

## REVIEW ARTICLE

# A 10 year Review of Judgments on Alleged Medical Negligence Cases by the Supreme Court of India

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## Abstract:

Doctors have obligations to their patients, and if those obligations are broken, they may be considered negligent. More than ever, Indians are aware of their rights as consumers under the Consumer Protection Act (CPA). As a result, more people are suing doctors for medical negligence and turning to redressal forums for assistance in minimising their loss or harm. As a result, it is necessary to recognise and take care of the crucial elements that influence how a case of alleged medical negligence is decided. For this study, a review of rulings from the period of January 2012 to December 2021 (10 years) was taken from the Supreme Court website using a free text search for the term "medical negligence". 63 judgements in total were discovered; 34 of these were excluded, and 29 were included in this study. When compared to medical specialties, surgical specialties are at a higher risk of being sued for medical negligence, according to the examination of the rulings. The majority of lawsuits were brought against obstetrics and gynaecology. Overall, the result favoured doctors and hospitals in 55.2% of the decisions. Medical records were a major factor in the decision in 87.5% of all verdicts in favour of the doctor or hospital. The medical community must accept that there is significant space for improvement in patient care since medical negligence lawsuits against doctors continue to be a major problem in India.

**Keywords:** Consumer protection act; Judgment; Medical negligence; Medical records; Supreme court.

## Introduction:

A contract preserving the core components of tort exists between a doctor and patient. A doctor has obligations to the patient and may be found negligent if those obligations are broken. In order to decide cases of medical negligence brought against physicians and hospitals, courts of law have developed over time while keeping up with contemporary medical practise. The Supreme Court ruled in the 1995 case of V.P. Shanta v. Indian Medical Association that the services provided by medical professionals were within the purview of the Consumer Protection Act (CPA).<sup>1</sup> Indian citizens have grown more conscious of patient rights and the CPA. As a result, more people are suing doctors for medical negligence and turning to redressal forums for assistance in minimising their loss or harm.

Despite a recent trend in India showing an increase in charges of medical negligence brought against hospitals and doctors under the CPA, these accusations are frequently unfounded.<sup>2</sup> Medical professionals frequently find it difficult to defend themselves and must deal with the stress and unpredictability of the legal process. The doctor is frequently subjected to the anger of the family and the community, with insulting remarks being disseminated on social media, in print, and on electronic media without giving the

doctor a chance to respond. Given all of this, a doctor may be seen as the second victim in a medical malpractice case.<sup>3</sup> Doctors are frequently unaware of the myriad issues, such as legal intricacies, prior court decisions, etc., that affect the outcome of a medical negligence case. However, the legal system makes an effort to be logical, reasonable, and scientific in making decisions. In India, hospitals and doctors should stay current on court rulings involving medical negligence and the justifications for them. This might enhance patient care and stop such incidents from occurring.

The medical community should keep in mind that if a doctor fails to exercise reasonable care, the party who was wronged will receive justice. Thus, the major factors that help the court/tribunal decide on a case of medical negligence must be identified and addressed in order to properly prepare healthcare service providers for this litigious age.

## Methodology:

This is a narrative analysis based on decisions taken from the Supreme Court of India website (<https://main.sci.gov.in/judgments>) using a free text search with the phrase "medical negligence" made between January 2012 and December 2021 (10 years).

**Inclusion Criteria:** Cases where final decision of Supreme Court was pronounced

**Exclusion Criteria:** Cases which met either of the following

1. Trial is ongoing/pending
2. Directed by Supreme Court for retrial

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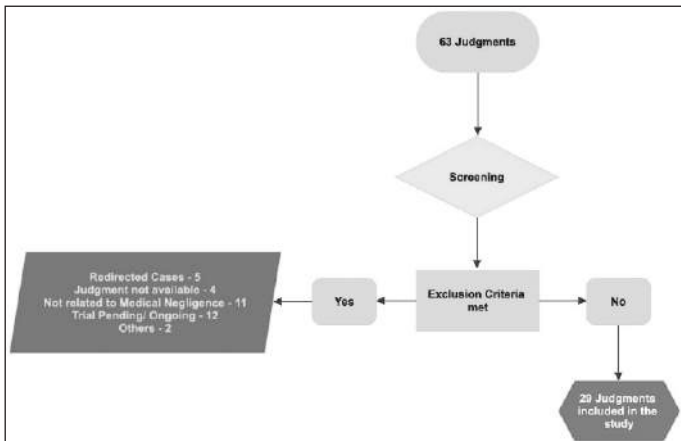
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## Article History

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**Figure 1. Process of selection of judgments in the study.**



3. Non availability of judgment copies
4. Cases not related to medical negligence
5. Others (Complaint not maintainable, final judgment yet to be pronounced, etc.)

Based on this, 63 judgments were downloaded from the Supreme Court of India website. As shown in Figure No. 1, out of these, 29 cases were included in the study while 34 cases were excluded.

The list of cases taken into consideration for this study is given in the Annexure no. 1

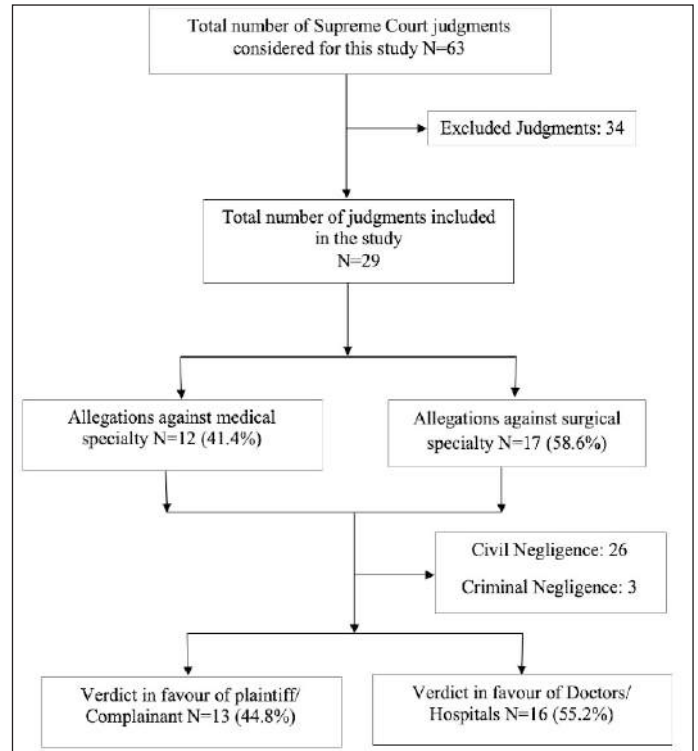
**Results:**

For this study, a total of 29 Supreme Court rulings were taken into account after screening. Figure No. 2 shows the outcome of the studied rulings.

According to the analysis of the data, claims against the medical and surgical specialties were made in 17 (58.6%) and 12 (41.4%) cases, respectively, out of the 29 judgements. With 7 (24.1%) cases, the Obstetrics & Gynaecology (OBG) specialty received the most allegations, followed by General Surgery and Medicine, each with 6 (20.7%) incidents. Among the 29 cases, 26 (89.7%) were submitted as civil negligence cases (seeking compensation), and 3 (10.3%) as criminal negligence cases (seeking punishment). Table No. 1 highlights the several reasons why medical negligence lawsuits are brought, including concerns with diagnosis, investigation, post-operative care, consent, and referral. According to Table No. 2, Group 2 medical errors accounted for 31% of all alleged medical negligence instances, followed by group 3 and group 4 medical errors, which accounted for 27.6% and 20.7% of cases, respectively.

The primary grounds for accusations of medical negligence in the judgements studied were causing damage to patient in 10 (34.5%) cases and death of patient in 15 (51.7%) cases. The complaints were related to acts of commission and omission in 8 (27.6%) and 17 (58.6%) of the cases, respectively. Only 12 (41.4%) cases involved the court requesting an expert's view, and only 2 (6.9%) involved the doctor arguing contributory negligence as a defence. In three (10.3%) of the cases where the court felt Res Ipsa Loquitur applied, the burden of proof was shifted to the doctors or the hospital, who had to show that they had provided standard

**Figure 2. Outcome of the studied judgments.**



care in the course of their duty.

13 (44.8%) of the Supreme Court's verdicts found the plaintiff's claim to be true, whereas 16 (55.2%) of the judgements found the doctors not guilty. In 14 (87.5%) of the verdicts in favour of doctors, medical records and paperwork were viewed as essential proof to refute charges of negligence. Finally, the Supreme Court increased the compensation awarded by the lower courts in 6 (20.7%) of the analysed judgements; in one judgement, it affirmed the National Commission's decision to reduce the compensation awarded by the State Commission.

**Discussion:**

There has been an unprecedented surge of accusations made against the medical community in a time when consumers are well aware of their rights and have access to consumer forums that are flexible and less expensive to contact.<sup>4</sup> An analysis of the data from our study reveals that the surgical specialties were the subject of the most allegations (58.6%), which is consistent with the results of other studies.<sup>2,5-11</sup> Numerous studies have found that surgical specialties are targeted by lawsuits more frequently than medical specialties, a pattern that is not only observed in India but also around the world.<sup>11-14</sup> Even among the surgical specialties, the department of obstetrics and gynaecology received the most complaints, which is consistent with other studies' findings and accounted for 24.1% of the cases. This may be because the mother's health and the life of the unborn child are frequently in jeopardy, and in the event of a bad outcome, the relatives choose to file lawsuits out of an emotional inclination.<sup>3</sup>

The group 2 error, which was seen in 31% of the cases where there were reported medical errors, was followed by the group 4 error

**Table 1. Allegation wise distribution of alleged medical negligence cases**

S. No.	Allegation	No. of Cases (%)
1	Failure to do timely investigations	8 (27.6%)
2	Informed written Consent was not taken	3 (10.3%)
3	Timely/ appropriate referral not given	3 (10.3%)
4	Doctor went abroad when patient was under his/her care	2 (6.9%)
5	Failure to examine and treat properly	2 (6.9%)
6	No anaesthetist/non-qualified anaesthetist were present during the surgery/ procedure	2 (6.9%)
7	Pre-anaesthetic check-up was not done	2 (6.9%)
8	Screening of ROP was not done for pre-term baby	2 (6.9%)
9	Telephonic instructions without examining patient	2 (6.9%)
10	Ventilator/ Operation Theatre was not available	2 (6.9%)
11	Administering anaesthesia without proper care	1 (3.5%)
12	Allergic reaction to drug – test dose not given	1 (3.5%)
13	Alternative surgical procedure (Girdle arthroplasty) was chosen over THR	1 (3.5%)
14	Arterial cannulation instead of venous cannulation	1 (3.5%)
15	Biopsy not taken from the diseased site	1 (3.5%)
16	Carelessness led to aortic dissection	1 (3.5%)
17	Cyst was not removed completely	1 (3.5%)
18	Direct blood transfusion	1 (3.5%)
19	Emergency surgery done without ICU facility	1 (3.5%)
20	Failure to administer factor VIII	1 (3.5%)
21	Failure to safeguard while the patient was delirious	1 (3.5%)
22	High dose of Inj. Depomedrol given	1 (3.5%)
23	Ligation of Common bile duct during the surgery which lead necrosis of bile duct	1 (3.5%)
24	Liver failure not diagnosed	1 (3.5%)
25	No qualified radiologists were present in the hospital	1 (3.5%)
26	Patient was started on oral antibiotics when there is active infection	1 (3.5%)
27	Surgeon never waited for the physician to discuss the details	1 (3.5%)
28	Surgical mop was left in the body	1 (3.5%)
29	Suturing was not done properly, and products of conception was retained in Utero	1 (3.5%)
30	Tubectomy done on one side only	1 (3.5%)

Note: While the main allegations are presented in the table above, more than one allegation was made in some instances.

(27.6%) and the group 3 error (20.7%). He et al. found that types 1, 2, and 5 medical errors were the most frequent, accounting for 50.5%, 18.6%, and 19.6% of instances, respectively, in their analysis.<sup>15</sup> Whether damage happened as a result of the alleged medical negligence is an important question for doctors and hospitals to answer since the presence of damage encourages the patient or their family to file a lawsuit to seek recompense for their harm or loss.

Similar findings were obtained by Vora et al. Acts of omission were found to be the primary cause of the claims in 58.6% of the judgements.<sup>5</sup> In 10.3% of the cases studied, the phrase "Res Ipsa Loquitur"—which means the object speaks for itself—could be applied. In such a case, the onus of proof switches to the physician or medical facility (defendant), who must persuade the court that there were no flaws in the care they provided while treating the patient. Also, in 3 (10.3%) cases, the failure to get consent has been mentioned as the cause of litigation. Since the Supreme

**Table 2. Classification of medical negligence adapted from.<sup>14</sup>**

Group No.	Description	Examples
1	Negligence (Omitting the necessary treatment), therapeutic omissions	Diagnostics insufficiency (no CT after head injury, ECG not done after cardiac emergency) Delayed action on post-operative complications Hospital admission is delayed or non-admission to ICU
2	Complications at and/or after surgery, peri-operative complications	Complications (Intra-operative) during the surgery (Surrounding organs get injured) Complications during endoscopic procedures Complications in the Post-operative period Mishaps due to Anesthesia
3	Wrong treatment, Inappropriate treatment	Transfusion related reactions Diagnosing through telephone without examining the patients Wrong/ improper treatment Instruments retained or left behind
4	Sub-optimal care, mistake in care	Prophylaxis insufficiency for decubitus ulcer Prophylaxis insufficiency for thrombosis Improper positioning during the procedure/surgery
5	Adverse drug event, medication errors	Wrong dosage of drug, wrong drug Wrong application/administration Improper frequency Neglecting the drug allergy Misinterpretation of given orders Illegible order

Court reaffirmed in the *Samira Kohli v. Dr. Prabha Manchanda & Anr.* case that an act of unauthorised invasion and interference with a patient's body constitutes an act of assault and battery, it is always advisable that the treating doctor or a doctor from the treating team obtain the appropriate consent prior to any procedure.<sup>16</sup>

In 2 (6.9%) of the cases, contributory negligence was used as a defence, but the defendants were unable to establish this in court due to a lack of supporting material in the medical records. In the case of *Kunal Saha*, contributory negligence was raised as a defence, arguing that the complainant's status as a physician caused him to interfere excessively with the patient's care. However, the court declined to accept this justification because there was no supporting evidence in the charts.

In 41.4% of the cases, an expert opinion was required to assess if negligence occurred. The court chose which expert committee or board of experts' opinions to rely on and accept in order to decide the issue if there were two opposing opinions. Additionally, if the court is unable to reach a decision based on the expert testimony offered by the panel of experts, it will declare such reports to be inconclusive and determine the matter on the basis of the merits and its own findings.

In order to respond to legal action, the doctor or hospital must maintain accurate recording and maintenance of medical records. Medical records were correctly maintained and stored in 87.5% of the cases where the doctors or hospitals proved guiltless. As a result, even when under the scrutiny of experts, treating physicians and hospitals could prove that they carried out their tasks with the utmost care. This is in agreement with the ruling made in the matter of the *Maharaja Agrasen Hospital*, which reads "It is well-settled that a court is not bound by the evidence of an expert, which is advisory in nature and the court must derive its

**Annexure 1. List of supreme court judgments studied.**

S. No.	Details of the Case	Year of Judgment
1	Jaswinder Singh & Anr. v. Santhokh Nursing Home & Ors.	2012
2	Mehta Charitable Hospital v. Shanti Devi	2012
3	Dr. Balram Prasad v. Kunal Saha & Ors.	2013
4	Dr. Sanjeev Manktala v. Dr. Ajit Sood & Ors.	2013
5	Dr. S.K. Jain v. Shaveer Singh	2013
6	Arun Kumar Jha v. Dr. Parth Pratim Pandey & Ors.	2013
7	ESIC & Anr. v. Sudha Dhobriyal & Anr.	2013
8	Alfred Benedict & Anr. v. Manipal Hospital & Ors.	2014
9	Kanta v. Tagore Heart Care & Res. Centre Pvt. Ltd & Anr.	2014
10	Ashish Kumar Mazumdar v. Aishi Ram Batra Charitable Hospital & Ors.	2014
11	Krishnakumar v. State of Tamilnadu & Ors.	2015
12	Vishnu Dutt Tiwari v. State of UP & Ors.	2015
13	Asit Baran Mondal & Anr. v. Rita Sinha & Anr.	2016
14	Kozhy Varghese v. T.P.Basheer Ahammed	2016
15	Bijoy Sinha Roy v. Biswanath Das & Ors.	2017
16	Vipul Subodh Chandra Shah & Ors. v. Gujarat Res. & Medical Institute & Ors.	2017
17	Dr. Jayshree Ujwal Ingole v. State of Maharashtra & Anr	2017
18	Rajesh Taneja v. Kaiser Hospital & Ors.	2018
19	Baby Zachariah v. B.K. Memorial Hospital & Anr.	2018
20	Dr. Jhunjhunwala v. Dhanwanthi Kaur & Ors.	2018
21	Arun Kumar Manglik v. Chirayu Health & Medicare Pvt. Ltd. & Anr.	2019
22	Maharaja Agrasen Hospital & Ors. v. Master Rishabh Sharma & Ors.	2019
23	Devi Lal Parikh v. Harbans Singh & Anr.	2019
24	Shilaben Ashwinkumar Rana v. Bhavin K Shah & Anr.	2019
25	Vinod Jain v. Sanktoba Durlabhji Memorial Hospital & Anr.	2019
26	Anjana Agnihotri & Anr. v. State of Haryana & Anr.	2020
27	Dr. Sheela Pahlajani v. Anjali Srivastava	2021
28	Dr. Harish Kumar Khurana v. Joginder Singh & Ors.	2021
29	Bombay Hospital & Research Centre v. Ajay Jaiswal & Ors.	2021

own conclusions after carefully sifting through the medical records, and whether the standard protocol was followed in the treatment of the patient."<sup>17</sup>

Although the doctors or hospitals won the majority of the cases (55.2%) in the end, they fought the legal battle for several years. As more patients and families accuse carelessness either as a reflex to express their anger or sadness or with the purpose of extorting money, there is an increase in vexatious or frivolous accusations against doctors and hospitals that cannot be ignored.<sup>2</sup>

In this regard, it is essential for the medical community to be knowledgeable about the most recent rulings and legal regulations pertaining to medical negligence. Hopefully, this will lessen some of the doctors' fears and/or anxieties and keep them from taking dramatic measures to avoid facing the criminal charges that are frequently falsely brought against them. Sadly, an obstetrician in Rajasthan recently committed suicide out of dread of being arrested after a FIR for murder was filed against her after her patient passed away from postpartum haemorrhage (PPH).<sup>18</sup> Similar pressures and accusations affect a lot of doctors, although they are rarely reported.

In six (20.7%) of the judgements studied, the Hon'ble Supreme

Court increased the awarded compensation, whereas in one case there was no loss of income or patient income, hence the amount was lowered. The "Bolam test" is used by Indian courts to evaluate the level of care and decide whether or not the doctor was negligent. The propriety of the expert's opinion should not be called into question by the court if their actions are endorsed by a group of experts in the field. In other words, other medical experts in the field, not judges, should determine whether or not a doctor is guilty of negligence.<sup>19</sup> The practise of relying on the opinions of "medical experts" to provide a decision is changing in popularity around the world, and numerous tribunals/courts are now logically assessing the advice provided by the medical experts.<sup>20-23</sup> Doctors should remember the oft-repeated adage that in a court of law, "poor records means poor defence and no records mean no defence."<sup>24</sup>

One cannot argue that the judicial system is faulty or incapable of handling cases of medical negligence. It has been determined via a series of judgements that the Indian judiciary puts to rest the speculative nature of adjudication in cases involving medical negligence liability and makes plainly clear that if the complainant's charges are proven, then fair justice would be done. Additionally, it is equally obvious that there cannot be a presumption that medical professionals cannot make mistakes when providing patient care and treatment.<sup>25</sup> According to studies, doctors in India are not familiar with the concepts of medical negligence and the consumer protection act. Therefore, it is imperative that administrators and healthcare professionals take the appropriate efforts to improve their legal knowledge.<sup>26,27</sup>

Recommendations to doctors and hospitals:

a. Precautions to avoid litigation

1. Establish a strong line of communication with patients, their guardians, and/or family members about the condition, disease, and treatment strategy. They should also be informed on a regular basis how the treatment is going.
2. Avoid bringing up contentious issues pertaining to the treatment in front of patients, their loved ones, or guardians since this could send the incorrect signals.
3. In order to prevent misunderstandings and miscommunications, the treatment and action plans must be shared with even the junior doctors on the treating team. Patients or their loved ones may become suspicious as a result of these misunderstandings.
4. Either the treating physician or a physician from the treating team should get consent for treatment from the patient or their relative or guardian.
  - a. When describing surgical operations, it is best to use diagrams or drawings whenever possible.
  - b. Consent must always be obtained before the start of a procedure or surgery with the signature of a witness (the consent form should specify the witness's relationship to the patient).
5. The following information needs to be recorded in operative/procedure notes:



- a. The start and end times of the surgery
- b. The names of the surgeons and anaesthetists (if any) engaged
- c. Intraoperative observations
6. Never inflate patients' expectations or guarantee a full recovery.
7. If a patient, patient attendant, or legal authority makes a formal request through proper channel for a copy of the medical records, you must give it to them within 72 hours (as per current rule); The proposed regulations by the National Medical Commission (NMC) stipulate that it must be provided within 5 working days.<sup>28,29</sup>
8. Retrospective changes to medical records should be avoided.
9. You should never falsify medical documents.
10. Document the situation with the date and time if a patient disobeyed your orders or interfered with the treatment procedure.
11. If a patient dies, exercise caution when expressing regret to the deceased's family because this could be used against the doctor in court as evidence of guilt.
12. Refrain from prescribing over the phone without first seeing the patient.
13. Stay up to date on the most recent evidence based medical recommendations and treatment techniques.
- b. To plan the defence if litigation is initiated
  1. Use the services of a competent attorney. The hospital and/doctor are entitled to legal representation from an attorney.
  2. The medical professional or facility should refute all of the claims. It should be made clear that standard protocol was followed, and even though the adverse event was regrettable, it was not the doctors' fault, even though the doctor may feel empathetic to the patient or their loved ones.
  3. Don't include all of your defences in the letter in response to the accusations presented by the patient/ patient party or their advocate.
  4. In accordance with the terms and conditions of their policy, a doctor must notify their insurance agency whether they have indemnity insurance.
  5. It's crucial to file all paperwork on time, including written declarations, affidavits, and other records.
  6. It's crucial to retain medical records, treating physicians' affidavits, investigative findings, etc. appropriately.
  7. The expert testimony of a licenced and impartial medical professional requires special consideration. Affidavits from experts should be submitted as well.
  8. To mount a strong defence at trial, supporting medical literature on the subject should be supplied.
  9. Case law that is pertinent to the issue will aid in mounting a strong defence at trial.
  10. Become familiar with the rules and rulings that may control the course of alleged medical negligence claims.

### Conclusion:

The medical community is understandably worried about protecting itself from speculative and vexatious claims. Even if there are undeniably incidents of medical negligence, the problem that concerns the medical fraternity is that speculative allegations frequently result in permanent harm. As a nation, we are experiencing a malpractice crisis. Thus, the medical community must realise that there is potential for improvement in patient care, particularly in diagnostics, surgery, post-op care, documenting, maintaining medical records, providing counselling and medications, etc.

**Limitations:** As the cases were chosen via a free text search on the Supreme Court of India website with the keyword "Medical Negligence," there was an inherent bias in the selection process. As there was no option to segregate or choose all judgements relating to medical negligence or in accordance with the law, i.e., Consumer Protection Act, it is likely that certain judgements were missed.

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**Conflict of Interest:** None

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