UNMASKING THE 'SHADOW DOCTOR': ENSURING EQUITY AND ACCOUNTABILITY IN AI-DRIVEN MEDICAL MALPRACTICE ARBITRATION

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Abstract

As Artificial Intelligence (AI) increasingly drives diagnostics in Sri Lankan healthcare, it creates "Shadow Doctors"—algorithmic agents operating without substantive oversight. Under Sri Lankan law, medical malpractice is governed by the Roman-Dutch law of delict through the *lex Aquilia*, requiring proof of fault (*culpa*) against the standard of the reasonable medical professional established in *Bolam* and qualified by *Bolitho*, as in the seminal case of *Priyani Soysa v Rienzie Arsecularatne.* Extrapolating to the modern technological age, this study investigates whether Sri Lankan liability frameworkspossess the legal elasticity to rectify algorithmic opacity during medical malpractice arbitration. Furthermore, as algorithmic tools lack legal personhood, a practitioner's professional duty of care is non-delegable, leaving practitioners primarily liable for unverified errors. Employing a doctrinal comparative analysis, this paper contrasts the remedial US approach, grappling with AI hallucinations and due process, with the proactive, risk-based governance of the EU AI Act, which treats algorithmic and generative AI outputs as advisory. It also evaluates institutional mechanisms: while hospitals face vicarious liability for employee negligence and contributory negligence apportions fault, practitioners remain liable to victims rather than the software. Consequently, the "black box" nature of AI-generated outputs precludes stakeholders from mounting meaningful adversarial challenges, thereby abridging procedural due process (*audi alteram partem*) within the party autonomy framework and confidential nature of arbitration. In conclusion, systemic transparency is a structural prerequisite for institutional equity and procedural accountability, including clinical AI,accompanying forced input, and its continued evolutionary nature. Consequently, this paper proposes a statutory "Duty of Transparency" mandating the disclosure of AI provenance, validation protocols, and epistemic logic within Sri Lankan arbitral proceedings. Institutionalising this duty ensures that as healthcare paradigms transition toward digital innovation, legal standards of accountability, doctor's practices, patient protection, and human-centered justice remain fully preserved within the Sri Lankan legal system.

Keywords: Artificial Intelligence, Algorithmic Transparency, MedicalMalpractice, Arbitration, Sri Lankan Law