

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 7 | Issue 3

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2024

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# Diving Deep: Bolam and Bolitho Tests in The Evaluation of Medical Negligence in India

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## ABSTRACT

*Following the enactment of the Consumer Protection Act in 1986, some patients began pursuing legal actions against medical professionals, claiming that they were irresponsible in their medical services and seeking and receiving compensation in exchange. Because of the increase in such similar cases, various legal decisions have been made about what constitutes negligence and what the requirements are to show that medical negligence took place. Negligence can be defined as a breach of a legal duty to care that causes damage to the other person. Breach of such duty allows the patient the right to sue the doctors who had a duty of care and breached it, resulting in damage to the patient. Anyone who provides medical services or any type of medical treatment implicitly states that they have the necessary expertise and knowledge; this is known as the "implied undertaking" of the medical practitioner. Proof that the doctor did not deliver the requisite standard of care given the circumstances is a key component of any negligence lawsuit against the doctor. The development of the Bolam test demonstrates a careful balance between judicial action & deference to medical expertise. While courts are entrusted with assessing negligence, India's rules for evaluating expert views & the level of deference to medical practitioners are always developing and uneven. In Indian courts, the Bolam test is an important instrument for determining medical negligence claims. This test compares a doctor's behavior to the accepted standards of their professional community. To establish negligence, it must be proven that the doctor diverted from accepted standards and took actions that were not in line with what an expert of typical ability would have done. The Bolam test, although widely recognised in India, has proven useful in circumstances such as Suresh Gupta case, but disputes continue over the need for a more strict test to suit increasing standards. However, the Bolam test had been critiqued for leaning too much on medical testimony to support the defendant. The House of Lords' decision in the Bolitho case requires that the asserted quality be justified logically and must have taken into account the hazards and benefits of various other options. The outcome of Bolitho is that the court will adopt a more inquisitive approach to the medical evidence presented by both*

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*sides in litigation, allowing it to reach its verdict. An analysis of the Bolam and Bolitho rules in India indicates a complex ecosystem where legal standards, medical ability, and court discretion coexist. The need for an agreed-upon and complete structure to handle medical negligence is clear, with an emphasis on balancing respect to medical experts with responsibility and patient rights protection.*

**Keywords:** *Bolam test, Bolitho test, medical negligence, Consumer Protection Act, implied undertaking, standard of care, negligence lawsuit.*

## I. INTRODUCTION

Medical negligence is a serious problem that haunts the Indian healthcare system, hurting numerous individuals and families each year. Medical negligence, defined as a healthcare provider's failure to fulfill the established standard of care, can have far-reaching consequences, involving injuries to the body, mental anguish, and monetary challenges.<sup>3</sup> In an environment with significant disparities in healthcare and problems, evaluating medical negligence standards becomes essential for maintaining patient safety, ensuring professional accountability, & promoting trust in the healthcare system. The lack of a defined legal definition of medical negligence in Indian legislation underlines the challenge of tackling this problem in the country's legal framework. Compared to countries with clearly defined medical negligence regulations, India depends extensively on court rulings & precedents to handle medical negligence scenarios.<sup>4</sup> The reliance on case law includes an in-depth learning of legal concepts, shifting standards of care, & the relationship between medical skill and legal scrutiny. The Bolam and Bolitho tests, which developed in landmark judgments in the UK, have made significant effects on the determination of cases involving medical negligence across the world, including India. The Bolam test, developed in *Bolam v. Friern Hospital Management Committee* (1957), indicates that a medical professional is not negligent if they obey the ethical standards of medical opinion within their specialty. This exam emphasizes expert judgment and opinion within the field of medicine, emphasizing the importance of peer-reviewed standards in evaluating medical practice. In contrast, the Bolitho test, established in the famous *Bolitho* case, provides legal scrutiny to specialized medical judgments. According to the aforementioned test, even if a responsible body of medical opinion endorses a particular therapy or conclusion, the court retains the ability to decide whether the view is sensible and justifiable. The Bolitho test was created to deal with conditions in which judgments by experts lack

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<sup>3</sup> What are the basis of determining medical negligence By MC Gupta

<sup>4</sup> A practical guide to the medical negligence By M Boylan

credibility or are unable to resist rational consideration, so guarding against potential mistakes or oversights in medical decision-making. This study tries to dive into the complex nature of medical negligence standards in India through the comparison of the Bolam and Bolitho tests. This study aims to give helpful insight into the complicated nature of medical negligence adjudication by examining legal precedents, judicial interpretations, and practical implications of these tests in Indian courts, as well as to identify areas for potential reform or improving in the current legal structure.

## II. UNDERSTANDING MEDICAL NEGLIGENCE

In J.Mathew's case<sup>5</sup>, the Supreme Court of India discussed professional conduct and what constitutes negligence by a professional:- In the law of negligence, individuals including doctors, lawyers, builders, and other professionals are included in the category of persons professing some special skill or qualified individuals in general. Any work that requires the use of a specific ability is usually accepted or performed once the individual in question demonstrates the necessary competence. Any prudent individual choosing an occupation that necessitates a specific amount of expertise to be identified as a professional of that branch implicitly ensures anyone who interacts with him that the ability that he professes to possess shall be exercised and exercised with an appropriate amount of diligence and caution.

In K Sharma & Ors. v. Batra Hospital & Medical Research Centre and Ors<sup>6</sup>, the Honourable Supreme Court referred to the Halsbury's Laws of the United Kingdom, which defined medical negligence as responsibilities owing to the patient. An individual who claims to be ready to provide medical guidance or therapy implies that he possesses the necessary competence & expertise. Any individual, whether a licensed physician or not, who receives input from the patient owes them certain responsibilities, including an obligation of care when deciding if to embark on the case, an obligation of proper care in choosing which treatment to offer, and a duty of care in administering the treatment in question. A breach whatsoever of these responsibilities will back up the individual's negligence claim.

Winfield noted that negligent conduct consists of three major components. They are –

- 1) The existence of a legal responsibility.
- 2) A breach of legal responsibility.
- 3) Damage resulting from the breach.

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<sup>5</sup> J.Mathew Vs State of Punjab AIR 2005

<sup>6</sup> K Sharma & ors Vs Batra Hospital & medical research centre AIR 2010

### III. CONSEQUENCES OF MEDICAL NEGLIGENCE

Medical negligence can have far-reaching implications, affecting not only the persons directly involved, but also the healthcare system, society, and public faith in medical practitioners. When medical practitioners fail to provide the required level of care, the effects can be severe and long-lasting. One of the greatest direct repercussions of medical malpractice is physical injury to the patient. Whether it be a misdiagnosis, surgical error, pharmaceutical error, or any other type of neglect, the patient may experience increased health issues, extended recovery times, incapacity, or even death. These physical effects can significantly affect the patient's quality of life, causing pain, suffering, and emotional misery for both the patient and their loved ones.

<sup>7</sup>Along with physical suffering, medical carelessness can result in financial ramifications for the patient. Patients may face additional medical costs to repair the errors caused by irresponsible healthcare professionals, causing financial pressure and hardship. Lost wages as a result of prolonged recuperation or incapacity can worsen the patient's and family's financial hardship. In situations of extreme carelessness, the expense of continued medical treatment, rehabilitation, and long-term impairment can be significant, causing financial insecurity and hardship. <sup>8</sup>Furthermore, medical malpractice can diminish faith in the healthcare system and its practitioners. Patients rely on healthcare practitioners to deliver competent and compassionate treatment, and when that trust is violated due to carelessness, it can have long-term consequences. Patients may become unwilling to seek medical care, adhere to treatment programmes, or accept the advice of healthcare experts, resulting in delays in receiving needed care and potentially worsened health outcomes. This loss in trust can have far-reaching consequences for the healthcare system, including increased litigation, regulatory scrutiny, and reputational harm for healthcare institutions and providers. Beyond the person, medical negligence can have a systemic impact on the healthcare system as a whole. Medical mistakes caused by neglect can put a strain on healthcare resources, raise healthcare expenditures, and lower overall care quality. Healthcare facilities may face more liability, insurance expenses, and regulatory supervision, making it more difficult for healthcare practitioners to practice. Furthermore, negative publicity and legal ramifications from medical negligence lawsuits can harm the image of healthcare institutions and providers, limiting their capacity to recruit patients and keep employees.

Medical carelessness can have a wide range of societal implications. Public knowledge of medical mistakes and carelessness may result in increased scrutiny of the healthcare system,

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<sup>7</sup> Psychological consequences of medical negligence by uk centre for medico legal studies

<sup>8</sup> Analysis on medical negligence by V Dubey

requests for greater openness and responsibility, and demands for stronger patient safety measures. Media coverage of high-profile examples of medical malpractice may also alter public attitudes of healthcare practitioners and influence public policy decisions about healthcare regulation and monitoring. The social stigma associated with medical mistakes and neglect can exacerbate the difficulties experienced by patients and healthcare staff, causing feelings of humiliation, guilt, and isolation. Medical negligence has far-reaching effects on people, the healthcare system, society, and public faith in medical personnel.<sup>9</sup> Medical negligence has far-reaching and complicated consequences, including bodily suffering and financial hardship, as well as degraded trust and institutional issues. Addressing medical negligence necessitates a holistic approach that emphasises improving patient safety, increasing responsibility, and fostering a culture of transparency and constant enhancement within the healthcare system. Recognizing the implications of medical negligence and taking proactive actions to prevent errors and enhance the quality of care delivered allows healthcare practitioners to strive towards improved patient outcomes and develop trust in the healthcare system.

#### **IV. MEDICAL NEGLIGENCE AND CONSUMER PROTECTION ACT**

According to the provisions of the Consumer Protection Act of 1986, medical negligence is defined as misconduct by medical practitioners in failing to provide adequate care or a reasonable degree of care, resulting in a breach of their legal obligations and causing injury to patients, who are customers. An unhappy individual might always submit a complaint with the consumer forums regarding the accused medical practitioner and the facility.

In the case of *Indian Medical Association vs. V.P. Santha*<sup>10</sup>, the Honourable Supreme Court noted that medical professionals fall under the Consumer Protection Act of 1986, which means that the medical care provided by them ought to be addressed as services according to section 2(1) (o) of the Consumer Protection Act of 1986. Medical services are included in the scope of services under the newly enacted Consumer Protection Act of 2019, as specified in sec 2(42)<sup>11</sup>. Any medical negligence that occurs on behalf of the service provider will be deemed a deficit under Section 42(11) of the revised Consumer Protection Act of 2019. Any individual who has been harmed by medical malpractice can sue a doctor or a hospital. According to Sec 69(1) of the Consumer Protection Act of 2019, the time for filing a complaint concerning medical

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<sup>9</sup> Consequences of medical negligence by S Snyder

<sup>10</sup> *Indian medical Ass. Vs VP Shantha* 1996 AIR 550

<sup>11</sup> Section 2(42) of Consumer Protection Act of 2019

negligence is two years from the date of harm.<sup>12</sup>

The regulatory structure regulating medical negligence in India is centered on the Bolam test, and this stipulates that a medical professional can be held accountable for negligence if they fall short of providing the level of care that a reasonably qualified and mindful medical professional would have given in similar situations. The Supreme Court of India has adopted the Bolam test as the criterion for determining medical negligence in the country. The legal landscape of medical negligence in India is complicated and varied, with several regulations and laws controlling the field of medicine and the rights of patients. The IPC, the Consumer Protection Act, & the Indian Medical Council Act are major pieces of law that establish a legal structure for dealing with medical negligence in India. The Bolam test, which is based on the norm of care premise, is the country's criteria for determining medical negligence. Medical practitioners must adhere to the highest standards of care, and for patients to be aware of their rights & legal decisions in the event of medical negligence.

#### **(A) Bolam Test As Applied In Indian Jurisprudence, Is An Effective Way To Affix Liability In Medical Negligence Cases ?**

The Bolam test is a test that developed from the English case law, Bolam V Friern hospital management.<sup>13</sup> In this particular case, the judge pointed out that considerable medical consensus was against the utilization of relaxant medications, and that physical restraining might occasionally enhance the danger of fracture. Furthermore, it was customary practice in the field not to advise clients about the potential hazards of therapy until they specifically requested it. The judge determined that what was established for practice in a certain field was extremely important to the quality of care expected. An individual is negligent when he or she fails to act according to what someone with common sense would do given the circumstances. However, if a person claims to have expertise like doctors do, the standard of their treatment must be improved. The defendant's hospital received a favorable judgment in this case. Considering the general medical consensus regarding what was appropriate electroshock therapy treatment, they weren't irresponsible regarding how they delivered the medication. The defendant's hospital received a favorable judgment in this case. Given the general medical consensus on what was appropriate electro-shock therapy, they weren't irresponsible in how they delivered the treatment. An individual is considered negligent when he or she fails to act according to what someone with common sense would have done given the situation at hand. However, if a person

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<sup>12</sup> Section 69(1) of Consumer protection Act of 2019

<sup>13</sup> Bolam V Friern hospital management.

claims that they have professional abilities, as doctors do, the standard of care has to be improved. The defendant's hospital received a favorable judgment in this case. Given the general medical consensus on what was appropriate electro-shock therapy, they weren't irresponsible in how they delivered the treatment. This decision established the Bolam test, which is the established criterion for determining the appropriate threshold for reasonable diligence in negligence claims involving trained professionals. When the defendant has portrayed himself or herself as having above-average talents and skills, this test requires criteria to be consistent with an accountable group of views, even if others differ. According to the Bolam test, if a doctor meets the standards of a respectable body that provides a medical opinion, he is not negligent.

In India, the Bolam test is widely regarded as the accepted norm. In the case of *AH Khodwa vs. the State of Maharashtra*<sup>14</sup>, the court determined that medical practitioners' skill varies from doctor to doctor. In this line of work, several therapy options may be available for a patient. A medical consensus may disagree on the method of action that needs to be followed by a doctor caring for a patient, however so long as the doctor behaves in a manner appropriate for the medical field and the court determines the doctor has handled the patient using proper care, skill, and attentiveness. Despite taking all measures, it will be difficult to find the doctor liable for negligence if the patient dies or has a lasting disease. When doctors act recklessly and in ways that aren't typical of them in their final days the medical practitioner may be held accountable. Bolam's test has also been allowed in the case of *the State of Haryana and Others v. Smt. Santra*.<sup>15</sup> This case is comparable to *A. H. Khodwa vs. the State of Maharashtra* in that it involves civil responsibility to compensate for the failure of a surgeon's sterilization procedure. In the matter of *Dr. Suresh Gupta vs. Government of NCT of Delhi*, the court ruled stated the criteria for finding medical negligence established in Bolam's case is applicable in India. The Bolam test has been in use in India for a long time, with the idea being adopted and implemented in several situations. While the Bolam test has been utilized in India for a long time, significant problems persist, which politicians should address. The Bolam test has been a longstanding principle applied in numerous cases within India's legal framework. However, despite its historical application, it is acknowledged that the Bolam test possesses certain limitations that warrant attention from legislators. Initially adopted from English tort law, the Bolam test has been utilized in India for an extended period. Nevertheless, recognizing the deficiencies of the Bolam test, particularly evident in English jurisprudence, England has moved

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<sup>14</sup> *A. H. Khodwa vs. the State of Maharashtra* 1996 SCC (2) 634

<sup>15</sup> *State of Haryana and Others v. Smt. Santra* 2000



towards a new standard known as the Bolitho test. Among the significant drawbacks associated with the Bolam test is the delegation of determining the standard of reasonable practice solely to the medical profession rather than the judiciary. This setup allows medical professionals to set their own standards, even if they are deemed incorrect, without facing liability. The Bolam test grants medical professionals immunity from liability, which often dissuades claimants from pursuing their cases further.

**(B) Whether Bolitho Test, As Evolved In English Jurisprudence, May Be Considered A More Effective Way To Affix Liability In Medical Negligence Cases Than The Bolam Test ?**

The Bolitho test originated in the case of *Bolitho v. Hackney Health Authority* [1996]<sup>16</sup>. In this case, the court concluded that a defendant can not avoid responsibility simply by claiming that the harm could have taken place in any event given that he was going to do another breach of duty later. Furthermore, the court determined that the doctor's failure to go and care for the patient wasn't what led to his death. If a medical professional had visited the individual, she wouldn't have intubated him. That judgment would be considered backed by professional opinion since many specialists acknowledged that intubation is not a normal procedure. The Bolitho test limits Bolam's scope by requiring a logical analysis of defense arguments before accepting them as reasonable, respectable, or responsible. However, if a body providing medical opinion represents itself as reasonable, respectable, or irresponsible, it is rare for the court to reject it.

The Bolitho test was considered in the Supreme Court of India at two occasions: In the matter of *S.Kohli v Prabha*<sup>17</sup>, the court noted that a foundation had been established in *Bolitho v Hackney*, and it noted that the court had purposefully selected the ' real consent notion developed in Bolam.

In the *V. Ashok vs. Lakshmi Hospital* <sup>18</sup>case, the Court ruled that a medical professional will be held accountable for negligence regarding medical care and diagnosis despite a body with a professional opinion accepting his actions in cases in which it hasn't been proven to the satisfaction of the court that the opinion relied on is reasonable or responsible.

Contrasting the Bolam test, the Bolitho test states that the court shouldn't acknowledge a defense position as reasonable, acceptable, or responsible without first determining if such an opinion

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<sup>16</sup> *v. Hackney Health Authority* [1996]

<sup>17</sup> *S.Kohli vs Prabha* AIR 2008

<sup>18</sup> AIR 2001 SC 3914

is open to logical scrutiny. Nevertheless, if there is a body of medical thought that portrays itself as reasonable, acceptable, or responsible, it is uncommon for a jury to find such a view to be anything other than represented. This result in the Bolitho case indicates that the procedures and methods used by medical professionals to treat patients may now be considered irrational by the courts, however, this will only happen in a few circumstances.

## **V. COMPARATIVE STUDY BETWEEN BOLAM AND BOLITHO TESTS**

The Bolam and Bolitho tests are two legal criteria used to assess medical practitioners' responsibility in situations of medical negligence. According to the Bolam test, if a practitioner follows a practice acknowledged by a respectable body of medical opinion, then are unable to be held guilty of medical negligence. This exam has been severely criticized for prioritizing medical professional's views above the security and well-being of patients, as well as neglecting to reflect the evolving character of medical practice. The Bolitho test, on the other hand, indicates that a medical professional's activities must be rationally justifiable to be judged acceptable. This review emphasizes the necessity for medical practitioners to defend their choices and weigh the risks and advantages of various treatment alternatives.<sup>19</sup>

The Bolam test is commonly used in India to detect medical negligence, although the Bolitho test is being advocated for adoption. The Supreme Court of India has cited the Bolitho test twice, but it has not yet been established as a threshold for medical negligence. Critics argue that the Bolam exam in India prioritizes medical practitioners' perspectives over the safety of patients and mental health. The exam has been characterized as a clumsy instrument, created from medical cronyism and put in place via a system of peer evaluation, where professionals set the standards that are required of them and give testimony in each other's defense. The Bolitho test, on the other hand, has received acclaim for emphasizing rational defensibility and its ability to safeguard patients from medical errors. The test has been defined as a medico-legal examination for a test regarding medical negligence that explains why the court's decision in Bolitho did not overturn Bolam but rather altered the broader principle in Bolam as situations may require.

Therefore, while the Bolam test has traditionally been employed to identify medical negligence in India, there have been requests for the implementation of the Bolitho test. The Bolitho test emphasizes the necessity for medical personnel to defend their conduct and weigh the dangers and benefits of various treatment alternatives, with a view to better safeguard patients from medical malpractice. Eventually, the decision between the Bolam and Bolitho tests will be

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<sup>19</sup> Critical analysis study on Indian legislation on medical negligence By E Chandrakar

determined by the Indian legal system's goals and the balance it wants to strike between medical experts' opinions and patient safety and well-being.

### **(A) Need For Adoption of Bolitho Test In India**

Medical negligence is a major concern in India, with a high rate of medical mistakes and lawsuits. The standard care that is employed by Indian courts is based on English case law, with the Bolam Test finding the "reasonable degree of care and skill". However, this norm has been criticized as inefficient and enabling doctors to act as their judges. The Bolitho Test, on the other hand, recommends that the courts should intervene and declare the Bolam Test inapplicable in cases when the body of experts view is irrational. The Bolitho Test advocates a doctrinal reform, arguing that the issue of rationality should be decided by the court rather than the medical community. This is an important part of the Bolitho Test because it provides for a more thorough review of medical malpractice and guarantees that the quality of treatment is held to a higher level. The Indian judiciary has relied heavily on the legislation established by English courts, although its application of the norms of care has been tailored to local conditions. In India, medical mistakes and lawsuits are common, with an absence of information about patients becoming one of the leading causes. The Indian judiciary has endeavored to strike a balance between medical professionals' rights to minimize intimidation, but this has ended up in a reduction in doctors' accountability. The Bolitho Test, which emphasizes the court's interventionist posture, offers an enhanced quality of care that can assist in alleviating India's medical negligence problem.<sup>20</sup> The Bolitho Test has been only cited twice in the Indian Supreme Court, but its ability to raise the strain on medical professionals while also providing more possibilities to seek reimbursement renders it a crucial tool for tackling medical negligence in India. The Bolitho Test demands that the medical professional's actions be rational and do not necessarily comply with the greatest standard of care. This level of care is varied and dependent on the circumstances, giving it a more adaptive and versatile quality of care. The Bolitho Test also emphasises the significance of risk assessment in clinical judgments, that's especially relevant in India, where medical errors are frequently caused by a lack of information about patients. The Bolitho Test fosters a more considered and methodical method of medical care by pushing doctors to weigh the risks and advantages of various treatment alternatives. The Bolitho Test is a more efficient standard of care than the Bolam Test, which should be implemented in India<sup>21</sup>. The Indian judiciary's dependence on English case law offers a solid framework for implementing the Bolitho Test, which has an opportunity to improve the level of care and

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<sup>20</sup> Test of medical negligence by K Kadhanapal

<sup>21</sup> MC Gupta What is medical negligence

eliminate medical malpractice in India. The Bolitho Test's dedication to risk assessment, the court's interventionist approach, and its flexible and adaptive standard of care make it an effective instrument for dealing with medical malpractice in India. Indian law borrowed the Bolam test from UK torts law, and it has been in use throughout India for a long period. After a while, the UK saw the limitations and flaws of the Bolam test and superseded it with the Bolitho test, which addressed all of the Bolam test's inadequacies. There is no question that within the field of medicine, a medical professional has more expertise than any judge. Although it is uncommon, yet may be times when the medical professional's technique for treatment is inappropriate. India acquired the Bolam test from England; similarly, it may also adopt the Bolitho test in India since it is more efficient than the Bolam test, and the Bolitho test allows for speedy relief because it raises the load on the medical practitioner and so gives more room for compensation. The introduction of Bolitho can be viewed as a break from the traditional Bolam test, and it has the potential to benefit Indian jurisprudence overall.

## **VI. CHALLENGES FACED FOR ADOPTION OF BOLITHO AND MEASURES TO AFFIX THEM**

The Bolitho Test, developed in the UK, became widely studied and discussed in India as a possible replacement for the conventional Bolam Test for finding medical negligence. According to the Bolitho Test, an expert's perspective must be able to enduring logical investigation; otherwise, the court may conclude that the view is neither reasonable nor responsible. Notwithstanding its merits, the Bolitho Test's implementation in India confronts various hurdles. One of the key issues is that various judges may use the Bolitho Test differently, resulting in contradictory decisions in comparable situations. This can cause doubt and confusion for both medical professionals and patients, as well as weaken public trust in the legal system. To solve this issue, judges and legal professionals may require additional training and support when applying the Bolitho Test. This might entail creating clear rules and norms for its application, as well as providing expert evidence and assistance to aid in the evaluation of medical views. Another problem is that the Bolitho Test may be regarded as imposing an unfair load on medical personnel, who may believe they are being held to an unattainable level of care. This might prevent medical practitioners from working in specific regions or taking on challenging situations, thereby harming patients. To solve this issue, medical practitioners may require additional assistance and resources to guarantee that their ideas can survive logical investigation. This might involve creating training programmes and tools to help medical

professionals comprehend the Bolitho Test's criteria and how to implement them in practice.<sup>22</sup>

Another problem is that the Bolitho Test may be regarded as imposing an unfair load on medical personnel, who may believe they are being held to an unattainable level of care. This might prevent medical practitioners from working in specific regions or taking on challenging situations, thereby harming patients. To solve this issue, medical practitioners may require additional assistance and resources to guarantee that their ideas can survive logical investigation. This might involve creating training programmes and tools to help medical professionals comprehend the Bolitho Test's criteria and how to implement them in practice. In addition, the Bolitho Test may need to provide a more stringent evaluation of medical malpractice, perhaps leading to increased lawsuits. This might put further strain on the Indian judiciary, which is currently unable to keep up with the large amount of cases. To overcome this issue, it may be important to offer greater resources and support to the courts to successfully manage the rising number of cases. This might entail hiring more judges and support staff, as well as developing new methods and procedures to improve the examination of medical negligence cases. To summarise, while the Bolitho Test has some benefits over the old Bolam Test for finding medical negligence, its implementation in India confronts numerous hurdles. The potential for inconsistent application, the perceived burden on medical professionals, the possibility of increased litigation, and the need for changes to the legal framework and medical education system are all significant obstacles that must be overcome before the Bolitho Test can be effectively implemented in India. However, with careful analysis and design, the Bolitho Test has the potential to greatly enhance patient care in India while also reducing the frequency of medical malpractice.

## **VII. CONCLUSION**

In conclusion, medical negligence standards in India have become the subject of heated discussion and debate for a long time. The Bolam and Bolitho tests, based on English legal precedent, have been extensively studied and compared in India. The Bolam Test, India's conventional standard for care, has been criticized for appearing overly subservient to medical practitioners and failing to provide enough protection for patients. The criteria, that calls for a medical professional's action to be consistent with a reputable body of medical thought, have been challenged for enabling medical personnel to establish their requirements of care, potentially resulting in inferior quality treatment for patients. The Bolitho Test, on the contrary hand, gained appreciation for its less interventionist strategy and focus on the role of the court

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<sup>22</sup> Medical negligence & law by MPR Moham & V Raj

in defining the standard of care. The test, which compels the court to consider the logicity & defensibility of the medical views, enables a more thorough review of medical negligence, which may result in a better level of care for patients. The Indian judiciary's dependence on English legal precedent, notably in medical negligence, has resulted in the Bolam Test being adopted as the accepted standard of care in India. Nevertheless, the Bolam Test's limits have grown more evident, particularly in situations when medical mistakes have caused substantial injury to patients. The Bolitho Test, with its focus on risk analysis, court intervention, and flexible and adaptive standard of care, is a more effective standard of care for dealing with medical malpractice in India. The Indian judiciary's acknowledgment of the Bolitho Test in recent judgments indicates a readiness to explore adopting it as the accepted standard of care in India. Nevertheless, adopting the Bolitho Test is not devoid its difficulties. The exam may raise the load on medical practitioners while providing additional opportunities for remuneration. It may also need a more stringent evaluation of medical malpractice, perhaps leading to increased lawsuits. Notwithstanding these limitations, the Bolitho Test must be implemented in India to improve treatment quality and minimize the frequency of medical malpractice. The Indian judiciary's acknowledgment of the Bolitho Test in more recent judgments indicates a readiness to explore adopting it as the accepted standard of care in India. The Bolitho Test's dedication to risk assessment, the court's interventional approach, and its adaptable and adaptive standard of care make it an effective instrument for combating medical malpractice in India. By compelling the court to consider the rationality and defensibility of the medical opinion, the Bolitho Test encourages a more thorough review of medical negligence, perhaps leading to a higher level of care for patients. The introduction of the Bolitho Test in India would also encourage a more patient-focused strategy for medical care. By challenging medical practitioners to weigh the risks and advantages of various treatment alternatives, the Bolitho Test encourages a more thinking and intentional approach to medical care, resulting in a safe reliable, and more efficient healthcare system for everybody. Finally, a comparison evaluation of the Bolam and Bolitho tests reveals the need for a higher quality of care. The Bolitho Test, with its emphasis on risk analysis, interventionist approach, and adjustable standard of care, is an important tool for tackling medical malpractice in India. The Indian judiciary's acknowledgment of the Bolitho Test in recent judgements indicates a readiness to explore adopting it as the standard of care in India. The Bolitho Test must be implemented in India to improve the standard of care and minimise the occurrence of medical malpractice, resulting in a more safe and effective healthcare system for everybody.

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