence of two years²⁵ which does not suffice to account for the severe physical and emotional repercussions which the victims have to face particularly when exercise of reasonable care could have prevented the same.

This paper urges for better initiatives focused on enhancing the quality of antenatal and postnatal care which are crucial indicators of pregnancy related and neonatal morbidity through increased vigilance targeted to identify instances of medical incompetence and deficiency in

²³ 2015 IV CPJ 592 NC.

²⁴ Rakhi Dandona, G Anil Kumar, Nathaniel J Henry, Vasna Joshua, et al., "Subnational mapping of under-5 and neonatal mortality trends in India: the Global Burden of Disease Study 2000–17" 395(10237) *The Lancet* (2020), available at: <<https://pmc.ncbi.nlm.nihicles/PMC7262604/>> (last visited on July 09, 2025).

²⁵ Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s 106(1).

healthcare services and measures to correct the same through increased training programs for healthcare workers aimed at enhancing their skills, integration of qualified and competent midwives and skilled attendants at birth to reduce the maternal and infant mortality rates during birth and the inclusion of mental health services in maternity policies and programs to ensure the overall safety for both the mother and the child. Keeping in view the vulnerable state of the newborn infants and expectant mothers entrusted in their care, this paper also calls for a higher degree of accountability on the part of the medical practitioners for any injury caused due to incompetence on their part to execute their duties with reasonable skill and care as well as stricter penalty to be awarded in the cases where medical negligence has been successfully proved under the civil and criminal law.