

# Upcoming Medicolegal Challenges for a Practicing Surgeon in India

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## ABSTRACT

Surgical practice is one of the main pillars of the medical profession. Surgery in India has been flourishing since ancient times, be it the examples of trephination found on skeletal remains at sites of Indus Valley civilization (2nd millennium BCE) to the surgical excellence of Maharshi Sushruta (Sushruta Samhita) in the 1st millennium AD to India becoming a hub for surgical (medical) tourism in the 21st century.

However, today in India, there is also a growing anxiety about the rise of medicolegal issues in surgical practice both among doctors as well as society in general, creating a trust deficit in the doctor–patient relationship. Hence, it is of paramount importance that clinicians not only are skilled in their profession but must also be acquainted with the latest medicolegal aspects to have an uneventful practice. The aim of this article is to analyze the evolution of medicolegal foundations in India, predict the likely course of medicolegal issues in the future and democratize this information to clinicians as widely as possible to ensure a healthy doctor–patient relationship in the Indian context.

**Keywords:** Bolam test, Doctor–patient relationship, Golden hour, Medicolegal, Medical negligence, Professional obligation, Telemedicine.

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## INTRODUCTION

The term “medicolegal” basically refers to the practice of medicine (surgery) within the confines of law. It may differ slightly from country to country depending upon the variations in different legal systems around the world. In India, it has its basis in the constitution (Fundamental Rights and Directive Principles of State Policies), various judgements of constitutional courts (Supreme Court of India and High Courts) and various laws enacted by the Parliament and different state legislatures.

## LEGAL FOUNDATIONS OF HEALTHCARE IN INDIA

- The Constitution of India in Article 21 provides for a person’s life and personal liberty as a fundamental right. Further, the Constitution in Article 47 places a duty on the state to improve the status of nutrition, public health and standard of living.<sup>1</sup>
- The Supreme Court of India has contributed greatly toward the evolution of healthcare laws in India, like in the Municipal Council Ratlam case (1980),<sup>2</sup> wherein the supreme court (SC) directed the state to provide public sanitation as the court judged it to be a duty of the state toward citizens. Then, in the Parmanand Katara Case (1989),<sup>3</sup> the apex court observed that the constitution under Article 21 places a duty on the state to preserve life, which is of paramount importance and that every doctor, whether public or private is under professional obligation to extend his/her services with due expertise for protecting lives. The Supreme Court said that there should be no legal impediment for the doctor to carry out his/her duty to preserve life in emergency situations. In the Consumer Education and Research Centre Case (1995),<sup>4</sup> the court considered the workers’ right to health to be an integral part of the right to life enshrined in Article 21 of the Indian Constitution.
- In the Indian Medical Association vs VP Shantha Case (1996),<sup>5</sup> the apex court brought the healthcare sector firmly under the ambit of the Consumer Protection Act, 1986.
- The Supreme Court then accepted the Bolam Test<sup>6</sup> as the benchmark to determine medical negligence and distinguish between civil and criminal negligence in the Dr Jacob Mathews vs State of Punjab Case (2005)<sup>7</sup> and reiterated the Bolam Test as the benchmark for India in the Samira Kohli vs Prabha Manchanda Case (2008).<sup>8</sup> As per the Bolam Test, the standard to be applied for judging whether the person charged has been negligent would be that of an ordinary competent person (reasonable clinician) exercising ordinary skill in that profession.
- Further, in the Savelife Foundation & Anr vs Union of India and Anr case<sup>9</sup> the apex court highlighted the duty of doctors to give emergency care to patients to preserve life and that not doing so may amount to professional misconduct. The court highlighted the duty of doctors to give emergency care to patients to preserve life and that not doing so may amount to professional misconduct. The court also gave the concepts of

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golden hour and good Samaritans in this case, which surgeons face routinely in their practice while attending trauma cases.

- Acts of Parliament like Indian Penal Code, 1860; Indian Contracts Act, 1872; Drugs and Magic Remedies Act, 1954; Medical Termination of Pregnancy Act, 1971; Clinical Establishment (Registration and Regulation) Act, 2013; The Mental Healthcare Act, 2017; The HIV and AIDS (Prevention and Control) Act, 2017; The National Medical Commission Act, 2019; The Consumer Protection Act, 2019; The Assisted Reproductive Technology (Regulation) Act, 2021; Surrogacy (Regulation) Act, 2022, etc. define medical practitioners and their respective duties in some form or another.
- Acts of various state legislatures like The Rajasthan Right to Health Care Act, 2022, etc.

### LACK OF AWARENESS AMONG DOCTORS

Although the medicolegal principles have evolved considerably over the years, it has been realized in the field of healthcare that the doctors, nursing staff, paramedical and other support staff lack detailed knowledge about medicolegal issues in day-to-day practice. As per some studies, the majority of doctors have elementary knowledge about the basics of medical ethics and medicolegal issues but lack knowledge about the finer details of the subject.<sup>10</sup>

Since 1996, following VP Shantha's judgment, the healthcare sector has been under the ambit of the Consumer Protection Act. Moreover, in today's world, the healthcare sector in India is becoming more and more commercialized. Yet, doctors lack detailed knowledge of The Consumer Protection Act 1986, further adding to the trust deficit among patients.<sup>11</sup>

### INSUFFICIENT FOCUS ON MEDICOLEGAL TRAINING IN THE MEDICAL CURRICULUM

It has been observed that the majority of Interns and Post Graduate trainees have very little knowledge about handling medicolegal cases independently. There is also an opinion within sections of medical undergraduate and postgraduate students that the present curriculum is not sufficient for dealing with medicolegal cases.<sup>12</sup> This points toward insufficient focus on medicolegal training of medical undergraduates and postgraduates in their respective curricula.

### INCREASING TRUST DEFICIT IN DOCTOR-PATIENT RELATIONSHIP

In recent years, there has been a significant rise in the number of medical negligence cases across India. There are various studies charting such cases across large parts of India that find certain specialties to be more prone to medicolegal cases like general surgery, gynecology and obstetrics, general medicine, and cardiology, as well as cases of composite negligence.<sup>13</sup> Moreover, it has also been noted by some experts that the majority of the cases appear in the private sector and that most of the negligence cases are not being proven in courts.<sup>14</sup> Thus, it is clear that the traditional dynamics of doctor-patient relationships have come under strain, and the trust deficit has increased in recent years.

### FUTURE TRENDS

There is a strong likelihood that the healthcare sector is going to become more and more commercialized in the coming years

because of the burgeoning population. This, coupled with increased patient awareness because of the easy availability of information, will lead to an increased medicolegal compliance burden for practicing surgeons in India.

There are new ventures toward digitization in the healthcare sector, like telemedicine, e-pharmacies, digitization of health records/data, etc., that would lead to apprehensions about data privacy and patient confidentiality, further adding to aforementioned trust deficit issues.

In recent years, there has also been a significant rise in the medical insurance sector, which is evident from the rise in total premium collections and increasing health insurance penetration in India.<sup>15</sup> As the Indian healthcare sector becomes more commercialized, the medical insurance sector will also grow correspondingly. As a result, the medicolegal obligations of doctors regarding insurance queries are only going to increase in the foreseeable future.

There is a possible move away from the Bolam test for determining medical negligence toward more stringent standards. In the *V Kishan Rao vs Nikhil Super Specialty Hospital and Another* case (2010),<sup>16</sup> the Supreme Court expressed concern about the Bolam test as a benchmark for medical negligence. The inherent danger in the Bolam test is that if the courts defer too readily to expert evidence, medical standards would obviously decline, and it would become a race to the bottom. However, despite making this observation, the SC declined to move away from the established Bolam Test prescribed by the larger bench in *Dr Jacob Mathews vs State of Punjab* Case (2005). This indicates that in the future, the minimum standards of care expected from a doctor may increase, and we may move away from the Bolam test toward the Montgomery Test and Canterbury Test.<sup>17,18</sup>

Thus, all these trends point toward the fact that medicolegal responsibilities and, consequently, the number of medical negligence cases are only going to increase in the coming years.

### WAY FORWARD

Medicolegal updates must be regularly included in CME conferences for practicing doctors to ensure maximum possible legal compliance on the part of clinicians so as to avoid unwarranted medicolegal litigations.

The MBBS curriculum must be redesigned so as to include basics of medicolegal topics for undergraduate students.

The postgraduate trainees must have separate training modules in this regard and must be sensitized with respect to their medicolegal responsibilities, especially in the surgical specialties mentioned above.

The nursing staff, paramedical staff and support staff must also be adequately sensitized and educated on these topics *via* various workshops and symposia.

In addition, there must be a charter of duties for all employees of hospitals outlining their respective duties clearly.

There must also be a charter of expected duties from patients to their attendants as far as possible.

This way, the trust deficit can be bridged, and the cordial nature of doctor-patient relationship restored so that future practicing surgeons in India may work with greater vigor and motivation than ever before.

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