

**Australasian Association of
Bioethics and Health Law
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**“BEYOND BOLAM:
SHOULD INDIA REVISIT
IT’S STAND?”
(7th December, 2025)**

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HEALTHCARE DELIVERY LANDSCAPE: INDIAN CONTEXT

- Robust and Multiplying 'Private' role;
- States' presence is very minimal, however, post COVID, there are discernible changes.

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MEDICAL LITIGATION EXPERIENCE SO FAR !

- Almost unheard about medical negligence cases five decades ago.
- Seed was sown by COPRA, 1986 and 1994 it was validated that Doctor Patient relationship comes under the ambit of COPRA.

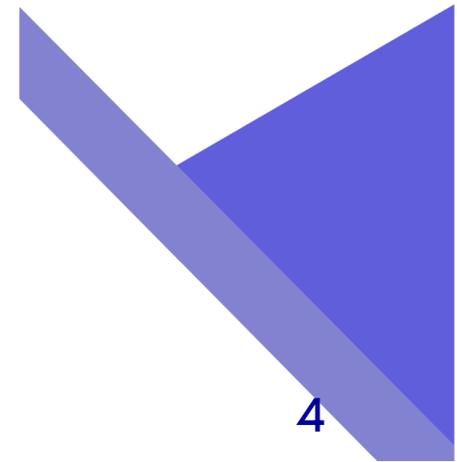
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NUMBER OF MEDICAL NEGLIGENCE CLAIMS

- Over a period of time the numbers escalated primarily owing to
 - Trust deficit;
 - Affordability @ Commercialization.



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MEDICAL NEGLIGENCE LAW

- For long grappled with the tension between Professional autonomy and Patient rights.

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BENCHMARK TO ADJUDICATE MEDICAL NEGLIGENCE LIABILITY

In multiple decisions, Supreme Court held that complying with the BOLAM TEST is mandatory for adjudicating Medical Negligence Cases @ before Consumer Commissions or other Courts.

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DEPARTURE IN 2010

Supreme Court in 2010 held that cases before Consumer Commissions, expert evidence is not mandatory as it may not be necessary in many cases.

MAKING OUT A CASE

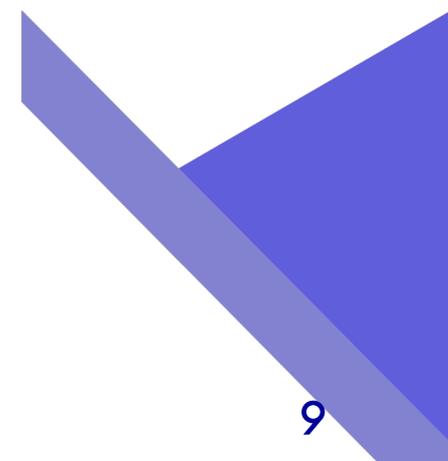
However, reasoned that when parties make out a case, the Commission may consider.

DICHOTOMY

- On one hand BOLAM is mandatory !
- On the other hand EXPERT evidence is not mandatory !



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COMPARATIVE PERSPECTIVES

- Though a review of critical case law this presentation examines the transition 'Beyond Bolam'.

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The Bolam Test and Its Traditional Dominance

Originating in *Bolam v. Friern Hospital Management Committee* [1957], the test held that a doctor is not negligent if their conduct is in accordance with a responsible body of medical opinion. This allowed courts to defer heavily to medical professionals, often at the expense of patient-centric rights.

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The Bolitho Challenge: Logic and Scrutiny

Bolitho v. City and Hackney Health Authority [1998] clarified that courts are not bound to accept expert medical testimony unless it withstands logical scrutiny. Lord Browne-Wilkinson emphasized that expert opinions must be capable of rational analysis—an important judicial assertion that expert bodies do not have unreviewable authority.

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**Informed Consent:
The Rogers and
Canterbury
Breakthrough**

In *Rogers v. Whitaker* [1992], the Australian High Court rejected *Bolam* in the context of informed consent, laying emphasis on what a reasonable patient would consider significant.

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Informed Consent:

The Rogers and Canterbury Breakthrough

Likewise, the U.S. case of *Canterbury v. Spence* [1972] held that physicians must disclose material risks based on a “prudent patient” standard, reinforcing patient self-determination over paternalistic judgment.

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The United Kingdom's Pivot: Montgomery v. Lanarkshire [2015]

In Montgomery, the UK Supreme Court finally departed from Sidaway [1985] and Bolam, endorsing Rogers' patient-centric view. The judgment emphasized that risks significant to the particular patient must be disclosed and that patients are no longer passive recipients of care but active participants in treatment decisions.

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The Indian Scenario: Between Bolam and Canterbury

The Indian Supreme Court in *Samira Kohli v. Dr. Prabha Manchanda* [2008] recognized the need for consent to be more than mere formality. While the court did not fully adopt the Canterbury approach, it moved beyond Bolam, requiring disclosure of material information.

In *V. Krishna Rao v. Nikhil Super Speciality Hospital* [2010], however, Bolam was still substantially endorsed in matters of standard care.

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Comparative Perspectives and Future Directions

The transformation across jurisdictions indicates a broader trend: from professional self-regulation to legal standards shaped by patient autonomy and judicial oversight. The balance of power in the doctor-patient relationship is shifting towards transparency, dialogue, and individualized care.

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Conclusion

From Bolam to Montgomery, and through Bolitho, Rogers, and Canterbury, the evolution of medical negligence jurisprudence reflects a move toward prioritizing patient rights. While India still retains a hybrid model, the global trend points unmistakably toward reinforcing the legal duties of disclosure and logical accountability in medical practice.

Conclusion

The Test abdicates the judiciary's duty to adjudicate and hence, it is necessary for the Supreme Court to reconsider its insistence. Fairness and transparency are the twin foundations of any accountability norm. On one hand, India needs to depart from relying and applying the Bolam Test and on the other hand, it must mandate expert evidence.

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Time for Interaction

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Thank You

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