*Page 46 - 50* **DOI:** *https://doij.org/10.10000/IJLSI.112174*

# INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

**[ISSN 2581-9453]**

**Volume 6 | Issue 5**

**2024**

# The Evolution of Res Ipsa Loquitur in Modern Medicolegal Practice

**DR SOURABH AGGARWAL**[1]

## ABSTRACT

*The doctrine of res ipsa loquitur, meaning "the thing speaks for itself," plays a significant role in the law of torts, particularly in cases of medical negligence. This principle allows the burden of proof to shift from the complainant to the defendant, requiring the latter to demonstrate that no negligence occurred. Originating from Roman legal traditions and famously applied in the English case Byrne v Boadle (1863), the doctrine has evolved significantly, especially within the medicolegal context in India. Here, res ipsa loquitur is frequently invoked under the Indian Evidence Act, 1872, to hold medical professionals accountable when injuries occur under circumstances typically linked to negligence, despite proper care.*

*To apply this doctrine, the complainant must establish that the medical professional owed a duty of care, the incident could not have happened without negligence, the accident was under the exclusive control of the defendant, and there was no contributory negligence on the part of the patient. The burden then shifts to the healthcare provider to prove otherwise, employing strategies such as challenging the applicability of the doctrine, disputing exclusive control, proving contributory negligence by the patient, or providing evidence of due care through guidelines and expert opinions.*

*This paper explores the complexities of res ipsa loquitur in medical negligence, including notable defenses that healthcare providers can employ and the implications of landmark judgments such as Dr. Janak Kantimathi Nathan vs. Murlidhar Eknath Masane, V. Kishan Rao v. Nikhil Super Speciality Hospital, and the non-applicability of the principle in criminal law as affirmed in the Jacob Mathew vs. State of Punjab case. Through these analyses, the doctrine's impact on medical litigation and the evolving standards of care are highlighted, offering insights into its practical application and challenges within modern medicolegal practice.*

***Keywords**: res ipsa loquitur, defend.*

## I. INTRODUCTION

Res Ipsa Loquitur is a latin term which means that “the things speaks for itself”. This is considered a legal principle in the law of tort and is based on the circumstantial evidence which

[1] Author is an Associate Professor at DR SSTMCH & RC, India.

 [ISSN 2581-9453]

consider that the accident could not happen without the negligence. When it is applied it means complainant cannot prove how negligence occurred but he is fully sure that the negligence occurred in his case.

## II. HISTORY

The earliest known use of the phrase was by Cicero in his defense speech *Pro Milone*.[1][2] The circumstances of the genesis of the phrase and application by Cicero in Roman legal trials has led to questions whether it reflects on the quality of *res ipsa loquitur* as a legal doctrine subsequent to 52 BC, some 1915 years before the English case *Byrne v Boadle* (1863), The plaintiff, Byrne, was walking along a public street when he was struck by a barrel of flour that fell from a window above a shop owned by the defendant, Boadle. There were witnesses to the injury, but no witnesses as to how the barrel fell. Boadle was held negligent considering the mixim res ipsa loquitur.

**Its role in case of medical negligence cases in India:**

RIL is a doctrine that shifts the burden of proof from the patient to the doctor or medical provider. It is applied when a patient suffers an injury or harm that is unforeseeable even with the exercise of proper care, and the medical provider's negligence is the most probable cause. This doctrine is often used in India to hold medical professionals liable for harm caused due to breach of duty, and is recognized under the Indian Evidence Act, 1872. And the hon'ble supreme court of India consider this and the burden to prove that nothing wrong was done shifts to doctor and the hospital.

Complainant have to prove the following facts before applying the doctrine:

1. **There must be duty**: patient have to prove that there was legal obligation by the doctor while doing the treatment of the patient. In emergency situation where doctor voluntary treat the patient like CPR given on road side, railway, airport etc there is no duty.
2. **Incident could not happen without negligence**: complainant have to prove that normally such accident does not occur normally and occurs only when there is some negligence or some omission which resulted in the accident and subsequent damage.
3. **Accident was totally in defendant control**: in medical cases this thing is easily proved as the patient during surgery or treatment is usually under the control of the doctors and the hospital.

 [ISSN 2581-9453]

4. **Plaintiff did not contribute to the cause**: if he has done something which was not to be done can be labelled as contributory negligence, eg after a surgery despite refusal to lift heavy weight for a time if patient is lifting heavy weight the problem caused can be contributory negligence in such case.

Once this is applied the complainant consider that he assumes that the defendant doctors or the hospital has done some negligence, which has resulted in the damage. Else in routine, such thing does not occur in routine. When this is applied, now the burden shifts to the doctors and hospital to prove that there was no negligence, else they will lose the case.

How the defendant will fight this doctrine? There are various ways through which defendant can prove that this is wrongly applied and there is nothing like this and can won the case.

1. **Challenge the applicability** of the doctrine by proving that
    - incidence does not occur due to negligence, by producing various paper or books showing that this is a known complication and certain percentage of cases can have such problem.
    - Dispute exclusive control by few disease that cause problems like diabetes delay healing, and such things are not in the control of the doctor.
    - Prove contributory negligence by proving the negligence done by the patient in follow up or not properly acting as per the advise or refusal for investigation despite been asked etc.
2. **Provide evidence of due care** papers or guidelines from various recognised society or the standard books can be taken which clearly shows that the treatment given was proper
    - show compliance with standards of various society
    - Present maintained records with proper documentation of the case file and other maintenance records showing that always proper due care is given to the patient.
3. **Identify alternative cause** : when one can prove that the accident was not in the exclusive control of the defendant.
    - 3rd party responsibility by showing the records of the AMC or CMC of the instruments fault of the instrument can be transferred to the company who is taking care of.
    - Unavoidable accident which no one has control over it, like there was an

earthquake and during that the patient fell from the bed etc now the control is in no ones hand and the accident was unavoidable.

4. **Introduce expert opinions** experts opinion can be produced to show that the treatment provided was as per the medical norms and nothing wrong has been done by the defendant.

When such defence are used they can save the doctor or the hospital and can remove the doctrine and can make them win the case.

Examples of RES Ipsa loquitur

1. Sponge or instrument left in the body
2. Electric burn due to cautery
3. Broken needle in the patient body
4. Premises liability.

Landmark judgements:

1. Dr Janak Kantimathi Nathan vs Murlidhar Eknath Masane
2. V. Kishan Rao v. Nikhil Super Speciality Hospital

We are very fortunate that the principle of res ipsa is not applicable in the criminal law and in the Jacob methew case the hon'ble supreme court of India had layed stress on the same. [5]

*****

 [ISSN 2581-9453]

## III. REFERENCES

1. *"M. Tullius Cicero, For Milo, section 53". Perseus.tufts.edu. Retrieved 30 September 2017.*
2. *Jon R. Waltz; Fred Edward Inbau (1971). Medical jurisprudence. Macmillan. p. 88. ISBN 0-02-424430-9.*
3. Dr Janak Kantimathi Nathan vs Murlidhar Eknath Masane 2002 (2) CPR 138
4. V. Kishan Rao v. Nikhil Super Speciality Hospital And Another (2010 SCC 5 513, Supreme ourt Of India, 2010
5. Jacob methew vs state of Punjab (2005).

*****