

NEGLIGENCE IN THE LAW OF TORTS: LIABILITY, DEFENCES AND CONTEMPORARY CHALLENGES

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ABSTRACT

Negligence is the organising doctrine of contemporary torts law. It transforms the overarching moral sense that individuals ought to exercise reasonable care in order not to cause harm to others into a body of law based on the concepts of duty, breach, causation, remoteness and damage. But negligence is far from a fixed set of rules. Its substance evolves according to how courts deal with the novel technological, professional and commercial contexts in which negligence may occur. Moreover, negligence now involves novel types of hazards that are widely distributed, data-intensive, and hard to pin down to one individual. This paper addresses the core doctrines of negligence law, focussing on Indian law but taking inspiration from common law sources that still influence Indian tort law. It covers the requirements of liability, the working of res ipsa loquitur, contributory and composite negligence, volenti non fit injuria, inevitable accident and statutory authority. This paper makes the case for retaining the flexible test of reasonable care in negligence law in India while making advances in the way evidence and institutions are used to establish liability and causality in such cases. In relation to technological causes of harm, the emphasis of the courts should be on the creation, control, traceability and reasonable design of systems, rather than trying to shoehorn the discussion into a nineteenth-century conception of individual human behavior.

Keywords: Negligence; Duty of Care; Breach; Causation; Remoteness; Medical Negligence; Contributory Negligence; Artificial Intelligence; Tort Law; India.

I. INTRODUCTION

The doctrine of negligence has an important place in the law of torts as it reconciles two social values: individual liberty and security against unreasonable harm. The law does not compel everyone to make every conceivable attempt to prevent all injuries. However, it does not allow individuals to impose the cost of their risks on others either. Thus, the law of negligence poses the following questions: did the defendant owe a legal duty, did he violate the relevant standard of

care and did he cause legal damage in the process? In recent years, the notion of a legal duty has been widely discussed in the light of the “neighbour principle” in *Donoghue v. Stevenson*¹, which held that a person owes a duty to exercise reasonable care towards those who are so closely and directly affected by his conduct that they ought reasonably to have been in his contemplation, and, subsequently, in the light of the further requirements of proximity and of whether it is fair, just and reasonable to impose a duty². The Indian courts have not always accepted each and every rule of the English limitation in a mechanical way; however, due to the uncoded nature of Indian tort law, common law formulas carry great weight.

Indian negligence law has also evolved within constitutional and statutory context. The Supreme Court has frequently made a distinction between civil negligence and criminal negligence³ and has acknowledged that the standard of care is situational rather than absolute. In addition, mass transportation, hospitals, manufacturing companies, digital intermediaries, and algorithmic systems increasingly delegate decision making among organizations rather than individuals. The issue thus is not whether the concept of negligence is still relevant but whether its traditional instruments can pinpoint the responsible parties in a complicated system.

It will be shown in this paper that the answer is affirmative, assuming that courts can isolate the normative aspect of the issue of duty from the evidentiary aspects of breach and causation, avoid hindsight bias, and adjust evidentiary rules for circumstances in which relevant technical data are held disproportionately by defendants. The discussion will move from the classical elements of negligence to defenses and then to current issues.

II. CONCEPT AND ESSENTIAL ELEMENTS OF NEGLIGENCE

¹*Donoghue v. Stevenson*, [1932] A.C. 562, 580 (H.L.) (appeal taken from Scot.).

²*Caparo Indus. plc v. Dickman*, [1990] 2 A.C. 605, 617-18 (H.L.).

³*Jacob Mathew v. State of Punjab*, (2005) 6 S.C.C. 1, 15-17 (India).

Negligence can be a state of mind, a way of behavior, or a tort in itself. In current tort law, its most valuable definition is objective, and negligence means failing to take care that a reasonable man would have taken in similar circumstances. The question is not about the defendant's intention to cause harm, but rather about the foreseeability and seriousness of the danger that needed prevention.

A. Duty of Care

It serves a screening role. Foreseeability alone is not enough to decide on liability because any possible effect can be regarded as foreseeable in an abstract manner. The courts have to consider the relationship between the parties, control over the risk, vulnerability, reliance, statutory background, and effects of recognizing a duty. The rule was provided by the case of *Donoghue, and Caparo Industries plc v. Dickman*⁴ articulated foreseeability, proximity and fairness as considerations in novel duty situations.

Indian law illustrates a comparatively pragmatic approach. In *Municipal Corporation of Delhi v. Subhagwanti*⁵, the collapse of a clock tower in Chandni Chowk, Delhi, led the Supreme Court to hold the municipal corporation liable for the injury caused by a structure under its control; the Court applied the principle of *res ipsa loquitur*, since an accident of that kind would not ordinarily occur without negligence.

B. Breach and the Standard of Reasonable Care

If there has been a duty, then the issue of breach becomes the question of whether the defendant fell short of the legal standard. While the standard of reasonableness is objective, the question of how to apply it is highly fact-specific. Courts tend to look at the likelihood of harm, its seriousness, and the burden of prevention. *Bolton v. Stone*⁶ indicates that a risk which is small and fanciful may not be enough to warrant the taking of additional precautionary measures, whereas *Paris v. Stepney Borough Council*⁷ shows that the seriousness of potential injury can demand greater care even where the probability of an accident is unchanged.

⁴*Caparo Indus. plc v. Dickman*, [1990] 2 A.C. 605, 617-18 (H.L.).

⁵*Mun. Corp. of Delhi v. Subhagwanti*, A.I.R. 1966 S.C. 1750, 1752-53 (India).

⁶*Bolton v. Stone*, [1951] A.C. 850, 858-59 (H.L.).

⁷*Paris v. Stepney Borough Council*, [1951] A.C. 367, 375 (H.L.).

This is a test of reasonableness. It ensures that negligence is not equated to liability in all cases. A defendant will not be charged for negligence just because an accident took place, or even if, with the benefit of hindsight, another course of action would have been safer. The issue is whether a reasonable person in possession of the information then available would take such an action.

C. Causation and Remoteness

No liability arises where there is a breach without any causative link. Causation can be proved using the 'but for' test, which is whether the damage would have occurred but for the breach by the defendant. *Barnett v. Chelsea & Kensington Hospital Management Committee*⁸ illustrates how, even in the presence of a clear breach, no damages are incurred if the same result would befall the plaintiff irrespective.

Factual causation is then followed by legal causation, or remoteness. *The Wagon Mound (No. 1)*⁹ rejected direct consequence liability in favour of the requirement of reasonable foreseeability of the nature of the damage. The test requires that the harm must be sufficiently related to the risk which makes the defendant's conduct negligent. In addition, an intervening cause might interrupt the sequence of causation if it is sufficiently independent and unforeseeable.

Current cases make application of the straight forward but for test difficult due to the existence of multiple causative factors. Toxic exposure, delayed medical treatment, faulty computer programs, and computer decisions can have causation that is cumulative in nature. Courts should not mistake scientific uncertainty for lack of legal causation.

D. Actual Damage

⁸*Barnett v. Chelsea & Kensington Hosp. Mgmt. Comm.*, [1969] 1 Q.B. 428, 438-39.

⁹*Overseas Tankship (U.K.) Ltd. v. Morts Dock & Eng'g Co. (The Wagon Mound No. 1)*, [1961] A.C. 388, 426 (P.C.) (appeal taken from Austl.).

A case of negligence becomes actionable only where there is damage proved. The claimant will have to show an injury recognized by the law. Pure economic loss is given careful consideration under the law of negligence in common law because the law would become indeterminate if the liability was unlimited for relational or financial loss.

III. RES IPSA LOQUITUR AND THE PROBLEM OF PROOF

Negligence often arises in situations where the facts are within the exclusive knowledge of the defendant. This is where the doctrine of res ipsa loquitur steps in to address the evidential imbalance. Where there is an event of a kind that will not usually happen except with negligence, the thing causing the event is under the care or management of the defendant, and other explanations for the occurrence are effectively ruled out, then the occurrence itself can prove negligence. The Subhagwanti case of the Supreme Court is a good Indian example. Res ipsa loquitur does not imply strict liability but rather creates an evidential presumption where it is impracticable for the claimant to prove exactly what happened. The relevance of the doctrine at the present time is immense. A patient cannot pinpoint what specific internal procedure went wrong inside a hospital, while a consumer is not in a position to examine the software which caused a hazardous output.

IV. PROFESSIONAL AND MEDICAL NEGLIGENCE

Negligence of professionals changes the reasonable person test as specialized work demands specialized skill. The classic Bolam formulation¹⁰ asks whether there was adherence to a practice that was approved as a correct one by a responsible group of individuals qualified in the same field of expertise. Bolitho¹¹, it was later clarified that an expert opinion cannot be taken at face value; the court must be convinced that the opinion is logical. The law on medical negligence in India follows a similar approach. In *Jacob Mathew v. State of Punjab*¹², the Supreme Court pointed out that negligence can arise from a situation whereby the person involved does not have the necessary skills he pretends to have or even does not apply his skill in an appropriate manner, but it cannot arise from an error in judgment alone. The Court made a clear distinction between criminal and civil negligence, holding that to fasten criminal liability under Section 304A of the Indian Penal

¹⁰Bolam v. Friern Hosp. Mgmt. Comm., [1957] 1 W.L.R. 582, 587.

¹¹Bolitho v. City & Hackney Health Auth., [1998] A.C. 232, 241-43 (H.L.).

¹²Jacob Mathew v. State of Punjab, (2005) 6 S.C.C. 1, 15-17 (India).

Code, 1860 the negligence must be gross or of a very high degree.¹³ In *Kusum Sharma v. Batra Hospital & Medical Research Centre*¹⁴, the Supreme Court emphasised that doctors are required to apply a reasonable amount of skill, knowledge, and care instead of being responsible for producing any positive outcome. The principle plays an essential role in the current age of defensive medicine. Indeed, if every negative result will be considered as negligence, doctors will have an incentive to conduct unnecessary tests and procedures just to reduce their liability. Nowadays, the issue is represented by AI-assisted medicine. When the doctor uses an algorithm-based suggestion, the analysis of negligence should take into account the question about the nature of reasonable reliance. Blind trust in the obviously irrational result can constitute negligence, while ignoring the validated tool, the use of which became a standard practice, can do the same. Besides, liability can go beyond doctors and include hospitals, developers or manufacturers according to their control over design, notifications, updates and implementation. Thus, the proper standard should focus on the human-machine system.

V. DEFENCES TO NEGLIGENCE

A. Contributory Negligence

“Contributory negligence is negligence on the part of the claimant which is unreasonable and leads to injury or loss.” In current legal practice, it is generally treated as a matter of apportionment rather than a total denial of the claim, although India has no statute corresponding to the Law Reform (Contributory Negligence) Act, 1945 in England, and apportionment rests on judicial practice. The Indian case law on motor accidents has been very precise in distinguishing between contributory negligence and composite negligence. In *T.O. Anthony v. Karvarnan*¹⁵, the Supreme Court explained contributory negligence as a case where the injured party has, by his own want of care, contributed to the injury he has suffered, whereas composite negligence is an injury occasioned by the joint or concurrent negligence of two or more persons.

In *Khenyei v. New India Assurance Co. Ltd.*¹⁶, the Supreme Court held that in a case of composite negligence the claimant may recover the whole of the damages from any one of the joint

¹³Id. at 22-24.

¹⁴*Kusum Sharma v. Batra Hosp. & Med. Rsch. Ctr.*, (2010) 3 S.C.C. 480, 497-99 (India).

¹⁵*T.O. Anthony v. Karvarnan*, (2008) 3 S.C.C. 748, 752-53 (India).

¹⁶*Khenyei v. New India Assurance Co. Ltd.*, (2015) 9 S.C.C. 273, 282-83 (India).

tortfeasors, without regard to the inter se apportionment of responsibility between them. This will protect the claimant from being affected by the insolvency of the defendants.

B. Volenti Non Fit Injuria

The principle of volenti involves the voluntary assumption of risks. Knowing about the risk alone is not enough; what is needed is that the claimant assumes the legal risk voluntarily. The doctrine is interpreted strictly especially when there is inequality of bargaining position or in situations involving rescue. *Smith v. Baker*¹⁷ is the classic authority distinguishing knowledge of risk from voluntary acceptance of it.

C. Inevitable Accident and Act of God

An inevitable accident is an accident that cannot be prevented by means of proper precautions. An act of God means a natural force that is unforeseeable despite the exercise of due care. Such terms should not be used to justify invoking the concept of accident when causation is unclear. The defendant should establish that the incident occurred in the course of proper care being exercised. The modern-day definitions of these terms can become narrower because of forecasting and engineering skills.

¹⁷*Smith v. Baker & Sons*, [1891] A.C. 325, 360 (H.L.).

D. Statutory Authority and Necessity

If the action in question is carried out in accordance with law and the harm caused is an inevitable outcome thereof, then it can be protected. This defense does not usually offer immunity from negligent performance. Necessity, likewise, applies in rare situations when interference in another's interest is necessary to prevent a greater evil.

VI. CONTEMPORARY CHALLENGES TO NEGLIGENCE LAW**A. Artificial Intelligence and Autonomous Decision-Making**

AI challenges the negligence doctrine by distinguishing between the design, deployment, and decision making. An autonomous system can lead to an accident due to a combination of factors like training dataset, model, sensor malfunction, software updates, user configuration, and surrounding circumstances. None of the parties involved will necessarily have control over all of those aspects.

The solution seems simple: the party closest to the accident should be liable for it. However, that cannot be the solution. The negligence doctrine must consider whether the parties created or controlled the risks and what steps were appropriate for preventing accidents at each stage. Developers could have certain obligations regarding testing, potential misuse, documentation, and updates; deployers regarding contextual validation and monitoring and human override; users regarding following warning and limitations.

Moreover, explainability impacts the burden of proof. If the person has been injured by a proprietary AI system, he or she will likely not have access to the logs and other technical information. Thus, courts should be willing to draw appropriate adverse inferences if defendants fail to preserve or present such evidence.

B. Autonomous Vehicles and Distributed Control

An autonomous car is a case of distributed liability since any collision can hold liable not just the driver of the car but also the owner, the safety driver, the manufacturer of the vehicle, the mapmaker, the provider of sensors and even the software developer. While traditional ideas of driver negligence are relevant, they cannot solve the problems associated with the defect in perception or automated operation of the car.

The situation gets complicated in India where an automatic system can be trained in relatively well-organized traffic environment while used in the context of heterogeneous types of vehicles, pedestrians and road conditions. Global validation of the system does not mean automatic liability of being reasonably safe on Indian roads.

C. Digital Platforms and Cyber Negligence

In many cases, digital service providers retain user information, facilitate business activities, and manage security infrastructure. The basis for negligence allegations may lie in foreseeable security issues, dangerous platform architecture, and inadequate response to known threats. The crucial issue here is to define a duty without making service providers insurers of any malevolent acts by third parties.

The right method is to apply the criteria of control and foreseeability. In cases where a defendant has control over the security architecture of the platform and is aware of the significant vulnerability, the failure to make appropriate security arrangements will be similar to traditional negligence. Unforeseeable criminal innovations should not automatically result in liability.

D. Environmental and Climate-Related Harm

The problem with environmental injury is that causation can be cumulative, remote in time, and created by many parties. Indian environmental law has frequently used doctrines stricter than negligence. In *M.C. Mehta v. Union of India*¹⁸, the Supreme Court evolved the rule of absolute liability for enterprises engaged in hazardous or inherently dangerous activity. It was deliberately framed so as not to be subject to the exceptions to the rule in *Rylands v. Fletcher*. It proves that negligence is not necessarily the right form of liability in cases where there is a catastrophic risk associated with industrial operation.

¹⁸*M.C. Mehta v. Union of India*, (1987) 1 S.C.C. 395, 421 (India).

However, negligence can apply to issues of maintenance, risk assessment, warnings, preparation for disasters and compliance. Climate change creates problems in the application of the act of God exception. With advances in science, floods, heat waves and rainfall that were once unforeseen may be predictable enough to necessitate a responsible response from infrastructure managers and public officials.

E. Consumer Products and Complex Supply Chains

The contaminated bottle of ginger beer in Mrs Donoghue's own claim was the first example of the consumer goods paradigm. Present day goods are much more complicated than that since it might contain hardware, cloud-based software, recurrent updates, and software developed by third parties. This implies that a defect could arise even after its sale through a certain update or interaction with some other application.

Nevertheless, a statutory product liability scheme is not incompatible with negligence. The Consumer Protection Act, 2019¹⁹ clearly establishes the liability of manufacturers, sellers and service providers for their products under certain conditions. The negligence principle is still important when the claimant bases his case on the duty of care, or when the issue involves testing, warnings, maintenance, or professional services and not just statutory defects.

VII. RETHINKING THE STANDARD OF CARE FOR COMPLEX SYSTEMS

¹⁹Consumer Protection Act, No. 35 of 2019, §§ 82-87, INDIA CODE (2019).

The core strength of negligence is its flexibility. The flaw is that this very flexibility can give rise to indeterminacy. Hence, in today's world, courts should develop a more formal process for the evaluation of the standard of reasonable care, especially where technology is concerned. Five elements are of particular relevance: the size and likelihood of the danger; the amount of control the defendant has; the availability and cost of preventive measures; conformance with reliable technical standards; and the defendant's ability to preserve and explain evidence. Conformity with industry practices ought to be relevant but not decisive. Industry as a whole could be lagging in terms of safety, just as a body of professional opinion may, under *Bolitho*, fail to withstand logical analysis. Likewise, compliance with regulation should usually be no more than a starting point, and will not answer a claim where an obvious and serious additional risk would have been apparent to a reasonable person. Outcome error should also be distinguished from process negligence. An AI system, a physician, or an engineer may arrive at a wrong decision even though the process was a reasonable one. The liability in such situations should usually fall on the unreasonable design, testing, deployment, monitoring or response to the problem and not on the error.

VIII. REFORM PROPOSALS FOR INDIA

First, the country would gain from a clear and structured statement of core tort concepts through statute without stifling judicial discretion. Due to the largely unstructured nature of tort law in India, fundamental aspects of duty, standards, and defences are hard to discern. The codification of tort laws in the country should allow specialized doctrines, such as absolute liability for risky activities and consumer protection. Secondly, there should be case management procedures within the court system for cases where the technicality involved in determining the torts is high. There should be independent experts and fair amounts of documentation of testing logs, etc. The plaintiff should not fail only because the defendant uses a particular technological advancement to make the cause and effect relationship invisible. Thirdly, regulators in each industry need to encourage auditing of safety documentation for high-risk artificial intelligence systems. There could be logs and version history along with known limitations and incidents. The goal here should be traceability and not total disclosure of codes. Fourthly, negligence by professionals must continue to be based on reasonable competence whereas professional practice must be looked at critically and not be conclusive. Jacob Mathew and Kusum Sharma rightly advise that professionals should not be judged by the criterion of hindsight. This right must be coupled with genuine accountability for systemic failures. Lastly, the distinction between negligence and strict or absolute liability must

be maintained by the courts. In cases where either Parliament or constitutional law requires stricter obligations to be placed on dangerous undertakings and defective goods, then such legal principles must stand independent of negligence law.

IX. CONCLUSION

The concept of negligence has been resilient in face of technological and social changes due to the absence of any static list of prohibited acts. Instead, negligence raises the issue of how a reasonable person would have responded to the risk that was foreseen as being created or controlled by the defendant. The elements of duty, breach, causation, remoteness, and damage make a practical framework of this question, whereas the defenses make sure that responsibility takes into account the behavior of the claimant and the real assumption of risk.

There are many examples of the adaptability and limitations of negligence in Indian law, such as *Subhagwanti*, *Jacob Mathew & Kusum Sharma*, which deal with the issues of control and inference; *T.O. Anthony and Khenyei*, concerning contributory and composite negligence; and *M.C. Mehta*, which highlights the fact that some activities require a stricter liability regime than negligence. The future disputes will be about systems more than actions: AI-driven medicine, self-driving cars, cyber security, product development through software, and climate-proofing of infrastructure. Such disputes do not require giving up on the negligence standard, but require the courts to allocate responsibility throughout the life cycle of the risk, demand traceability of defendants where they control technical evidence, and consider the process, not the outcome, through hindsight.

The fundamental principle must thus be simple but difficult: the innovation may shift the creation of the risk and its occurrence, but it doesn't absolve one from taking reasonable care.