

# Medical Negligence: Critical Analysis of Select Case Laws from Nepal

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## Abstract

This study presents a critical analysis of five legal precedents established by the Supreme Court of Nepal involving medical negligence, with the aim of understanding the legal principles, challenges, and implications in such cases. The primary objective of this research is to contribute to the discourse on patient rights, doctor accountability, and healthcare quality. To achieve this, a case law study approach was adopted, involving critical analysis of relevant case law. The selected precedents were thoroughly examined to identify legal principles, judicial reasoning, and the application of laws in different contexts related to medical negligence. The key findings from the analysis of the case laws emphasize the importance of ethical conduct and professionalism in medical practice, the judiciary's commitment to upholding justice, and the balance between patient rights and doctors' accountability through the distinction between civil and criminal liability.

*Keywords:* medical negligence, limitations, patient rights, doctor accountability

## Introduction

Medical negligence, also known as medical malpractice, refers to the failure of a medical professional or healthcare provider to meet the standard of care expected in their profession, resulting in harm or injury to a patient (Terry, 1915). It occurs when a healthcare practitioner deviates from the accepted medical practices and fails to exercise the level of skill, knowledge, and care that a reasonably prudent professional in the same field would provide under similar circumstances.

There are several elements that must be established to prove medical negligence. Firstly, it must be demonstrated that a doctor-patient relationship existed, meaning the patient sought the medical professional's services, and the doctor agreed to provide medical care. Secondly, it must be shown that the healthcare provider breached their duty of care by failing to meet the appropriate standard of care. This breach could be in the form of misdiagnosis, surgical errors, medication mistakes, or neglecting to provide adequate treatment. Thirdly, it must be established that the breach of duty directly caused harm or injury to the patient. Lastly, the patient must have suffered damages, which can be physical, emotional, or financial in nature, as a result of the medical negligence (Luther, 2021).

Medical negligence cases can be complex and challenging to prove, often requiring expert medical testimony and thorough investigation. The standard of care may vary based on the patient's condition, the healthcare setting, and the prevailing medical practices in the region (Oyebode, 2013). In some cases, it may be difficult to ascertain whether an adverse outcome is due to medical negligence or an inherent risk of treatment. As a result, medical negligence cases often involve extensive legal proceedings and are subject to specific statutes of limitations, which limit the time within which a patient can file a lawsuit.

To address medical negligence, many jurisdictions have laws and regulations in place to protect patients' rights and hold healthcare providers accountable for their actions. Patients who believe they have been victims of medical negligence may seek legal remedies, including compensation for damages and potential changes in medical practices to prevent similar incidents in the future. Additionally,

medical professionals and institutions must prioritize patient safety, ongoing education, and adherence to evidence-based medical practices to minimize the occurrence of medical negligence and ensure the highest quality of care for their patients (Cheluvappa et al., 2020).

Medical negligence cases are complex and often necessitate expert medical testimony and extensive investigation (Parajuli, 2013). The aim of this paper is to conduct a case law study involving critical analysis of five case laws related to medical negligence. By examining key precedents, this study seeks to gain valuable insights into the legal principles governing medical negligence cases, understand the challenges faced in establishing negligence, and explore the implications of court rulings on patient rights and doctor accountability. There is a dearth of comprehensive doctrinal studies that critically analyzes the Supreme Court precedents published in Nepal Kanoon Patrika (NKP), the official law periodical of the Supreme Court of Nepal, surrounding this complex legal issue.

This study aims to bridge this research gap by providing an in-depth analysis of five case laws published in NKP to uncover nuanced legal interpretations, emerging trends, and potential areas of improvement in the legal framework concerning medical negligence. This study adopts a doctrinal approach, primarily relying on the critical analysis of case law concerning medical negligence. The selected court decisions were examined in detail to identify legal principles, judicial reasoning, and the application in different contexts. By scrutinizing these precedents, the study derived valuable insights into the complexities and challenges faced in medical negligence cases and their potential implications for the healthcare system and patient welfare.

### **Analysis and Discussion**

This study is a critical analysis of five leading precedents regarding medical negligence established by the Supreme Court of Nepal and published in the NKP. Each case presents a unique set of circumstances, legal arguments, and implications, offering valuable insights into the complexities and challenges inherent in medical negligence litigation. Through a critical examination of these cases, this study uncovers the underlying legal principles, the court's approach to interpreting laws, and the impact of these rulings on patient rights and doctor accountability. The analysis provides a comprehensive understanding of the nuances surrounding medical negligence, fostering a deeper appreciation of the significance of patient-centered care and the pursuit of high-quality healthcare services. Finally, a broader perspective on the broader implications for the medical profession, patient well-being, and the pursuit of justice within the realm of medical negligence law will be achieved. The cases are analyzed chronologically starting from the oldest to the newest.

#### **Janahit Sanrakchan Manch v. Dr. Dinesh Bikram Shah**

Dr. Dinesh Bikram Shah's case fundamentally deals with the calculation of the limitation period for seeking compensation in case of medical negligence (Janahit Sanrakchan Manch v. Dr. Dinesh Bikram Shah, 2010). The court ruled that the limitation period should not be calculated from the date of prescription or treatment initiation, but from the date the symptoms and effects of the negligence appear after taking the medicine daily. The court also emphasized interpreting the law purposively to avoid frustrating its intent.

The court's emphasis on calculating the limitation period based on the appearance of symptoms and effects is crucial. This approach acknowledges that the true impact of medical negligence might not be immediately evident and that the patient should have a reasonable time to recognize and act upon the harm caused. By considering the date of symptoms and effects as the starting point for the limitation period, the court safeguards patients' rights to seek compensation for medical negligence. This prevents

patients from losing their right to legal recourse merely because the negligence's consequences were not immediately apparent. This provides clarity on the calculation of the limitation period in medical negligence cases. This can assist both patients and healthcare providers in understanding their legal rights and responsibilities. The ruling's emphasis on holding healthcare providers accountable for the consequences of their actions can foster a culture of transparency and responsibility within the medical profession.

The court's insistence on interpreting the law purposively is commendable. This means looking at the intention and spirit of the law rather than a strict literal interpretation. Such an approach ensures that the law is applied to serve its intended purpose and not used to deny justice to affected parties.

This case law emphasizes the use of expert testimony in cases of medical negligence. Medical negligence cases often require expert medical testimony to determine the cause and effect relationship between the negligence and the harm suffered by the patient. The court's reliance on medical expertise is vital for fair and accurate judgment.

However, determining the exact date when symptoms and effects appear might be challenging, especially in cases where the symptoms develop gradually or may not be immediately attributed to medical negligence. This could lead to evidential complexities and disputes during legal proceedings. Moreover, it is essential to ensure a fair balance between patients' rights and doctors' accountability. A reasonable provision is necessary to prevent claims based on stale evidence and to allow doctors to practice without undue anxiety about past cases. Apart from that, this ruling by the Supreme Court might increase the burden on medical practitioners to keep records of their patients' progress over time to defend themselves in case of any future claims. This could also lead to concerns about defensive medicine practices such as referring patients to other hospitals in critical cases where immediate care would have been fruitful.

In short, this case highlights the court's efforts to protect patients' rights and ensure doctors' accountability in medical negligence cases. While the ruling emphasizes a patient-centric approach and purposive interpretation of the law, it also raises challenges related to evidential complexities and potential burdens on medical practitioners.

### **Sushma Thapa v. Dr. Bulanda Thapa**

In the case of Sushma Thapa the issues of medical negligence and the impact of negligent practices on healthcare services were addressed. The Supreme Court of Nepal acknowledged the perception of doctors as divine figures but highlighted the transformation of medical care into a business, affecting the quality of services. It recognized the legal right of affected consumers to seek compensation for damages caused by wrong services or negligence. The case emphasized the importance of the Consumer Protection Act 2015 in providing fair compensation and protection of consumer rights in medical negligence cases. Additionally, it highlighted the negative consequences when other doctors refrain from reporting negligent practices, leading to a lack of accountability and affecting the trust in medical services as a whole (Sushma Thapa and Dr. Bulanda Thapa, 2017).

The court's acknowledgment of the perception of doctors as divine figures contrasts with the reality of healthcare turning into a business. This recognition underscores the need for maintaining the altruistic essence of healthcare while addressing commercial influences. The court's recognition of the impact of a business-oriented approach on healthcare services is essential. The focus on profit-making can potentially compromise the quality of care and patient-centeredness.

Second, the court's emphasis on consumers' legal right to seek compensation for damages due to negligent practices is crucial for ensuring accountability and providing remedies to affected individuals.

By highlighting the significance of the Consumer Protection Act 2015, the court strengthens the legal framework to safeguard patients' rights and prevent exploitation.

Third, this precedent brings attention to the importance of transparency and reporting of negligent practices within the medical community. Encouraging reporting can foster accountability and contribute to improving healthcare standards. The court's recognition of negligent practices in healthcare brings attention to the need for ongoing efforts to improve medical education, training, and oversight to minimize errors and negligence. Moreover, the precedent asserts that trust plays a critical role in medical services. Any perception of negligence or lack of accountability can erode patients' confidence in seeking medical care, negatively impacting public health.

However, identifying negligence in medical cases can be complex, requiring expert medical opinions and careful examination of evidence. Ensuring fair and accurate judgments demands a thorough understanding of medical standards and practices. Moreover, it is necessary to maintain balance between recognizing patients' rights to compensation and avoiding excessive litigation that might discourage doctors from taking on challenging cases.

This precedent of the Supreme Court highlights the court's efforts to protect consumer rights, address negligent practices, and maintain the integrity of healthcare services. The case emphasizes the need for transparency, accountability, and adherence to medical ethics while providing remedies to affected individuals through the Consumer Protection Act.

### **Subba Pulami Magar v. Dr. Sudha Thapa**

In the case of Subba Pulami Magar, the Supreme Court of Nepal addressed the issue of the time limit for minors to seek treatment against excessive carelessness or injustice. The court recognized a legal provision that the time limit for minors to seek treatment starts when they become adults. It also accepted the doctrine of tolling, allowing flexibility in the limitation period under certain conditions. The case emphasizes the importance of providing fair treatment to minors who have suffered due to medical negligence and ensuring their right to seek compensation when they come of age (Subba Pulami Magar v. Dr. Sudha Thapa, 2018). The major ideas and challenge raised by this judgment are discussed below.

This precedent is important for its recognition of the time limit starting when minors become adults protects their rights to seek compensation for damages caused by medical negligence when they are in a better position to understand and advocate for their interests. Accepting the doctrine of tolling acknowledges the complexities and challenges faced by minors seeking compensation for past medical negligence. This flexible approach ensures that minors are not unfairly disadvantaged due to their age. It thus ensures fairness and equitability in cases involving minors, especially when seeking compensation for harm suffered during their childhood.

However, medical negligence cases involving minors can present challenges in obtaining evidence and expert testimonies, considering the passage of time and potential fading of memories. Moreover, while it is essential to provide a fair opportunity for minors to seek compensation, it is necessary to prevent undue burden on healthcare providers and litigation arising from stale claims. Likewise, the recognition of the doctrine of tolling may have implications for healthcare institutions, as they must maintain records and be prepared for potential claims even after an extended period.

Clearly, this precedent underscores the court's commitment to protecting minors' rights and ensuring equitable treatment in cases of medical negligence. By accepting the doctrine of tolling and clarifying the time limit for minors to seek compensation, the court strives to assure the rights of the minors. However, it cannot be denied that the need to handle stale claims can cause additional burden for the healthcare providers to maintain health records for a long time.

## **Rajiya Khatun v. Dr. Pramod Kumar Poudel**

The precedent of *Rajiya Khatun v. Dr. Pramod Kumar Poudel* is related to the quality of healthcare services. In this case the Supreme Court of Nepal emphasizes that healthcare services, regardless of whether they are provided by government, non-government, private organizations, or individuals, must be of high quality in every aspect. It recognizes that the absence of quality healthcare can undermine various rights, including health and the right to live with dignity (*Rajiya Khatun v. Dr. Pramod Kumar Poudel*, 2018). The court upholds the provisions of the Consumer Protection Act 2015 and highlights the broad definition of “consumer” to ensure that real victims of substandard services can seek compensation. Additionally, the court distinguishes between civil liability and criminal liability in cases of medical negligence, underscoring the importance of accountability while avoiding the stigmatization of medical practitioners who act with care and caution. The major ideas and issues in the precedent are discussed below.

First, this precedent’s emphasis is on the high-quality healthcare as a fundamental right is crucial in ensuring the well-being and dignity of individuals. It highlights the interconnectedness of healthcare with other essential rights, such as education and employment.

Second, the court’s recognition of a broad definition of “consumer” under the Consumer Protection Act 2015 ensures that victims of substandard services, including patients and their families, can seek compensation. This approach fosters consumer protection and accountability in the healthcare sector. By upholding the Consumer Protection Act 2015, the court promotes accountability among healthcare providers, encouraging them to deliver quality services and take responsibility for any negligence.

Third, the precedent sets a distinction between civil and criminal liability in cases of medical negligence. It protects medical practitioners who act with care and caution from undue stigmatization and potential witch-hunting. The clarity on the distinction between civil and criminal liability, which is crucial in determining appropriate penalties and remedies for negligent acts while safeguarding the rights of both patients and healthcare professionals.

However, the court accepts that defining and measuring “quality” in healthcare can be complex, as it involves multiple dimensions, such as safety, effectiveness, patient-centeredness, timeliness, and efficiency.

The precedent reflects the judiciary’s commitment to promoting quality healthcare services, protecting patient rights, and ensuring accountability in the medical profession. By distinguishing civil and criminal liability and upholding the broad definition of “consumer,” the court emphasizes the importance of fair compensation while safeguarding medical practitioners who act responsibly. The ruling serves as a foundation for encouraging healthcare providers to deliver high-quality care and upholding the dignity and well-being of patients.

## **Jyoti Baniya v. Dr. Buddha Basnet**

This case law involves Dr. Buddha Basnet and Jyoti Baniya, addressing medical negligence and the duty of care that medical practitioners owe to their patients. The Supreme Court of Nepal recognizes that doctors involved in healthcare have a high degree of care towards their patients. Negligent medical examinations were deemed malpractice, emphasizing the importance of providing realistic and complete health reports to patients (*Jyoti Baniya v. Dr. Buddha Basnet*, 2021). The case underscores the need for doctors to act with diligence, caution, and professionalism in their interactions with patients. The major issues of the precedents are as discussed below.

First, the emphasis is on the high degree of care that doctors owe to their patients. Moreover, it reaffirms the fundamental principle of medical ethics and professionalism. The case highlights the

court's commitment to protecting patient well-being by addressing negligent medical examinations and malpractice, underscoring the importance of adhering to professional standards.

Second, and more importantly, the significance of providing realistic and complete health reports to patients ensures informed decision-making and facilitates better patient care. By addressing negligent medical examinations as malpractice, the court promotes accountability among medical practitioners, encouraging them to act diligently and responsibly.

Third, expert medical witnesses play a crucial role in establishing the standard of care and determining whether negligence occurred in medical examinations. The case indirectly emphasizes the importance of obtaining informed consent from patients before conducting medical examinations or procedures.

However, as in other precedents it cannot be denied that determining negligence in medical examinations can be complex, requiring expert medical opinions and a thorough understanding of the standard of care.

This precedent showcases the court's commitment to patient well-being, professionalism, and accountability in the medical profession. By emphasizing the duty of care and the importance of realistic health reports, the court aims to ensure that medical practitioners provide high-quality and patient-centered care. The case underscores the significance of expert testimony and the challenges in assessing negligence in medical examinations. This case law serves as a reminder of the importance of ethical, diligent, and responsible medical practice for the benefit of patients and the integrity of the healthcare system.

### **Conclusion**

The five precedents presented in this study collectively offer valuable insights into the multifaceted nature of medical negligence and its implications for the healthcare system and patient welfare. Throughout the cases, a common theme emerges, emphasizing the significance of patient rights, doctor accountability, and the pursuit of high-quality healthcare services. The courts' recognition of the duty of care owed by medical practitioners to their patients underscores the fundamental principle of medical ethics and professionalism, emphasizing the need for diligence and responsible conduct in medical practice. The cases also highlight the importance of transparent communication, realistic health reports, and informed consent to facilitate better patient care and informed decision-making. Moreover, the emphasis on interpreting laws purposively, considering the intent and spirit of the legislation, reflects the judiciary's commitment to upholding justice and fairness in medical negligence cases.

Furthermore, the cases reveal the complexities involved in identifying and proving medical negligence, necessitating expert medical testimony and careful examination of evidence. Therefore, courts must ensure fair compensation for victims while avoiding excessive litigation and undue burden on healthcare providers. Additionally, the distinction between civil and criminal liability in medical negligence cases aims to protect responsible medical practitioners from unwarranted stigmatization while holding those guilty of negligence accountable. The analysis also sheds light on the challenges of determining the limitation period and tolling provisions, which can impact a patient's ability to seek compensation, especially in cases involving minors.

These landmark cases from Nepal underscore the ongoing importance of maintaining the integrity of healthcare services, protecting patient rights, and fostering a culture of transparency, accountability, and patient-centered care within the medical profession.



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