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DUTY, DELEGATION AND DAMAGE: TORTIOUS LIABILITY OF MEDICAL PROFESSIONALS, VICARIOUS LIABILITY AND OTHER CIVIL WRONGS

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Abstract

Medicine asks patients for extraordinary trust: to be cut open, sedated, or prescribed powerful drugs by someone they have just met. The law of torts is how society holds that trust to account when it is broken. This article examines the civil liability of medical professionals in India, covering the law of negligence, the standard of care, and the doctrines of *res ipsa loquitur* and informed consent. It looks closely at **vicarious liability**, the question of when a hospital or the State must answer for the wrongs of its doctors, nurses and staff, and separates it from the hospital's *direct* liability for its own failures. It also covers civil wrongs beyond negligence: battery, breach of confidentiality, false imprisonment, misrepresentation and breach of statutory duty. The Indian framework (the common law of torts, the Consumer Protection Act, 2019, the National Medical Commission Act, 2019 and constitutional remedies under Articles 21, 32 and 226) is read together with the leading Supreme Court decisions. The article concludes that Indian law has a mature set of doctrines, but its practice suffers from an accountability gap that harms patients and doctors alike. It offers reforms aimed at both.

Keywords: Medical negligence; Tortious liability; Vicarious liability; Standard of care; Bolam test; Res ipsa loquitur; Informed consent; Consumer Protection Act 2019; Medical ethics; Hospital liability

1. Introduction

Consider two hospitals. In the first, a patient dies after a surgeon makes a genuine, defensible judgement call that simply fails. In the second, a patient dies because a nurse was never trained to monitor the drug she administered. Both families grieve, and both may go to court. Yet only one of these cases involves a legal wrong. The central task of this branch of law is to tell them apart, protecting the first doctor from unfair blame and the second patient from avoidable harm.

Medical ethics speaks of four classic principles: *autonomy* (the patient decides), *beneficence* (do good), *non-maleficence* (do no harm) and *justice* (fairness in care). Ethics tells the doctor what she *should* do, and the law of torts tells her what she must *pay* if she does not. Accountability lives in the space between the two.

Two features make this area especially rich:

1. **The asymmetry of knowledge.** The patient cannot easily judge whether the treatment was competent, so the law must decide who carries the burden of proof and how courts rely on expert evidence.
2. **The institutional nature of modern medicine.** Patients today are treated by teams within corporate hospitals, so liability rarely rests with one individual, and the doctrine of vicarious liability becomes central.

The article proceeds as follows. Part 2 sets out definitions and the legal framework. Part 3 explains the concept in detail through a running illustration. Part 4 collects landmark judgments. Part 5 analyses the gap between doctrine and practice. Part 6 offers suggestions, and Part 7 concludes.

2. Definitions and Legal Framework

2.1 Key definitions

Tort. A civil wrong, other than a mere breach of contract, for which the law provides a remedy in damages. Indian tort law is largely uncodified and rooted in common law principles.

Medical negligence. Breach of a duty of care owed by a medical professional to a patient, causing damage. The Supreme Court in *Jacob Mathew v. State of Punjab* (2005) 6 SCC 1 described professional negligence as the absence of the skill and care that an ordinarily competent member of the profession would exercise.¹

Vicarious liability. Liability imposed on one person (the employer or principal) for the tort of another (the employee or agent), even where the first person did nothing wrong

¹ AIR 2005 SUPREME COURT 3180, 2005 AIR SCW 3685, 2005 CRILR(SC&MP) 2 667, (2005) 3 RAJ CRI C 753, (2005) 4 CTC 540 (SC), (2005) 122 DLT 83, 2005 CRILR(SC MAH GUJ) 2 667, (2005) 33 ALLINDCAS 1 (SC), 2005 (6) SLT 1, 2005 (8) SRJ 50, 2005 (3) CPJ 9.2, 2005 ALL MR(CRI) 2567, 2005 SCC(CRI) 1369, (2005) 6 JT 584 (SC), (2006) 2 JCR 184 (SC), 2005 (6) SCALE 130, 2005 (6) SCC 1, 2005 (2) CALCRILR 472, 2005 (4) CTC 540, 2005 (3) JKJ 5, 2005 (33) ALLINDCAS 1, (2005) 3 ALL WC 2756, (2005) 3 CPR 70, (2005) 2 BOMCR(CRI) 339, (2005) 85 DRJ 330, (2005) 4 EASTCRIC 169, (2005) 5 SUPREME 297, (2005) 4 JLJR 137, (2005) ACJ 1840, (2005) 53 ALLCRIC 251, (2005) 3 CHANDCRIC 19, (2005) 3 CRIMES 63, (2005) 4 ALLCRILR 1, (2005) 3 GUJ LR 2126, (2005) 3 KER LT 965, (2005) MAD LJ(CRI) 1077, (2005) 32 OCR 175, (2005) 4 PAT LJR 213, (2005) 3 RECCRIR 836, (2005) 5 SCJ 601, (2005) 3 TAC 716, (2005) 5 ANDHLD 52, (2005) 3 ALLCRIR 2257, (2005) 6 SCALE 130, (2005) 3 CURCC 189, (2003) 1 JCR 314 (JHA), 2005 (3) ANDHLT(CRI) 1 SC, (2005) 3 ANDHLT(CRI) 1, (2005) 3 CPJ 92, 2005 (2) ALD(CRL) 334

personally. The idea is captured in the Latin maxim *respondeat superior*, "let the master answer."

Direct (institutional) liability. A hospital's liability for its own wrong, such as inadequate staffing, defective equipment, unsafe protocols or negligent hiring.

Informed consent. A patient's agreement to treatment after being told, in understandable terms, the nature of the procedure, its material risks and the reasonable alternatives.

Res ipsa loquitur ("the thing speaks for itself"). An evidentiary doctrine under which, where the accident is of a kind that does not ordinarily occur without negligence, the court may infer negligence unless the defendant offers an explanation.

2.2 The four elements of negligence

A claimant must establish:

1. a **duty of care** owed by the professional;
2. **breach** of that duty, meaning conduct below the accepted standard;
3. **causation**, a link between the breach and the injury; and
4. **damage**, recognised loss.

2.3 The statutory and constitutional map

Source	Relevance
Constitution, Art. 21	Right to life includes the right to health and emergency medical care.
Constitution, Arts. 32 / 226	Compensation as a public-law remedy against State hospitals.
Constitution, Art. 300	The State can sue and be sued, so it is liable in tort for its hospitals' negligence.
Consumer Protection Act, 2019	S. 2(7) "consumer", S. 2(11) "deficiency", S. 2(42) "service", S. 35 (complaints), S. 39 (reliefs), S. 69 (two-year limitation).
Indian Contract Act, 1872	S. 73: damages for breach of the doctor-patient contract.
Fatal Accidents Act, 1855	S. 1A: claim by dependants where death results from a wrongful act.

National Medical Commission Act, 2019	Replaced the Indian Medical Council Act, 1956. The Ethics and Medical Registration Board regulates professional conduct and handles misconduct complaints.
Professional conduct regulations	The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 have remained the working code of ethics, as the 2023 National Medical Commission regulations were put in abeyance.
Bharatiya Nyaya Sanhita, 2023	S. 106(1): death by negligence, with a reduced penalty (up to two years) where the accused is a registered medical practitioner. Also Ss. 26, 27 and 30 on acts done in good faith for a person's benefit (formerly IPC Ss. 88, 89, 92).
Other statutes	Clinical Establishments (Registration and Regulation) Act, 2010; Mental Healthcare Act, 2017; HIV/AIDS (Prevention and Control) Act, 2017; Medical Termination of Pregnancy Act, 1971 (as amended in 2021).

Section 106 BNS is criminal law, but it matters here for a reason. The civil standard of negligence is *lower* than the criminal one. A doctor may owe damages in tort without being criminally liable, because crime requires *gross* negligence (*Jacob Mathew; Dr. Suresh Gupta v. Govt. of NCT of Delhi* (2004) 6 SCC 422).²

3. The Concept in Detail

3.1 A running illustration: Sunita's surgery

Sunita, 45 years old, is admitted in a private hospital for a gallbladder operation. We will follow her through five possible wrongs.

Wrong 1: Operating beyond consent (battery). Sunita signed a consent for gallbladder

² AIR 2004 SUPREME COURT 4091, 2004 AIR SCW 4442, 2004 (6) SCALE 432, 2004 (3) LRI 531, 2004 ALL MR(CRI) 2881, 2004 (5) ACE 1, 2004 CALCRILR 982, 2004 (3) COM LJ 271 SC, 2004 CRI(AP)PR(SC) 561, 2004 (6) SCC 422, 2004 SCC(CRI) 1785, 2004 (7) SRJ 160, (2004) 3 KHCACJ 355 (SC), (2004) 2 CGLJ 273, (2004) 3 COM LJ 271, 2004 CRILR(SC&MP) 674, 2004 (2) UJ (SC) 1357, (2004) 6 JT 238 (SC), (2004) 21 ALLINDCAS 875 (SC), 2004 (4) SLT 940, (2004) 3 RECCRIR 925, (2004) 3 ACJ 1441, (2004) 77 DRJ 235, (2004) 3 EASTCRIC 99, (2004) 3 KER LT 14, (2006) 1 ORISSA LR 447, (2004) 3 PAT LJR 321, (2004) 3 PUN LR 375, (2004) 3 RAJ LW 447, (2004) 3 CURCRIR 69, (2004) 5 SUPREME 604, (2004) 3 ALLCRIR 2279, (2004) 6 SCALE 432, (2004) 2 UC 1105, (2004) 3 CRIMES 149, (2004) 61 CORLA 172, (2004) 3 CPR 84, (2005) 1 GCD 280 (SC), (2004) 3 MPHT 503, (2004) 50 ALLCRIC 257, (2004) 2 CHANDCRIC 271, (2004) 4 ALLCRILR 159, (2004) 2 BOMCR(CRI) 528, (2004) 112 DLT 866, (2004) 2 KER LJ 843, (2004) 20 INDLD 212, (2004) 29 OCR 38, 2004 CHANDLR(CIV&CRI) 1, 2004 (2) ANDHLT(CRI) 739 SC

removal. During surgery, the surgeon notices a cyst on her ovary and removes it too, although nothing suggests an emergency. This is a trespass to the person, regardless of how skilfully it was done.

Wrong 2: A careless operation (negligence). The surgeon injures the bile duct and fails to detect it. Sunita develops sepsis.

Wrong 3: The nurse's error (vicarious liability). A hospital-employed nurse gives the wrong dose of a post-operative drug.

Wrong 4: The hospital's own failure (direct liability). The operating theatre's sterilisation unit was understaffed, and the nurse was never trained on the drug protocol.

Wrong 5: The leaked file (breach of confidence). Her records are disclosed to her employer without her consent.

The same hospital produces five distinct kinds of liability, each with its own logic.

3.2 The standard of care: how good must a doctor be?

The law does not demand perfection. In *Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole* AIR 1969 SC 128, the Supreme Court said a doctor owes the patient a duty of care in deciding whether to take the case, in deciding what treatment to give, and in administering that treatment. The standard is that of a reasonably competent practitioner, neither the highest nor the lowest degree of skill.³

Courts measure that standard using the **Bolam test**, drawn from the English case *Bolam v. Friern Hospital Management Committee* [1957] 1 WLR 582 and adopted by the Supreme Court in *Jacob Mathew*. Under it, a doctor is not negligent if she acted in accordance with a practice accepted as proper by a responsible body of medical opinion.⁴ The test has a refinement, from *Bolitho v. City and Hackney Health Authority* [1998] AC 232, that the opinion must withstand logical analysis.⁵ This refinement is reflected in *Arun Kumar Manglik v. Chirayu Health and Medicare Pvt. Ltd.* (2019) 7 SCC 401.⁶

Three corollaries follow:

- **An error of judgment is not necessarily negligence.** If two courses are both accepted by the profession, choosing the one that fails is not a wrong.

³ 1969 AIR 128, 1969 SCR (1) 206, AIR 1969 SUPREME COURT 128

⁴ *Bolam v. Friern Hosp. Mgmt. Comm'n* [1957] 1 W.L.R. 582 (Q.B.)

⁵ *Bolitho v. City & Hackney Health Authority* [1998] AC 232 (HL)

⁶ AIRONLINE 2019 SC 639, (2019) 134 ALL LR 312, (2019) 197 ALLINDCAS 51, (2019) 2 CURCC 39, (2019) 2 RECCIVR 225, (2019) 3 ANDHLD 1, (2019) 3 MAD LJ 81, (2019) 3 SCALE 333, (2019) 4 ACJ 2409, (2019) 4 CIVILCOURTC 414, (2019) 4 CIVLJ 299, (2019) 4 PUN LR 500, 2019 (7) SCC 401

- **The standard is judged at the time of treatment**, not with hindsight.
- **A professional holding herself out as competent in a field must meet that field's standard.** In *Poonam Verma v. Ashwin Patel* (1996) 4 SCC 332, a homeopath who prescribed allopathic drugs was found negligent, since practising outside one's qualifications is itself a breach.⁷

3.3 Proof: who must show what?

The burden of proving negligence ordinarily lies on the patient, which is a heavy one given the knowledge gap. The law softens it in two ways.

Res ipsa loquitur. In *Achutrao Haribhau Khodwa v. State of Maharashtra* (1996) 2 SCC 634, a sponge was left in a patient's abdomen during surgery. The Court held that such an event ordinarily does not happen without negligence, and no expert was needed to say so. The evidential burden shifts to the hospital to explain.⁸

Expert evidence. In *Martin F. D'Souza v. Mohd. Ishfaq* (2009) 3 SCC 1, the Court urged that consumer fora refer cases to a competent medical body before proceeding against doctors.⁹ *V. Kishan Rao v. Nikhil Super Speciality Hospital* (2010) 5 SCC 513 clarified that expert evidence is *not mandatory in every case*, because forcing it where negligence is obvious would defeat claimants.¹⁰ *Harish Kumar Khurana v. Joginder Singh* (2021) 10 SCC 291 then emphasised that where the matter is technically complex, a finding of negligence without expert support is unsafe.¹¹

The practical rule is that **obvious negligence can speak for itself, and complex negligence needs an expert to speak for it.**

⁷ 1996 AIR 2111, 1996 SCC (4) 332, AIR 1996 SUPREME COURT 2111, 1996 AIR SCW 2553, (1996) 3 GUJ LR 342, 1996 (4) SCC 332, (1996) 3 CPR 205, (1997) 2 COMLJ 1, (1996) 2 GUJ LH 180, (1996) 2 SCJ 623, 1996 CCJ 721, 1996 ALL CJ 2 1145, (1996) 4 ANDH LT 18, (1996) 3 CIVLJ 80, (1996) 2 CURCC 322, (1996) 2 CPJ 1, (1996) 5 JT 1 (SC), 1996 (2) KLT SN 2 (SC)

⁸ 1996 SCC (2) 634, JT 1996 (2) 624, AIR 1996 SUPREME COURT 2377, 1996 AIR SCW 919, (1996) 2 SCR 881 (SC), (1997) 1 BOM CR 571, (2006) 4 CPJ 8, (1996) 2 MAD LJ 105, (1996) ACJ 505, (1996) 1 CURCC 358, (1996) 1 ORISSA LR 424, 1996 ALL CJ 2 681, 1996 (2) SCC 634, (1996) 1 SERVLR 29, (1996) 1 LJR 577, (1996) 2 JT 624 (SC), 1996 (1) KLT SN 34 (SC)

⁹ AIR 2009 SUPREME COURT 2049, 2009 AIR SCW 1807, 2009 (3) ALL LJ 165, 2009 (3) AIR BOM R 242, (2009) 2 EASTCRIC 206, (2009) 2 RAJ LW 1094, (2009) 1 CLR 825 (SC), (2009) 2 PUN LR 1, (2009) 2 RECCIVR 1, (2009) 5 MAD LJ 510, (2009) 1 UC 417, (2009) 75 ALLINDCAS 36 (SC), (2009) 3 CIVLJ 137, (2009) 1 CPR 105, (2009) 1 CPR 231, (2009) 2 ANDHLD 67, (2009) 3 JCR 109 (SC), (2009) 74 ALL LR 802, (2009) 2 MAD LW 681, (2009) 2 RECCRIR 64, (2009) 2 SCALE 629, (2009) 2 ALL WC 1220, 2009 CALCRILR 2 563, (2009) 157 DLT 391, 2009 (3) SCC 1, (2009) 1 CPJ 32, 2009 (1) SCC (CRI) 958, (2009) 3 BOM CR 202

¹⁰ 2010 (5) ALD 46 (SC), 2010 (3) AWC 3252 (SC), JT 2010 (4) SC 630, (2010) 5 MLJ 121 (SC), 2010 (4) SCALE 662, (2010) 5 SCC 513

¹¹ AIR 2021 SUPREME COURT 4690, AIRONLINE 2021 SC 700

3.4 Consent and the duty to inform

Consent is the doorway through which every medical touch must pass. In *Samira Kohli v. Dr. Prabha Manchanda* (2008) 2 SCC 1, a gynaecologist performed a hysterectomy during a diagnostic procedure when only the diagnostic procedure had been authorised. The Supreme Court held that:

- consent must be **real**, given by an adult of sound mind after being told of the nature of the procedure, its risks and alternatives;
- consent to *diagnosis* is not consent to *treatment*;
- a doctor may go beyond the consent only where it is **necessary in an emergency** to save life or prevent serious harm, not merely convenient.¹²

This is the stage at which ethics and law meet most visibly. The principle of **autonomy** is the ethical form of what law calls *battery*. Sunita's Wrong 1 falls here. An unauthorised operation can ground a claim even if the surgery was clinically excellent.

Emergencies are different. Where a patient is unconscious and in immediate danger, treatment proceeds on implied consent, and the Bharatiya Nyaya Sanhita protects good-faith acts done for the benefit of a person unable to consent (Ss. 26, 27 and 30).

3.5 Vicarious liability: when the hospital answers for its people

The traditional rationale. The employer creates the enterprise, profits from it, controls it and is better able to bear and spread the loss through insurance. This is why it answers for its employees' torts committed in the course of employment.

Three routes to hospital liability.

Route	Idea	Example
Employment	The wrongdoer is an employee acting in the course of employment.	Sunita's nurse (Wrong 3).
Agency / ostensible agency	The patient chose the hospital, and the hospital presented the doctor as part of its service.	A visiting consultant, though paid per patient, is presented by the hospital as its own.
Non-delegable duty	A hospital that undertakes to care for a patient cannot discharge that duty	Radiology outsourced to an independent agency or

¹² AIR 2008 SUPREME COURT 1385, 2008 AIR SCW 855, 2008 (2) ALL LJ 711, 2008 (2) AIR BOM R 354, (2008) 2 MAD LW 336, (2008) 1 RAJ LW 853, 2008 (2) SCC 1, (2008) 1 RECCIVR 525, (2008) 1 SCALE 442, (2008) 39 OCR 593, (2008) 2 PUN LR 213, (2008) 1 ICC 705, (2008) 1 CTC 392 (SC), (2008) 2 ACJ 747, (2008) 2 MAD LJ 662, (2008) 1 RECCRIR 670, (2008) 1 CPJ 56, 2008 (2) ALLMR (NOC) 41, (2008) 5 BOM CR 373

	by handing it to a contractor.	independent contractors.
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Spring Meadows Hospital v. Harjol Ahluwalia (1998) 4 SCC 39 held the hospital and its doctor liable for a nurse's negligent injection that left a child with brain damage, and treated the parents as consumers of the service.¹³ *Savita Garg v. Director, National Heart Institute* (2004) 8 SCC 56 held that a hospital is liable for the negligence of doctors it engages, and that it cannot avoid responsibility on the ground that the particular doctor was not separately made a party.¹⁴

The State as employer. In *Achutrao*, a government hospital was held liable for negligent surgery, and *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* (1996) 4 SCC 37 awarded compensation against the State for denial of emergency care.¹⁵

Vicarious versus direct liability. The distinction is worth keeping clear:

- *Vicarious* liability depends on an individual's wrong. If the nurse is not negligent, the hospital is not vicariously liable.
- *Direct* liability depends on the hospital's own failing, such as a lack of trained staff, unsafe protocols or defective equipment (Wrong 4). It can exist even when no single individual is at fault.

In *Sunita's* case, the hospital is vicariously liable for the surgeon and nurse, and directly liable for the understaffed sterilisation unit.

What about the senior surgeon? A surgeon is answerable for her own acts and for

¹³ AIR 1998 SUPREME COURT 1801, 1998 (4) SCC 39, 1998 AIR SCW 1590, 1998 (2) ALL CJ 992, (1998) 3 PUN LR 719, 1998 ALL CJ 2 992, (1997) 2 CPR 235, 1998 BRLJ 160, 1998 (1) CCJ 521, 1998 (2) SCALE 456, 1998 (3) ADSC 61, (1998) 2 SCR 428 (SC), 1998 (1) UJ (SC) 706, (1998) 3 ALLMR 136 (SC), (1998) 1 CTC 665 (SC), (1998) 2 COMLJ 228, 1998 CCJ 1 521, (1998) 1 LS 74, 1998 ADSC 3 61, (1998) WRITLR 448, 1998 (1) BLJR 755, 1998 (120) PUN LR 719, 1998 UJ(SC) 1 706, (1998) 2 JT 620 (SC), (1998) 2 MAD LW 38, (1998) 1 CHANDCRIC 189, (1998) WRITLR 424, (1998) 1 CPR 1, (1998) 2 ALL WC 1259, (1998) 2 SCALE 456, (1998) 2 EASTCRIC 827, (1998) 1 GUJ LH 643, (1998) 3 MAD LJ 63, (1998) 2 ORISSA LR 93, (1998) 2 RAJ LW 239, (1998) 3 SCJ 71, (1998) 29 CORLA 170, (1998) 3 SUPREME 183, (1998) 2 ICC 196, (1998) 33 ALL LR 48, (1998) 3 CIVLJ 811, (1998) 92 COMCAS 797, (1998) 1 CPJ 1, 1998 (2) KLT SN 25 (SC)

¹⁴ AIR 2004 SUPREME COURT 5088, 2004 (8) SCC 56, 2004 AIR SCW 5820, 2004 ALL. L. J. 3900, 2004 AIR - JHAR. H. C. R. 3176, (2005) 1 ALLMR 42 (SC), (2005) 1 CLR 107 (SC), (2005) 1 JCR 22 (SC), 2004 (4) COM LJ 255 SC, 2004 (7) ACE 704, (2014) 1 CPR 258, (2004) 4 KHCACJ 195 (SC), (2004) 4 COMLJ 255, (2004) 3 KER LT 919, 2004 (6) SLT 385, (2004) 8 JT 607 (SC), (2004) 23 ALLINDCAS 86 (SC), 2004 (3) BLJR 2145, 2004 (9) SRJ 515, (2004) 4 RECCIVR 512, (2005) 1 PUN LR 74, (2005) 1 MAD LW 302, (2004) 63 CORLA 69, (2004) 4 CPJ 40, (2004) 8 SCALE 694, (2004) 2 UC 1338, (2005) 1 TAC 903, (2004) 4 ALL WC 3699, (2005) 3 BOM CR 430, (2005) 1 ANDH LT 10, (2005) 1 BLJ 698, (2004) 8 SUPREME 58, (2005) 1 WLC(SC)CVL 316, (2005) 1 CURLJ(CCR) 272, (2005) 1 CIVLJ 621, (2005) 1 MAH LJ 451, (2005) 1 CPR 54, (2004) 57 ALL LR 36

¹⁵ 1996 SCC (4) 37, JT 1996 (6) 43, AIR 1996 SUPREME COURT 2426, 1996 AIR SCW 2964, 1996 LAB. I. C. 2054, (1996) 4 SCT 28, (1996) 3 SCJ 25, (1996) 3 RECCIVR 289, 1996 ALL CJ 2 952, (1996) 3 COMLJ 172, (1996) 2 ORISSA LR 152, 1996 (4) SCC 37, (1996) 6 SERVLR 346, (1996) 3 ICC 269, (1997) 1 MAD LJ 7, (1996) 2 CURCC 286, (1996) 6 JT 43 (SC)

what she is responsible for supervising. Indian courts examine who actually controlled and performed the act, and do not apply an automatic "captain of the ship" rule.

3.6 Other civil wrongs by medical professionals

Wrong	What it protects	Illustration
Battery / trespass to person	Bodily autonomy	Treatment beyond or without consent.
Breach of confidentiality	Privacy	Disclosing Sunita's records to her employer.
False imprisonment	Liberty	Detaining a patient, or withholding a body, for unpaid bills.
Misrepresentation / fraud	Truthful dealing	Falsely claiming a specialist qualification or guaranteeing a cure.
Breach of statutory duty	Compliance with law	Violating transplant, Medical Termination of Pregnancy or disclosure laws.
Defamation	Reputation	Falsely labelling a patient with a stigmatised condition.
Breach of contract	Agreed terms	A promised procedure or guaranteed outcome not delivered.

Confidentiality deserves special attention. The Court in *Mr. X v. Hospital Z* (1998) 8 SCC 296 (reviewed in (2003) 1 SCC 500) held that disclosing an HIV-positive status to the patient's fiancée did not breach confidentiality, because her right to health in a marriage outweighed his privacy.¹⁶ After *Justice K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1 recognised privacy as a fundamental right,¹⁷ the later HIV/AIDS Act of 2017 narrowed permissible disclosures, and the reasoning in *Mr. X* is today read narrowly.

¹⁶ AIR 1999 SUPREME COURT 495, 1998 (8) SCC 296, 1998 AIR SCW 3662, (1999) 1 KER LT 14, 1999 BLJR 2 1306, (1999) 1 ALLMR 469 (SC), 1999 (1) COM LJ 23 SC, (1999) 2 BLJ 634, 1999 (1) UJ (SC) 232, 1998 (6) SCALE 230, 1999 (1) SRJ 88, 1998 (9) ADSC 109, 1999 UJ(SC) 1 232, (1998) 7 JT 626 (SC), 1998 (7) JT 626, (1999) 2 EASTCRIC 18, (1999) 1 GUJ LH 1008, (1999) 1 MAHLR 750, (1998) 9 SUPREME 220, (1999) 1 RECCIVR 324, (1998) 6 SCALE 230, (1999) 1 ALL WC 274, (1999) 2 ANDHWR 205, (1998) 3 CPJ 12, (1999) 2 BOM CR 474

¹⁷ AIR 2017 SUPREME COURT 4161, (2017) 6 BOM CR 78, AIR 2017 SC (CIV) 2714, (2017) 3 KER LJ 17, 2017 (10) SCC 1, (2017) 124 ALL LR 877, (2017) 10 SCALE 1, (2017) 4 CURCC 87, (2017) 6 MAD LJ 267, (2017) 5 ALLMR 686 (SC), (2018) 1 RECCIVR 398, 2017 (178) AIC (SOC) 1 (SC), 242 (2017) DLT 9 (CN)(SC), 2017 (3) KCCR SN 255 (SC), 2017 (4) KLT SN 1 (KER)

Failed sterilisation. In *State of Haryana v. Smt. Santra* (2000) 5 SCC 182, a doctor performed a sterilisation negligently and the patient conceived. The Court recognised the doctor's liability and the right to damages, adding that a woman's reproductive choice is part of her personal liberty.¹⁸

3.7 Remedies and forums

A patient has several routes, which are not mutually exclusive in kind:

1. **Civil suit** for damages in a civil court.
2. **Consumer complaint** (CPA 2019). Medical services for consideration are "services" (*Indian Medical Association v. V.P. Shantha* (1995) 6 SCC 651). Free services are excluded, but where a hospital charges some patients, those it treats free of charge can also be consumers.¹⁹ Pecuniary jurisdiction is determined by the consideration paid under the 2021 Rules, and the limitation period is two years (S. 69).
3. **Writ petition** (Arts. 32/226) for compensation against State hospitals.
4. **Disciplinary complaint** before the State Medical Council or the National Medical Commission's Ethics and Medical Registration Board, which can suspend or remove a doctor's name, though it does not award damages.
5. **Criminal complaint**, which requires gross negligence.

Damages. Courts award *pecuniary losses* (medical expenses, lost earnings, future care) and *non-pecuniary losses* (pain, suffering, loss of amenities). In *Balram Prasad v. Kunal Saha* (2014) 1 SCC 384, a case arising from the death of a young woman through multiple lapses at a Kolkata hospital, the Supreme Court awarded compensation of over ₹ 11 crore, applying the multiplier method and holding the hospital liable alongside its doctors.²⁰ Where death results, dependants may sue under the Fatal Accidents Act, 1855.

Defences. The principal defences are accepted professional practice (*Bolam*), informed consent, error of judgement, contributory negligence, unavoidable complications that were disclosed, and emergency necessity.

¹⁸ (2000) 5 SCC 182, AIR 2000 SC 1888, 2000 (5) JT 247, 2000 (3) SCALE 417, 2000 INSC 234, 2000 (2) RCR (Civil) 739, 2000 Cri LJ 2479, 2000 (2) ACC 474, 2000 ACJ 749, 2000 (2) BLJR 1604

¹⁹ 1996 AIR 550, 1995 SCC (6) 651, AIR 1996 SUPREME COURT 550, 1995 (6) SCC 651, 1995 AIR SCW 4463, (1996) 1 ALLMR 146 (SC), (1996) WRITLR 121, (1996) 1 RAJ LW 87, (1996) 86 COMCAS 806, 1996 CCJ 1, (1996) 1 MAHLR 561, (1995) 3 CPR 412, (1995) 4 SCJ 663, (1996) 1 PUN LR 1, (1996) 1 ANDHWR 3, (1996) 1 UPLBEC 227, 1996 BLJR 1 281, (1996) 1 CTC 119 (SC), (1996) 1 COMLJ 15, (1996) 1 LS 9, (1995) 1 CPR 838, 1996 BRLJ 10, (1995) 2 GUJ LR 1806, (1996) 1 MAD LW 206, (1995) 3 CPJ 1, (1995) 8 JT 119 (SC), (1996) 4 BOM CR 1

²⁰ AIRONLINE 2013 SC 528

3.8 The four tracks of accountability

Track	Question asked	Standard	Outcome
Ethical / disciplinary	Did the doctor violate professional norms?	Professional conduct code	Warning, suspension, removal from register
Civil (tort / consumer)	Did she cause avoidable harm?	Negligence (balance of probabilities)	Compensation
Criminal	Was the negligence gross?	Gross negligence beyond reasonable doubt	Imprisonment, fine
Constitutional	Did the State fail its duty to protect life?	Art. 21	Public-law compensation

One incident may trigger all four tracks, each asking a different question.

4. Landmark Case Laws

Duty and standard of care

- ***Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Babu Godbole*, AIR 1969 SC 128.** Established the doctor's three-fold duty: whether to take the case, what treatment to give and how to administer it.²¹
- ***Jacob Mathew v. State of Punjab*, (2005) 6 SCC 1.** Adopted the *Bolam* standard in India, distinguished civil from criminal negligence, and laid down safeguards against casual prosecution of doctors, such as requiring a credible medical opinion before prosecution.²²
- ***Kusum Sharma v. Batra Hospital and Medical Research Centre*, (2010) 3 SCC 480.** Collected the governing principles, including that a doctor is not liable merely because a better course might have existed, and that courts must not make doctors fear liability for every adverse outcome.²³

²¹ 1969 AIR 128, 1969 SCR (1) 206, AIR 1969 SUPREME COURT 128

²² AIR 2005 SUPREME COURT 3180, 2005 AIR SCW 3685, 2005 CRILR(SC&MP) 2 667, (2005) 3 RAJ CRI C 753, (2005) 4 CTC 540 (SC), (2005) 122 DLT 83, 2005 CRILR(SC MAH GUJ) 2 667, (2005) 33 ALLINDCAS 1 (SC), 2005 (6) SLT 1, 2005 (8) SRJ 50, 2005 (3) CPJ 9.2, 2005 ALL MR(CRI) 2567, 2005 SCC(CRI) 1369, (2005) 6 JT 584 (SC), (2006) 2 JCR 184 (SC), 2005 (6) SCALE 130, 2005 (6) SCC 1, 2005 (2) CALCRILR 472, 2005 (4) CTC 540, 2005 (3) JKJ 5, 2005 (33) ALLINDCAS 1, (2005) 3 ALL WC 2756, (2005) 3 CPR 70, (2005) 2 BOMCR(CRI) 339, (2005) 85 DRJ 330, (2005) 4 EASTCRIC 169, (2005) 5 SUPREME 297, (2005) 4 JLJR 137, (2005) ACJ 1840, (2005) 53 ALLCRIC 251, (2005) 3 CHANDCRIC 19, (2005) 3 CRIMES 63, (2005) 4 ALLCRILR 1, (2005) 3 GUJ LR 2126, (2005) 3 KER LT 965, (2005) MAD LJ(CRI) 1077, (2005) 32 OCR 175, (2005) 4 PAT LJR 213, (2005) 3 RECCRIR 836, (2005) 5 SCJ 601, (2005) 3 TAC 716, (2005) 5 ANDHLD 52, (2005) 3 ALLCRIR 2257, (2005) 6 SCALE 130, (2005) 3 CURCC 189, (2003) 1 JCR 314 (JHA), 2005 (3) ANDHLT(CRI) 1 SC, (2005) 3 ANDHLT(CRI) 1, (2005) 3 CPJ 92, 2005 (2) ALD(CRL) 334

²³ 2010 (3) SCC 480, AIR 2010 SUPREME COURT 1050, 2010 AIR SCW 1315, 2010 (2) AIR BOM R 644, 2010 (2) AIR KANT HCR 206, (2008) 1 MAD LW 36, (2010) 3 MAD LJ 512, (2010) 4 MAH LJ 541, (2010) 3

- **Arun Kumar Manglik v. Chirayu Health and Medicare Pvt. Ltd., (2019) 7 SCC 401.** Reaffirmed *Bolam* with the *Bolitho* requirement of logical support, and treated the standard of care as applying to both treatment and the process leading to it.²⁴
- **Poonam Verma v. Ashwin Patel, (1996) 4 SCC 332.** A practitioner who prescribes outside his recognised system of medicine is negligent.²⁵

Evidence and proof

- **Achutrao Haribhau Khodwa v. State of Maharashtra, (1996) 2 SCC 634.** *Res ipsa loquitur* applied to a surgical instrument left in the body; the State is liable.²⁶
- **Martin F. D'Souza v. Mohd. Ishfaq, (2009) 3 SCC 1.** Called for expert medical opinion before proceeding against doctors.²⁷
- **V. Kishan Rao v. Nikhil Super Speciality Hospital, (2010) 5 SCC 513.** Expert evidence is not necessary in every case, and *res ipsa loquitur* may apply.²⁸
- **Harish Kumar Khurana v. Joginder Singh, (2021) 10 SCC 291.** Technical cases require expert support.²⁹

Consent

- **Samira Kohli v. Dr. Prabha Manchanda, (2008) 2 SCC 1.** The leading Indian authority on informed consent and its limits.³⁰

MPLJ 290, (2010) 1 RAJ LW 722, (2010) 1 CPR 167, (2010) 1 WLC(SC)CVL 308, (2010) 88 ALLINDCAS 200 (SC), (2010) 1 CLR 452 (SC), (2010) 2 ALL WC 1859, (2010) 2 CALLT 36, (2009) 2 SIM LC 185, (2009) 84 ALLINDCAS 544 (HP), (2010) 2 ANDHLD 89, (2010) 2 RECCIVR 161, (2010) 2 JCR 62 (SC), (2010) 3 ACJ 1444, (2010) 79 ALL LR 921, (2010) 2 SCALE 267, (2010) 2 UC 1156, (2009) 4 CPR 254, (2010) 2 MAD LW 54, (2010) 1 ORISSA LR 884, (2010) 2 TAC 34, (2010) 1 CURCC 211, (2010) 2 CIVILCOURTC 15, (2012) 1 MARRILJ 344, (2010) 1 CPJ 29, 2010 (2) SCC (CRI) 1127, 2010 (3) KCCR SN 90 (SC), (2010) 2 BOM CR 599²⁴ AIRONLINE 2019 SC 639, (2019) 134 ALL LR 312, (2019) 197 ALLINDCAS 51, (2019) 2 CURCC 39, (2019) 2 RECCIVR 225, (2019) 3 ANDHLD 1, (2019) 3 MAD LJ 81, (2019) 3 SCALE 333, (2019) 4 ACJ 2409, (2019) 4 CIVILCOURTC 414, (2019) 4 CIVLJ 299, (2019) 4 PUN LR 500, 2019 (7) SCC 401

²⁵ 1996 AIR 2111, 1996 SCC (4) 332, AIR 1996 SUPREME COURT 2111, 1996 AIR SCW 2553, (1996) 3 GUJ LR 342, 1996 (4) SCC 332, (1996) 3 CPR 205, (1997) 2 COMLJ 1, (1996) 2 GUJ LH 180, (1996) 2 SCJ 623, 1996 CCJ 721, 1996 ALL CJ 2 1145, (1996) 4 ANDH LT 18, (1996) 3 CIVLJ 80, (1996) 2 CURCC 322, (1996) 2 CPJ 1, (1996) 5 JT 1 (SC), 1996 (2) KLT SN 2 (SC)

²⁶ 1996 SCC (2) 634, JT 1996 (2) 624, AIR 1996 SUPREME COURT 2377, 1996 AIR SCW 919, (1996) 2 SCR 881 (SC), (1997) 1 BOM CR 571, (2006) 4 CPJ 8, (1996) 2 MAD LJ 105, (1996) ACJ 505, (1996) 1 CURCC 358, (1996) 1 ORISSA LR 424, 1996 ALL CJ 2 681, 1996 (2) SCC 634, (1996) 1 SERVLR 29, (1996) 1 LJR 577, (1996) 2 JT 624 (SC), 1996 (1) KLT SN 34 (SC)

²⁷ AIR 2009 SUPREME COURT 2049, 2009 AIR SCW 1807, 2009 (3) ALL LJ 165, 2009 (3) AIR BOM R 242, (2009) 2 EASTCRIC 206, (2009) 2 RAJ LW 1094, (2009) 1 CLR 825 (SC), (2009) 2 PUN LR 1, (2009) 2 RECCIVR 1, (2009) 5 MAD LJ 510, (2009) 1 UC 417, (2009) 75 ALLINDCAS 36 (SC), (2009) 3 CIVLJ 137, (2009) 1 CPR 105, (2009) 1 CPR 231, (2009) 2 ANDHLD 67, (2009) 3 JCR 109 (SC), (2009) 74 ALL LR 802, (2009) 2 MAD LW 681, (2009) 2 RECCRIR 64, (2009) 2 SCALE 629, (2009) 2 ALL WC 1220, 2009 CALCRILR 2 563, (2009) 157 DLT 391, 2009 (3) SCC 1, (2009) 1 CPJ 32, 2009 (1) SCC (CRI) 958, (2009) 3 BOM CR 202

²⁸ 2010 (5) ALD 46 (SC), 2010 (3) AWC 3252 (SC), JT 2010 (4) SC 630, (2010) 5 MLJ 121 (SC), 2010 (4) SCALE 662, (2010) 5 SCC 513

²⁹ AIR 2021 SUPREME COURT 4690, AIRONLINE 2021 SC 700

³⁰ AIR 2008 SUPREME COURT 1385, 2008 AIR SCW 855, 2008 (2) ALL LJ 711, 2008 (2) AIR BOM R 354, (2008) 2 MAD LW 336, (2008) 1 RAJ LW 853, 2008 (2) SCC 1, (2008) 1 RECCIVR 525, (2008) 1 SCALE 442,

- **Common Cause v. Union of India, (2018) 5 SCC 1.** Recognised advance directives and the patient's right to refuse treatment as part of dignity under Article 21.³¹

Vicarious and institutional liability

- **Indian Medical Association v. V.P. Shantha, (1995) 6 SCC 651.** Medical services fall within the Consumer Protection Act.³²
- **Spring Meadows Hospital v. Harjol Ahluwalia, (1998) 4 SCC 39.** Hospital and doctor liable for a nurse's negligent act; compensation to the child and parents.³³
- **Savita Garg v. Director, National Heart Institute, (2004) 8 SCC 56.** The hospital's own responsibility for its doctors and its duty to establish the standard of care it provided.³⁴
- **Malay Kumar Ganguly v. Dr. Sukumar Mukherjee, (2009) 9 SCC 221.** Held a hospital and doctors civilly liable for multiple lapses, while distinguishing criminal liability.³⁵
The compensation was fixed in **Balram Prasad v. Kunal Saha, (2014) 1 SCC 384.**³⁶

(2008) 39 OCR 593, (2008) 2 PUN LR 213, (2008) 1 ICC 705, (2008) 1 CTC 392 (SC), (2008) 2 ACJ 747, (2008) 2 MAD LJ 662, (2008) 1 RECCRIR 670, (2008) 1 CPJ 56, 2008 (2) ALLMR (NOC) 41, (2008) 5 BOM CR 373
³¹ AIR 2018 SUPREME COURT 1665, AIR 2018 SC (CIV) 1683, (2018) 3 MAD LJ 503, (2018) 4 SCALE 1, (2018) 1 CRIMES 184, (2018) 1 CURCC 448, 2018 (5) SCC 1, 2018 (2) KLT SN 47 (SC), 2018 (1) KCCR SN 65 (SC)

³² 1996 AIR 550, 1995 SCC (6) 651, AIR 1996 SUPREME COURT 550, 1995 (6) SCC 651, 1995 AIR SCW 4463, (1996) 1 ALLMR 146 (SC), (1996) WRITLR 121, (1996) 1 RAJ LW 87, (1996) 86 COMCAS 806, 1996 CCJ 1, (1996) 1 MAHLR 561, (1995) 3 CPR 412, (1995) 4 SCJ 663, (1996) 1 PUN LR 1, (1996) 1 ANDHWR 3, (1996) 1 UPLBEC 227, 1996 BLJR 1 281, (1996) 1 CTC 119 (SC), (1996) 1 COMLJ 15, (1996) 1 LS 9, (1995) 1 CPR 838, 1996 BRLJ 10, (1995) 2 GUJ LR 1806, (1996) 1 MAD LW 206, (1995) 3 CPJ 1, (1995) 8 JT 119 (SC), (1996) 4 BOM CR 1

³³ AIR 1998 SUPREME COURT 1801, 1998 (4) SCC 39, 1998 AIR SCW 1590, 1998 (2) ALL CJ 992, (1998) 3 PUN LR 719, 1998 ALL CJ 2 992, (1997) 2 CPR 235, 1998 BRLJ 160, 1998 (1) CCJ 521, 1998 (2) SCALE 456, 1998 (3) ADSC 61, (1998) 2 SCR 428 (SC), 1998 (1) UJ (SC) 706, (1998) 3 ALLMR 136 (SC), (1998) 1 CTC 665 (SC), (1998) 2 COMLJ 228, 1998 CCJ 1 521, (1998) 1 LS 74, 1998 ADSC 3 61, (1998) WRITLR 448, 1998 (1) BLJR 755, 1998 (120) PUN LR 719, 1998 UJ(SC) 1 706, (1998) 2 JT 620 (SC), (1998) 2 MAD LW 38, (1998) 1 CHANDCRIC 189, (1998) WRITLR 424, (1998) 1 CPR 1, (1998) 2 ALL WC 1259, (1998) 2 SCALE 456, (1998) 2 EASTCRIC 827, (1998) 1 GUJ LH 643, (1998) 3 MAD LJ 63, (1998) 2 ORISSA LR 93, (1998) 2 RAJ LW 239, (1998) 3 SCJ 71, (1998) 29 CORLA 170, (1998) 3 SUPREME 183, (1998) 2 ICC 196, (1998) 33 ALL LR 48, (1998) 3 CIVLJ 811, (1998) 92 COMCAS 797, (1998) 1 CPJ 1, 1998 (2) KLT SN 25 (SC)

³⁴ AIR 2004 SUPREME COURT 5088, 2004 (8) SCC 56, 2004 AIR SCW 5820, 2004 ALL. L. J. 3900, 2004 AIR - JHAR. H. C. R. 3176, (2005) 1 ALLMR 42 (SC), (2005) 1 CLR 107 (SC), (2005) 1 JCR 22 (SC), 2004 (4) COM LJ 255 SC, 2004 (7) ACE 704, (2014) 1 CPR 258, (2004) 4 KHCACJ 195 (SC), (2004) 4 COMLJ 255, (2004) 3 KER LT 919, 2004 (6) SLT 385, (2004) 8 JT 607 (SC), (2004) 23 ALLINDCAS 86 (SC), 2004 (3) BLJR 2145, 2004 (9) SRJ 515, (2004) 4 RECCIVR 512, (2005) 1 PUN LR 74, (2005) 1 MAD LW 302, (2004) 63 CORLA 69, (2004) 4 CPJ 40, (2004) 8 SCALE 694, (2004) 2 UC 1338, (2005) 1 TAC 903, (2004) 4 ALL WC 3699, (2005) 3 BOM CR 430, (2005) 1 ANDH LT 10, (2005) 1 BLJ 698, (2004) 8 SUPREME 58, (2005) 1 WLC(SC)CVL 316, (2005) 1 CURLJ(CCR) 272, (2005) 1 CIVLJ 621, (2005) 1 MAH LJ 451, (2005) 1 CPR 54, (2004) 57 ALL LR 36

³⁵ AIR 2010 SUPREME COURT 1162, 2010 AIR SCW 769, (2010) 2 BOMCR(CRI) 185, 2010 CALCRILR 1 42, (2013) 4 CPR 639, (2009) 4 MAD LJ(CRI) 551, 2010 (2) SCC(CRI) 299, (2009) 3 CURCRIR 558, (2009) 4 RAJ LW 3625, (2009) 4 CALLT 40, (2009) 44 OCR 373, (2009) 4 RECCRIR 1, 2009 (10) SCALE 675, 2009 (9) SCC 221, (2009) 4 RECCIVR 14, (2009) 10 SCALE 675, (2009) 2 CPR 409, (2009) 3 CPJ 17, (2010) 2 ALD(CRL) 1

³⁶ AIRONLINE 2013 SC 528

Emergency care and constitutional duties

- ***Pt. Parmanand Katara v. Union of India, (1989) 4 SCC 286.*** Doctors must provide immediate aid to accident victims without waiting for police formalities.³⁷
- ***Paschim Banga Khet Mazdoor Samity v. State of West Bengal, (1996) 4 SCC 37.*** Failure to provide emergency treatment in State hospitals violates Article 21.³⁸

Confidentiality, privacy and reproductive harm

- ***Mr. X v. Hospital Z, (1998) 8 SCC 296; (2003) 1 SCC 500.*** Confidentiality is a duty but yields where another's health is at risk.³⁹
- ***Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.*** Privacy is a fundamental right, which strengthens the protection of medical records.⁴⁰
- ***State of Haryana v. Smt. Santra, (2000) 5 SCC 182.*** Liability for negligent sterilisation.⁴¹

Criminal / civil boundary

- ***Dr. Suresh Gupta v. Govt. of NCT of Delhi, (2004) 6 SCC 422.*** Civil negligence does not become criminal without gross negligence.⁴²

³⁷ 1989 AIR 2039, 1989 SCR (3) 997, AIR 1989 SUPREME COURT 2039, 1989 (4) SCC 286, (1990) 1 ACC 3, (1990) 1 CRILC 168, (1990) 2 RECCRIR 75, (1990) EASTCRIC 12, (1989) 15 ALL LR 595, (1990) 1 APLJ 33(1), 1990 CHANDLR(CIV&CRI) 403, (1989) 3 CRIMES 156, (1990) 1 BLJ 233, (1990) SC CR R 160, (1990) MADLW(CRI) 21, (1989) 3 JT 496 (SC), 1989 SCC (CRI) 721, (1990) 2 BOM CR 96

³⁸ 1996 SCC (4) 37, JT 1996 (6) 43, AIR 1996 SUPREME COURT 2426, 1996 AIR SCW 2964, 1996 LAB. I. C. 2054, (1996) 4 SCT 28, (1996) 3 SCJ 25, (1996) 3 RECCIVR 289, 1996 ALL CJ 2 952, (1996) 3 COMLJ 172, (1996) 2 ORISSA LR 152, 1996 (4) SCC 37, (1996) 6 SERVLR 346, (1996) 3 ICC 269, (1997) 1 MAD LJ 7, (1996) 2 CURCC 286, (1996) 6 JT 43 (SC)

³⁹ AIR 1999 SUPREME COURT 495, 1998 (8) SCC 296, 1998 AIR SCW 3662, (1999) 1 KER LT 14, 1999 BLJR 2 1306, (1999) 1 ALLMR 469 (SC), 1999 (1) COM LJ 23 SC, (1999) 2 BLJ 634, 1999 (1) UJ (SC) 232, 1998 (6) SCALE 230, 1999 (1) SRJ 88, 1998 (9) ADSC 109, 1999 UJ(SC) 1 232, (1998) 7 JT 626 (SC), 1998 (7) JT 626, (1999) 2 EASTCRIC 18, (1999) 1 GUJ LH 1008, (1999) 1 MAHLR 750, (1998) 9 SUPREME 220, (1999) 1 RECCIVR 324, (1998) 6 SCALE 230, (1999) 1 ALL WC 274, (1999) 2 ANDHWR 205, (1998) 3 CPJ 12, (1999) 2 BOM CR 474

⁴⁰ AIR 2017 SUPREME COURT 4161, (2017) 6 BOM CR 78, AIR 2017 SC (CIV) 2714, (2017) 3 KER LJ 17, 2017 (10) SCC 1, (2017) 124 ALL LR 877, (2017) 10 SCALE 1, (2017) 4 CURCC 87, (2017) 6 MAD LJ 267, (2017) 5 ALLMR 686 (SC), (2018) 1 RECCIVR 398, 2017 (178) AIC (SOC) 1 (SC), 242 (2017) DLT 9 (CN)(SC), 2017 (3) KCCR SN 255 (SC), 2017 (4) KLT SN 1 (KER)

⁴¹ (2000) 5 SCC 182, AIR 2000 SC 1888, 2000 (5) JT 247, 2000 (3) SCALE 417, 2000 INSC 234, 2000 (2) RCR (Civil) 739, 2000 Cri LJ 2479, 2000 (2) ACC 474, 2000 ACJ 749, 2000 (2) BLJR 1604

⁴² AIR 2004 SUPREME COURT 4091, 2004 AIR SCW 4442, 2004 (6) SCALE 432, 2004 (3) LRI 531, 2004 ALL MR(CRI) 2881, 2004 (5) ACE 1, 2004 CALCRILR 982, 2004 (3) COM LJ 271 SC, 2004 CRI(AP)PR(SC) 561, 2004 (6) SCC 422, 2004 SCC(CRI) 1785, 2004 (7) SRJ 160, (2004) 3 KHCACJ 355 (SC), (2004) 2 CGLJ 273, (2004) 3 COMLJ 271, 2004 CRILR(SC&MP) 674, 2004 (2) UJ (SC) 1357, (2004) 6 JT 238 (SC), (2004) 21 ALLINDCAS 875 (SC), 2004 (4) SLT 940, (2004) 3 RECCRIR 925, (2004) 3 ACJ 1441, (2004) 77 DRJ 235, (2004) 3 EASTCRIC 99, (2004) 3 KER LT 14, (2006) 1 ORISSA LR 447, (2004) 3 PAT LJR 321, (2004) 3 PUN LR 375, (2004) 3 RAJ LW 447, (2004) 3 CURCRIR 69, (2004) 5 SUPREME 604, (2004) 3 ALLCRIR 2279, (2004) 6 SCALE 432, (2004) 2 UC 1105, (2004) 3 CRIMES 149, (2004) 61 CORLA 172, (2004) 3 CPR 84, (2005) 1 GCD 280 (SC), (2004) 3 MPHT 503, (2004) 50 ALLCRIC 257, (2004) 2 CHANDCRIC 271, (2004) 4 ALLCRILR 159, (2004) 2 BOMCR(CRI) 528, (2004) 112 DLT 866, (2004) 2 KER LJ 843, (2004) 20 INDLD 212, (2004) 29 OCR 38, 2004 CHANDLR(CIV&CRI) 1, 2004 (2) ANDHLT(CRI) 739 SC

5. Analysis: The Accountability Gap

Indian doctrine is strong. The difficulty is a double failure in practice, one that disadvantages patients and doctors alike.

For patients:

1. **The knowledge barrier.** Patients struggle to obtain records, find willing expert witnesses and fund long litigation.
2. **Delay.** Consumer cases can take years, and the damage is permanent by then.
3. **Collective silence.** Doctors are often reluctant to testify against peers, which weakens the evidence available.
4. **Record-keeping gaps.** Poorly maintained or later-altered records frustrate proof.

For doctors:

1. **Defensive medicine.** Fear of litigation and violence leads to unnecessary tests and referrals, raising costs without improving care.
2. **Blurred lines.** Complications and negligence are often confused, so a bad outcome is treated as proof of wrongdoing.
3. **Individual blame for system failure.** Staff shortages, overcrowded wards and missing equipment are often institutional failures, but the individual doctor is often the target.

For the system:

1. **Weak institutional accountability.** Hospitals sometimes escape direct liability for their own governance failures.
2. **Uneven regulation.** The central [Clinical Establishments \(Registration and Regulation\) Act, 2010](#) has been adopted by only some States.
3. **Slow disciplinary processes** and limited public transparency about outcomes.

Ethics and law are meant to reinforce each other. Where either is weak, the other is overburdened.

6. Suggestions

1. **A clear statutory definition of medical negligence**, codifying *Bolam–Bolitho* and the *Jacob Mathew* principles, so that doctors and patients know the test.

Concept / Test	Year	Standard Basis	Core Legal Question
Bolam	1957	Doctor-centric	Did a responsible body of doctors agree with the treatment?

Bolitho	1997	Judicial-oversight	Is that responsible medical opinion logical and legally defensible?
Montgomery	2015	Patient-centric	Was the individual patient informed of all material risks and options?

2. **Specialist medical tribunals or expert panels** to give early, independent opinions, filtering out unfounded claims and speeding up genuine ones.
3. **Mandatory, standardised and digital medical records**, with an audit trail so that alteration is detectable, and statutory timelines for giving patients their records.
4. **A statutory consent protocol** with plain-language, procedure-specific forms, and recorded discussions of material risks and alternatives, in the patient's language.
5. **Clear hospital liability rules** stating that hospitals owe a non-delegable duty to patients, and are directly liable for staffing, equipment and protocol failures.
6. **Mandatory professional indemnity covers** for practitioners and institutions, so that compensation does not depend on the individual's means.
7. **Patient-safety culture reforms.** Confidential adverse-event reporting, root-cause analysis and a no-blame learning approach for systemic errors.
8. **A "no-fault" compensation scheme** for defined serious avoidable injuries, offering quick support without proving fault, to relieve the adversarial burden.
9. **Protection for doctors from violence and frivolous prosecution**, with enforcement of the *Jacob Mathew* safeguards and the Maharashtra-style protection laws across States.
10. **Faster, reasoned disciplinary processes** with public reporting of outcomes, and education in ethics, communication and consent in medical training.
11. **Communication-first practices**, such as disclosing errors honestly and offering early apology, which can reduce litigation and strengthen trust.

7. Conclusion

The law of medical liability expresses a bargain. Society grants doctors' extraordinary access to the human body and mind, and in return demands competence, honesty and respect for the patient's choices. A tort is the legal record of a broken part of that bargain.

India's case law, from *Laxman Joshi* to *Jacob Mathew*, *Samira Kohli* and *Balram Prasad v. Kunal Saha*, shows a legal system that understands both sides. It does not punish bad

luck or honest judgement, and it does not excuse carelessness, unauthorised treatment or institutional neglect. The doctrine of vicarious liability ensures that hospitals, which profit from care and control its conditions, cannot hide behind the individuals they employ, while the doctrine of direct liability reminds them that some failures belong to the institution itself.

The test of the system is not how elegant its doctrines are. It is whether a patient like Sunita can obtain her records, find an honest expert, receive a timely decision and fair compensation, and whether a conscientious doctor can practise without fearing that every complication will be treated as a crime. Where law and ethics are made to work together, accountability stops being adversarial and becomes part of good medicine.

