Contents lists available at ScienceDirect

Journal of Forensic and Legal Medicine

journal homepage: www.elsevier.com/locate/yjflm

Editorial

The doctrine of "Reasonable Doctor" in medical negligence: Need to be more reasonable

ARTICLE INFO

Keywords:
Reasonable doctor
Medical negligence
Bolam test
Unfair conviction

ABSTRACT

The model of a 'reasonable doctor' has been quite successfully used to deliver justice in disputes involving medical negligence. However, many a times a doctor is held guilty of negligence when viewed through the narrow lens of an ideal 'reasonable doctor' and without looking into the circumstances under which he was working which could have actually led to the alleged act of negligence. This short write-up highlights the importance of applying this doctrine more reasonably in the best interest of all stake holders and the drawbacks of the doctrine of 'reasonable doctor' in adjudicating medical negligence cases with few international case laws.

The law on professional medical negligence states that a medical professional is negligent if he was not reasonable in exercising his duty towards his patient. The model of a 'reasonable doctor' has been quite successfully used to deliver justice in disputes involving medical negligence. However, many a times a doctor is held guilty of negligence when viewed through the narrow lens of an ideal 'reasonable doctor' and without looking into the circumstances under which he was working which could have actually led to the alleged act of negligence. This short write-up highlights the importance of applying this doctrine more reasonably in the best interest of all stake holders.

1. The doctrine of 'reasonable doctor'

In many countries, where the legal system follows the common law system, the courts compare the actions of the allegedly negligent medical professional with that of a 'reasonable doctor' and if the alleged act falls below this expected benchmark of reasonable care under similar circumstances, the medical professional is held liable for an act of medical negligence.

The degree of skill and care required by a so called 'reasonable doctor' is well described in Halsbury's Laws of England. It states, "The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence, judged in the light of the particular circumstances of each case, is what the law requires, and a person is not liable in negligence because someone else of greater skill and knowledge would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, even though a body of adverse opinion also existed among medical men."[1]

In the famous case that popularized the application of the 'Bolam test' for medical negligence, Justice McNair pronounced that "the true test for establishing negligence in diagnosis or treatment on the part of a doctor is whether he has been proved to guilty of such failure as no doctor of ordinary skill would be guilty of if acting with ordinary care."[2] This was Justice McNair's version of a 'reasonable doctor'. The Supreme Court of India concurred with the doctrine of a 'reasonable doctor' in its judgments while deciding several historic medical negligence cases.[3–5]

2. Establishment of the doctrine of 'reasonable doctor'

2.1. *Bolam v Friern Hospital case*[2]

In this famous English case, the complainant accused the hospital of not administering muscle relaxants or manual restraints before subjecting Mr Bolam to Electro convulsive therapy [ECT] for treating his depressive illness on the 23rd of August 1954. Justice Mc Nair held the hospital to be reasonable as they had followed the expected standard of care, a practice accepted as proper by a responsible body of medical men skilled in that particular speciality. The reasoning for ruling in favour of Friern Hospital was that there is a risk of mortality when muscle relaxants are used and the risk of sustaining fractures are actually increased when manual restraints are put in place before application of ECT. This judgement resulted in the establishment of the doctrine of a "reasonable or prudent doctor" which was applied extensively in resolving litigations in relation to medical negligence.

2.2. *Laxman Balakrishna Joshi case*[4]

In this case, the Supreme court of India held Dr Joshi, an orthopaedic surgeon, guilty of professional medical negligence since his actions fell below the expected standard of care when he attempted reduction of a fractured femur without administering anesthesia in a young adult who later succumbed to his injuries in the hospital.

3. Legal tools available to assess a doctor for reasonability

In order to identify reasonability of action taken by a medical professional a judge has the following tools available to him to come to a conclusion viz.

https://doi.org/10.1016/j.jflm.2022.102451
Received 23 August 2022; Accepted 6 November 2022
1752-928/

- Opinion of one or more Expert medical professionals
- Opinion of a respectable body of professionals
- Standard operating protocols or clinical guidelines issued by statutory health authorities as part of delegated legislation.

4. Drawbacks of the doctrine of 'reasonable doctor' in adjudicating medical negligence cases

The doctrine focuses solely on the accused individual and his actions without considering the circumstances under which he was working and fails to consider the wider context of inadequate paramedical or nursing staff, insufficient infrastructure and existing work load or unreasonably long duty hours without proper food, sleep and rest under testing and trying conditions. In other words, the doctor becomes a scapegoat in a 'blame-based system of accountability'.

Mental or physical fatigue and physician burnout have huge influence in judgement and decision making while treating patients.[6] In the absence of a reasonable identification of the working conditions of a doctor, the judge should not be fixated on the doctrine of an ideal "reasonable doctor". In other words, he shouldn't miss the wood for the trees. In this context the words of wisdom from Late Justice Lahoti of the Supreme Court of India as written in the historic Dr Jacob Mathew judgement[3] are worth remembering as narrated below:

"Any forum trying the issue of medical negligence in any jurisdiction must keep in mind that many incidents involve a contribution from more than one person, and the tendency is to blame the last identifiable element in the chain of causation, the person holding the 'smoking gun'. One may have notions of best or ideal practice which are different from the reality of how medical practice is carried on or how the doctor functions in real life."

5. International cases where the doctrine of a reasonable doctor led to unfair convictions

5.1. Dr Hadiza Bawa-Garba case in the UK.[7–9]

This case is a classic example of the doctrine of 'reasonable doctor' failing to deliver justice. In this case Dr Hadiza Bawa-Garba, a senior trainee paediatrician who recently returned from an extended leave of absence and was in charge of the treatment of a six-year-old child Jack Adcock who had pneumonia, sepsis and metabolic acidosis. Three senior medical colleagues could not join her shift, and she was overburdened during her duty, managing acutely sick patients across four floors without any break in her 12-h long shift. There was unprecedented IT system failure which resulted undue delay in getting the ordered blood reports which resulted in undue delay in administration of the necessary medications. She failed to communicate with the mother of the patient to not administer his usual medication, enalapril which eventually led to circulatory shock and death of the child. Adding to the problems, Dr Bawa-Garba mistakenly interrupted resuscitation, having confused him for another patient who had a Do not resuscitate (DNAR) order. Thus, the child died not only due to the medical complications but also due to the systemic failings during his treatment.

Dr Hadiza Bawa-Garba was convicted of gross negligence manslaughter in 2015 by jury trial and she was handed a 24-month suspended sentence. She was later struck off by the General Medical Council in 2018 even when The Medical Practitioners Tribunal service [MPTS] in 2017 had found faults with many aspects of the care that child received which were actually systemic failings. Her appeal to the Royal Courts of Justice in London however overturned the GMC's decision citing the reason of the child's death as "systemic failings" and not just due to one individual's actions.

5.2. 'Svendborg case' in Denmark[10]

A young Danish doctor was on duty at a hospital in Svendborg, Denmark in August 2013, when a diabetic gentleman with a non-emergency recurring medical condition was admitted to the hospital. The junior doctor made a verbal request to the nurse on-duty for a blood sugar measurement before administering Insulin to the patient; but failed to document the same. However, three consecutive nursing staff members failed to measure the patient's blood glucose level. Later, the patient was found unconscious, the next morning due to hypoglycemic encephalopathy and eventually died 4 weeks later. The doctor was charged with gross negligence and was convicted by the high court in Copenhagen in 2017. As appeal to the Supreme court was made and the 7-judge bench overturned the guilty verdict a year later by a slim margin of 4:3 votes. Later it was found that the department managers of the hospital had instructed the nurses to not carry out verbal orders due to time constraints. It was also argued in court that following up every verbal instruction by nurses would be impractical and impossible. Documentation is important as per law but doctor's first priority is their patients and their health. Attending to sicker patients is doctor's priority rather than documentation of the verbal instruction given to the nurses in a non-emergency case. Doctors work in real time and need to take quick decisions regarding the patients and depend on the co-operation of colleagues from other disciplines. Targeting one individual would be result in making him a scapegoat for all accidents or errors.

6. The way forward[11]

1. Medical expert panel constituted by doctors while scrutinizing the cases involving allegations against doctors should have a mandatory duty to consider systemic issues such as inadequate staffing levels, inadequacies in the infrastructure and any other setting failure relevant to the situation, to avoid accused doctors being made scapegoats for the wider failures of the healthcare system.
2. The medical expert panel should take all relevant factors into account including the context in which the accused doctor was working in while preparing the report instead of focusing solely on the individual and his actions.

7. Conclusions

While applying the doctrine of a 'reasonable doctor' in the court of law there is a pressing need to take all relevant factors into account, like the condition in which the accused doctor was working in, adequacy of staffing, work load in real time etc., so that the evaluation of the doctor is not biased. This will protect the doctors from unfair convictions and ensure justice to the victims of medical negligence as well as ensure patient safety in the future.

Funding

Nil.

Declaration of competing interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

References

1. Halsbury's Laws of England (fourth ed.), Vol.vol. 30, Para 35.
2. Bolam V Friern Hospital Management Committee [1957]vol. 1 WLR 583].
3. Jacob Mathews vs State of Punjab & Anr--Appeal (CRL) 144-145 of 2004 SCC.
4. Joshi Laxman Balkrishna, Godbole Trimbak Babu, Anr. AIR128. *SCR*. 1969;(1): 206.

5. Chanda Rani Akhouri . vs M.S. Methusethupathi CIVIL APPEAL NO(s).6507 OF 2009 Decided on 20 April, 2022]
6. Shanafelt T.D., Sloan J.A., Habermann T.M. The well-being of physicians. *Am J Med*. 2003;114:513–519. https://doi.org/10.1016/S0002-9343(03)00117-7.
7. Medical expert witnesses 'should not scapegoat doctors'. https://www.theguardian.com/society/2022/jul/18/medical-expert-witnesses-should-not-scapegoat-doctors?CMP=share_btn_tw&s=08.
8. *BMJ*. 2017;359:j5534. https://doi.org/10.1136/bmj.j553.
9. Bawa-Garba: timeline of a case that has rocked medicine. https://www.pulsetoday.co.uk/analysis/regulation/bawa-garba-timeline-of-a-case-that-has-rocked-medicine.
10. Last read 22-8-2022 https://www.thelocal.dk/20180328/supreme-court-acquits-danish-doctor-in-landmark-case/.
11. Last read 22-8-2022 https://www.theguardian.com/society/2022/jul/18/medical-expert-witnesses-should-not-scapegoat-doctors?CMP=share_btn_tw&s=08.

B. Sadananda Naik *
Senior Physician, Alva's Health Centre, Moodabidri, 574227, Karnataka, India
Adhish Basu
Consultant Plastic Surgeon, Apollo Multispeciality Hospital, Kolkata, 700017, India

* Corresponding author.
E-mail addresses: sadanandanaik2@gmail.com (B.S. Naik), adhishbasu@gmail.com (A. Basu).