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By: Dr. Pooja Bali, Associate Professor & Dean, University Institute of
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ABSTRACT:

“Medical malpractice and vicarious liability are critical legal concepts that govern accountability in healthcare. In India, medical malpractice is addressed under various legal frameworks, including the Bharatiya Nyaya Sanhita (BNS), 2023, the Consumer Protection Act, 2019, and the Indian Medical Council Act, 1956. These laws define the legal responsibilities of medical professionals and establish liability for negligence in patient care. The Bolam Test is often applied by Indian courts to determine whether a medical professional’s actions align with accepted medical standards. However, proving negligence remains challenging due to the burden of proof resting on the patient, the complexity of medical evidence, and procedural delays in litigation. Vicarious liability ensures that hospitals and healthcare institutions are accountable for the negligence of their employees. However, ambiguities arise in cases involving independent medical consultants, raising questions about institutional responsibility. A comparative analysis of medical malpractice laws in the United States and the United Kingdom reveals significant differences in legal standards, compensation mechanisms, and procedural efficiency. While India has made progress in strengthening consumer rights, challenges such as prolonged litigation, limited access to expert witnesses, and inadequate compensation persist. Reforms such as fast-track courts, alternative dispute resolution mechanisms, standardized medical negligence guidelines, and better legal awareness can improve the effectiveness of India’s medical malpractice framework. Strengthening patient rights while safeguarding medical professionals from frivolous litigation will lead to a more balanced and just healthcare system”.

Keywords: Medical Malpractice, Vicarious Liability, Consumer
Protection, Negligence, Bolam Test.

I. INTRODUCTION:

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Medical malpractice and vicarious liability are two essential concepts that play a crucial role in the Indian legal system, especially concerning healthcare practices. Medical malpractice refers to negligence or misconduct by a healthcare professional, including doctors, nurses, or other medical practitioners, which results in harm or injury to a patient. The law surrounding medical malpractice primarily seeks to protect patients from harm and ensures that healthcare providers maintain high standards of care. Vicarious liability, on the other hand, is a legal doctrine that holds an employer (*in this case, a healthcare institution or hospital*) responsible for the actions of its employees, such as doctors and nurses, when they act within the scope of their employment. In the context of medical malpractice, vicarious liability allows patients to hold hospitals accountable for the negligence of their staff, even if the institution itself is not directly responsible for the harm caused.¹

In India, the primary legal framework governing medical malpractice and vicarious liability can be found in various statutes, judicial interpretations, and guidelines issued by regulatory bodies. One of the key pieces of legislation in this regard is the *Bharatiya Nyaya Sanhita (BNS), 2023*. The BNS lays down provisions that deal with criminal negligence, which can be applied to cases of medical malpractice. Section 104 of the BNS addresses causing death by negligence, while Section 123 deals with causing grievous hurt by an act of negligence. These provisions make it possible for a healthcare provider to face criminal charges if their negligent actions lead to harm or death of a patient. However, criminal liability is not easy to prove in medical malpractice cases, and courts often require expert testimony to establish the standard of care and the breach of that standard.² In addition to the *BNS*, the *Consumer Protection Act, 1986*, has played a significant role in the evolution of medical malpractice law in India. *Under*

¹ Satvik N Pai et al., "Malpractice or masterful practice? Navigating vicarious liability in healthcare," 13 World Journal of Clinical Cases (2025).

² "Medical Negligence Under BNS," Drishti Judiciary available at: <https://www.drishtijudiciary.com/to-the-point/bharatiya-nyaya-sanhita-&-indian-penal-code/medical-negligence-under-bns> (last visited March 19, 2025).

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this Act, medical services are considered as services provided to consumers, and patients can file complaints against healthcare providers in consumer courts if they believe they have been victims of medical negligence. This is a civil remedy available to patients who have suffered harm due to the substandard services provided by healthcare professionals. The Act has made it easier for patients to seek compensation for their injuries, as it allows for a more accessible and less expensive forum than traditional civil courts. The Consumer Protection Act provides patients with the opportunity to obtain redress for medical negligence without needing to prove intent or gross negligence, but only a failure to provide adequate care.³ Alongside these statutes, *the Indian Medical Council Act, 1956*, governs the regulation of medical practitioners in India. The Act empowers the *Medical Council of India (MCI)*, to set standards for medical education, professional conduct, and ethics. It also provides for disciplinary actions against doctors who engage in misconduct or negligence. *The MCI's Code of Medical Ethics* further sets out the duties and responsibilities of medical practitioners, including the duty to act in the best interests of patients and uphold the standard of care expected of them. These ethical guidelines provide a framework for determining whether a healthcare provider's actions constitute medical malpractice. The guidelines also assist in ensuring that medical professionals maintain the required standard of care and refrain from practices that could harm patients.⁴ When it comes to vicarious liability, Indian law draws upon principles established in common law, specifically under the doctrine of agency. In the context of medical malpractice, hospitals, clinics, and other healthcare institutions can be held vicariously liable for the acts of their employees if those acts are performed in the course of their employment. This is particularly significant in cases where direct actors such as a nurse or junior doctor—may be difficult to identify, or where multiple healthcare professionals are involved in a patient's

³ "Article Detail," International Journal of Advanced Research, 2014 available at: <https://www.journalijar.com/article/50325/medical-negligence-and-consumer-protection-act/> (last visited March 19, 2025).

⁴ nawlendu, "Regulation for Professional Misconduct by Doctors" iPleaders, 2018 available at: <https://blog.ipleaders.in/professional-misconduct-by-doctors/> (last visited March 19, 2025).

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treatment. Vicarious liability ensures that the healthcare institution, which has greater financial resources, can be held accountable for the negligence of its staff. It also allows patients to receive compensation more easily, as they can sue the hospital or institution rather than pursuing legal action against individual medical practitioners.

I.I OBJECTIVES OF THE STUDY:

1. *To Analyze the Legal Framework of Medical Malpractice in India.*
2. *To Explore the Concept of Vicarious Liability in the Context of Medical Malpractice.*
3. *To Examine Judicial Interpretations and Case Law on Medical Malpractice and Vicarious Liability.*
4. *To Propose Recommendations for Reform in Medical Malpractice Law in India.*

I.II RESEARCH METHODOLOGY:

The research methodology used in this study is doctrinal, which primarily focuses on the analysis of existing legal frameworks, statutes, judicial decisions, and academic literature. The doctrinal approach involves a comprehensive review of relevant laws such as the *Bhartiya Nyaya Sanhita*, the Consumer Protection Act, and various medical council guidelines. The study also examines judicial precedents and case law to interpret how courts have applied the legal principles of medical malpractice and vicarious liability. This methodology allows for a detailed exploration of the theoretical aspects of the law and its practical application within the context of the Indian legal system.

I.III REVIEW OF LITERATURE:

Bansal, R.K. (2017), This article examines the legal principles governing medical negligence in India, focusing on the role of the *Bharatiya Nyaya Sanhita, 2023*, and the *Consumer Protection Act, 2019*. It discusses the challenges faced by patients in proving negligence and evaluates the effectiveness of current legal remedies. The author highlights judicial trends in medical malpractice cases and suggests reforms to improve legal accountability in the healthcare sector.

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Gupta, R., and Ramesh, P. (2019),⁵ This study analyzes the key legal challenges in medical negligence cases in India. It critically evaluates the Bolam Test and its application by Indian courts. The article also explores the difficulties in obtaining expert medical opinions, procedural delays, and the financial burden on patients seeking legal redress. The authors propose changes to procedural laws to enhance access to justice in medical negligence claims.

Raghavan, V. (2020),⁶ This article explores the doctrine of vicarious liability in the medical field, particularly in the context of hospitals and healthcare institutions. It discusses the contractual relationships between hospitals and doctors, distinguishing between employees and independent consultants. The author examines legal precedents and statutory provisions, suggesting clearer guidelines for determining liability in medical negligence cases involving healthcare institutions.

Joshi, R. (2018),⁷ This research paper evaluates the impact of consumer courts in handling medical malpractice claims. It discusses the Consumer Protection Act, 2019, and its role in providing an accessible legal remedy for patients. The article examines common legal hurdles, such as proving medical negligence and obtaining expert testimony, and highlights how consumer forums have evolved in handling complex medical cases.

Sharma, Anil. (2016),⁸ This article provides a detailed analysis of the Bolam Test, which is used to assess medical negligence in India. The author examines the historical evolution of the test, its judicial application in Indian courts, and its limitations in modern medical practice. The article argues for a revised approach that balances professional discretion with patient rights and suggests alternative models for evaluating medical negligence claims.

⁵ Gupta, R., and Ramesh, P. Legal Perspectives on Medical Negligence: Issues and Challenges (2019). Indian Journal of Legal Studies, 13(4), 101-115.

⁶ Raghavan, V. Vicarious Liability in Medical Malpractice: A Critical Analysis (2020). Indian Law Review, 24(3), 89-102.

⁷ Joshi, R. Medical Malpractice and the Role of Consumer Courts (2018) Journal of Consumer Protection Law, 17(2), 78-92.

⁸ Sharma, Anil. Understanding the Bolam Test and Its Application in Indian Medical Malpractice Cases (2016). Medical Law Journal, 14(1), 25-39.

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II. CONCEPT OF MEDICAL MALPRACTICE:

II.I DEFINITION AND NATURE OF MEDICAL MALPRACTICE:

Medical malpractice refers to the professional negligence or misconduct of a healthcare provider that results in harm or injury to a patient. It occurs when a healthcare professional, such as a doctor, nurse, or hospital, fails to provide the standard of care expected in their field, resulting in damage to the patient. Medical malpractice does not necessarily require the healthcare provider to have intended harm; instead, it focuses on whether their actions or lack of action fell below the expected standard of care, leading to patient injury.⁹ In India, the definition and nature of medical malpractice are primarily guided by provisions under the *Bharatiya Nyaya Sanhita (BNS), 2023, and the Consumer Protection Act, 1986. Section 104 of the BNS* addresses causing death by negligence, while *Section 123* deals with causing grievous hurt by a negligent act. These sections lay the groundwork for addressing medical malpractice that results in patient harm or death, providing a legal framework for criminal liability. In addition, the Consumer Protection Act allows patients to file complaints in consumer courts if they have been subjected to substandard medical treatment.¹⁰

II.II TYPES OF MEDICAL MALPRACTICE:

Medical malpractice encompasses various types of negligent actions or omissions that lead to harm or injury to a patient. ***These types can include, but are not limited to:***

- 1. Diagnostic Errors:*** This involves failure to diagnose a medical condition correctly, misdiagnosis, or delayed diagnosis, which can result in improper or delayed treatment and, in some cases, irreversible harm to the patient.

⁹ Yvette Brazier, "What is medical malpractice?" Medical News Today, 2017 available at: <https://www.medicalnewstoday.com/articles/248175> (last visited March 19, 2025).

¹⁰ Adv. Darpan Magon, "Medical negligence under BNS (Bharatiya Nyaya Sanhita)" JudiX, 2024 available at: <https://www.myjudix.com/post/medical-negligence-under-bns-bharatiya-nyaya-sanhita> (last visited March 19, 2025).

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2. ***Surgical Errors:*** *These errors occur during surgery, such as operating on the wrong site, leaving foreign objects inside the body, or performing unnecessary procedures. Surgical malpractice can lead to infections, permanent damage, or even death.*
3. ***Medication Errors:*** *Incorrect prescriptions, dosages, or administration of medication fall under this category. Medication errors can result from a healthcare professional's oversight or miscommunication, leading to adverse reactions, overdose, or underdose.*
4. ***Anesthesia Errors:*** *Mistakes related to anesthesia administration, such as incorrect dosages or failure to monitor a patient's response to anesthesia, can lead to severe complications or death.¹¹*
5. ***Birth Injuries:*** *Negligence during labor and delivery, such as failure to identify fetal distress, improper use of delivery tools, or failure to perform a timely cesarean section, can lead to permanent disabilities or death of the newborn or mother.*

The nature of medical malpractice may vary in severity, and the harm caused can be physical, emotional, financial, or psychological. The gravity of the malpractice determines the legal action taken, whether civil or criminal.

II.III STANDARDS OF CARE IN MEDICAL PRACTICE:

The standard of care in medical practice refers to the level of care and skill that a healthcare provider is expected to meet when treating a patient. It is determined by the practices and procedures that are widely accepted as appropriate by the medical community. The standard of care is shaped by various factors, including the training, expertise, and experience of the healthcare provider, as well as the specific circumstances of each case.¹² In India, *the Indian Medical Council Act, 1956, and the Code of Medical Ethics published by the Medical Council of India (MCI)*, outline the professional responsibilities and standards of care expected from medical professionals. These guidelines provide clear expectations regarding

¹¹ Ayman Aly Rayan, Sherif Essam Hemdan and Ayman Mohamed Shetaia, "Root Cause Analysis of Blunders in Anesthesia - PMC," 13 Anesthesia, Essays and Researches.

¹² Trisha Torrey, "Understanding Standard of Care for Patients" Verywell Health, 27 July 2008.

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patient treatment, confidentiality, informed consent, and ethical practice. *Additionally, the Consumer Protection Act, 1986*, recognizes the quality of medical services provided by practitioners and healthcare establishments as a matter of consumer rights. The Act defines a medical professional's failure to meet the required standard of care as a deficiency in service, providing patients with a means to seek compensation through consumer forums. The standard of care is also informed by expert testimony in medical negligence cases, where expert opinions on what constitutes proper treatment are used to assess whether the healthcare provider met the required standard.

II.IV THE ROLE OF MEDICAL NEGLIGENCE IN MEDICAL MALPRACTICE:

Medical negligence is a central concept in understanding medical malpractice. It refers to a healthcare provider's failure to exercise the level of care, skill, and diligence that a competent medical professional would have used in similar circumstances. Medical negligence can involve errors in diagnosis, treatment, aftercare, or failure to act, and it constitutes the foundation for claims of medical malpractice.¹³ *Under Section 104 of the BNS*, medical negligence that results in death may lead to criminal liability, while *Section 123* deals with causing grievous hurt by negligence. These provisions reflect the legal recognition of medical negligence as a serious matter. Additionally, medical negligence under the Consumer Protection Act allows patients to seek compensation for substandard medical services in consumer courts.¹⁴ The role of medical negligence is essential in determining whether a healthcare provider's actions amount to malpractice. A patient must establish that the provider's actions fell below the established standard of care, resulting in harm. Negligence is complex and often requires expert medical testimony to establish the standard of care and how

¹³ Tarek Moukalled and Ali Elhaj, "Patient negligence in healthcare systems: Accountability model formulation," 2 Health Policy OPEN 100037 (2021).

¹⁴ "BNS Section 106 - Causing death by negligence.," A Lawyers Reference *available at*: <https://devgan.in/bns/section/106/> (last visited March 19, 2025).

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it was breached. The judiciary plays a significant role in shaping the interpretation of negligence, with courts looking at the conduct of the medical professional in relation to the prevailing medical standards.

Type of Medical Description	
Malpractice	
Diagnostic Errors	Failure to accurately diagnose a medical condition, resulting in improper treatment or delayed care.
Surgical Errors	Mistakes during surgery, such as operating on the wrong site or leaving foreign objects inside the body.
Medication Errors	Incorrect prescriptions, dosages, or administration of medication leading to harm.
Anesthesia Errors	Mistakes related to anesthesia, including incorrect dosages or improper monitoring of the patient.
Birth Injuries	Negligence during childbirth leading to harm to the mother or child, such as failure to timely perform a cesarean.

III. VICARIOUS LIABILITY IN MEDICAL MALPRACTICE:

III.I DEFINITION AND CONCEPT OF VICARIOUS LIABILITY:

Vicarious liability is a legal principle under which an employer or superior is held responsible for the wrongful acts of their employees or subordinates committed within the scope of their employment. In the context of medical malpractice, vicarious liability arises when a hospital, clinic, or healthcare institution is held accountable for the negligent actions of its doctors, nurses, or other medical staff. The fundamental basis of vicarious liability is that an employer benefits from the work of its employees and, therefore, should also bear responsibility for any

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harm caused due to their negligence.¹⁵ Under Indian law, vicarious liability is derived from common law principles and statutory provisions. *The Indian Contract Act, 1872*, recognizes the concept of an employer-employee relationship, establishing that acts performed by an agent (*employee*) on behalf of a principal (*employer*) are binding on the employer. Furthermore, the Doctrine of Respondeat Superior, meaning "*let the master answer*," underpins vicarious liability in medical malpractice cases, ensuring that hospitals and healthcare institutions are accountable for their staff's negligent actions. *Additionally, under the Consumer Protection Act, 2019*, hospitals and medical establishments are considered service providers. If their employees provide deficient services that cause harm to patients, the institution can be held vicariously liable. Similarly, under *Section 104 of the Bharatiya Nyaya Sanhita (BNS), 2023*, which deals with causing death by negligence, and *Section 123*, which pertains to causing grievous hurt by a negligent act, an employer can be held accountable if a medical practitioner employed by them is found guilty of negligence. *The Indian Medical Council Act, 1956*, also outlines ethical and professional responsibilities for medical practitioners, reinforcing the duty of hospitals to ensure their staff adheres to standard medical practices.¹⁶

III.II APPLICATION OF VICARIOUS LIABILITY IN MEDICAL

CASES:

The application of vicarious liability in medical malpractice cases depends on various legal provisions and principles that govern employer responsibility. Hospitals and healthcare institutions can be held liable in different scenarios where negligence by their employees leads to patient harm. One of the most common applications of vicarious liability is in cases where a doctor or nurse, while performing their duties, commits a negligent act that causes harm to a

¹⁵ monika, "Vicarious Liability in case of Master-Servant Relationship in Tort Law" iPleaders, 2019 available at: <https://blog.iplayers.in/vicarious-liability-case-master-servant-relationship-tort-law/> (last visited March 19, 2025).

¹⁶ Priyanka Batra and Nishtha Das, "Deficiency of Services under Consumer Protection Act, 2019" SS Rana & Co, 20 August 2020.

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patient. For example, if a hospital-employed surgeon performs an operation negligently, resulting in complications, the hospital may be held vicariously liable for the surgeon's mistake. This is because the hospital benefits from the surgeon's services and is expected to ensure that its staff meet medical standards. Another significant application of vicarious liability is in emergency care situations. When a patient is admitted to a hospital and receives treatment from its medical staff, they are entitled to assume that the hospital is responsible for the actions of its employees. Under the Consumer Protection Act, 2019, if a hospital fails to provide adequate emergency care due to the negligence of its staff, it can be held vicariously liable for the damage suffered by the patient. *The Bhartiya Nyaya Sanhita (BNS), 2023*, also provides a basis for the application of vicarious liability in medical malpractice cases. If a hospital-employed doctor commits an act of gross negligence resulting in a patient's death, the hospital may be held accountable under Section 104, which deals with causing death by negligence. Similarly, if negligence causes serious injuries, Section 123 of the *BNS* may apply, holding the institution liable for the consequences of its employees' actions. Hospitals may also be vicariously liable for errors committed by paramedical staff, such as nurses, laboratory technicians, or anesthetists. If a nurse administers the wrong dosage of medication or a technician misinterprets a diagnostic test, leading to incorrect treatment, the hospital can be held liable for failing to provide competent care. The Indian Medical Council Act, 1956, mandates that hospitals ensure proper medical supervision and training of their staff, reinforcing their responsibility in such cases.¹⁷ Additionally, private hospitals and corporate healthcare chains, which operate on a commercial basis, are often subject to higher scrutiny regarding vicarious liability. Since they profit from the services of their employees, they are expected to ensure that all medical practitioners under their employment adhere to strict standards of care. *The Consumer Protection Act, 2019*, recognizes the rights of patients as

¹⁷ Rebecca Furtado, "Medical Negligence: Liability of Hospitals" iPleaders, 2016 available at: <https://blog.ipleaders.in/medical-negligence-liability-hospitals/> (last visited March 19, 2025).

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consumers and allows them to claim compensation from hospitals for negligent treatment provided by their employees.

Conditions for Vicarious Liability	Explanation
Employer-Employee Relationship	The medical professional must be directly employed by the hospital or institution.
Negligence Occurred Within Employment Scope	The negligent act must have been committed while performing official medical duties.
Breach of Duty Leading to Harm	The healthcare provider must have failed in their duty of care, causing injury or damage.
Non-Delegable Duty of Care	Hospitals are responsible for ensuring their employees provide competent medical services.

IV. STATUTORY FRAMEWORK GOVERNING MEDICAL MALPRACTICE IN INDIA:

The statutory framework governing medical malpractice in India is complex, involving multiple laws, regulations, and guidelines designed to ensure the safety and well-being of patients while holding healthcare providers accountable for their actions. Medical malpractice is generally defined as professional negligence, a breach of the standard of care that results in harm to a patient. Various statutory instruments, including the *Bharatiya Nyaya Sanhita (BNS)*, the Consumer Protection Act, 2019, the Indian Medical Council Act, 1956, and specific medical ethics and guidelines provided by governing bodies, form the backbone of legal provisions relating to medical malpractice in India.¹⁸

¹⁸ Scientific Scholar (DN), "Legal mechanisms and procedures in alleged medical negligence: A review of Indian laws and judgments," 37 *The National Medical Journal of India* 39–45 (2024).

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IV.I BHARATIYA NYAYA SANHITA, 2023:

The *Bharatiya Nyaya Sanhita, 2023 (BNS)*, provides the fundamental legal structure for addressing medical malpractice that results in harm to patients. Several sections of the *BNS* deal with offenses of negligence in medical practice.

- **Section 104:** This section deals with causing death by negligence. It holds a person criminally liable if they cause the death of another by their negligent act, without any intention to cause harm. In the context of medical malpractice, if a medical professional's actions result in the death of a patient due to negligence, this section can be invoked to prosecute the healthcare provider. The section does not require an intention to harm, merely that the act was negligent.
- **Section 123:** This section deals with causing grievous hurt by a negligent act. If a medical professional's actions result in serious injury or harm to a patient, Section 123 of the *BNS* can be applied. This provision is relevant in cases where medical errors, such as surgical mistakes or misdiagnosis, result in injuries that cause serious harm to the patient, like disfigurement, permanent disability, or severe pain.
- **Section 2(10):** This section provides a legal defense to a medical practitioner who performs an act that would otherwise be considered a crime if done with the patient's consent. In medical malpractice cases, if a doctor performs a procedure with the patient's informed consent and within the acceptable standards of care, this section may be relevant.¹⁹

The *BNS* establishes a basis for both civil and criminal proceedings against medical professionals found guilty of negligent acts that cause harm or death to a patient. These sections also ensure that criminal prosecution is a recourse available to patients or their families in cases of serious medical negligence.

¹⁹ "Medical Negligence – The Judicial Approach by Indian Courts – The Association of Surgeons of India," available at: <https://asiindia.org/medical-negligence-the-judicial-approach-by-indian-courts/> (last visited March 19, 2025).

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IV.II CONSUMER PROTECTION ACT, 2019:

The Consumer Protection Act, 2019 is another vital piece of legislation that plays a significant role in governing medical malpractice in India. Under this Act, healthcare services are treated as "services" under consumer law, and patients are considered "*consumers*."

- **Section 2(1)(o)** defines "services" to include medical treatment and healthcare services. The act ensures that if a patient suffers due to substandard services, whether in private or public healthcare institutions, they are entitled to compensation under the provisions of this law.
- **Section 12** of the Consumer Protection Act establishes the rights of patients as consumers, including the right to be treated with dignity and the right to seek redress if services are deficient. This section provides patients with the ability to file complaints in consumer courts for malpractice and negligence.
- **Section 14** addresses the powers of consumer forums to provide relief and compensation in cases of medical negligence. In such cases, the forums may direct the hospital or healthcare provider to pay compensation, remove deficiencies in their services, or even reprimand the healthcare provider involved.

The Consumer Protection Act has been a game-changer for medical malpractice cases as it allows patients to file complaints in consumer forums for substandard medical services. This law provides an accessible and effective mechanism for patients to seek justice outside the traditional legal process, offering a faster resolution in many cases.

IV.III INDIAN MEDICAL COUNCIL ACT, 1956:

The Indian Medical Council Act, 1956 (IMC Act), regulates medical practice in India and is crucial in the context of medical malpractice. The Act governs the registration of medical

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practitioners and the establishment of the *Medical Council of India (MCI)*, which is tasked with setting medical standards and ethical guidelines for doctors.²⁰

- **Section 15:** This section mandates that no person can practice medicine unless they are registered with the Medical Council of India or any of the State Medical Councils. It ensures that only qualified and professionally trained individuals are permitted to offer medical services, thereby minimizing the likelihood of medical negligence due to unqualified practitioners.
- **Code of Medical Ethics:** The IMC Act also provides for the establishment of ethical guidelines that govern medical practice. These guidelines outline the duties and responsibilities of doctors, including informed consent, confidentiality, and providing adequate care. Any breach of these ethical obligations by a medical practitioner can lead to disciplinary action by the Medical Council, including suspension or removal from the register.
- **Section 16:** This section provides provisions for the disqualification of medical practitioners for unethical or unprofessional conduct. If a doctor is found guilty of gross negligence or malpractice, they may be disqualified from practicing medicine, either temporarily or permanently, based on the severity of their actions.

IV.IV MEDICAL NEGLIGENCE AND ETHICS UNDER THE INDIAN MEDICAL COUNCIL ACT:

The Indian Medical Council (IMC) sets forth ethical guidelines for medical professionals through its Code of Medical Ethics and the Indian Medical Association (IMA) guidelines.

²⁰ Amit Agrawal, "Medical negligence: Indian legal perspective - PMC," 19 Annals of Indian Academy of Neurology.

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These guidelines define what constitutes acceptable practice and what actions could lead to disciplinary measures.

- ***Informed Consent:*** The IMC's guidelines emphasize the importance of informed consent, which requires doctors to explain the risks, benefits, and alternatives of any treatment or procedure before proceeding. Failure to obtain informed consent can result in allegations of negligence or malpractice.²¹
- ***Confidentiality:*** Medical professionals are required to maintain patient confidentiality under the guidelines of the IMC Act. Breaching confidentiality without patient consent, except in certain legal circumstances, can lead to disciplinary actions and malpractice claims.
- ***Professionalism and Competence:*** The IMC Act mandates that medical practitioners maintain a high level of competence by engaging in continuous medical education. Medical negligence claims can arise if it is found that a doctor's lack of updated knowledge or skill leads to a substandard standard of care.

IV.V DRUGS AND COSMETICS ACT, 1940:

The ***Drugs and Cosmetics Act, 1940***, governs the manufacturing, distribution, and use of medical drugs and devices. In the context of medical malpractice, this Act plays an essential role when negligence involves the prescription or administration of incorrect medications, faulty medical devices, or improper use of medicines.

- ***Section 27:*** Deals with the sale, supply, or use of counterfeit drugs. In the context of medical malpractice, a medical professional's negligence in prescribing counterfeit or unapproved drugs can lead to harm, and they can be prosecuted under this section.

²¹ "Informed Consent," AMA-Code available at: <https://code-medical-ethics.ama-assn.org/ethics-opinions/informed-consent> (last visited March 19, 2025).

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- **Section 33:** Regulates the manufacturing and distribution of drugs and ensures that only drugs approved by authorities are used in medical practice. A healthcare provider who uses unapproved drugs or equipment could be held liable for medical negligence.

IV.VI MEDICAL LIABILITY AND INSURANCE ACT:

While there is no comprehensive statute on medical malpractice insurance in India, the rise in medical negligence claims has led to the introduction of medical liability insurance policies for healthcare providers. These policies cover healthcare professionals and institutions against claims of medical malpractice.²² Though not yet mandatory, several private healthcare providers are increasingly opting for liability insurance to cover the financial risks associated with medical negligence lawsuits. This sector is slowly evolving, and there is potential for legislation to govern medical liability insurance comprehensively.

Key Statutory Instruments Governing Medical Malpractice in India:

Statute	Relevant Sections	Key Provisions
<i>Bharatiya Nyaya Sanhita, 2023</i>	Sections 104, 123, 2(10)	Criminal liability for negligence resulting in harm or death, with provisions for consent and defenses.
Consumer Protection Act, 2019	Section 2(1)(o), Section 12, Section 14	Patients as consumers, right to redress, and compensation for deficient services in healthcare.
Indian Medical Council Act, 1956	Section 15, Section 16, Code of Medical Ethics	Regulation of medical practitioners, registration requirements, and ethical standards for medical practice.

²² Kirthika Ravi, Gerard Pradeep Devnath and Ranjit Immanuel James, "Medical Negligence In India: Urgent Call For Comprehensive Data, Tort Reforms, And Cultural Transformation..." Medknow Publications, 2024 available at:

https://www.researchgate.net/publication/379869928_Medical_Negligence_In_India_Urgent_Call_For_Comprehensive_Data_Tort_Reforms_And_Cultural_Transformation_To_Revitalize_Healthcare_System (last visited March 19, 2025).

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Drugs and Cosmetics Act, 1940	Section 27, Section 33 Regulations for drugs and medical devices used in practice, with penalties for negligence in their use.
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V. CHALLENGES IN MEDICAL MALPRACTICE LITIGATION:

Medical malpractice litigation in India presents numerous challenges for both patients and healthcare providers. Despite the existence of legal provisions under the *Bharatiya Nyaya Sanhita (BNS), 2023*, the *Consumer Protection Act, 2019*, the *Indian Medical Council Act, 1956*, and other relevant statutes, the process of proving medical negligence and securing justice is often complex. Several legal, procedural, and systemic barriers make medical malpractice litigation a difficult and time-consuming process.²³ One of the primary challenges is the burden of proof on the patient. *Under the Consumer Protection Act, 2019, a patient (consumer)* must establish that the medical practitioner owed a duty of care, breached that duty, and that the breach directly resulted in harm. This can be difficult because medical procedures inherently involve risks, and adverse outcomes are not always a result of negligence. The courts often rely on the Bolam Test, which states that a doctor is not negligent if they follow a practice accepted by a responsible body of medical professionals. This creates a significant hurdle for patients who need strong medical evidence to prove malpractice. Another major challenge is prolonged litigation and delays in the legal process. Medical malpractice cases often take years to resolve due to the backlog of cases in Indian courts. The Consumer Protection Act, 2019, which provides for consumer dispute redressal, has set time limits for resolving disputes, but in practice, medical negligence cases still experience delays. Additionally, cases filed under *Section 104 of the BNS (causing death by negligence)* or *Section 123 (causing grievous hurt by a negligent act)* require extensive evidence, expert

²³ LawBhoomi, "Medical Negligence Under Bharatiya Nyaya Sanhita" LawBhoomi, 2025 available at: <https://lawbhoomi.com/medical-negligence-under-bharatiya-nyaya-sanhita/> (last visited March 19, 2025).

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opinions, and cross-examination, further prolonging the process. The lack of medical expertise in the judiciary is another obstacle in medical malpractice litigation. Judges are not medical experts and often rely on reports from expert medical witnesses. However, the availability of impartial and credible expert witnesses is a significant issue. In many cases, doctors are reluctant to testify against their colleagues, making it difficult for patients to establish negligence. The Indian Medical Council Act, 1956, through the Medical Council of India (now replaced by the National Medical Commission), sets professional standards, but disciplinary proceedings within the medical fraternity are often slow and lack transparency.²⁴

Another concern is the high cost of litigation, which can deter patients from pursuing legal action. Filing a medical negligence case, obtaining expert opinions, and engaging legal counsel require significant financial resources. Many patients, particularly those from economically weaker backgrounds, find it difficult to afford litigation expenses. *The Consumer Protection Act 2019*, while providing a cost-effective forum for consumer disputes, does not eliminate financial burdens, especially for cases requiring substantial medical evidence and expert consultations.

VI. COMPARATIVE ANALYSIS OF MEDICAL MALPRACTICE

LAWS:

The laws governing medical malpractice vary significantly across jurisdictions, each country adopting its own approach based on its legal, social, and healthcare systems. In this section, we will compare the medical malpractice laws of India with those of the United States and the United Kingdom, focusing on key aspects such as legal frameworks, burden of proof, statutory provisions, damages, and procedural issues. Understanding these differences is critical for

²⁴ Joseph Pergolizzi and Jo Ann K LeQuang, "Black Robes and White Coats: Daubert Standard and Medical and Legal Considerations for Medical Expert Witnesses - PMC," 16 *Cureus*.

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evaluating the strengths and weaknesses of India's legal framework in relation to medical malpractice.

VI.I LEGAL FRAMEWORK AND DEFINITIONS:

In India, medical malpractice is governed by a combination of civil, criminal, and consumer protection laws. *The Bharatiya Nyaya Sanhita (BNS) provides for criminal liability in cases of medical negligence, especially under Section 104 (causing death by negligence) and Section 123 (causing grievous hurt by a negligent act).* The Consumer Protection Act, 2019 defines patients as consumers and allows them to file complaints in consumer forums for negligent medical services. Moreover, the Indian Medical Council Act, 1956, sets professional standards and ethical guidelines for medical practitioners. In contrast, the United States operates under a more complex, state-by-state framework. Each state has its own laws concerning medical malpractice, but there is a general federal framework under the Health Care Quality Improvement Act (HCQIA), which establishes peer review mechanisms for healthcare providers. In the U.S., medical malpractice is typically governed by civil law principles, and tort law plays a significant role in resolving disputes. While the definition of medical malpractice varies slightly between states, it generally involves a claim that a healthcare provider failed to meet the standard of care required in a particular situation, resulting in harm to the patient.²⁵ *In the United Kingdom, the NHS (National Health Service), provides a public healthcare framework in which medical malpractice cases are typically handled under civil law. Claims of medical negligence are generally governed by the Law Reform (Contributory Negligence) Act 1945 and the Consumer Protection Act 1987. The UK also operates under the National Health Service Litigation Authority (NHSLA), which is responsible for handling claims against NHS healthcare providers. Like the U.S., the UK uses civil law principles but incorporates a more centralized approach through the NHS system.*

²⁵ M.D. Frakes, "The Surprising Relevance of Medical Malpractice Law" JSTOR, 2015 available at: https://www.researchgate.net/publication/282233967_The_Surprising_Relevance_of_Medical_Malpractice_Law (last visited March 19, 2025).

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VI.II BURDEN OF PROOF AND STANDARD OF CARE:

In India, the burden of proof lies with the patient, who must establish that the healthcare provider was negligent. This is often difficult because the courts apply the Bolam Test, which states that a doctor will not be held negligent if they follow a practice accepted by a responsible body of medical professionals. As per the Indian Medical Council Act, 1956, medical practitioners are expected to adhere to established medical standards, and deviations from these standards can be grounds for a malpractice claim. However, proving negligence can be challenging, as the standard of care is not always clear-cut, and patients often lack access to the necessary expert medical testimony. In the U.S., the burden of proof is also on the patient, and proving negligence requires expert testimony to demonstrate that the medical professional deviated from the standard of care. The standard of care is typically defined as the level of care, skill, and treatment that is commonly accepted and exercised by healthcare professionals in the same field within the same geographic area. The U.S. system places significant emphasis on expert witnesses, and the legal standard for determining whether a breach of duty occurred can vary slightly depending on the state. Additionally, U.S. malpractice laws allow for comparative negligence, where the responsibility for the injury may be shared between the patient and the healthcare provider. In the UK, the burden of proof is also on the claimant (patient). The legal test is whether the healthcare provider's actions fell below the standard of care expected from a reasonably competent practitioner in the same field. The Bolam Test is also applied, like India, meaning that a medical professional is not necessarily negligent if their conduct follows a practice accepted as proper by a responsible body of medical opinion. However, in the UK, patients are also more likely to succeed in claims against NHS providers due to the existence of a centralized process for dealing with claims through the NHSLA.²⁶

²⁶ Ali Yagan, "Understanding medical negligence in the UK: a brief overview" Eye News, 2024 available at: <https://www.eyenews.uk.com/education/top-tips/post/understanding-medical-negligence-in-the-uk-a-brief-overview> (last visited March 19, 2025).

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VI.III DAMAGES AND COMPENSATION:

In India, compensation for medical malpractice is awarded by consumer courts under the *Consumer Protection Act, 2019*. The amount of compensation is usually determined by the severity of the injury, medical expenses, loss of income, and pain and suffering. However, compensation in India is often considered relatively modest compared to countries like the U.S. or the UK. The *Bharatiya Nyaya Sanhita*, while addressing criminal liability, does not provide specific provisions for compensation, making the Consumer Protection Act the primary recourse for financial restitution. In the United States, the number of damages awarded in medical malpractice cases can be substantial. Compensatory damages cover economic losses such as medical expenses and lost wages, as well as non-economic losses like pain and suffering. Punitive damages may also be awarded if the defendant's conduct was particularly egregious, though some states have capped these damages to avoid excessive awards. The U.S. legal system also permits the use of tort reform in certain states, which can place caps on the amount of compensation awarded, especially for non-economic damages. This system allows for potentially very high compensation, though the process of obtaining damage can be expensive and protracted.²⁷ In the UK, damages for medical malpractice are typically awarded for both special damages (*such as medical expenses*) and general damages (*for pain and suffering, loss of amenity, and long-term care*). The NHSLA handles claims against public healthcare providers, and the compensation is typically aimed at covering the cost of medical treatment, rehabilitation, and lost earnings. The amount of compensation is generally more modest than in the U.S., but the UK legal framework prioritizes settlement over prolonged litigation, which can lead to quicker resolutions of claims.

VI.IV PROCEDURAL ISSUES AND COURT SYSTEMS:

²⁷ Yvette Brazier, "What is medical malpractice?" Medical News Today, 2017 available at: <https://www.medicalnewstoday.com/articles/248175> (last visited March 19, 2025).

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In India, medical malpractice cases are typically filed in consumer courts, with the *National Consumer Disputes Redressal Commission (NCDRC)* serving as the apex body for appeals. However, due to delays in the judicial process and the complexity of medical negligence cases, the resolution of disputes can take years. Moreover, patients often face difficulties in accessing expert witnesses and may be deterred by the high cost of legal proceedings. The U.S. system of medical malpractice litigation is characterized by jury trials in most states, where a jury decides the outcome of a case. This process is expensive and time-consuming, with the risk of appeals adding further delays. While alternative dispute resolution methods like arbitration and mediation are available, the adversarial nature of the U.S. legal system often results in lengthy legal battles. In the UK, medical malpractice claims are usually heard by civil courts, with the possibility of settlement before trial. The NHSLA plays a central role in settling claims against public healthcare providers, and litigation costs are generally covered by the NHS. The UK legal system is designed to facilitate quicker resolutions, and the process of filing a claim is streamlined through the NHS framework. The cost of litigation is relatively lower compared to the U.S., and legal aid is available for patients in need.

VII. CASE LAWS:

Indian Medical Association vs. V.P. Shantha & Ors.²⁸ This landmark case clarified that medical services fall under the purview of the *Consumer Protection Act, 1986 (now replaced by the Consumer Protection Act, 2019)*. The Supreme Court held that patients are "consumers" under the Act and can seek compensation for medical negligence in consumer forums. It established those medical professionals and hospitals, whether government or private, are liable for deficient services unless they provide free treatment to all patients without exception.

²⁸ Indian Medical Association v. V.P. Shantha & Ors., (1995) 6 SCC 651

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Jacob Mathew vs. State of Punjab & Anr.²⁹ The Supreme Court laid down guidelines for determining criminal liability under Section 104 of the BNS (causing death by negligence). It ruled that medical professionals should not be held criminally liable for mere errors in judgment unless there is gross negligence. The Court emphasized that a doctor should not be punished simply because better treatment could have been given, and negligence must be proved beyond a reasonable doubt for criminal liability.

Kusum Sharma & Ors. vs. Batra Hospital & Medical Research Centre & Ors.³⁰ The Court reiterated the Bolam Test, stating that medical negligence is established only when a doctor fails to follow a practice accepted as proper by a responsible body of medical professionals. It emphasized that courts must exercise caution in awarding damages and that negligence is not inferred merely because treatment was unsuccessful.

Dr. Laxman Balkrishna Joshi vs. Dr. Trimbak Babu Godbole & Anr.³¹ This case laid down the three essential duties of a medical professional: (i) *duty to decide whether to undertake the case*, (ii) *duty to decide the proper treatment*, and (iii) *duty to administer treatment with due care*. The Supreme Court ruled that failure in any of these duties leading to patient harm constitutes negligence.

Spring Meadows Hospital & Anr. vs. Harjol Ahluwalia & Anr.³² This case established the concept of vicarious liability in medical negligence cases. The Supreme Court held that hospitals are vicariously liable for the negligence of their employees, including doctors and nurses. The ruling emphasized that hospitals must ensure that medical staff provide competent care, and if negligence occurs, the institution itself can be held accountable.

VIII. CONCLUSION:

²⁹ Jacob Mathew v. State of Punjab & Anr., (2005) 6 SCC 1

³⁰ Kusum Sharma & Ors. v. Batra Hospital & Medical Research Centre & Ors., (2010) 3 SCC 480

³¹ Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Babu Godbole & Anr., AIR 1969 SC 128

³² Spring Meadows Hospital & Anr. v. Harjol Ahluwalia & Anr., (1998) 4 SCC 39

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Medical malpractice and vicarious liability are crucial aspects of healthcare law, ensuring accountability in medical practice while balancing the rights of doctors and patients. In India, the legal framework governing medical negligence is spread across civil, criminal, and consumer laws, including the *Bharatiya Nyaya Sanhita (BNS), 2023, the Consumer Protection Act, 2019, and the Indian Medical Council Act, 1956*. These laws provide mechanisms for patients seeking redress while also safeguarding medical professionals from frivolous litigation. A key challenge in medical malpractice litigation is the burden of proof, which rests on the patient. The courts rely on the Bolam Test, which holds that a doctor is not negligent if they follow a practice accepted by a responsible body of medical professionals. While this ensures that medical decisions are judged by professional standards, it also makes it difficult for patients to establish negligence, especially in cases requiring complex medical evidence. Additionally, the Consumer Protection Act, 2019 has provided an accessible forum for patients to seek compensation, but delays in litigation and high costs remain significant hurdles. Vicarious liability plays an important role in holding hospitals accountable for the actions of their employees. The principle ensures that institutions providing medical care maintain strict oversight over their staff. However, ambiguities in contractual relationships between hospitals and independent consultants often create legal complexities regarding responsibility in negligence cases. A comparative analysis of medical malpractice laws in the U.S. and the U.K. reveals that India's system is still evolving. While the U.S. offers large compensatory awards and the U.K. provides a structured settlement mechanism, India faces challenges in ensuring swift justice and adequate compensation. Strengthening expert witness mechanisms, promoting alternative dispute resolution, and improving patient awareness can enhance India's medical malpractice jurisprudence, ensuring a more efficient and equitable system.

IX. SUGGESTIONS:

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To improve the legal framework governing medical malpractice and vicarious liability in India, several key reforms are necessary. These suggestions aim to balance patient rights with the protection of medical professionals while ensuring a fair, efficient, and transparent legal process.

- 1. There is a need to streamline medical malpractice litigation by reducing delays in court proceedings. Special fast-track courts or dedicated tribunals for medical negligence cases could help expedite the resolution process. Additionally, strengthening alternative dispute resolution (ADR) mechanisms such as mediation and arbitration would provide a quicker and cost-effective remedy for patients.*
- 2. Clarity in medical standards and liability are essential. While the Bolam Test is widely applied in Indian courts, there should be specific statutory guidelines defining negligence in various medical procedures. The National Medical Commission (NMC) can play a crucial role in standardizing medical protocols and ensuring accountability.*
- 3. The burden of proof on patients should be reconsidered. Since medical negligence cases require technical expertise, an independent Medical Review Board can be established to assess claims before litigation. This would prevent frivolous lawsuits while ensuring genuine cases receive due attention.*
- 4. Hospitals must be held more accountable under vicarious liability principles. Clear guidelines should be set to determine liability in cases where independent consultants are involved. Patients should not suffer due to contractual loopholes between hospitals and doctors.*

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