DOI: 10.21088/jcfs.3107.6874.9226.5

JOURNAL OF CLINICAL FORENSIC SCIENCES
VOLUME 9 NUMBER 2, JULY - DECEMBER 2026

ORIGINAL ARTICLE

Procedural Safeguards under CPC for Effective Resolution of Medical Negligence Allegations: Ensuring Fairness through Precise Pleadings and Validated Expert Testimony

Shri Gopal Kabra[1], Vivekanshu Verma[2]

HOW TO CITE THIS ARTICLE:

Shri Gopal Kabra, Vivekanshu Verma. Procedural Safeguards under CPC for Effective Resolution of Medical Negligence Allegations: Ensuring Fairness through Precise Pleadings and Validated Expert Testimony. Jr of Clinical Forensic Sci. 2026; 9(2): 83–90.

ABSTRACT

Medical negligence litigation in India often suffers from vague pleadings, generalized allegations, and inadequate evidentiary support, leading to protracted trials and inconsistent outcomes. The Civil Procedure Code (CPC), though primarily procedural, provides critical mechanisms to ensure effective adjudication when applied rigorously in medicolegal disputes. This paper examines how CPC provisions—particularly those governing pleadings, burden of proof, and expert testimony—can be leveraged to strengthen the adjudicatory process in medical negligence cases. It argues that allegations must be specific, structured, and substantiated by expert opinion to meet the threshold of credibility and fairness. By analyzing statutory requirements alongside judicial precedents, the study demonstrates that precise pleadings and validated expert evidence not only safeguard practitioners from frivolous claims but also protect patients' rights to justice. The paper concludes that a disciplined application of CPC provisions can transform medical negligence adjudication into a more efficient, equitable, and evidencedriven process, thereby reinforcing trust in both the healthcare and judicial systems.

KEYWORDS

• Civil Procedure Code • Medical negligence • Pleadings • Expert testimony • Burden of proof • Structured evidence • Procedural justice

AUTHOR'S AFFILIATION:

[1] Director-Clinical, Bhagwan Mahaveer Cancer Hospital, Jaipur, Rajasthan, India.

[2] Associate Consultant, Department of Forensic Medicine, Medanta Hospital, Gurgaon, Haryana, India.

CORRESPONDING AUTHOR:

Shri Gopal Kabra, Director-Clinical, Bhagwan Mahaveer Cancer Hospital, Jaipur, Rajasthan, India.

E-mail: kabrasg@hotmail.com

➢ **Received:** 04-02-2026 ➢ **Accepted:** 05-03-2026

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INTRODUCTION

Medical negligence litigation in India grapples with systemic challenges, including vague pleadings, unsubstantiated allegations, and weak evidentiary foundations, which prolong trials and erode judicial efficiency. These issues not only burden healthcare practitioners with frivolous claims but also undermine patients' access to timely justice. The Civil Procedure Code (CPC), 1908,[1] offers robust procedural safeguards—particularly in pleadings, burden of proof, and expert testimony—that, when rigorously applied, can streamline adjudication and ensure equitable outcomes.

In medical negligence cases before the Supreme Court of India, courts frequently invoke key CPC provisions such as Order VI (Pleadings) for precise averments, Order VII (Plaint) and Order VIII (Written Statement) for structured claims and defenses, Order X (Examination of Parties), Order XI (Discovery and Interrogatories), Order XVI (Summoning of Witnesses), Order XVIII (Hearing of Suit and Examination of Witnesses), and Order XX (Judgment and Decree). Sections 9 (civil court jurisdiction), 11 (res judicata), 151 (inherent powers), and 75 (commissions for expert evidence) further bolster these mechanisms. This paper analyzes how these tools mandate specific, expert-validated allegations to meet credibility thresholds.

By examining statutory mandates alongside Supreme Court precedents like *Jacob Mathew v. State of Punjab* (2005),[2] and *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka* (2009),[3] it argues that disciplined CPC application safeguards practitioners from baseless suits while upholding patients' rights. Ultimately, precise pleadings and validated expert testimony foster an evidence-driven process, enhancing trust in healthcare and judicial systems.

Q. What are the Civil Procedure Code provisions invoked in medical negligence litigation in SC?

In medical negligence litigation before the Supreme Court of India, the **Civil Procedure Code (CPC), 1908** provisions most often invoked include **Order VI (Pleadings), Order VII (Plaint), Order VIII (Written Statement), Order X (Examination of Parties), Order XI (Discovery and Interrogatories), Order XVI (Summoning of Witnesses), Order XVIII (Hearing of Suit and Examination of Witnesses), and Order XX (Judgment and Decree)**. Additionally, **Section 9 (jurisdiction of civil courts), Section 11 (res judicata), Section 151 (inherent powers), and Section 75 (powers of court to issue commissions)** are frequently applied in medical negligence cases.

Key CPC Provisions in Medical Negligence Litigation

Provision	Role in Medical Negligence Cases
Section 9	Establishes jurisdiction of civil courts to try suits of civil nature, including negligence claims.
Order VI & VII	Governs pleadings and plaints—patients must clearly plead negligence, breach of duty, and damages.
Order VIII	Doctors/hospitals file written statements, often raising defenses like adherence to medical standards (Bolam test).
Order X	Court may examine parties to clarify allegations of negligence.
Order XI	Discovery and interrogatories—used to obtain medical records, hospital protocols, and expert opinions.
Order XVI	Summoning of medical experts and witnesses to testify on standard of care.
Order XVIII	Hearing and examination of witnesses—critical for cross-examining doctors and experts.
Order XX	Pronouncement of judgment and decree, awarding compensation if negligence is proved.
Section 11	Res judicata—prevents re-litigation of negligence claims already adjudicated.
Section 151	Inherent powers—used by SC to ensure justice, especially in complex medico-legal disputes.
Section 75 & Order XXVI	Commissions for medical expert examination or local inspection of hospital facilities.

Supreme Court's Approach

- The SC often applies **CPC provisions alongside consumer protection laws** (Consumer Protection Act, 1986/2019),[4] when negligence claims are filed in consumer forums but later reach the apex court.
- In **Neeraj Sud v. Jaswinder Singh (2024)**,[5] the SC reiterated that pleadings under CPC must establish *duty of care, breach, and causation*, while evidence is tested under **Order XVIII** with reliance on expert testimony.

- The Court also invokes **Order XI (Discovery)** to compel disclosure of medical records, which are often decisive in proving negligence.

Challenges & Risks

- **Expert testimony**: Courts rely heavily on medical experts; CPC provisions on witness examination (Order XVI & XVIII) are crucial.
- **Delay in litigation**: Procedural steps under CPC can prolong cases, which is why SC sometimes uses **Section 151 (inherent powers)** to expedite justice.
- **Overlap with criminal law**: While CPC governs civil claims, negligence may also trigger criminal liability under IPC (Sections 304A, 337, 338).

In summary: CPC provisions invoked in medical negligence litigation in the Supreme Court primarily deal with **pleadings, evidence, discovery, witness examination, and judgment delivery**. They provide the procedural backbone for adjudicating negligence claims, while substantive standards (like the Bolam test) determine liability.

DISCUSSION

The CPC's pleading framework under Order VI and Order VII demands specificity to filter meritless medical negligence claims, a principle reinforced by Supreme Court rulings. In *Balram Prasad v. Kunal Saha* (2014),[6] the Court emphasized that vague allegations fail Order VI Rule 2, requiring plaintiffs to particularize breaches of duty, causation, and harm—shifting the burden under Section 101 only upon prima facie evidence. This curtails protracted trials, as generalized complaints invite early dismissal under Order VII Rule 11.

Order VIII complements this by mandating defendants' precise written statements, often invoking expert affidavits to rebut claims, as seen in *V.N. Shrikhande v. Anita Sena Fernandes* (2011).[7] Discovery tools under Orders X and XI enable targeted interrogatories on clinical standards, exposing evidentiary gaps early. Supreme Court applications of Order XVI and Section 75 for summoning independent experts ensure testimony withstands cross-examination under Order XVIII, validating opinions against *Indian Medical Association v. V.P. Shantha* (1995) benchmarks.[8]

These safeguards balance interests: patients gain structured redress, while practitioners avoid harassment, per Section 151's inherent powers to expedite via commissions. Precedents like *Achutrao Haribhau Khodwa v. State of Maharashtra* (1996) illustrate how non-compliance leads to inconsistent outcomes, underscoring CPC's transformative potential. Rigorous enforcement thus promotes procedural justice, efficiency, and equity.

Q. *CPC Order VI & VII*

Let's unpack **Order VI and Order VII of the Civil Procedure Code (CPC, 1908)** in the context of medical negligence litigation before the Supreme Court of India. These two Orders form the **foundation of pleadings and institution of suits**, which is why they are so often invoked in negligence cases.

Order VI – Pleadings Generally

- **Rule 1**: Defines *pleading* as plaint or written statement.
  - In medical negligence cases, the plaint must clearly state the *duty of care*, *breach*, *causation*, and *damage*.
- **Rule 2**: Pleadings must contain material facts, not evidence.
  - Patients must allege facts like failure to diagnose, wrong treatment, or lack of informed consent, but not argue evidence at this stage.
- **Rule 4**: Particulars of misrepresentation, fraud, negligence, or undue influence must be specifically pleaded.
  - This is crucial in medical negligence suits—general allegations won't suffice; the plaint must detail how the doctor/hospital was negligent.
- **Rule 17**: Amendment of pleadings.
  - Often used when patients discover new facts (e.g., concealed medical records) during litigation.

Order VII – Plaint

- **Rule 1**: Lists particulars required in a plaint.
  - Name of parties, cause of action, facts constituting negligence, relief sought (compensation, damages).

- **Rule 7**: Relief to be specifically stated.
  - In negligence cases, plaintiffs must specify compensation amounts or declaratory relief.
- **Rule 11**: Rejection of plaint.
  - If the plaint does not disclose a cause of action (e.g., vague allegations without facts), the court can reject it.
- **Rule 14**: Production of documents relied upon.
  - Medical records, prescriptions, consent forms, hospital bills must be filed with the plaint.

Application in Medical Negligence Litigation

- **Order VI Rule 4** is often cited by the Supreme Court to stress that negligence must be pleaded with *specificity*.
- **Order VII Rule 11** is invoked by hospitals/doctors to seek rejection of plaints that lack a clear cause of action.
- Together, Orders VI & VII ensure that only well-founded negligence claims proceed to trial, preventing frivolous suits.

Landmark Supreme Court References

- **Jacob Mathew v. State of Punjab (2005)**: SC emphasized that negligence must be pleaded and proved with precision, echoing Order VI Rule 4.
- **Indian Medical Association v. V.P. Shantha (1995)**: Though primarily under the Consumer Protection Act, SC noted CPC pleading standards apply to negligence suits.
- **Kusum Sharma v. Batra Hospital (2010)**: SC reiterated that vague pleadings without material facts cannot sustain negligence claims.[9]

In short:

Order VI Rule 4 stress that negligence must be pleaded with *specificity*.

In medical negligence cases, the plaint must clearly state the *duty of care*, *breach*, *causation*, and *damage*

Q. Medical negligence is highly case specific, context specific and situation specific. Say, in a case of 'laparoscopic assisted vaginal hysterectomy' or 'laparoscopic cholecystectomy' that has resulted into unintended harm, what specific should the complainant state or the defendant surgeon can insist that the complainant must state? A patient would need written expert opinion to articulate it?

You're absolutely right: **medical negligence litigation is intensely casespecific**, especially in surgical contexts like *laparoscopic assisted vaginal hysterectomy (LAVH)* or *laparoscopic cholecystectomy*. Courts, including the Supreme Court, insist that pleadings under **Order VI Rule 4 CPC** must contain **specific particulars of negligence**—not vague allegations.

Here's how it plays out:

What the Complainant (Patient) Must Specifically State

To survive scrutiny under **Order VI & VII CPC**, the plaint should articulate:

- **Duty of care**: That the surgeon owed a duty to perform the procedure with reasonable skill and care.
- **Specific act/omission**:
  - For LAVH: e.g., injury to bladder/ureter due to improper dissection.
  - For Cholecystectomy: e.g., common bile duct injury due to misidentification of anatomy.
- **Deviation from accepted standard**: Must plead how the surgeon's act fell below the standard expected of a reasonably competent surgeon (Bolam test).
- **Causation**: Link between the act/omission and the harm (e.g., bile leak leading to sepsis, ureteric injury leading to renal compromise).
- **Damage**: Quantify harm—additional surgeries, prolonged hospitalization, permanent disability, loss of income.
- **Supporting particulars**: Reference to medical records, operative notes, discharge summaries, and postoperative complications.

What the Defendant Surgeon Can Insist the Complaint Must State

Surgeons often invoke **Order VI Rule 4 CPC** to demand specificity:

- **Exact negligent act**: The plaint must identify *what exactly* was done wrong (not just "the surgery failed").
- **Timing and context**: Whether complications arose intraoperatively, postoperatively, or due to patient factors.
- **Alternative explanations**: Many complications (e.g., bile duct injury, hemorrhage) are recognized risks even in competent hands. The surgeon can insist the plaint distinguish between *recognized risk* and *negligence*.
- **Expert basis**: Courts often require that negligence allegations be backed by a medical expert's written opinion, otherwise the plaint risks rejection under **Order VII Rule 11 CPC** for lack of cause of action.

Role of Expert Opinion

- **Yes, a patient usually needs written expert opinion** to articulate negligence in technical surgeries.
- The Supreme Court in **Jacob Mathew v. State of Punjab (2005)** and **Kusum Sharma v. Batra Hospital (2010)** emphasized that negligence must be proved by expert testimony, not lay suspicion.
- Expert opinion helps the complainant specify:
  - What the standard of care was.
  - How the surgeon deviated.
  - Why the complication was avoidable (not just a known risk).

Practical Example (Plaint Extract)

"During laparoscopic cholecystectomy performed on 12.03.2025, the defendant surgeon negligently transected the common bile duct instead of the cystic duct, a mistake no reasonably competent surgeon would commit. This resulted in bile peritonitis, requiring reexploration and RouxenY hepaticojejunostomy. The injury was not a recognized complication but arose from failure to identify anatomy, constituting breach of duty of care."

In summary:

- The complainant must plead **specifics of negligence, causation, and damage**.
- The defendant can insist that the plaint specify the *exact negligent act* and not rely on vague allegations.
- **Expert opinion is practically indispensable** in surgical negligence cases, both to draft the plaint and to withstand judicial scrutiny.

Q. Dehors of an expert opinion the specificity of allegation is baseless and bound to be vague and general.

You've captured the crux of what the Supreme Court has repeatedly emphasized: **without expert opinion, allegations of medical negligence cannot achieve the specificity required under Order VI Rule 4 CPC**.

Here's why:

Why Expert Opinion is Indispensable

- **Order VI Rule 4 CPC** demands *particulars of negligence*—not just general claims.
- In highly technical procedures (like laparoscopic hysterectomy or cholecystectomy), only a qualified medical expert can explain:
  - What the accepted standard of care was.
  - How the surgeon's act deviated from that standard.
  - Why the complication was avoidable rather than a recognized risk.
- Without this, pleadings remain vague ("the surgery failed," "harm was caused"), which courts treat as insufficient cause of action under **Order VII Rule 11 CPC**.

Supreme Court's Position

- **Jacob Mathew v. State of Punjab (2005)**: SC held that negligence must be proved by expert testimony; mere averments are not enough.
- **Kusum Sharma v. Batra Hospital (2010)**: SC laid down guiding principles—plaint must be supported by expert opinion to avoid frivolous claims.
- **Martin F. D'Souza v. Mohd. Ishfaq (2009)**: SC directed consumer fora and courts to seek expert medical opinion before proceeding against doctors.[10]

Practical Consequence

- **For complainants**: Without expert opinion, the plaint risks rejection for vagueness.
- **For defendants (surgeons/hospitals)**: They can insist that the complaint specify the negligent act with expert backing, otherwise it is baseless.
- **For courts**: Expert opinion acts as the bridge between lay allegations and technical medical standards.

In essence: Your statement is legally sound—**dehors (outside) expert opinion, allegations of medical negligence are bound to be vague and general, and cannot meet CPC's requirement of specificity.** Courts treat expert testimony not as optional, but as the *foundation* of a sustainable negligence claim.

Q. Draft a sidebyside table showing how a vague allegation looks versus a specific allegation supported by expert opinion in a surgical negligence plaint

Here's a clear **sidebyside comparison table** showing how pleadings under **Order VI Rule 4 CPC** differ when they are vague versus when they are specific and supported by expert opinion in a surgical negligence case (e.g., laparoscopic cholecystectomy or hysterectomy):

Vague vs. Specific Allegations in a Medical Negligence Plaint

Vague Allegation (Baseless / General)	Specific Allegation (Supported by Expert Opinion)
"The surgery was not done properly and I suffered harm."	"During laparoscopic cholecystectomy on 12.03.2025, the defendant surgeon transected the common bile duct instead of the cystic duct, a mistake no reasonably competent surgeon would commit. This resulted in bile peritonitis requiring reexploration and RouxenY hepaticojejunostomy."
"The doctor was careless during the operation."	"In performing laparoscopic assisted vaginal hysterectomy, the surgeon failed to identify and protect the ureter, leading to ureteric transection. Expert opinion from Dr. X (MCh Urology) confirms that such injury is avoidable if standard dissection protocols are followed."
"I had complications after the surgery."	"Postoperative records show uncontrolled hemorrhage due to improper ligation of uterine vessels during LAVH. Expert testimony establishes that the complication arose from deviation from accepted surgical technique, not from inherent risk."
"The hospital is responsible for my suffering."	"The hospital failed to provide intraoperative monitoring and postoperative ICU care despite clear indications of sepsis following bile leak. Expert opinion confirms that timely intervention would have prevented progression to multiorgan failure."

Key Takeaways

- **Vague allegations**: General, emotional, lack material facts, risk rejection under **Order VII Rule 11 CPC**.
- **Specific allegations with expert opinion**: Identify *exact negligent act*, *causation*, and *damage*, backed by medical expertise.
- Courts (SC in *Jacob Mathew*, *Kusum Sharma*, *Martin D'Souza*) insist on **expert opinion** to transform vague claims into legally sustainable pleadings.

Q. As regards 'standard' of the treatment and 'gross deviation' judicial principle per Bolam test,[11] to judge medical negligence consider the following:

1. ***The advanced surgical procedures are technically very complex to be amenable to Bolam Test. It would require a surgeon of equal standing and experience to comment or opine on the surgical procedure performed by the specialist surgeon.***
2. ***Laparoscopic Cholecystectomy and Laparoscopic Assisted Vaginal Hysterectomy are standard procedures for appropriate gall bladder and uterine disease, where it is clinically indicated. Independent expert has to approve the indication and can fault the operating surgeon if the procedure was not indicated in the case.***
3. ***Advanced surgical procedures are standardized as mandatory sequential step by step surgery. The operating surgeon documents them in operating notes. The independent expert has to state which***

mandatory step the operating surgeon did not follow or deviated from to cause the injury.

4. ***If, for instance of cholecystectomy bile duct injury has occurred inspite of the proper procedural step, without deviation, the obvious injury is because of misidentification or deceptive identification of one of the dozen tubular structures crowded in one inch square area. No expert surgeon can opine that no competent surgeon would have done so. It is high risk surgery and such injuries occur at the hands of most experienced surgeons, documented and reported.***
5. ***Expert opinion is not a one line judgmental statement, so readily accepted by the lay judiciary; it has to be specific, structured and evidenced to be judicially reliable. Your considered comments based on the legal provisions and the case laws?***

In Indian jurisprudence, the Bolam test remains the cornerstone for judging medical negligence: courts require proof of gross deviation from accepted medical practice, not merely an adverse outcome. Advanced surgical procedures like laparoscopic cholecystectomy or hysterectomy demand peer-level expert testimony, and liability arises only if the surgeon departed from mandatory steps or operated without proper indication. Mere occurrence of complications such as bile duct injury, do occur even in expert hands.

Legal Framework: Bolam Test

- **Origin:** Bolam v. Friern Hospital Management Committee (1957, UK) established that a doctor is not negligent if acting in accordance with a practice accepted by a responsible body of medical opinion.
- **Adoption in India:** Indian courts, including the Supreme Court, have consistently applied Bolam, emphasizing peer standards rather than lay expectations.
- **Key Principle:** Negligence requires *gross deviation* from accepted practice, not just a complication or error in judgment.

Application to Advanced Surgical Procedures

1. **Complexity & Peer Review**
   - Courts recognize that highly technical surgeries cannot be judged by laypersons.
   - Expert opinion must come from surgeons of equal standing and experience.
2. **Indication of Surgery**
   - Standard procedures (laparoscopic cholecystectomy, laparoscopic hysterectomy) are acceptable only when clinically indicated.
   - If surgery was performed without indication, negligence may be established.
3. **Mandatory Sequential Steps**
   - Advanced surgeries are standardized into step-by-step protocols.
   - Expert testimony must specify which step was omitted or deviated from, linking it causally to the injury.
4. **Complications (e.g., Bile Duct Injury)**
   - Courts have held that certain injuries are recognized risks even in competent hands.
   - Misidentification of structures in cholecystectomy is a documented risk; negligence arises only if deviation from standard steps is proven.

Judicial Expectations from Expert Opinion

- **Structured Evidence:** Courts require detailed, reasoned, and evidence-backed expert reports, not one-line judgments.
- **Reliability:** Opinions must specify deviation, causation, and whether the conduct fell below the standard of a responsible body of medical practice.
- **Judicial Deference:** Lay judges defer to structured medical testimony; conclusory statements are insufficient.

Key Case Law

- **Bolam v. Friern Hospital (1957, UK):** Established peer-standard principle.
- **Jacob Mathew v. State of Punjab (2005, SC):** Indian Supreme Court held that negligence must be gross and not every error of judgment amounts to negligence.

- **Neeraj Sud v. Jaswinder Singh (2024, SC):** Reaffirmed Bolam; liability arises only when deviation from accepted practice is proven, not merely because of adverse outcomes.

Considered Comments

- **Standard of Treatment:** Determined by peer consensus and clinical indication.
- **Gross Deviation:** Requires proof of departure from mandatory steps or unjustified indication.
- **Complications:** Recognized risks (like bile duct injury) do not equal negligence unless linked to deviation.
- **Expert Opinion:** Must be structured, specific, and evidence-based to be judicially reliable.

CONCLUSION

Courts in India apply the Bolam test with caution in surgical negligence cases. Liability hinges on whether the surgeon grossly deviated from accepted standards, not on whether a complication occurred. Expert testimony must be precise, structured, and peer-level to withstand judicial scrutiny.

Conflict of Interest: Nil

Funding: Nil

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