THE LAWS GOVERNING MEDICAL NEGLIGENCE IN INDIA: THE PREVAILING DEFICIENCY AND WAY FORWARD

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Authors

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LIST OF ABBREVIATIONS

Art.	Article
AIR	All India Reporter
All ER	All England Reporter
CCJ	Consumer Claim Journal
CDRC	Consumer Dispute Redressal Commission
CPC	Consumer Protection Cases
CPR	Consumer Protection Report
CPC	Civil Procedure Code
Cr.P.C	Criminal Procedure Code
Chd. SCDRC	Chandigarh State Consumer Dispute Redressal Commission
CPJ	Consumer Protection Journal
Dr.	Doctor
Del.	Delhi
EPMA	European Association for Predictive Preventive & Personalised Medicine
GM-RES	General Miscellaneous Matters Residuary
Guj.	Gujarat
Ker.	Kerala
IPC	Indian Penal Code
Mad.HC	Madras High Court
MTP	Medical Termination of Pregnancy
NC	National Commission
NCDRC	National Consumer Dispute Redressal Commission
SC	Supreme Court
SCC	Supreme Court Cases

SCDRC	State Consumer Dispute Redressal Commission
SCR	Supreme Court Reporter
Supra	Refer above
Sec.	Section

(Note: In Alphabetical order)

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1.	Achutrao Haribhabu Khondwa v. State of Maharashtra, (1996) 2 SCC 634.
2.	Adarsh Bararia v. P.S. Hardia, 2000 (2) CPR 188.
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4.	Beti Bai Saxena (Smt). v. Dr. S L Mukherjee & Others, 2001 (3) CPJ 251.
5.	Bhagwant Sarup v. Himalaya Gas Co, I (1985) ACC 214, AIR 1985 HI 41.
6.	Blyth vs the Birmingham's Waterworks Company, 1856, 781 Ex CH 7.
7.	Bolam v. Friern Hospital Management Committee, (1957) 1 WLR 582.
8.	C.J.Lawrence v. Apollo Hospitals, Tamil Nadu SCDRC O.P.No.8/94.
9.	Cross v. Gutheri, 2 Root 90 (Conn.1794).
10.	Cruzan v. Director, Missouri Dep't of Health, 497 US 261 (1990).
11.	Digvijay Singh A Zata v. Dr. Narendra T Vani & Others, 1995 (I) CPJ 186 (Guj. SCDRC)
12.	Dr. Balram Prasad v. Dr. Kunal Saha, (2014) 1 SCC 384.
13.	Dr. Bishwanath Chakroborty v. Mrs. China Sinha &

	Others, 2002 (2) CPJ 329 WB SCDRC.
14.	Dr. Ganesh Nayak v. V. Shamanna and Others, Writ Petiton No.21688 of 2009.
15.	Dr. Laxman Balakrishna Joshi v. Dr. Trimbak Bapu Godbole & Another, (1969) 1 SCR 206.
16.	Dr. Suresh Gupta v. Govt. of NCT of Delhi and Another, AIR 2004, SC 4091.
17.	Frogatt v. Chesterfield and North Derbyshire Royal Hospital NHS Trust [2001] All ER Vol.4 p.117.
18.	In Re Guardianship of Theresa Marie Schiavo, 780.
19.	Indian Medical Association v. V.P. Shantha & Others, 1996 AIR 550.
20.	Jacob Mathews v. State of Punjab, (2005) 6 SCC 1.
21.	Jayantilal Govindalal Parmar v. Managing Trustee & Others, 1997 (1) CPJ 295.
22.	Juggankhan v The State of Madhya Pradesh, (1965) 1 SCR 14.
23.	Kalawati v. State of Himachal Pradesh, 1988 ACJ 780 HP-HC.
24.	Kanaiyalal Ramanlal Trivedi v. Dr. Satyanarayan Vishwakarma, 1996 (2) CPR 24. 2003.
25.	Karen Ann Quinlan 70 N.J. 10; 355 A.2d 647 (1976).
26.	The Kerala State Electricity Board vs Suresh Kumar, AIR 1986 Ker 72.
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28.	Mahon v. Osborne [1957] 2 All ER 118.
29.	Malay Kumar Ganguly v. Sukumar Mukherjee, SC Criminal Appeal No- 1191-1194 of 2005.

30.	Martin F. Dsouza v. Mohd. Ishfaq, (2009) 3 SCC 1.
31.	Municipal Corporation of Delhi v. Subhagwanti & Others, 1966 AIR 1750.
32.	Neena Gupta v. Dr. Kanwarjit Kochhar, Complaint Case No. 489 of 1993, Chd.-UT CDRC.
33.	Nihal Kaur and others v. Director P.G.I Chandigarh, 1996(3) CPJ 112 (Chd.- UT CDRC).
34.	Nirmala vs Tamil Nadu Electricity Board, AIR 1986 Ker 72.
35.	Nizam Institute of Medical Sciences v. Prasanth S. Dhananka & Others, C.A. No.3126 of 2000.
36.	Parmanand Katara vs. Union of India, 1989 AIR 2039.
37.	Paschim Banga Khet Mazdoor Samiti vs. State of West Bengal, 1996 SCC (2) 634.
38.	Poonam Verma v. Ashwin Patel and Others, (1996) 4 SCC 332.
39.	R. L Sethi v. Dr. Somnath Chakraborti, 2001(2) CPR 379.
40.	S. Rama Rao v. Bantwal Sulochana Madhava Shenoy Trust, I (1997) CPJ 301.
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42.	Shashi Bala v. Sushil Kumar, 2002 CCJ 48.
43.	Shivaji Gendeo Chavan v. Chief Director, Wanless Hospital & another (1995) 3 C.P.J. 43 (Maharastra S.C.D.R.C.).
44.	Smt, Madhubala v. Government of NCT Delhi, 118 (2005) DLT 515, 2005 (82) DRJ 92.
45.	Spring Meadows Hospital and Another v. Harjol Ahluwalia, AIR 1998 SC 1801.

46.	State of Punjab v. Shiv Ram, (2005) 7 SCC 1.
47.	Stratton v. Swanlond, 1374.
48.	Subh Lata v. Christian Medical College, 1995 CCJ 512.
49.	Udale v. Bloomsbury Area Health Authority, [1983] 2 All ER 522.
50.	V. Kishan Rao v. Nikhil Super Speciality Hospital, (2010) 5 SCC 513.
51.	Vinod Jain v. Santokba Durlabhji Memorial Hospital & Another, Civil Appeal No. 2024 of 2019.

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THE LAWS GOVERNING MEDICAL NEGLIGENCE IN INDIA: THE PREVAILING DEFICIENCY AND WAY FORWARD.

CHAPTER 1

INTRODUCTION

"Medicine, the finest of all the arts, is today lagging far behind all the others, owing mostly to ignorance on the part of those who practise it, as well as the absurdity of those who pass judgement on it without contemplating the repercussions."

-Hippocrates.

Medical negligence is an act of negligence that occurs when doctors fail to take reasonable care of their patients, resulting in injury. In other words, it refers to a doctor's failure to fulfil their duty to care for their patients. Medical negligence, unlike medical malpractice, lacks the element of intent. Medical malpractice is defined as an intentional failure on the part of a doctor that causes harm to a patient.

Two and a half centuries ago, the father of medicine's remark is still valid and properly defines the current state of the medical systems in India. While the noble profession has always been viewed with awe and respect since the dawn of creation, it is now recognised as one that arouses undignified sentiments in certain parts of the public, as it has for thousands of years.

In recent times, there has been an astonishing rise in the number of complaints filed by patients alleging medical malpractice with consumer dispute resolution agencies, with a significant percentage of these cases culminating in a monetary award. In a handful of incidents, criminal charges were filed against medical personnel for allegedly leading to their patients' deaths through negligence.

The recent awareness may have drawn attention of an individual's constitutionally protected civil rights, which may explain the quick surge in medical malpractice cases. International treaties, the Indian Constitution, and a series of health-related judgements by the Supreme Court of India have increasingly acknowledged healthcare as one of the essential rights guaranteed by the Constitution.

This situation shows a growing conflict in our culture between the ethics of trust and individual rights, which is similar to the scenario that occurs in industrialised nations. Furthermore, the Indian medical profession has failed to meet the public's demand for greater accountability from its practitioners.

When it comes to a patient, "Medical Negligence" is the most important consideration to take into account. India, a nation that once regarded and worshipped doctors and other medical professionals as a "God" or as a form of divinity, is today in a state of uncertainty. The primary reason is the increase in the number of cases of medical negligence that have occurred in recent decades.

Over the course of the last few decades, medical negligence has evolved into one of the most significant problems facing the country. It has become abundantly clear that the medical profession, which is often regarded as one of the most honourable professions, is not immune to neglect, which regularly leads to the loss of life, the entire or partial damage of limbs, or another source of pain for the patients.

It has become abundantly clear that the medical profession, which is considered to be one of the most honourable professions, is not exempt to negligence, which frequently results in fatalities or in the complete or partial impairment of limbs, or which further

culminates in another form of misery for the patients. There are several documented examples of incompetent or poorly trained medical professionals acting on their own will to cause harm to a patient who was not responsible for the incident. And in any event, such a significant amount of negligence or intentional behaviour on the part of the medical professionals or litigants in order to take their rights.

In point of fact, medical negligence is a major cause for concern when it comes to human rights, as it has a direct impact on both the "right to life" and the "right to healthcare." The ever-increasing number of cases of medical negligence that have been reported in India have, for the most part, been met with a complete lack of response by the country's judicial system which ultimately results in the complete loss of public trust placed in the individuals or organisations providing medical services. Even though the legal remedies or redress available under the present laws are restricted or difficult to obtain, such attempts provide a clear picture regarding the deficiency of the existing law and the underlying challenges in the court system.

The primary objective of this research project is to conduct a critical analysis of the legislative framework governing medical negligence in India in order to get a better understanding of the medical negligence landscape in this nation.

1.1.1 Definition of Negligence.

In the law, "negligence" is a type of Tort wrong or Civil wrong. It is also a wrong according to criminal law and consumer law, which means that an action is wrong because it doesn't meet the legal standard that a reasonable person would have to meet to protect people from foreseeable dangerous or harmful acts. If you hurt

someone else's mental or physical health, wealth, property, or relationships because of your carelessness, you should pay them for it.

1.1.2 Essentials elements of Negligence.

It is a known fact that negligence is hard to define. However, the idea of negligence has been recognized and accepted in law. In Jacob Mathew v. State of Punjab and Anr.,[1] the Supreme Court of India defined negligence as: actionable negligence is when a defendant fails to use reasonable skill and care or knowledge towards a person to which the defendant has a duty to use ordinary care and skill, and because of that failure, the plaintiff gets hurt or loses something. There are three parts to the definition of negligence:

1. A legal duty on the part of the party complained of to exercise proper care towards the party complaining about the former's conduct within the realm of duty.
2. Breach of the aforementioned responsibility;
3. Consequential damage.

1.1.3 Medical Professional Accountability.

Since the beginning of human history, those who practice medicine have been held accountable to the law in the same way that any other citizen would be held responsible. This has been the case since the beginning of mankind. On the other hand, the procedures that were utilized in order to hold them responsible for their actions ranged widely from civilization to civilization. In what manner is the medical professional accountable to the laws of the nation in which he or she practices? Where does he place in terms of power, responsibility, and accountability, whether that be

[1] Jacob Mathews v. State of Punjab, (2005) 6 SCC 1.

answerability to others or answerability to themselves? Are there any ambiguities in the restrictions? Are they just and reasonable? Is there enough freedom under the law for doctors to practice their profession, and is there enough room for them to do so?

It is imperative that each and every person, and professionals in particular, be held accountable, and one of the ways in which responsibility to the patient, the patient's family, and society can be discovered and enforced is through the legal system. These are the kinds of questions that have been keeping the minds of judges, health-care experts and administrators, and citizens alike for a considerable amount of time.[2]

"A doctor owes each patient the amount of expertise, skill, and care that would be anticipated of a reasonable and prudent practitioner in the same situation, given the current state of medical knowledge and the resources that are available."

No one can argue with this. No sane person would ever wilfully and willingly settle for less than that standard of treatment. The Journal of the American Medical Association says that the following quote shows something that doctors should be aware of: *"We are all human, and we must and do make mistakes in diagnosis and treatment."*[3]

Because doctors have to make decisions based on complicated and incomplete information, mistakes are inevitable in the medical field. The only person who is always right is a charlatan. On the other hand, we may be held responsible for our lack of care and lack of average competence, since these are errors that any

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[2] Karunakaran Mathiharan, Supreme Court on Medical Negligence, Vol. 41 ECONOMIC AND POLITICAL WEEKLY pp. 111-115, (2006).

[3] Samuels. Alec, 'The Doctor and the Law', Vol 49 (4), THE MEDICO-LEGAL JOURNAL p.139, (1981).

competent practitioner should be able to avoid.

Doctors are worshipped as Gods because they save the lives of millions of people. They drag people from their deathbeds and give them the chance to see the new world. In the form of a God, the doctor is thought to be unimpeachable. When God cannot perform his duties as expected, people tend to forget that he is still a human being with special medical training and hold them accountable for his errors.

Medical negligence is an act of negligence that occurs when doctors fail to implement reasonable care of their patients, resulting in injury. Doctors can be negligent in the following ways: failing to attend or treat patients, making an incorrect diagnosis, making incorrect treatments, failing to take a complete medical history into account, performing wrong surgery, failing to communicate and advise, and so on.[4]

In today's world, medical law is undergoing a significant transformation, influencing our attitudes toward medical services and medical professions. Doctor is like God, the status is eroding, and they are no longer regarded as unimpeachable. Doctors are ordinary people who have specialized in the medical field and can provide the best treatment for their patients after examining them. The doctor-patient relationship has become more formal and structured in recent years. Effective approaches have been introduced that have legal and ethical implications for medicine.

In our country, medical negligence cases are handled by lawyers and decided by judges. However, because the judges are unfamiliar

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[4] Abhijit Das, Ramakant Rai and Dinesh Singh, Vol.39,Medical negligence and rights violation; ECONOMIC AND POLITICAL WEEKLY, No.35 p.3876-3879. (2004).

with medical science, it is difficult for them to render a decision. As a result, these decisions are based on the opinions and recommendations of medical experts. On the other hand, judges apply the principles of the law of the land and make a final decision while keeping reasonability and prudence in mind.

1.2 STATEMENT OF RESEARCH PROBLEM.

The research analyses that medical negligence is an act of negligence that occurs when doctors fails to take reasonable care of their patients, resulting in injury. The existing legal framework in India is not satisfactory, and the researcher compares the existing legal framework and the liability for medical negligence in India with the USA and UK, which have strong regulatory systems.

1.3 RESEARCH OBJECTIVES.

1. To study the liability for medical negligence and their existing legal framework.
2. To examine whether existing laws on medical negligence in India are adequate in addressing the causes of medical negligence.
3. To compare the liability for medical negligence in India with the USA and UK.
4. To provide suggestive measures for a strong regulatory framework for controlling medical negligence.

1.4 RESEARCH QUESTIONS.

1. What is the liability for medical negligence, and how effectively the existing laws are implemented in India?
2. Does the existing legal framework in India address the entire scenario of medical negligence?
3. What are the legal challenges and difficulties in

implementing the existing laws on liability for medical negligence?

1.5 HYPOTHESIS.

The existing legal framework on liability for medical negligence is not comprehensive.

1.6 SCOPE AND LIMITATION OF STUDY.

1. This study analyses the existing laws on medical negligence and its guidelines on addressing the causes that lead to medical negligence.
2. The existing laws of the USA and UK are taken into comparison with the Indian perspective.

1.7 METHOD OF RESEARCH.

The research methodology used is purely doctrinal. It involves a thorough examination of statutory materials, cases decided by various courts, a text review, and a comparative analysis.

1.8 LITERATURE REVIEW.

1. Tapas Kumar Koley's:

Medical negligence and the law in India duties, responsibilities, and rights by Tapas Kumar Koley first edition published by Oxford University Press, the book attempts to cover all major issues in modern law about medical negligence. This book was written to provide vital information to medical professionals, medical and law students, and lawyers in order for them to avoid the unpleasant situation of facing a negligence suit. There are three sections in this book. The first section provides a general overview of medical negligence in India and its impact on the medical profession. The second section of the book deals with various

important aspects of Indian Medical law that cover medical negligence lawsuits. The third and final section of the book is devoted to identifying potential areas of litigation in specific important disciplines of medicines such as surgery, anaesthesia, obstetrics and gynaecology, pharmacology, paediatrics, internal medicine, and pathology, and this section of the book will help medical professionals to modify and improve their practices and avoid lawsuits. This book has provided the rights, duties and responsibilities of a doctor towards to his patients and in very minute details the author has covered with relevant case laws.

By presenting an in-depth analysis relating to medical negligence in India, this book assisted me in bringing my research project to a successful conclusion. In-depth discussion of the rights and responsibilities that physicians have for their patients, as well as those that patients have toward their doctors. The doctor-patient conflict, as well as its roots and repercussions, as well as the shifting dynamics of the current scenario, have all been highlighted in this book in a very concise way.

2. Medical Law by Dr. Bindumol V.C.:

This is a textbook published by Allahabad law Agency second edition on the law pertaining to medical practise. This book offers summaries of cases as well as statutes that are pertinent to the field of medical law. The book is broken up into 11 parts, the first of which is titled "Medical Ethics," and the third is titled "Medical Negligence."

Both of these chapters are important in finishing the research work. The author of this book has provided a concise summary of all of the legislations that are associated with medical negligence, including how those statutes have evolved over the course of time

with important and landmark judgements. My research on medical ethics and medical negligence is complete, thanks in large part to the assistance of this book. The discussion that the author has provided on the subject of medical ethics is highly insightful.

3. Medical Negligence and Legal Remedies by Anoop Kaushal:

This book is published by Universal Law Publishing and it's the third edition published in 2004. The meaning of medical negligence is broken down in clear and concise detail in this book. The important clauses of the numerous laws that have been passed in this regard are emphasised here. Statutory restrictions are also included, and judgments from a variety of consumer courts, high courts, and the supreme court are summarised and given here. This research would not have been able to progress past the fourth chapter without the extensive discussion of a variety of cases involving landmarks judgments that were included in this book.

4. Richa Singh Faculty of Law, Aligarh Muslim University: Medical Negligence in India. The author of that article has discussed all of the legal considerations, the process for making a complaint, as well as the consequences of medical negligence throughout this article. This essay took the perspective of the customer and outlined in great detail all of the actions that need to be taken by consumers in order to safeguard their legal rights. This article is published on blog named ipleaders.

5. Priya Adlakha and Nihit Nagpal: Medical Negligence India.

In this article, the researcher explains how patients can file a petition for compensation in accordance with a number of different

statutes, as well as the method that is associated with doing so. The author of the article has addressed a number of different case laws, which describe the strategy the courts have used to resolve the issue in accordance with a number of different laws. This article has helped me comprehend the perspective that the courts take in the event of medical negligence and the steps that they take. This article is published on website of lexology, a place where all the latest updates in the field of law is published.

6. Amit Agrawal: Medical Negligence: Indian legal perspective.

In this article, the author makes an effort to describe the essential components of "medical negligence" in layman's terms, making use of as little legal language as is feasible. He has made reference to some of the most significant incidents of medical negligence in the history of the world. The author of this article has focused their attention on the overall situation in India, including notable incidents. How much time and effort has gone into making these changes. This article assisted me in completing my understanding of the Indian perspective on medical negligence and the development of its law in response to the passage of time. This article is mentioned on the website of National Library of Medicine, which is one of the finest online websites for any information related to medicine and law.

7. Daya Tiwari: Medical Negligence in India: A critical study of medical negligence in India:

In this article, the author examines how the Supreme Court of India has interpreted the idea of negligence as it applies to the medical field. The author of the article extensively cites landmark Supreme Court decisions. The Supreme Court has repeatedly ruled in favour

of both patients and doctors when interpreting the law. This article has assisted me in developing a perspective on the ways in which the courts have interpreted in favour of consumers as well as physicians. In this article, both the patients and the doctors' points of view on the subject have been presented and discussed. This article is published on website of Semantic Scholar.

8. Shivani Upadhyay: Medical Negligence and Malpractice: A threat to Humanity. The author of the article intends to demonstrate how important it is to put these provisions into practise in order to assist patients in regaining their rights and to re-establish public confidence in the medical community as a whole. Medical malpractice and other forms of medical negligence are addressed in a variety of statutes. It is necessary that the ethics of medicine be revised so that patients, rather than being discouraged from trusting their physicians and other medical professionals, are actively encouraged to do so.

This article has helped me to determine the specific factors upon which criminal responsibility for medical negligence is often established. In addition, qualitative disparities between civil and criminal accountability for medical negligence are explored. For this, the fundamental concepts of negligence law and pertinent judicial decisions are reviewed. This article is written by a student and the article has been mentioned on a website called probono-India.

9. Dr. Mukesh Yadav, "Recent Scenario of Criminal Negligence in India, Doctor, Community & Apex Court":

This article examines the current condition of "Criminal Negligence in India," including its effects on the medical fraternity, law

enforcement agencies, and the general population, as well as the implementation of Supreme Court Guidelines. This research couldn't be completed without the support of the numerous judicial decisions addressing on medical negligence. This article has been mentioned in the reputed journal of Indian Academy of forensic medicine (JIAFM).

10. Prof. (Dr.) Subhash Chandra Gupta and Shikha Dimri, "Remedies for the Victims of Medical Negligence: Responsibilities in Criminal Law":

The purpose of this research is to investigate the particular aspects upon which criminal culpability for negligent medical care is typically based. In addition, the qualitative differences between civil and criminal responsibility for medical negligence are investigated. In order to accomplish this, the underlying ideas behind negligence law as well as relevant judicial decisions are examined. In addition to it, the pertinent criminal law laws are analysed after they have been referenced. Understanding the notion of criminal and civil liability in medical negligence, as well as its interpretation in a variety of Supreme Court rulings, has been made easier due to the information provided in this article. This article is published in International Journal of law & Governance.

1.9 CHAPTERS

Chapter 1: Introduction.

The introduction chapter of this research work discusses the definition of negligence, emphasizing the term Medical Negligence. It also clarifies the laws governing negligence and the indicators of negligence. It also focuses on research problem statements. This chapter has briefly explained the concept of negligence as laid

down by the Supreme court.

Chapter 2: The Laws Governing Medical Negligence: An overview of the prevailing laws governing medical negligence

The second chapter consists of the medical professionals' code of ethics, as the medical profession requires strict disciplinary action and other related laws governing them. In this chapter major legislations relating to medical negligence has been thoroughly.

Chapter 3: The Law Governing Medical Negligence in UK and USA with comparison to India: An Assessment

The third chapter compares Indian medical negligence laws to the UK and USA. In this chapter the medical redressal system in all 3 countries have been discussed with relevant case laws.

Chapter 4: The Approach of Indian Court on the Laws governing medical negligence

This chapter is the heart of this research work, which deals with judicial decisions on medical malpractice and negligence in India. This chapter specially deals with the justification and grounds that form the rules in medical negligence law regarding remedies and punishment, i.e., whether a hospital or a doctor would be held accountable as laid out by the Supreme Court.

Chapter 5: Conclusion & Suggestions

The fifth chapter of this dissertation concludes the research work and makes some valuable recommendations.

CHAPTER 2:
THE LAW GOVERNING MEDICAL NEGLIGENCE: AN OVERVIEW ON THE PREVAILING LAWS GOVERNING MEDICAL NEGLIGENCE.

2.1 Introduction.

The medical profession in India is governed by a set of rules and regulations. These laws establish the code of conduct and ethics that all professionals in our country are required to adhere to in order to practice their profession. Skills, efficiency, accuracy in decision-making, and carefulness are required in the medical profession and are considered to be sine qua non requirements for the profession. Despite the fact that each profession has its own significance, the medical profession is distinct in that its practice has a direct connection with people's lives, and there is nothing more valuable in this world than a human being's life.

As a result, the responsibilities of medical professionals are extremely stringent and demanding. There are many different types of liability for medical offences, including criminal liability, tort liability, contractual liability, and consumer liability. The purpose of this chapter is to discuss the laws that govern medical professionals in the country of India.

Complaints against medical malpractice filed with consumer dispute resolution organizations have increased dramatically in recent years, with many of these cases culminating in an order for compensation. There have also been a handful of incidents in which medical personnel have been charged with criminal negligence for allegedly causing the death of a patient.

Many people are becoming aware of their constitutionally guaranteed civil rights, which may explain the sudden rise in

medical malpractice claims. Healthcare is rapidly being recognized as one of the fundamental rights by the Indian Constitution, international agreements, and the Supreme Court of India in a number of health-related judgements.

2.2 Meaning of Negligence.

Negligence is culpable carelessness. Carelessness is culpable only when law is imposed a duty of carefulness. To be negligent, one must fail to perform a duty in a way that a sensible and a person with sound mind should not do, or to act in a manner that a cautious and reasonable person would not. There are two different theories for the meaning of the term negligence. In this subjective theory, it is a state of mind. As far as the objective theory of negligence goes, it is a kind of conduct.[5]

Medical negligence damages lawsuits must be filed within three years of the date when the right to sue or a cause of action arises, whichever comes first.[6] The definition would involve three components of negligence:

Essentials in an action for negligence, the plaintiff has to prove the following essentials:

- The defendant owed duty of care to the plaintiff;
- The defendant made the breach of that duty;
- The defendant suffered damage as consequence thereof;[7]

2.2.1 Duty of care to the plaintiff:

The idea of accounting anyone who could be chargeable for every act of carelessness, or for every careless act that could results in

[5] RATAN LAL DHIRAJ LAL, THE LAW OF TORTS, 441 (2nd Edn. 2005).

[6] The Limitation Act, 1963, §113, No.36, Acts of Parliament, 1963 (India).

[7] Poonam Verma v. Ashwin Patel and Others, (1996) 4 SCC 332.

damage, would be absurd. He should only be accountable for negligence if he/she was legally obligated to as a part of reasonable care. A valid duty varies from the moral, religious and a social obligation, as a result, the litigant (consumer) must prove that the person liable to owed him a legal duty to which if he failed to adhere and of which he has committed a breach in order to succeed. Any person would only be required to achieve the standards of care if he or she has a responsibility to perform valid caution in such circumstances.

Accordingly, the "duty" can be defined as “the relationship between individuals in which one imposes upon the other an obligation under the law for the benefit of the other”. In other words, duty is "an obligation, recognized by law, to refrain from engaging in conduct that poses an unreasonable risk of harm to other people." Because of the consequence of existence of a duty owed to the plaintiff becomes a key component of the tortfeasor's liability.

2.2.2 Breach of Duty

The second important requirement for holding a party liable with negligence would be that the appellant must not only owe the litigant the duty of reasonable care, but also should be in breach of that duty of reasonable care. According to the oft-cited dictum of Alderson B, the standard for determining whether a breach of duty has occurred is as follows: in the Blyth vs the Birmingham's Waterworks Company.[8] litigation, where it had been said that the "negligence is breach of duty caused by the omission to do something which a reasonable man, guided upon those

[8] Blyth vs the Birmingham's Waterworks Company, 1856,781 Ex CH7.

considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. "[9]

A preceding meaning of the failure of performance of duty puts a focus as of duty of a "reasonable man," any specimen of the law whose act serves as the yardstick by how these courts judge the demeanor of every other people and determine whether if it is correct or incorrect in respective instances that could arise from period to period.

In a case of the Nirmala vs Tamil Nadu Electricity Board,[10] the party's husband who had died as soon he touched an electric hanging cable that had happened while at work on the plaintiff's farm. Nirmala was the wife of the plaintiff. The defendants were found to be guilty for negligence by the courts, which said that they had failed to provide required maintenance as the result of which the wires got electrocuted, and that they had also shown negligence in not providing the device that would have caused the snapped wire to automatically become dead and harmless.

In the litigation of Kerala State Electricity Board vs Suresh Kumar,[11] a young man died after getting into contact with the overhung electric line that had dropped to three foot above the base suffering burn injuries. The Electricity Board was in charge of keeping the high-tension wires at a 15-foot altitude. As a result of the Board's failure to meet its statutory requirements, it was found accountable.

In Bhagwant Sarup v. Himalaya Gas Co.,[12] the plaintiff contracted

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[9] Blyth vs the Birmingham's Waterworks Company, 1856,781 Ex CH7.

[10] Nirmala vs Tamil Nadu Electricity Board, AIR 1984 Mad 201.

[11] The Kerala State Electricity Board vs Suresh Kumar, AIR 1886 Ker 72.

[12] Bhagwant Sarup v. Himalaya Gas Co & Others, AIR 1985 HP 41.

with the party, whose gas agency was in Shimla (Himachal Pradesh), to replace a cooking gas cylinder that had been damaged. The defendant's delivery man entered the plaintiff's home and removed a cylinder from the premises. Because the cylinder's cap was damaged, he attempted to open it by striking it with the axe.

He was unsuccessful. Because of this, the cylinder was damaged and gas was leaking out of it at the time. A small fire had already started in the kitchen, and the gas that had leaked ignited it. Because of the result of the outbreak of fire, the plaintiff's daughter died, many family members had to suffer severe and acute burn injuries, and some of the plaintiff's personal property was destroyed. As a result of the defendant's servant's careless attitude in opening the cylinder, the defendant who was held guilty of the consequences of that carelessness. It should be noted that the magnitude of risk varies from case to case, and that this is something to consider.

2.2.3 Breach of Duty must have caused the damage:

Another final requirement of negligence is that the litigant must demonstrate a usual link between the non-performance of the work with resulting damage, i.e., how many defects can be linked to the accused, this litigant should demonstrate that the defendant was careless in performing his or her duties.

2.2.4 Degrees of Negligence

There are three categories of negligence that must be taken into account in civil law, according to the Delhi High Court. in 2005:[13]

i. gross neglect means lata culpa,
ii. ordinary neglect means levis culpa, and

[13] Smt, Madhubala v. Government of NCT Delhi, 2005 (82) DRJ 92.

iii. slight neglect means levis sima culpa,

2.3 LEGISLATIONS REGULATING MEDICAL PROFESSION IN INDIA.

1. The Constitution of India.
2. The National Medical Commission Act 2019.
3. Indian Medical Council Rule 1957.
4. Medical Council of India Regulations 2000.
5. Code of Medical Ethics Regulations 2002.
6. The National Commission for Homoeopathy Act 2020.
7. The Indian Nursing Council Act 1947.
8. The National Commission for Indian System of Medicine Act 2020.
9. The Dentists Act 1948; The Revised Dentists (Code of Ethics) Regulations 2014.

1. The Constitution of India.

The Indian Constitution lays the groundwork for a welfare state and socialist form of socioeconomic growth. Social and economic rights such as health, education, and livelihoods, amongst others, are provided for as Directive Principles for the State and are not, therefore, justiciable. On the other hand, civil and political rights are codified as Fundamental Rights, which are justiciable.

The latter is under the purview of planned development, which the state directs through various initiatives, such as the Five Year Plan and other Development Policy Initiatives. In spite of the absence of any specific language to that effect, the Constitution of India recognises a number of rights connected to health care, among which are a significant number of patient rights. The fact that the

rights that either directly or indirectly relate to patients' rights are be it in the form of fundamental rights or fall under Directive Principles is a significant consideration, but it is not the only consideration.

Therefore, given that the rights accorded under directive principles are of an inherently unjustifiable nature on the one hand, and the rights accorded under basic rights can only be enforced by way of a writ petition on the other, it is extremely challenging to avail oneself of these rights. It is important for higher levels of the judicial system to have a part in determining and acknowledging patients' legal rights.

The right to health was incorporated into the Indian Constitution as a fundamental right following a joint reading of Article 21[14] and Articles 39(e)[15] , 39(f)[16] ,42[17] and 47[18] of Part IV of the Indian

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[14] Article 21- Protection of the life and personal liberty - No person shall be deprived of his/her life or of personal liberty except according to the procedure established by law.

[15] Article 39 (e) Certain principles of the policy to be followed by State- The State shall, in particular, direct its policy securing-

(e) that health and strength of workers, women and men, and the tender age of children aren't abused and that citizens aren't forced by the economic necessity to enter any vocation unsuited to their age and strength;

[16] Article 39 (f) Certain principles of the policy to be followed by State- The State shall, in particular, direct its policy securing-

(f) that the children are provided opportunities and facilities to develop in a healthy manner and _ the conditions of freedom and dignity and the childhood and youth are protected against exploitation and against the moral and material abandonment.

[17] Article 42 - Provisions for the just and the human conditions of the work and the maternity relief. The State shall make the provision for securing a just and human conditions of work and for maternity relief.

[18] Article 47- Duty of State to raise the level of the nutrition and the standard of living and to improve the public health - The State shall regard the raising of the level of nutrition and the standard of living of the people and the improvement

Constitution, which deals with directive principles of state policy. Numerous writ petitions on health-related concerns are filed invoking the public interest litigation, authority granted by Articles 32 and 226 of the Constitution. In the area of health, a landmark ruling was made in Parmanand Katara v. Union of India.[19]

In that case, the court was presented with hospitals denying accident victims and referring them to hospitals designated for medicolegal matters. The court determined that while medical authorities were entitled to create administrative procedures to address specific circumstances based on practical factors, no medical authority may deny a patient in need emergency medical assistance. The court based its verdict on clauses 10 (obligations to the sick) and 13 (the patient must not be neglected) of the Indian Medical Council's code of medical ethics, concluding that such rejection violated universally accepted ideas of medical ethics. It observed that such procedures infringed Article 21's promise of 'protection of life and liberty' and thereby established a right to emergency medical treatment.

2. National Medical Commission Act (2019).

National Medical Commission was created initially through an ordinance and later became a permanent body following the enactment of the NMC Act 2019. The law established a detailed composition of the commission, outlining its major duties and functions. The act's primary purpose was to ensure that:

a. Accessing the quality and the affordability to medical

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of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxication drinks which are injurious to health.

[19] Parmanand Katara vs. Union of India, 1989 AIR 2039.

education system.

b. Accessibility of required and qualified medical personnel across parts of the country.
c. Equal and with universalized health care that would encourage communities' health objective;
d. Promoting National health objectives;
e. Encouraging medical professionals to practice the latest researches in medical field that would work and contribute to research;
f. Objectives which are periodic and transparent through assessment of the medical institutions;
g. Maintaining medical registers of India;
h. Higher ethics and standards in every aspect of medical services;
i. Effective grievance redressal mechanisms.[20]

Section 5 of the national medical commission act provides that the chairman and certain part-time members, as mentioned in section 4(4)(a) of this act, as well as a secretary of the national medical commission, would be selected by union government based on recommendation of a search committee.[21]

Section 10 powers and functions of the commission: The Commission shall perform the following functions, namely:[22]

To establish policies for ensuring the qualities and standards

[20] Objective of The National Commission Act, 2019, No.30, Acts of Parliament, 2019 (India).

[21] The National Medical Commission Act, 2019, § 5, No. 30, Acts of Parliament, 2019 (India).

[22] The National Medical Commission Act, 2019, § 10, No. 30, Acts of Parliament, 2019 (India).

required for medical education and enacting the required necessary regulations; establishing policies for medicinal institutions, research in medicine, and medical personnel and enacting required measures; assessing the healthcare wants, which includes human resources for medicine and health infrastructure, and developing a map for meeting those requirements.

To promote, coordinate, and adhere guidelines for the proper functioning of the office, the district Boards, and the Medical Councils through the adoption of necessary regulations; ensure coordination among the district Boards; Perform measures as may be required to maintain compliance by the Medical Councils with the rules and regulations provision of the said Act for their outstanding operation under this Act.

Establishing regulations and the rules to make sure that required ethics are adhered to in the medical community and to promote ethical behaviour by medical practitioners when providing care.

To establish guidelines for determining fees for fifty percent of seats in medical institutions and deemed to be universities covered by the Act; and the additional powers and duties to perform other responsibilities as required.

The ethics and medical assessment board shall keep a national register of medical professionals and make sure that they follow medical ethics.

3. Medical Council of Indian Regulations, 2000.

The Medical Council of India Regulations, 2000 are enacted by Medicine Council of India in coordination with the Union Government, according to the authority assigned by the section 33(b) of the Indian Medical Council Act (1956). Regulation 54 governs the appointment of a Registrar. The Registrar is

responsible for maintaining the Central Register of Indian Medicine. The full-time inspector is responsible for the following duties:

Conduct comprehensive inspections of medical colleges, associated institutions, medical hospitals, and other centres to ensure that the requirements or amenities provided in terms of people, academic atmosphere, and other teachers and probation for UG and PG courses, which includes research, meet the requirements established as per the Indian Medical association;

Conduct a yearly report of the country's medical education and make recommendations for the implementation of uniform assessment standards. The registrar shall obtain from examining organisations and institutions the date and location of examinations on a periodic basis, which may be examined by the council. To evaluate such medical colleges, the executive committee shall assign a minimum of three inspectors. The Indian Medical Council shall assign a visitor who will personally attend each examination he is obligated to visit. He shall report to the council's President independently and individually on each examination he visits.

4. Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, (2002).

Section 20A of the 1956 Indian Medical Council Act, said that in along with section 33(m) of the 1956 Medical Council of India Act, empowers this council to make regulations with the consent of the Union government.

These regulations are divided into eight sections. Chapter 1 of the Code of Medical Ethics is a lengthy description of a physician's responsibilities and duties, including sustaining high standards of character and medical practice, charging for professional services,

and adhering to local laws governing the practice of medicine.
Chapter 2 of this regulation imposes numerous responsibilities on medical practitioners. This chapter discusses physicians' obligations to their patients in detail, including the fact that no physician may reject care to a patient arbitrarily. Doctors should neither overstate nor misguide their patients' illnesses. It is critical to look after the patient. A physician is free to treat anyone he or she wishes. After initiating a case, a physician should not quit it or cease working on it without providing proper notice to the patient and family members.
Chapters 3 and 4 provide an in-depth examination of how doctors should collaborate. Chapter 5 discusses your responsibilities as a physician to the public as well as the medical community.
Chapter 6 discusses unethical conduct. Any activity by a physician that results in patient solicitation, whether directly or indirectly, is unethical. Any physician who chooses to patent medical devices or medications may do so. It would be unethical to deny the benefits of patents or copyrights in cases where the interests of a wide population are at issue. Prescriptions from physicians should always provide a proprietary formula and a readily identifiable brand name for each drug. A physician is unethical if he or she prescribes secret medicines.
Chapter 7 discusses in details a physician's professional misconduct, including the actions and omissions that define it. These sorts of misconduct include rule violations, adultery, and improper conduct, along with convictions for crimes including moral turpitude or criminal acts.
The concluding chapter is devoted to discipline and punishment. In the event where the complaints of personal misconduct, the eligible

Medical Council can always be addressed for disciplinary action. Complaints are immediately investigated. A medical practitioner convicted of professional misconduct may be suspended from the medical registry for a specified amount of time by an applicable medical council. The eligible council can also order that order be reinstated to the register before the period of suspension has elapsed if the suspension was for a limited length of time.

2.4 Liability of medical professionals under three heads:

A patient goes to a doctor to get better. In some cases, he or she may not be able to figure out what's wrong. He might give him excessive medicine. After the surgery, he might even leave a foreign object inside the body. Laws must be used to make things right for people who have been hurt by this. This chapter will talk about when a patient can sue a doctor, as well as how doctors are supposed to follow the law.

Lawsuits against members of the medical profession can be divided into three categories:

1. Criminal liability
2. Civil liability, and
3. Disciplinary proceedings.

Civil liability is divided into two categories: tortious liability and contractual liability. The Bolam test can be used to determine whether or not civil liability exists. The criteria for determining criminal liability are gross negligence. In the event of a disciplinary proceeding before a professional body, the outcome is either suspension or removal from the register.

- The Bolam Test.[23]

In 1954, E.C.T. (electro-convulsive therapy) treated John Hector Bolam for depression at Friern Hospital. On the other hand, midwives were stationed on other side of the bed to keep him from rolling over. During the consent process, the hospital did not tell him of the hazards, including that he could be provided with the therapy without the use of medications. He got fractures as a result of the treatment because of which he filed a lawsuit against the hospital, claiming negligence-related damages. Both relaxant-based treatment and non-relaxant-based treatment were considered acceptable by experts. There were two common approaches of alerting patients: giving the warning to all patients, or giving the warning just to those who specifically request it. The doctors and hospital were found not guilty of negligence by the court.

The criterion that McNair J. outlined for measuring the level of care that medical personnel owe to their patients is frequently referred to as the "Bolam test." If the professional acted in a manner that was in accordance with practices that were acknowledged as proper by a responsible body of other medical professionals who specialize in that particular area, then the professional will not be in breach of their duty of care because they will not have breached the standards of care that are expected of them. If this is proven to be true, then the fact that there are other knowledgeable individuals who take a different stance towards the procedure is irrelevant. There was no violation of standards because the procedures that were utilised in this instance had along with a responsible segment of the medical profession. In order to prove that a defendant

[23] Bolam v. Friern Hospital Management Committee, (1957) 1 WLR 582.

committed the tort of negligence, it is necessary to demonstrate that the defendant violated their duty of care owed to the plaintiff. In order to prove that the breach occurred, the claimant has the burden of proving that the defendant did not behave in a manner that a reasonable person would have in their position.

2.4.1 Criminal liability of Medical Professionals

- **THE INDIAN PENAL CODE, 1860:**

An examination of the IPC of 1860 reveals those certain sections under Chapter XIV and a few sections under Chapter XVI deal with cases of medical negligence.

Sections 269[24] , 70[25] , 274[26] ,275[27] , 276[28] ,and 284[29] of the Indian Penal

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[24] Section 269 of the Indian Penal Code 1860 reads: Negligent act likely to spread infection of disease dangerous to life— Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

[25] Section 270 of the Indian Penal Code 1860 reads : Malignant act likely to spread infection of disease dangerous to life—Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[26] Section 274 of the Indian Penal Code 1860 reads : Adulteration of drugs—Who ever does any drug or medical preparation in such a manner as to lessen the efficacy or who changes the operation of such drugs or any medical preparation, or to make it toxic, intends that it shall be sold or used for, or knows it to be likely that it can be sold or as used for, any medicine purpose, as if it had undergone such an adulteration, which shall be punished with or without imprisonment of either for a term which may extend to six months, or a year with any fine which may extend to 1 thousand rupees, or with both.

[27] Section 275 of the Indian Penal Code 1860 reads : Sale of adulterated drugs.—Who ever, knows that any drug or medicine preparation to have been adulterated in which as to lessen its efficacy, to change its operation, or to make it noxious , selling the same, or offers or exposes it for sale, or issues it for any

Code deal with "offences affecting the public Health Safety, Convenience, Decency, and Morals.

If a medical practitioner commits illegal or careless act which could spread disease that is harmful to life, he shall be punished. If a medical professional maliciously spreads a dangerous disease, he will be punished under Section 270 of the IPC, 1860. Section 270 gives punishment, i.e. imprisonment for a term of two years, or fine or both. If any medical practitioner, whether practicing Ayurvedic, Unani, Siddha, Homoeopathic, or Allopathic medicine, modifies any drug or medicine in such a way as to demerit its working or its operation, he will be punished with Section 274 of the Indian Penal Code (1860).

In Juggan khan vs State of MP,[30] a well-recognised homoeopathic

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dispensary for medicine purpose as adulterated, or does it to be used for medicine purpose by person not knowing of the adulteration, will be punished with imprisonment of either description for a term which may extend to more than six months, or with fine which can extend to one thousand rupees, or with both.

[28] Section 276 of the Indian Penal Code 1860 reads : Sale of drug as different to preparation —Who ever knowingly sells, or may offer or expose it for a sale, or issues from a dispensary for medicine purpose, any drug or medical preparation, as a different drug or medical preparation, shall be punishable with imprisonment of description of a term which may extend to six months, or fine which can extend to one thousand rupees, or with both.

[29] Section 284 of the Indian Penal Code 1860 reads : Negligent conduct with respect to toxic substance.— Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

[30] Juggankhan v The State of Madhya Pradesh, (1965) 1 SCR 14.

practitioner prescribed 24 drops of sulphate (stramonium) and a leaf of Dhatura (which are both known to be deadly) to a patient in order to cure guinea worms. As a consequence, the patient succumbed to death. The court was informed that the Dhatura leaf, besides the ayurvedic system, is not utilised to treat guinea worms. The Supreme Court determined that providing deadly medications without first examining their potential negative effects was a rushed and careless move. While caution should be exercised when charging criminal negligence to a professional individual functioning within the scope of his profession, there really is no question that the appellant was careless and negligent, and so subject to prosecution with section 304A of IPC.

The sale of these adulterated medication is prosecutable by a term of jail of up to six months or a fine of up to one thousand rupees, or both. Section 284 IPC, 1860, punishes any medical practitioner who causes harm or injury to another person with a dangerous chemical deliberately or negligently. Similarly, any physician who conducts a rash or careless act using machinery that endangers human life is penalised under Section 287 (IPC), 1860.

Section 304 A of the Indian Penal Code (1860 Indian Penal Code, Chapter XVI) regards to offences linked to life. This section discusses cases of death as a result of negligence, which includes deaths as a result of the negligence of medical practitioners which including medical assistants, nurses, and physicians. Section 304A imposes a punishment of up to 2 years of imprisonment, or a fine, or both.

In the Suresh Gupta vs Government of NCT, Delhi & Another,[31]

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[31] Dr. Suresh Gupta v. Government of National Capital Territory of Delhi & Another, SLP (Crl.) No. 2931 of 2003.

the accused (plastic surgeon) was accused with violating sections 80, 86, and 304A of the IPC by causing the death for which he operated on to repair a nasal deformity. As per medical experts, the accused was careless in "not inserting a properly cuffed endotracheal tube" to prevent blood from the wound from aspirating into the respiratory tract.

The issue was whether the doctor's act might be characterised as reckless or grossly negligent enough to subject him to criminal liability. The Supreme Court, in rejecting the doctor's criminal case, established clearly that a higher degree of carelessness is required to establish a case of carelessness as section 304A of the Indian Penal Code. The level of carelessness necessary to establish criminal accountability for a physician or surgeon must be high that it may be explained as "gross negligence" and "recklessness," not simply a lack of required care, attention, and competence.

When a patient consents to medical treatment or a surgical procedure, not every careless act by a medical professional is considered 'criminal.' Rather, it is 'criminal' when the physician demonstrates a gross lack of competence or inaction as well as wanton disregard for his safety of the patient, which is ascertained to have caused from gross ignorance or gross negligence. While simple negligent misrepresentation or a lack of sufficient care and prudence may establish civil liability, they are inadequate to establish criminal liability.

The Supreme Court's position is clear and concise: demanding stringent medical evidence to establish a physician's responsibility would be damaging to public health. The court reasoned that if doctors are held criminally liable for the death of a patient as a result of inappropriate treatment, they will prioritise their personal

safety over patient care, weakening mutual confidence among physician and patient. The Supreme Court appears to be siding with the accused surgeon.

Any registered medical practitioner who causes a women to have an abortion negligently shall be prosecuted and punished under sections 312 to 315 of the Indian Penal Code, 1860.[32]

Any medical practitioner who causes the death of another person negligently is subject to prosecution under section 304A[33] , i.e., causing death by negligence. However, if his act results solely in bodily harm or grievous bodily harm, the medical practitioner is prosecuted under sections 323 and 325. If a medical practitioner's negligence results in injury to a patient, he or she shall be punished with imprisonment of either description for a term which do not exceed one year or without a fine not exceeding two thousand rupees, or both.[34]

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[32] Section 312 of the Indian Penal Code, 1860 reads: Causing miscarriage — Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with, or with both; and, if the woman be quick with child, be punished with imprisonment of either description for a term which may extend to 7 years, and shall also be liable to fine.

[33] Section 304A of the Indian Penal Code, 1860 reads: Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[34] Section 323, the Indian Penal code, 1860 reads: Punishment for Voluntarily causing hurt — Who, except in these case provides for by sect 334, voluntarily can cause hurt, can be punished with imprisonment either of description for a term which may be extended to either one or two years, or with fines which can extends to one thousand rupees, or with both.

If any medical practitioner causes any serious hurt then he/she be punished with imprisonment of a term which may extend to seven years, and shall also be liable to fines.[35]

In the civil and the criminal laws, the percept of the non-performance of duty is construed in a different manner. What may be considered negligence under the civil law does not necessarily constitute negligence under the criminal law. The element of means must be demonstrated in the case of a negligent act constituting a crime.

In criminal law, the extent of the damage is not particularly significant, but the amount of and the extent of failure are always significant, and this is taken into consideration when determining liability. The means rea is an essential component of the crime and cannot be ignored even if the majority of the charges brought before a criminal court are for criminal negligence. A person can be found guilty of a crime only if they had the intention to do so.

2.4.2 Civil Liability of Medical Professionals

Tortious and contractual liability both have the potential to result in civil liability. The inherent flaws in the civil justice system, such as delays in the disposition of cases and exorbitant court fees, may discourage litigants from pursuing this remedy.

- Under Contractual Liability.
- Under Tortious Liability.

Essentially, a contract is an agreement or promise between two or more people that is legally binding. A contract's essential elements

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[35] Section 325, the Indian Penal code, 1860 reads: Punishment for voluntarily causing grievous hurt — Who, except in any case provided by section 335, voluntarily can cause grievous hurt, can be punished with imprisonment of for a term which can extend to seven years, and could also be liable to fine.

include an offer, for example, a doctor's proposal to treat the patient, acceptance, for example, a patient's acceptance of such treatment according to the terms of the offer, consideration, for example, a doctor's fee or the cost of treatment, and capacity to contract, for example, an intoxicated person can't enter into the legally valid contract.

The interaction should be voluntary in nature and for the sole purpose of receiving legally valid medical care approved by law. However, when it comes to medical services, the contract is formed primarily on type of a fiduciary connection, not a financial one. Additionally, in nearly all circumstances, an implied or spoken contract exists (consent). Liability under contract law is reliant upon the patient and the medical practitioner or healthcare provider agreeing to describe or implying terms. Consent for treatment by the patient in exchange for payment of an agreed fee might be construed as an implied contract with said medical experts, who promise to exercise reasonable care and expertise.

In State of Punjab vs Shiv Ram,[36] it was asserted in passing reference that "the doctor cannot be held accountable for in contract unless the party alleges and establishes that the surgeon guaranteed a hundred percent exclusion of pregnancy following the surgery and that the plaintiff was persuaded to undergo surgery on the basis of such assurance."

- Under Tortious Liability.

The Latin phrase "res ipsa loquitur" translates as "this thing speaks to itself." In the context of medical malpractice, it refers to instances in which a doctor's treatment fell far below the established standards of care, resulting in the assumption of negligence.

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[36] State of Punjab v. Shiv Ram, (2005) 7 SCC 1.

The doctrine is based on the following premises:

- The type of injury provides a hint that it could not have happened if it wasn't for negligence.
- There were no indications of the patient's involvement in the injury in any way whatsoever.
- The injury occurred in the context of circumstances that were under the supervision and control of a medical professional.

It means that, by applying the principle, the judge has acknowledged that there has been non-performance on behalf of the parties. Following that the doctor will be required to refute this claim, and if he fails to do so, the patient will be considered to have flourished in the case of medical negligence on his or her behalf.
Following an investigation in the greater Municipal Corporation of Delhi v. Subhagwanti & Others,[37] it was ascertained that the clocked towers at Chandani Chowk in Delhi, which collapsed and killed the plaintiff's husband, had been "exclusively maintained and controlled by the appellant or its servants," and thus the appellant was held liable. The Chief Engineer specifically stated that the Clock Tower collapsed as a result of the displacement of the arches on the upper portion of the structure, and that the mortar had deteriorated to the point where it lacked cementing properties. The court determined that the evidence given in this case was adequate to establish a prima facie case in favour of the appellants because "the sheer fact that the Clock Tower collapsed tells the entire narrative in terms of creating an inference of carelessness" (the defendants).
On a similar note, the plaintiff's wife underwent surgery at the

[37] Municipal Corporation of Delhi v. Subhagwanti & Others, 1966 AIR 1750.

governmental hospital in Achutrau Haribhua Khodawa vs State of Maharashtra & Others.[38] The doctors accidentally left the mop in the patient's body during a sterilization procedure, causing pus to grow and the patient's death. The surgeon who conducted the surgery and the government were both found accountable under the new doctrine of res ipsa loquitor for their part in the patient's death as the result of widespread negligence.

There are three major aspects to a successful claim in tort of negligence, as stated in the preceding paragraphs. If you're dealing with a consumer complaint about a service a product, these foundations are equally vital. As previously mentioned, the need of exercising a standard care might be owed in a variety of ways. Due to this, subsistence of any duty of care does not pose any substantial difficulties in consumer lawsuits because the claims are directly tied to the service provided/or defective items delivered, rather than to the actual products themselves.

There may be circumstances where any person who receives a service or a product must provide evidence that he/she is entitled to compensation. The quality of care can be evaluated from its standpoint of a reasonable person, as previously indicated. Reasonable men are fictional characters who aid courts in deciding whether or not the accused has failed to satisfy a reasonable level of care.

They are neither superhuman nor perfectionist. And the alleged violation of obligation must be legal in substance and not merely a matter of right or wrong in society. This responsibility may be triggered by a careless act during the production, supply, or sale of faulty products or subpar services that harms the general public at

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[38] Achutrao Haribhabu Khondwa v. State of Maharashtra, (1996) 2 SCC 634.

large. It's important to keep in mind that in order to prove damages, the plaintiff consumer must show a connection between the breach of duty and the harm he suffered. The plaintiff's claim for damages is likely to fail unless the party can prove that the defendant's breach of duty caused the injury.

- **Liability of Medical Professionals under Consumer Protection Act.**

Anyone who believes they have been victimized can give a complaint to the consumer protection courts against both the defendant and the hospital. In the Indian Medicine Association vs. V.P Shantha[39] case, the Supreme court observed that these medical practitioners are protected by the Consumer Protection Act, 1986, and that their medical services should be recognized as the service under the sections 2(1)(o) of the Consumer Protection Act, 1986, according to the court. The health care services fall under the scope of services as stated in Section 2(42) of the newly enacted Consumer Protection Act, 2019. The incidence of medical irregularity as a part of the service providers would be considered a deficit under Section 42 (11) of the new regulated CPA, 2019.

Any person who has been harmed by medical malpractice can sue a doctor or a hospital for damages. Section 69 of the CPA, 2019 specifies a two-year limitation period for filing complaints for medical negligence.

2.4.3 Disciplinary Action.

The disciplinary action against the medical professional will be taken under the National Medicine Commission Act of 2019. Complaints about profession or any ethical misconducts against any registered medical personal will be received by the State

[39] Indian Medical Association v. V.P. Shantha & Others, 1996 AIR 550.

Medical Council. If a medical personal is not satisfied with a decision made by any state medical council, he or she may file an appeal with the Ethical and Medicine Registration Board. If the medicinal personal isn't satisfied with the Board's decision, he may file an appeal with the National Medical Council (NMC) against the decision. It is not clear why the National Medical Council (NMC) is a higher authority to appeal in matters involving profession or any ethical misconducts by medical practitioners.

2.5 Consumer Protection Act 1986 compared to the Consumer Protection Act (2019).

Consumer's needs and expectations have evolved as a result of increased awareness and globalization, and it is critical that their rights be safeguarded. The 1986 CPA has been replaced by the 2019 Consumer Protection Act, which is nearly three decades old.

After receiving the President's assent, the CPA of 2019 was published in the official gazette as on August 9, 2019.

The rules also provide for the redressal mechanism to refer pending adjudication matters to mediation, although the rule expressly prohibits mediation in cases of medical negligence which results in grievous injury or death.

- The CPA 1986 set lower pecuniary limits for District Forums of up to 20 lakhs, State commissions of twenty lakhs to a crore, and National Commissions of more than a crore; the New Act 2019 sets higher pecuniary limits for District Forums of up to a crore, State commissions of one crore to ten crores, and National Commissions of more than ten crores.
- The 1986 Consumer Protection Act established Central Protection Councils to promote and safeguard consumer rights; under the 2019 CPA, these councils will function as

advisory organizations for the protection and promotion of consumers' rights.

- According to the new legislation's provisions, a Central Consumers Protection Authority would be established, as opposed to the old act, which lacked a regulator.
- In accordance with the CPA 1986, a person who does not comply with the orders from the Commission may be sentenced to imprisonment for a period ranging from one month to three years or to a fine ranging from Rupees 2000 to Rupees 10,000, or both. People who do not comply with the orders of the Commission can face imprisonment for up to 3 years or any fine of not less than Rupees 25000 which can be increased to Rupees 1 lakh, or even both, according to the CPA 2019.

2.6 Conclusion

In this chapter, we look at the manual of ethics that has been prepared for medical professionals because the medical profession requires stringent disciplinary action to be effective. The National Medical Commission is in charge of controlling and supervising this work. With the advancement of medicine and technology, there have been new medical challenges to overcome. A law that is effective can help to improve the working environment in medical practices.

Therefore, medical professionals may be liable for their negligence under both civil and criminal law, depending on the severity of the negligence involved in a particular case, depending on the circumstances. Victims of medical malpractice, for example, may seek restitution through the use of legal remedies that are available to them.

Objections have been lodged against the medical negligence rules that are in place in India; some of these complaints have been directed directly at the legislation. The principle known as the "Burden of Proof" is the first and most essential of them. The person who is making the complaint has the responsibility to defend their case. As a consequence of this, the law requires further documentation to be given in the event that a patient alleges that they were the victim of medical malpractice. In this scenario, it is exceedingly challenging for a common person or a patient to determine the specific nature of the harm and the causal connection between the injury and the non-performance of duty by the doctor. As a result, the patient is not able to prove beyond a reasonable doubt that the doctor was negligent. Because medicine is an unpredictable and unexpected field in which anything can happen in a human body at any given moment, the burden of proof lies with the plaintiff in this particular case.

In this 21st century, the healthcare sector is undeniably considered as an industry, and of course, a source of the national economy. At the same time, the healthcare industry has expanded beyond the boundaries of individual nations in the name of medical tourism. In other words, the terms "doctor" and "hospital" have been ultimately supplanted by the term "health care providers" in the context of the commercialization and globalisation of medical treatment. This is the case in both the United States and other countries.

In addition, consideration has become the primary criterion for acquiring standard medical treatment; the more the price you spend, the higher the quality of the medical care you will receive. It is clear that the development and modernization of the health care structure has led to an increase in the risk factor as well as the

complications that are associated with the medical sciences. This is evidenced by the evolution that had taken place in the health care system as well as the idea of negligence. As a result, the idea of medical negligence came into existence.

Doctors, who were once held in high esteem by society and considered to be gods, were transformed into demons as a result of the acts of medical negligence and malpractice. In spite of the fact that they have exercised reasonable care, doctors can still make mistakes or fail to carry out their responsibilities. This is despite the fact that we should not forget that doctors are also humans and that they are one of us. As such, mistakes and faults are do feasible on their part. A negligence lawsuit has the potential to be extremely damaging to a physician in a variety of ways.

They have been made open to or subject to the scrutiny of the judicial system, the media, their fellow co-doctors, and ultimately the society as a whole as a result of such lawsuits, which has led to their career recourse being severely limited. However, such scrutiny and castigations are unavoidable in order to limit intentional malpractices and grave negligence; despite the fact that medical errors are considered to be an inevitable by-product of the medical profession, in order to prevent such serious problems, the collaborative support of medical professionals of all types is essential.

It is imperative that doctors maintain a state of constant awareness and vigilance. Providing the patient with clear communication and transparency concerning the nature and severity of the condition as well as the treatment that is being administered, as well as thorough and systematic recording and the upkeep of patient records. The most basic and fundamental actions that medical

practitioners can take to protect themselves from frivolous negligence lawsuits include arming themselves with the most recent medical innovations and, most importantly, adhering to and practising the standard of care.

CHAPTER 3
THE LAW GOVERNING MEDICAL NEGLIGENCE IN UK AND USA WITH COMPARISON TO INDIA: AN ASSESSMENT.

3.1 Introduction.

The idea of medical negligence, as it is used in India today, did not originate in India; rather, it is an adapted and refined form of English law that is widely used in India. In the legal system of England, medical negligence is regarded as its own distinct tort, however in the legal system of Scotland, it is referred to as a delict. Before the early 1800s in the United States of America, the idea of medical negligence was unheard of and practically unheard of. However, between the years 1835 and 1865, the country saw an increase in the number of cases alleging medical carelessness. The majority of these claims were incidents of fractures and dislocations, which led to unfavourable consequences such as the improper proportioning of limbs and muscles or their inability to function normally[40] .

Before beginning one's work in the illustrious field of medicine, it is customary to make specific promises or oaths, which dates back to ancient times. Before beginning their careers, medical professionals all over the world take an oath called the Hippocratic Oath, which was originally written in ancient Greece in the 5th century BCE. This oath is considered to be the most important one, and it went on to serve as the primary source of inspiration for a great number of other oaths.

The Charaka Samhita is a document that dates back to early India.

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[40] JC Mohr, American Medical Malpractice Litigation in Historical Perspective; JAMA (14TH MAY , 9:45 PM), https://jamanetwork.com/journals/jama.

It is often regarded as one of the earliest oaths taken by members of the medical community. This pledge encourages individuals who work in the medical field to forego personal rewards in order to devote themselves to the service of humanity. However, with the passage of time, these codes appear to have lost their significance, and it has become a merely customary document that is used by medical students on the day of their graduation to swear the Hippocratic Oath; else, it is so rarely recalled or put into effect.

We all know that every discipline or system needs rules or laws for it to work better. With the way things are now and how science and technology are changing in the medical field, it is important to look at the laws and compare them to those of the UK and USA, which have some of the best laws governing the medical health system as compared to India. There advancement in medical and technology is commendable.

3.2 The Historical Growth or Development of Legislations That Govern Medical Negligence in India:

Man is the ultimate expression among all of God's creatures, and he retains the ability to discriminate between things; nonetheless, the actions of man might be marred by mistakes, defects, carelessness, or negligence. There are a number of ancient scriptures that have laws and regulations that pertain to the idea of medical negligence. For instance, the ancient literature Vyavaharakalpataru has Vivada Ratnakar's stipulations for the laws governing negligence and medical negligence. Beginning in Ancient India and continuing all the way up until the present day, the idea of "medical negligence" underwent significant shifts and advancements over the course of this heading's discussion.

3.2.1 In Ancient India:

Manusmriti: In the ancient text known as Manusmriti, which dates back to between 800 and 600 B.C., there are verses that specifically address medical negligence. The Manusmriti provides detailed instructions on how to protect sick people from careless and negligent medical professionals.

It requires that all medical physicians, irrespective of caste, creed, religious affiliation, or gender, who treat their patients incorrectly or negligently be held responsible for their unwise act and liable to extend compensation. This obligation exists regardless of whether the improper treatment was intentional or accidental. If the plaintiff is an animal, then the fine imposed shall be the lowest, and if it is a human, then the penalty will definitely fall on a higher rate.[41]

The penalties that are levied on such negligent acts are dependent as to whether a human or an animal is the victim, which means that if the victim is an animal, then the fine imposed shall be the lowest. When it comes to cases involving medical malpractice, the punishments or retributions that are handed down by the king can vary widely depending on the gravity of the harm that was brought about by the negligent act in question as well as any and all additional circumstances that may have been present.

Yajnavalikya Smriti: In a similar manner, both the Yajnavalikya Smriti (300 AD – 100 BC) and the Vishnu Smriti advocate for punishments or compensations for the inappropriate treatment provided by physicians. In the same spirit as the Manusmriti, it stipulates that the decree or the amount of the sentence should be determined according to whether or not the victim is a human

[41] Manusmriti, IX.284.

being or an animal.

In contrast to Manu, which states that the category of the victim is also shall be taken into account, i.e., the higher the social class or group the victim belongs to, the higher the punishment that will be levied, Manu never advocated for penalties that were based on the victim's social class or community. Additionally, it provides for the imposition of penalties for the adulteration of pharmaceuticals.

Kautilya Arthashastra: The most influential ancient book is called Arthashastra, and it has precisely outlined the regulations or norms that regulate the practise of Ayurveda. It also comprehends the legalities that belong to medical science and medical expertise. According to Kautilya, a physician should first seek permission from the king or queen before beginning their professional medical career.

According to Arthashastra, a physician must be held accountable and punished for any wrongful or negligent acts that he commits toward his patient while providing treatment. As a result, physicians were required to notify and request permission from such administrative officers before visiting a new patient or continuing therapy or curing. Arthashastra is the first ancient treatise to include a comprehensive code of ethics for physicians.

It states that if a patient suffers from a sickness or disease that poses a threat to his or her life, the physician is responsible for notifying the appropriate authorities. Furthermore, if the patient died while under the physician's care, he is required to pay a minimal fine; however, if the cause of death is a fault or imprudent decision on the part of the physician, the penalty will be the harshest and a severe penalty will be imposed. According to Arthashastra, the physician is entrusted with a divine obligation of

care toward his patients.[42]

Naradsmriti: This ancient literature provides provisions for 'breach of a promise.' It has direct versus, which specifies that if a physician promises or gives an undertaking to execute any responsibilities or services and then fails to do so, it is considered a breach of promise.

Brihaspati smriti: Brihaspati smriti (200AD-400AD) is a classical text that exhaustively explains civil and criminal law. It is the only sacred scripture that clearly specifies the offences and their associated punishments. Brihaspati smriti describes medical negligence as "when a physician receives any financial or any other gains from the patient is prohibited and so, he shall be treated as a criminal and punished in a same manner."[43]

The practise of medicine in ancient India was governed by its own unique set of fundamental principles and legal structures, which were both responsible for regulating the profession. Controlling the medical profession in ancient Indian civilization involved a variety of methods, some of which included establishing limits, limiting or curtailing the freedom of physicians to practise, and imposing other such limitations.

There is evidence of the presence of the aforementioned restrictions in ancient times inside the Sushruta Samhita and the Charaka Samhita in the form of a variety of poems and chapters. For instance, the Sushruta Samhita requires that prior to commencing any treatment or responding to an illness, a physician must first acquire permission from the monarch to do so.

No applicant will ever be considered qualified or eligible to really

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[42] P.C. DIKSHI, MV COX'S MEDICAL JURISPRUDENCE, AND TOXICOLOGY 11 Lexis Nexis 7th edition 2002.

[43] Brihaspat-8-360.

practise medicine if they do not have the opportunity to receive hands-on training and direction from an experienced or senior physician. In addition, once they have completed the training, they should practise on a variety of other items before applying what they have learned to human bodies.[44]

3.3 An overview of Indian medical law.

In India, healthcare is provided through a government-run universal healthcare system that covers all of the country's states and territories. The competent authority imposes a community responsibility, which may be penalised by a monetary fine, imprisonment, or both. The Hammurabi code, the first known rule of law, governed various aspects of the profession, including fees for approved services payable to doctors. Hippocrates, the Greek doctor, said the Hippocratic oath, the oldest recorded guideline of medical ethics recorded 2500 years ago, around fifth century BC. The current form of the Hippocratic oath, developed by the World Health Organisation (WHO) after World War II (the Geneva Declaration), is acknowledged by the international medical community.[45]

1946's report of the Bhore committee established the framework of India's health policy. The study created Primary Health Care as the foundation of the National Health care system and defined the system patterns for health care facilities and health personnel in the government sector. The Bhore committee articulated the notion that Primary Health Care is a fundamental right to which no one should be refused access for socioeconomic or other grounds. India became

[44]Sushruta Samhita (1-9).

[45] Asahi B, Indian laws and regulations related to health, MEDINDIA (last visited June 14, 2022), (https://www.medindia.net/indian_health_act/acts.asp).

a staunch supporter of The Alma Ata declaration in 1978, in which it pledged to achieve the objective of health for all based on a primary healthcare strategy.[46]

The construction of a legislative framework for medical professionals was also required as part of the process of building the health system under colonial governance. As the number of trained physicians graduating from Indian medical colleges increased, it became necessary to enact legislation to protect them. The Indian Medical Council was established in 1933 by Indian Medical Council Act, which created a national statutory body for the modern medicine practitioners. The Bombay Medical Practitioners Act was passed in 1938, after which the Indian medical system received its first legal recognition and registration.[47]

The hospital commissioning law is a law that ensures that the facilities in hospital are built after proper registration process and the facilities are open to the public, have the minimum infrastructure required for the type and amount of work, and are inspected regularly to ensure that they follow the code. Other laws apply to the practice, qualification and behaviour of professionals, the storage, sale and the safe use of medications, care of patients, employment and workplace management, environmental protection, , pharmaceutical aspects and safety legislation, public and staffing of hospital premises, professional training and research legislation, corporate elements, license/certification needed for hospitals and so on. A hospital administrator should be aware of these laws, policies, rules, procedures, returns and reports. They

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[46] Ravi Duggal, Bhore Committee (1946) and its relevance today, 58(4), The Indian Journal of Pediatrics, 395-406 (1991) https://link.springer.com/content/pdf/10.1007/BF02750917.pdf .

[47] The Indian Medical Council Act, 1956, Act No. 102 of 1956 India (Repealed).

should also know about the latest changes to the law so they can give patients the best care possible.

The Government of India established A "health survey and planning committee" in 1959 as an initiative to review the implementation and development made in the health sector since the submission of Bhore committee findings. The committee was established at the conclusion of the second five-year plan to assess the performance or condition of the Healthcare sector following the implementation of the Bhore committee's recommendations[48].

This committee was chaired by Dr. A. L. Mudaliar to keep its scope expansive and to present thorough recommendations that did not place a great deal of emphasis on the merits of the most important recommendation, but did emphasise legislation as part of the recommendations. The committee that submitted its report in 1960 concluded that the level of progress made in the healthcare arena was deplorable and disappointing.

The findings of the committee were the recognition of pathetic and unsatisfactory conditions in Primary Health Care Centres, and the committee concluded that strengthening and intensifying the existing Primary Health centres is more urgent than establishing new ones. Enhancing district and subdistrict hospitals was an additional key recommendation.

The committee was also of the opinion that the Primary Health Care Centre should not be built to handle more than 40,000 people, as well as the curative services. Diagnostic, preventative, and other fundamental services are required to be made available and accessible at all Primary Health Care Centres. The Mudaliar committee also supports the establishment of a "All India Health

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[48] Supra note 46, 50.

Services" with a similar structure to the "Indian Administrative Service" in order to replace the "Indian Medical Services."[49]

3.3.1 History and Civilisation.

The earliest known civilization is the urban Indus civilization, which existed between 3000 and 2000 BC. Henry Sigerist, a renowned medical historian, believed that Mohenjo-Daro's public health delivery systems were superior to any other Asian-oriented culture. Since the time of the Asians, persons who undertake this pious vocation have been assigned particular tasks and responsibilities. Charaka's oath (around 1000 BC) and the Hippocratic oath (around 460 BC) are examples of this period. Artha Shastra by Kautilya provides written evidence of state's regulatory and participatory function. Kautilya looked at famine as a greater catastrophe than epidemics and pestilence, as diseases could be treated.[50]

Hammurabi, the famous king of Babylon, authored the earliest documented code of health rules approximately 2000 BC. This law, sometimes known as the Hammurabi code, governed many aspects of health care, including the payments made to a physician for his services. The laws were severe, and penalties for cruel treatment were provinces quickly passed their own laws about medicine. In

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[49] PARI, https://ruralindiaonline.org/en/library/resource/report-of-the-health-survey-and-planning-committee-volume-i (last visited April 12, 2022) Report of the Health Survey and Planning Committee (Volume I).

[50] Vol II, HENRY SE, A HISTORY OF MEDICINE 142-143 (Oxford University Press 1987).

1914, Bengal and Madras passed laws about medicine.[51]

Indian Medical Degree Act ,was passed by the Indian Legislative Council and then ratified by the Governor General in 1916, and was soon followed this provisional law. After the Indian Medical Council Act of 1933 was signed into law, the Indian Medical Council was set up as a national group for doctors of modern medicine. The Indian medical system was backed by the law, and in 1938, the Bombay Medical Practitioners Registration Act was passed.[52]

3.3.2 In Medieval India:

Since the Unani medical practise has its roots in the Middle East, it was an Arab who was responsible for bringing it to India in the first place. It is generally agreed that the golden age of Unani medicine occurred during the period when Islam ruled India in the mediaeval period. During this time period, the Delhi Sultans, the Khiljis, the Tuglaqs, and the Mughal Emperors all bestowed official encouragement upon the medical experts who practised this medical method.

During the time of Islamic rule, there was a highly systematised and organized system of inspections and registrations of physicians who practised Unani medicine. These physicians were required to meet certain standards. During this time period, having the consent or permission of the monarch was necessary in order to do anything at all. The 'inspectorate' was established so that it could supervise and investigate the system's administration, as well as

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[51] K K S R Murthy, Medical Negligence and the law, IV(3) INDIAN JOURNAL OF MEDICAL ETHICS 116,117 2007, http://ijme.in/articles/medical-negligence-and-the-law/?galley=html.

[52] DR. ADHIKARI NANDITA, LAW AND MEDICINE 56-57 (Central Law Publications, Allahabad, 2nd Edition, 2009).

keep an eye out for unethical practises such as the distribution of substandard medicines, the sale of noxious and counterfeit pharmaceuticals, and the adulteration of drugs, amongst other things.

During the time that the Abbasis were in power, the independent officer known as the "Ehtisaab" was appointed to administer public health and check on the quality of medicine and medical care that had been developed in the territory. This was done under the orders of the Army General Afseen at the time, who at the time strictly prohibited the sale of certain life-threatening or dangerous drugs. About the designation 'Ehtisaab,' the author Ammavardi (1058 AD) wrote a complete book titled Kita-Al Ahkamus Sultania. This book is referred to as the Ehtisaab book. In the aforementioned book, he makes it clear that the Ehtisaab is, in essence, an auditor.

These individuals are tasked with examining everything, including the prescriptions that a doctor gives to his patients. In addition to this, it is necessary for him to investigate if the illness or disease is correctly diagnosed and whether the drugs that are provided are appropriate and within the law. In a nutshell, the primary purpose of Ehtisaab is to make certain that appropriate and correct public medical treatment is provided, and that physicians do not act in a reckless or irresponsible manner while expanding their services.[53]

The death of a patient in the 10th century as a result of Hakim's[54] Negligence spurred the Abbasi Caliph Mukhtadir Billah, and he asked for an examination to be given to all of the Hakims. Those

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[53] Amit Agarwal, Medical negligence: Indian legal perspective, NCBI (Mar.27th 2022, 9:15AM) https://pubmed.ncbi.nlm.nih.gov/27891019/.

[54] A doctor, especially one who practices traditional medicine, in predominantly Muslim culture.

who were able to succeed in the exam were the only ones allowed to further or continue their practise.

3.3.3 Modern development in legislation.

Independence came in 1947 ushered in a new era for the development of organised health services, which granted individuals more rights. In addition, the state has enacted new laws, revised colonial laws, and developed case law to consolidate and expand citizen's healthcare rights. Building institutional and physical infrastructure for India's rapid expansion and modernization was the problem facing the nation at the time of our independence and in the first few years of the plan. Following this the Indian Parliament passed several laws and the acts to strengthen the country's healthcare system.

In the Indian Medical Council (etiquette, professional conduct and ethics) regulations of 2002, provisions have been provided for offences related to professional misconduct. These can be brought before the applicable Medical Council (State or the Medical Council of India). No action may be taken against a physician until he or she has had the opportunity to be heard in person or by counsel.

3.3.4 Judicial Intervention.

The Supreme Court made it clear that right to life under Article 21 includes, with certain limits, the right to emergency medical care. The most important decision that happened because of this important event is Parmanand Katara vs. Union of India.[55] In this case, a patient was turned away from the closest hospital on the grounds that it wasn't equipped to deal with his condition. In its decision, the Supreme Court said that it is a doctor's duty to care for a patient in a crisis, however it is the patient's right to refuse the

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[55] Parmanand Katara vs. Union of India, 1989 AIR 2039.

professional help.

Under Article 21's basic right to life and the right to emergency care, the court made it clear that the state has a duty to protect life under Article 21[56] of the Constitution. The Supreme Court also opined that every doctor, not just those who work in government hospitals or otherwise, has a duty to provide care with the skills needed to protect life, whether they work in a government hospital or not.

In another case, Paschim Banga Khet Mazdoor Samiti vs. State of West Bengal,[57] people who got headaches after a train accident were told they couldn't get treatment at different hospitals because they didn't have enough medical facilities and amenities. In this judgement, the apex court further enlarged the right to treatment in an emergency and thereby confirmed that a government hospital's refusal to give a person in need of such treatment with quick medical care while the right to life in Article 21, is a violation of that person's right to life.

3.3.5 Involvement of Criminal Liability.

Criminal law tries to make sure that people act in ways that are socially acceptable. It tries to use social morality principles in a big way. Criminal law says what kinds of wrongdoing are wrong and how to punish them. If a medical professional skips out on his or her responsibilities and duties, it could lead to criminal liability, liability in a criminal court, and punishment under the law.

Doctors are treated differently by the law than other people. This is because it lets a doctor hurt a patient to stop them from getting

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[56] INDIA CONST. art 21.

[57] Paschim Banga Khet Mazdoor Samiti vs. State of West Bengal, 1996 SCC (2) 634.

worse. The most important area of criminal law for doctors is life-threatening crimes. Most of these crimes are killings, injuries, serious injuries, and abortions. In general, doctors could be charged with any of these crimes. Criminal law on the other hand, gives doctors three strong ways to defend themselves.

1. An Informed approval
2. The Necessity
3. A Good faith.[58]

A few other parts of the Indian Penal Code(IPC), the Criminal Procedure Code (CrPC), and other laws, like the MTP, PCPNDT, and the human organ transplantation act, all have something to do with criminal responsibility.

3.4 The United Kingdom.

After the Second World War, the NHS was set up in the UK, and it started to work on July 5, 1948. The Beveridge Report of 1942 on social insurance and related services was presented to Parliament for the first time in 1942. It was Aneurin Bevan, a coal miner, who later became a politician and the health minister.

"The NHS was set up based on the ideas of universality principles, free at the point of delivery, and equality, and it is paid for by central financing." Even though there have been various political and organisational changes the NHS is still a service that most people can use. It is supported by tax and national insurance payments, and people are cared for based on their needs, not their ability to pay.[59]

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[58] The Indian Penal Code, Act No.45, Acts of Parliament, 1860 (India).

[59] Kate Diesfeld, Introduction to Medical Law, 27(3) JOURNAL OF MEDICAL ETHICS 27:388-392, (2001) https://jme.bmj.com/content/medethics/27/6/388.full.pdf.

The National Health Service (NHS) is the name for all of the health care systems in the UK that are paid for by the government (UK). Since 1948, tax money has been used to pay for them. The name "NHS" is used to describe three different systems (in England, Wales and Scotland). Health and social care in Northern Ireland were set up separately and are frequently referred as "the NHS" by people who live there.

England's health care and health policies are set by the Central government, while Northern Ireland, Wales, and Scotland's are set by their own governments. In the UK as a whole, the healthcare system is made up of two main parts: "one strategy, policy, and management, and one on actual medical/clinical care, which is divided into primary care (GPs, dentists, pharmacists, etc.) and secondary care (hospital-based, specialist hospitals)".[60]

The two main groups are getting more and more different. With the help of the reports "Shifting the Balance of Power: The Next Steps" from 2002 and "Wanless" from 2004, the NHS has been slowly changing over the past 10 years. This resulted in a major orientation towards the local decision making from the central decision making, removal of the restrictions between primary and secondary care, and a greater importance to the patient choice. In 2008, the government's "NHS next stage review: high-quality care for all" health plan (darzi review) summed up this approach. Further in 2010, the government's "Equity and excellence: liberating the NHS" health strategy reiterated the same thing.[61]

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[60] TOM BAKER, THE MEDICAL MALPRACTICE MYTH, Pg 3 University of Chicago Press 2005..

[61] Konstantina Grosios, Overview of Healthcare in the UK, (4) EPMA pg 5, (2010) https://pubmed.ncbi.nlm.nih.gov/23199107/.

The government of the UK announced plans for the biggest change to the NHS since it began. In the white paper on Equity and Excellence: liberating the NHS, which was released on July 12 in 2010, the conservative-Liberal Democrat coalition government laid out a plan to "build a more responsive patient-centred NHS that delivers results that are among the best in the world."

People don't usually think of law and health as being related, but in the United Kingdom, they go together beautifully. There are laws that protect your health everywhere, from right here under the care of the hospital staff to public health and safety.

The 'captain of the ship' doctrine casts a particularly harsh light on the dynamic that exists between physicians and registered nurses in a healthcare setting. By adhering to this idea, one individual (the captain) will be held accountable for any and all catastrophes that take place inside his or her sphere of responsibility. If the medical staff may be compared to a ship, then it is accurate to say that the doctor serves as the ship's captain.

On the other hand, nurses are considered to be subordinates, and the doctors are held accountable for the conduct of their subordinates. In a nutshell, the doctrine states that erroneous actions are the obligation of those who bear overall accountability, notwithstanding the fact that individual contributors may not be held liable. The captain bears vicarious liability for the errors committed by the crew.

In the case of Mahon v. Osborne,[62] the patient's death was attributed to a swab which had been left within his body. It was necessary for the court to determine whether or not the surgeon could avoid legal responsibility by contending that the nurse was

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[62] Mahon v. Osborne [1957] 2 All ER 118.

to blame for the incident. "That there was a risk of the clip getting detached from the swab and that this risk was totally external to the doctor who can neither control it nor know it," the judge wrote in his decision. despite the fact that the surgeon could not absolve himself of responsibility for bearing this risk by placing his trust in the nurse.

He was personally responsible for checking the stitching that was done on the incision. According to the "captain of the ship" theory, he is responsible for everything that goes on throughout the operation. Before closing the wound, it is necessary for the doctors to inspect personally to ensure that there is no foreign body present. However, this does not hold them responsible for the error made by the nurse; rather, it holds them accountable for their own error. Therefore, in England, this concept is referred to as the "Captain of the Ship" theory. Another important aspect is the relationship between the cause and the damage.

The courts have acknowledged that psychiatric injury or nervous shock can be a form of damage that can be compensated for in cases involving torts of negligence. This is particularly the case when the claimant's condition was brought on by the injury or threat of injury to a person other than the claimant. Damages were granted in the case of Frogatt v. Chesterfield and North Derbyshire Royal Hospital NHS Trust[63] to the husband and son of a woman who had a mastectomy as a result of receiving an incorrect diagnosis of breast cancer.

As a result of the incorrect diagnosis, the woman was treated for breast cancer. After seeing his wife so soon after the operation, the

[63] Frogatt v. Chesterfield and North Derbyshire Royal Hospital NHS Trust [2001] All ER Vol.4 p.117.

husband experienced what the judge referred to as "Sudden trauma." After being informed by his mother of the (incorrect) diagnosis, the son, too, developed symptoms of post-traumatic stress disorder (PTSD). The jury decided to award damages. In light of this conclusion, it is even more peculiar that psychiatric disease induced by other means, such as the experience of having to deal with the deprivation that follows the death of a loved one, does not attract any damage.

3.4.1 The law and health.

In the UK, there are laws and charters that protect your health and rights when you get medical care. With this law, your privacy will be protected, your permission will be asked for before treatment, and doctors won't be able to operate without giving you the appropriate treatment. So, if a medical worker breaks the law, they could be held responsible in both criminal and civil court.

3.4.2 Legal health and safety requirements.

Health and safety rules may seem like a distress, but they are there to keep us safe in a number of places. Health and safety at work may keep you from getting hurt. These rules can help you stay safe at work, from making sure there's no hazardous things around to making sure there are fire exits. In the same way, health and safety in a school setting helps keep kids safe by doing things like having someone watch over the playground. Health and safety are also important in many public places. Lawmakers and governing bodies say that the goal of health and safety laws is not to get rid of all risks, but to reduce the most dangerous ones.

3.4.3 Medical and Ethical law.

Medical legislation and its implementation are influenced by society's perceptions of ethics. As societal moral standards have

developed, so has the law. For instance, the 1967 abortion legislation was enacted when it was widely acknowledged that abortions are necessary for the protection of a woman's life. Similar ethical shifts influence the uniform application of medical legislation. Prior to the last few decades, euthanasia issues in the courtroom were unheard of in British culture. But with change in time now the talk is more common and aware of the situation.[64]

3.4.4 Medical attorneys.

In the United Kingdom, applicants and barristers are accessible for medical legal aid. These professions in England and Wales are members of the English and Welsh bars or the law society. In Scotland, they are members of the Scottish law society. The Northern Ireland law society exercises authority over these individuals. Each medical law practitioner normally possesses a bachelor's degree, postgraduate certification, and two years of training under a competent professional. Alternative parts of medical law are available, however they are more time-consuming than academic routes.

3.5 The United States of America.

Unlike many other countries, medical malpractice laws in the United States is administered by individual states and not the federal government. To get financial compensation, for an injury caused by the medical negligence, a patient should show that an inferior medical care caused the harm.

This legally regulated timeframe is known as the "statute of

[64] PETER MARQUAND, INTRODUCTION TO MEDICAL LAW pg.125 Oxford, Butterworth Heinemann, 2000.

limitation" and differs by state. After the injured party has shown that carelessness caused the injury, the concerned court determines the amount of financial compensation to be paid. In calculating damages, both economic loss, such as the income lost and the expenses of the future medical care, and non-economic loss, like pain and suffering are considered.[65]

Cross v. Gutheri[66] was the first medical negligence claim brought in the United States of America in 1794. This is a case of a patient who died three hours after her surgical mastectomy due to complications. The patient's spouse filed the claim against Dr. Cross, the Connecticut physician who conducted the surgery, on the only basis that the physician breached his promise or violated the undertaking of completing the procedure skilfully and with reasonable effort. The concluding officers held the physician responsible for the alleged severe violation and granted damages or compensation for loss of companionship.[67]

The majority of physicians in the U.S. have medical mal practice insurance to handle themselves in the case of medical negligence and the injury caused unintentionally. In few cases, this insurance is a necessity for the hospital privileges or for an employment with a medical group.

In the United States, the medical malpractice law comes under the jurisdiction of various states; structure and regulations governing

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[65] Abraham, Kenneth S. and Paul C. Weiler,108 "Enterprise Medical Liability and Evolution of the American Health Care System," HARVARD LAW REVIEW 381-436 1994, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3195420/.

[66] Cross v. Gutheri, 2 Root 90 (Conn.1794).

[67] Robert J. Flemma M.D, Medical Malpractice: A dilemma in the search for Justice, Volume 68 (2), Marquette Law Review, (1985) https://core.ac.uk/download/pdf/148689345.pdf.

are developed via the decisions of litigation brought before the state courts. Therefore, the state laws governing medical malpractices in the United States might vary between jurisdictions, although the underlying concepts are identical. In addition, statutes established by state legislatures during the past three decades have significantly altered the core aspects of the medical malpractice law. Therefore, the medical malpractice law in the United States is based on the common law and adjusted by varying state legislative measures.[68]

In the twentieth century, the law had an integral role in the field of medical practice. Historically, legal and forensic medicine have been professions devoted specificity to courtroom medicine: forensic pathology, forensic psychiatry. In the past, pathologist was required to identify and testify the cause of death in cases of suspected murder, and the characteristics of several injuries resulting from crimes such as assault and violence. Medical evidence would also be needed in civil issues concerning, for example, workplace injuries, automobile accidents, negligent injuries, and paternity claims.

Since the 1960s, the legal landscape has changed substantially. For many physicians, legal lawsuits alleging medical negligence are an everyday occurrence. Issues formerly associated with ethics (like abortion and the termination of medical treatment, the informed consent of patient and patient's rights) have become important civil

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[68] CHARLES FOSTER, MEDICAL LAW- A VERY SHORT INTRODUCTION 45 Oxford University Press (2013). https://www.veryshortintroductions.com/view/10.1093/actrade/9780199660445.001.0001/actrade-9780199660445.

rights issues in courts around the world.[69]

American philosopher Lon Fuller in 1960s, differentiated between "morality of aspiration" and "morality of obligation". First one is referred as ethics, and second as law. Ethics instructs individuals on what to do and reflects the end aim. The consequences of unethical behaviour are tied to how a person is perceived by him or her and by others. On the other hand, the law defines social limitations for actions, which may only be surpassed with the risk of external punishments such as incarceration, loss of a medical license etc. This explains why ethical norms are more general than laws, which are frequently more specific.

3.5.1 Judicial Pronouncements.

Stratton v. Swanlond[70], which was determined in 1374, is the oldest known instance of medical malpractice. A surgeon attempted to mend the mangled hand of a woman. The woman asserted that the surgeon stated he could treat her, yet she remained malformed after the operation. Due to a procedural error, the case was dismissed, but the judge established guidelines for many future instances. The judge stated that physicians could be held accountable for negligence, but if the patient was treated appropriately, they would not be held guilty if the patient was not cured.

Sometimes, advancements in medicine, such as cardiopulmonary resuscitation and mechanical ventilators for people unable to use their lungs, have prevented deaths. In some situations, it is challenging to reconcile ethical principles with reality. If a young

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[69] Roberts B, Hoch I, Malpractice litigation and medical costs in Mississippi, HEALTH ECON. 16:841–859 (2007).

[70] Stratton v. Swanlond, 1374.

woman in a persistent coma is removed from her mechanical ventilator, she would pass away, but if the apparatus is left in place, she will remain in that state for decades. It is unclear what the Hippocratic goal of "do no harm" requires.

In the 1967 case Karen Ann Quinlan,[71] the New Jersey Supreme Court addressed identical concerns. After her family insisted that the fan be removed, she passed away quietly. The physicians refused, citing medical ethics, as they believed it was unethical to do something which can result in the patient's death.

The attorneys for the Quinlan family contended in the court that the issue was not medical ethics, but the patient's right to refuse an ineffective invasive therapy. The court has ruled that patients are entitled the legal right to refuse medical treatment, and Karen Ann Quinlan's parents may use this right on her behalf. If they concur with the prediction of permanent coma, a hospital ethics council may sanction the removal of the ventilator, and all parties involved may be shielded from civil or criminal liability. The ventilator was taken off, but Karen Ann Quinlan continued to breathe. After nearly a decade, she died of pneumonia.

The case of Karen Ann Quinlan has become a standard model for contemporary medicine and the interlink between medical ethics and the law. The case depended on medical practice and the fear of legal culpability, despite the physicians' disagreement on medical ethics. Modern physicians dread both criminal and civil prosecutions for murder or suicide assistance. The New Jersey court established an ethical committee with legal immunity and obligations to address these issues.

Medical treatment refusal rights for all competent adults, whether

[71] Karen Ann Quinlan 70 N.J. 10; 355 A.2d 647 (1976).

or not terminally ill, have been broadened in the United States by the Quinlan argument (including artificial feedings). In 2006, religious groups petitioned Congress to keep Terri Schiavo's[72] feeding tube in place, despite the fact that many religious groups still reject mechanical feeding. As an example, courts consider a patient's best interests while determining whether he or she is competent or incapable.

Living wills are a way for patients to describe their treatment preferences under specific conditions. Patient wishes that cannot be spoken may be discovered by the doctor by using the world to live. In Nancy Cruzan's case[73] , the Supreme Court Judge Sandra Day O'Connor referred Nancy as a "proxy healthcare" because it is impossible to know when an individual would die. When someone becomes disabled, this agreement allows them to entrust decision-making authority to a trusted family member or friend. They have the same freedom to refuse treatment as any other person.

Refusal of medical treatment is in keeping with accepted medical practice and ethics, according to the American Medical Association. Lethal injections have been legalized and ethically sanctioned in some countries. " Every patient has a right to refuse medical treatment" when the US Supreme Court declared unanimously in 1997.

This is based on the core principles of ethics and law. In both medical ethics and legislation, the concept of a competent individual making judgments, benefit (or at least non-malice) on the part of medical professionals, and justice as a justice that

[72] In Re Guardianship of Theresa Marie Schiavo, 780 So.2d 176.

[73] Cruzan v. Director, Missouri Dep't of Health, 497 US 261 (1990).

medical professionals and society provide all patients are crucial[74] .

3.5.2 Medical Negligence.

United States medical malpractice law is based on English common law and has evolved as a result of judgements in different state courts. In the United States, medical malpractice cases are rather prevalent. In order to avoid the need for a jury trial, the legal system encourages parties to engage in lengthy discovery and negotiation. As part of a medical malpractice claim, the patient injured should show that the physician behaved carelessly while providing medical care, and that this carelessness caused harm. As a result, there must be proof of professional obligation towards the patient; violation of the duty; an injury occurred by the violation and the resulting damages. If monetary compensation is granted, it will normally take into account the real financial loss and non-financial loss, such as mental anguish and emotional distress.[75]

Patients who have been harmed by medical malpractice can seek compensation through the legal system of their respective countries. In the United States, doctors are frequently held liable for patients' injuries as a result of their carelessness.

It is a violation of professional ethics to treat a patient in any way less than a cautious, competent individual would do in the same or similar situation. It is not the obligation of a practitioner to guarantee the result of a patient. To hold a doctor accountable and answerable for medical malpractice has its roots in the ancient law, and the modern tort law is evolved from the principles of the

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[74] Emil F Frey, Medicolegal History: A Review of Significant Publications and Educational Developments"; WILEY ONLINE LIBRARY (June 10th, 2022, 9:30 pm) https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1748-720X.1982.tb00770.x

[75] B. Sonny Bal, An Introduction to Medical Malpractice in the United States, 467(2) CLIN ORTHOP RELAT RES 339-347, (2009)

English common law, further modified by innumerable court decisions and legislations which vary from state to state with respect to medical negligence claims.[76]

In the United States, medical negligence lawsuits are usually brought in state trial court. It has jurisdiction over the case. Malpractice lawsuits could be filed in the federal court in some situations. In the U.S, the medical malpractice law is governed by civil statutes. The medical malpractice cases are decided by a jury, and the involvement of the judge is limited.

The adversarial nature of the system encourages parties to settle their differences before going to court. A wide range of legal resources, for example depositions of the parties to the dispute, have been created to help the litigants in gathering evidence, evaluating their arguments, and, ultimately, reaching a mutually agreeable conclusion. There are only a few cases that will actually go to trial.[77]

3.6 Conclusion

One of the oldest legal systems in use today is the English legal system, usually referred to as the common law. The majority of the laws that are currently in effect around the world were developed from English law, however these laws have been modified slightly to reflect the interests of their respective citizens. Additionally, the English legal system served as a model for the Indian legal system.

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[76] CHARLES FOSTER, MEDICAL LAW- A VERY SHORT INTRODUCTION 45 Oxford University Press (2013). https://www.veryshortintroductions.com/view/10.1093/actrade/9780199660445.001.0001/actrade-9780199660445.

[77] Peeples R, Harris CT, Metzloff TB, Settlement has many faces: physicians, attorneys and medical malpractice JOURNAL OF HEALTH & SOCIAL BEHAVIOUR,333-346 (2000).

The concepts of a legal right, a legal duty of care, and a legal remedy are all solidly established within the framework of English law. In cases of medical negligence or tort, India has been citing the Bolam rule, which was developed in the United Kingdom and has been accepted from that country.

Claims of medical malpractice are pursued as civil torts in the courts of the United States, just as they are in India. There are situations when an act of medical misconduct will also constitute a criminal crime. When it is appropriate to do so, such as in India, additional conditions requiring the establishment of an intention or malice are applied.

Inclusive systems are common in countries like India. Healthcare practitioners in India are subject to state regulation. In India, a medical council is responsible for maintaining and making use of the Indian medical registration. A university degree, such as an MBBS or MD, is required for entry into these records. The Medical Council also accepts a number of international qualifications.

Every country is different, but the rights and interests of those concerned are what really matter when it comes to medical legislation. Finally, it is appropriate to note that India has still to plan a long voyage to comply with the medical regulations specified in these countries, as we lack such medical progress as theirs.

The frequency and complexity of healthcare delivery, the injuries and negative effects necessitate an equitable, fair, cost-effective and just system of patient redress as a result of advances in technology. As the technology, and the need for healthcare have increased, the complexity of healthcare has also increased, the number of injuries, and the number of bad outcomes. This calls for a fair, reasonable

and just patient grievances redressal mechanism.

After the Second World War, big changes were made to society in 1948, which is when the four systems were set up. The founding ideas included that services must be comprehensive, available to everyone and free at the point of delivery which means that health care should be based on the clinical needs, not on the ability to pay. Each service offers a wide range of health services that are free at the point of use for people who usually live in the United Kingdom. The only services that aren't free are dental care and eye care. In England, people who use the NHS have to pay for their prescriptions. Some people, like those over 60 and people who get certain state benefits, are exempt.

To hold a physician accountable for medical negligence has its origins in the ancient law. The modern tort law developed from the principles of the English common law. These principles are changed and modified by several court decisions and legislations differ from state to state in regard to medical negligence claims.

Instead of being controlled by criminal statutes, the law regarding medical malpractices in the United States is governed by civil statutes. In United States, instances involving medical malpractices are tried before a jury, and the judge's role in the process is typically quite restricted.

But when it comes to Indian scenario complaints are usually lodged in consumer courts, in very rare case when the negligence caused is severe the complaint is filed in criminal court. As compared to both the countries India’s redressal system in terms of legal system is very simple. The experiences of other developed countries show that there is no easy solution to the problem of medical malpractices. Reform efforts in this regard should continue to

create a system which is both economically efficient and fair to those who are affected by medical mistakes, while also keeping a check on frivolous claims.

In addition to being accommodating to victims, the law regarding medical malpractice in the United Kingdom is also extensive. Only a small portion of UK medical malpractice laws govern cases arising from the relatively small percentage of citizens who rely upon the more expensive private sector healthcare market. This is in contrast to the United States, which has a health insurance system that is predominately based on the private sector. In the United Kingdom, the majority of medical malpractice lawsuits have been filed against the National Health Service (NHS) since the NHS's inception, and these lawsuits are governed by common law.

CHAPTER 4
THE APPROACH OF INDIAN COURTS ON THE LAWS GOVERNING MEDICAL NEGLIGENCE.

4.1 Introduction.

In order to assist in the process of determining whether or not medical practitioners are liable for the negligent practices of their patients, the courts have established a number of guiding principles and rules. This chapter investigates the many frameworks that are utilized by the judicial system in order to make decisions regarding situations of medical negligence that pertain to a variety of medical related disciplines. In India's legal system, certain medical practices that have been brought before the courts have been deemed to be negligent, and the courts have also created certain benchmarks that have been used to settle claims of medical negligence.

It is a growing concern that medical practitioners and hospitals may soon face increased litigation from consumers exercising their statutorily enshrined rights, but the Consumer Protection Act comes to your aid because of the growing number of cases of medical negligence. The act establishes Consumer Courts as a means of achieving protection and speedy enforcement of consumer rights, in the medical industry. In addition, it raises the possibility that the number of cases of medical negligence will continue to rise. Nevertheless, the Consumer Protection Act only offers a limited foundation for complaints to be brought before the Consumer Court. As a consequence of this, it is likely that consumers who are attempting to recover damages will continue to rely on the common law remedies.

In this chapter we are going to discuss the various landmark

judgements given by the Indian courts. Time and again the courts have protected the interest of the consumers and also punished the people with frivolous complaints. It has protected the rights of the consumers as well as the medical professionals.

4.1.1 Case Laws.

1. Achutrao H. Khodwa v. State of Maharashtra[78].

Chandrika was taken to the government hospital, where she had a baby on July 10, 1963. On July 13, 1963, she had another surgery to make her sterile. But she died on July 14, 1963, and peritoneal cavity was listed as the cause of death. In this case, after the operation, a mob was left in the patient's abdomen. Because the doctor was careless a mop was left in the abdomen, the puss was formed there. After that, a second surgery was done, but the patient died. The court decided that negligence is natural and inevitable and that the res ipsa loquitur principle is clear.

In these cases, it is to the plaintiff to prove his or her case. In cases of medical negligence, this is especially hard because the field of medicine, the procedures used, and other things are beyond the understanding of the average person. In these kinds of cases, res ipsa loquitur is used. It comes from the Latin phrase "the things speak for themselves." It's a rule of evidence that's used in personal injury law, and it's different from the general rule about who has to prove something.

Whoever says so should prove it. The person who started the civil suit only has to explain what happened and show proof that those events led to the medicolegal case. Then, it's up to the defendant to prove that what he did was not an act of negligence. The doctrine is especially important in cases where a foreign object was left inside

[78] Achutrao Haribhabu Khondwa v. State of Maharashtra, (1996) 2 SCC 634.

the body after surgery.

2. In **Nizam Institute of medical sciences v. Prashanth S. Dhananka & Others**[79] the victim, a software engineer who became permanently disabled because of medical negligence, was given exemplary damages of one crore.

Prasanth Dhananka was taken to the hospital that filed the appeal (NIMS) because he had a tumor in his chest. The staff removed the tumor without consulting a specialist first. This damaged blood vessels in the respondent's nervous system, which made him unable to move. He then filed a complaint with the NCDRC, saying that the doctors had been careless, and asked for compensation. The respondent was given 15 lacs in compensation by the commission. Both sides went to the Supreme Court. One side said that the compensation wasn't enough, while the other side said that the patient's permission was taken, so they don't have to pay the compensation.

Issues.

1. Will the patient's consent discharge the doctor from responsibility for medical negligence?
2. Whether the amount of money given in the case was enough or not?

Decision of the court.

After looking at all the evidence and taking into account several global medical institutions, the Hon'ble Court gave the respondent exemplary compensation of one crore rupees for all the pain he and his family had to go through because of the hospital's medical negligence. The patient's consent for the biopsy, as argued by the

[79] Nizam Institute of Medical Sciences v. Prasanth S. Dhananka & Others, C.A. No.3126 of 2000.

appellant, cannot (except in a few rare cases) be used as consent for the surgery. The court said, "The term 'adequate compensation' must be used in some way as a rule of thumb, and since a balance has to be reached, it would be hard to make everyone happy." The Honorable Court also set up some rules for how compensation should be given in cases of medical negligence:

1. Medical negligence is not the same as a mistake or bad decision made by a doctor.
2. It is not medical negligence if the standard of care is met.
3. A balance is found between the compensation that the plaintiff party wants and what the other party wants. The court shouldn't give the compensation out of sympathy for the victim.
4. The compensation should be enough to give the victim a way to make a living.

By giving the highest amount of compensation ever given in a case of medical negligence, the Honorable court set a standard for future cases. The court has set up guidelines for figuring out the amount of compensation. These guidelines are not based on compassion or empathy, but on the court's ability to use good judgement.

3. In Dr. Balram Prasad vs. Dr. Kunal Saha,[80] the Supreme Court had to decide how much the appellant doctors and the hospital had to pay the claimant as compensation for their negligence in treating the claimant's 36-year-old US-based NRI wife who died. The court granted payment for:

a) Earnings of the deceased.
b) in Kolkata and Mumbai to get medical care.
c) loss of partnership

[80] Dr. Balram Prasad v. Dr. Kunal Saha, (2014) 1 SCC 384.

d) pain and suffering caused by the deceased as well as the cost of the lawsuit.

As compensation, they were given a total of 6,08,60,550, plus 6% interest from the time they filed a claim until the time they got the compensation. This is the most cost ever given as compensation for bad medical care in India. The Supreme Court asked that the decision serve as a warning to doctors, hospitals, nursing homes, and other related businesses that don't take their responsibilities seriously. The court also said that a doctor who kills a patient because of medical negligence can't use the fact that he didn't charge a fee as an excuse.

When deciding how much compensation to give, the court took inflation into account. It was decided that the "restitutio in integrum" principle is the basis for fair and reasonable compensation. That is, the person who was treated unfairly must get the amount of money that would put him back where he would have been if the wrong hadn't happened. Most of the time, the second schedule of the Motor Vehicle Act, which includes the multiplier, can be used as a guide when deciding how much compensation to give. However, there may be some cases that have special circumstances that require a change from the multiplier that is usually used.

4. Kusum Sharma vs. Batra Hospital,[81] the Supreme Court settled the law on medical negligence. The court looked at cases of medical negligence in India and other countries, especially in the United Kingdom, and came up with some basic rules that should be kept in mind when deciding medical negligence cases. The court

[81] Kusum Sharma v. Batra Hospital, (2010) 3 SCC 480.

says that the following well-known rules must be kept in mind when deciding whether or not the doctor is guilty of medical negligence:

- Negligence is the breach of a duty by not doing something that a reasonable person would do if he or she were guided by the usual rules for how people should act, or by doing something that a prudent and reasonable person would not do.
- Negligence is a crucial part of the crime. The prosecution must prove that the defendant was culpable or grossly negligent, not just that he or she made a mistake.
- The doctor or nurse should have a reasonable amount of skill and knowledge and should take a reasonable amount of care. The law doesn't require the highest or lowest level of care and skill, depending on the specifics of each case. Instead, it asks for a level of care and skill that is somewhere in the middle.
- A doctor would only be responsible for his actions if they fell below the standard of what a reasonably competent doctor in his field would do.
- There can be real differences of opinion when it comes to diagnosis and treatment, and a professional doctor is not at fault just because his conclusions are different from those of another professional doctor.
- The doctor is often asked to do a procedure that has a higher level of risk, but he believes the patient has a better chance of success with it than with a procedure that has less risk but a higher chance of failure. Just because a professional took more risks because of the severity of a patient's illness and it didn't work out the way they wanted it to doesn't mean that they

were negligent.

- A doctor can't be blamed for negligence as long as he does his job with reasonable skill and care. Even if the doctor chooses one course of action over the other, he would not be responsible if the course of action he chose was accepted by the medical community.
- It wouldn't help doctors do their jobs if they had to wear a halter around their necks whenever they gave out medicine.
- It would be the duty and responsibility of civil society to make sure that medical professionals are not harassed or put down for no reason, so that they can do their jobs without fear and worry.
- Sometimes, medical professionals need to be protected from people who use the criminal justice system to put pressure on medical professionals or hospitals, especially private hospitals or clinics, to pay them money. The medical professionals should not have to deal with such a malicious case.
- Doctors, nurses, and other medical workers have the right to be protected as long as they do their jobs with a reasonable level of skill and care for their patients. The health care workers' top priority must be the patient's health and well-being.
- The court didn't stop with laying out 11 guidelines for figuring out if medical professionals or hospitals breach their duties. Instead, they went one step further and said, "In our opinion, the above-mentioned rules should be kept in mind when deciding cases of medical negligence." The court added a word of warning by saying, "We should not be taken to have said that doctors can never be charged with medical negligence. As long as the doctors have done their jobs and shown an ordinary

level of skill and competence, they can't be charged with medical negligence. It is very important for doctors to be able to do their jobs without worrying about anything.

This judgement has indeed been dynamic. It saves doctors the trouble of having to worry about being prosecuted for even the smallest mistake. If doctors are charged for everything that goes wrong, even if they did everything they could to prevent it, no doctor would help a patient. This decision has found a good middle ground between the concerns of doctors and those of the people.

5. Spring Meadows Hospital and Another v. Harjol Ahluwalia.[82]

In this case, Spring Meadows hospital was taking care of a child named Harjol Ahluwalia. Dr. Promila Bhutani, a senior consultant in paediatrics, diagnosed that he had typhoid. Harjol was given "lariago" by nurse Bina Mathew as part of his treatment. The child collapsed right away.

The child was given CPR, and a manual respirator was put on him. Later, he was moved to AIIMS in New Delhi, where doctors told Harjol's parents that he was in a critical condition and that even if he survived, he would only be able to live in a vegetative state because his brain had been damaged in a way that couldn't be fixed, and that there was no chance that the damaged parts would come back to life.

In this case, the Supreme Court of India ruled that a gross medical negligence will always result in a finding of negligence. Using the incorrect medicine or dose during anaesthesia frequently results in the imposition of maximum culpability. Even delegating responsibility to subordinates when he knew they were unable of

[82] Spring Meadows Hospital and Another v. Harjol Ahluwalia, AIR 1998 SC 1801.

fulfilling their responsibilities correctly. This was the first instance of a court awarding a customer a substantial amount of damages and costs.

In their ruling, the Honourable Supreme Court of India upheld the order and also talked about how the parents of the child should be compensated for their severe mental pain and having to care for the child for the rest of his or her life. In the above case, the Hon'ble Apex Court ruled that the parents of the child who used the hospital's services are also "consumers" under section 2 (1)(d)(ii) and are also entitled to compensation because of negligence.

6. Dr. Suresh Gupta v. Govt. of NCT of Delhi and Another.[83]

In Dr Suresh Gupta v. government of NCT Delhi and another, the court ruled that: the legal decision is almost settled that where a death occurs due to negligent medical treatment of a doctor, the doctor can be held liable in civil law for paying compensation and damages in tort, while at the same time, if such degree of negligence is so gross and his act was so reckless as to endanger the patient's life, he would also be held criminally liable for the offence under section 304A of IPC.

"Therefore, a doctor cannot be held criminally responsible for a patient's death unless his negligence or incompetence showed such a lack of care for his patient's life and safety that it amounted to a crime against the state."

7. Jacob Mathew v. State of Punjab.[84]

The Supreme Court focused into two questions: whether there is a difference between the civil and criminal definitions of negligence, and whether a different standard should be used when a

[83] Dr. Suresh Gupta v. Govt. of NCT of Delhi and Another, AIR 2004, SC 4091.

[84] Jacob Mathews v. State of Punjab, (2005) 6 SCC 1.

professional, especially a doctor, is to be held responsible for negligence. The short story of the case is that the appellant filed a special leave petition against the High Court's decision not to throw squash the FIRs that were filed under sections 304A and 34 of the Indian Penal Code.

The complainant took the appellant to court because his father died because an empty oxygen cylinder was fixed. The appellant said that the patient had cancer because he was old. His sons have a lot of power, so they got him admitted to the hospital as an in-patient. The patient died of a natural cause. The primary point of the medical practitioner case was that it was a very pointless lawsuit. A Two judges bench didn't think that Dr. Suresh Gupta's case was right, so they referred it to a larger bench. The reasons given by the referring bench are:

(i) Gross isn't a requirement of section 304A of IPC

(ii) Different standard cannot be applied to doctors and others.

In the Suresh Gupta case, the Supreme Court has solved this issue over determining culpability in cases of negligence. The supreme court summarised its judgement under eight headings and determined that the concept of negligent liability in civil and criminal situations is distinct. The court ruled that negligence that is not gross nor of a higher degree can give rise to a civil case, but cannot be the basis for criminal prosecution. In further clarification of the negligent act under section 304A of the Indian Penal Code, the Supreme Court ruled that the language reckless or negligent act must be qualified by the word gross. In addition, the court ruled that in order to prosecute a medical practitioner for negligence under criminal law, it must be demonstrated that the accused did or failed to do something that no reasonable medical professional

under the circumstances would have done or failed to do.

In addition, the court applied the Bolam test but noted that the balancing test should be reconsidered in reference to the other nations. The ruling stated explicitly that the investigating officer should not move against the physician without first getting an independent and competent medical opinion, preferably from a government-employed physician who is qualified in that discipline of medical practice.

Similarly, the court ruled that a private complaint would not be considered unless it was accompanied by a reliable opinion from another qualified physician supporting the claim of rashness or incompetence against the accused physician. The ruling further stipulates that a physician's arrest should only be requested to secure his presence for his prosecution and under no other circumstances.

The prosecution of the accused appellant under sections 304A and 34 of the Indian Penal Code was quashed on appeal. In this instance, the Supreme Court took a firm stand regarding the prosecution of medical professionals. How to proceed with a complaint under section 304A of the Indian penal code against a physician was spelled out in clear terms by the court. This case law has undoubtedly established a rigorous standard of scrutiny for frivolous complaints against doctors. However, this has increased a consumer's reluctance to pursue legal action against a doctor for negligence.

8. Martin F. Dsouza v. Mohd. Ishfaq.[85]

The respondent, who was suffering from chronic renal failure, was recommended to Nanavati Hospital in Mumbai for a kidney

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[85] Martin F. Dsouza v. Mohd. Ishfaq, (2009) 3 SCC 1.

transplant by the director of health services. The respondent arrived at Nanavati Hospital and was being treated by the appellant physician. The respondent was then getting haemodialysis twice every week. He was experiencing a high fever. He denied hospital admission despite the advice of the appellant. Therefore, the appellant prescribes him antibiotics. In addition, the respondent had a serious urinary tract infection that could only be treated with amikacin or methenamine mandelate. The respondent insisted on an immediate kidney transplant, despite the fact that the appellant informed him that, due to his blood and urinary infection, no transplant could be performed for six weeks.

Contrary to the counsel of the appellant, the respondent was discharged from Nanavati Hospital on June 8, 1991. And on 11 June 1991, the respondent complained to the appellant as he had slight tinnitus (ringing in the ears).

In response, the appellant ordered the respondent to stop taking "Amikacin" and "Augmentin" and marked the treatment on the discharge card. However, despite the appellant's specific directions, the respondent continued to take amikacin until June 17, 1991. After that, the respondent was no longer treated by the appellant.

On July 7, 1992, the respondent filed a complaint with the National Consumer Disputes Redressal Commission, seeking 12 lakhs in compensation for loss of hearing allegedly caused by the appellant's prescribing an overdose of amikacin injections.

In this instance, the Supreme Court essentially reaffirmed its position in the Jacob Mathew case. It also stipulated that the consumer forum or criminal court should first refer the matter to a competent group of doctors specialising in that field, and when such committee of doctors concludes that a prima facie case of

medical negligence exists, only then should a notice be sent to the concerned doctor/hospital.
Furthermore the courts and consumer forums are not medical field specialists and hence should not replace their opinions for those of medical field experts. Also, the police officers were cautioned from pursuing charges against the doctors unless a case is established under the boundaries of the Jacob Mathew case.
This law is more of a watchdog than a bloodhound. It is said that doctors who perform their obligations with a fair degree of care are not liable for treatment failures. Doctors were encouraged to abide to the code of ethics, though. The court ruled that treatment that effectively saved a life despite causing side effects (hearing impairment) did not constitute carelessness. In this case, the standard for determining the standard of care was determined to be the same as in Bolam.
Medical practitioner would only be held accountable if his conduct fell below the requirements of a reasonably competent physician. Harm caused by accident, misfortune, or an error in judgement would not always result in such culpability. Existence of a body of competent professional opinion that considers the decision of a medical practitioner to be incorrect would not be conclusive if an equally competent body of professional opinion supports his decision as acceptable under the circumstances.
Further held, standard of care must be just in light of knowledge and equipment available at the relevant time; in performing a noble operation or prescribing a noble treatment to save a patient's life and no other treatment option is available, even if resulting in death or serious harm, the doctor should not be held liable; however, in such cases it is advisable for doctors to explain the

situation to the patient and obtain his written consent.

Lastly, a physician cannot be held immediately accountable for medical negligence based on the law of res ipsa loquitur simply because a patient did not respond well to treatment provided by the physician or a procedure failed.

9. V. Kishan Rao v. Nikhil Super Specialty Hospital.[86]

In its recent landmark decision in V Kishan Rao v. Nikhil Super Specialty Hospital, the Supreme Court ruled that there cannot be a mechanical or rigid approach to the requirement that all medical negligence cases be referred to experts for evidence and declared that the decision in Martin F. D'Souza v. Mohammed Ashfaq was per incuriam. This ruling is a positive step toward achieving the objectives of the Consumer Protection Act of 1986.

The hospital admitted the wife of the complainant, who was suffering from fever and chills. Four days were wasted treating her for typhoid instead of malaria. She died due to said improper treatment. On the complaint, the district forum determined that the hospital was negligent and awarded compensation. The order established by the district forum was reversed by both the state and national commissions. However, the Supreme Court reversed the rulings issued by the state and national commissions and reinstated the district commission's order.

The Supreme Court ruled that this court makes it clear that a mechanical approach cannot be taken in these circumstances. Each case must be evaluated on its own merits.

If a decision in all situations of medical negligence must be based on expert testimony, the effectiveness of the remedy offered by this act will be burdened needlessly, and in many instances, such a

[86] V. Kishan Rao v. Nikhil Super Speciality Hospital, (2010) 5 SCC 513.

remedy would be illusory.

As a result of the decision in V Kishan Rao, the consumer forum in the country is no longer required to refer cases of medical negligence to an expert committee before issuing a notice to the doctor or hospital accused of medical negligence, and the problems that arose as a result of the directives given in the Martin F. Dsouza case will be sorted.

10. Samira Kohli v. Dr. Prabha Manchanda & Another.[87]

A 44-year-old woman who had been having her period for 9 days was advised for an ultrasound and told to get a laparoscopy test done under general anaesthesia to confirm the diagnosis. While the patient was under general anaesthesia, a laparoscopic exam was done. At the same time, with the mother's permission, an abdominal hysterectomy and bilateral salpingo-oophorectomy were done to remove the uterus and both ovaries and fallopian tubes.

The Supreme Court ruled that consent given for a diagnostic procedure or surgery is not valid for therapeutic surgery, whether it is conservative or radical, unless the patient's life is in danger or there is an emergency.

It was also decided that when a patient gives permission for a certain type of surgery, that cannot be taken as permission for an unapproved extra procedure that removes an organ on the grounds that it will help the patient or stop a danger from happening in the future, if there is no immediate danger to the patient's life or health. In making its decision, the Supreme Court looked at the ideas of "real consent" in the UK and "informed consent" in the US.

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[87] Samira Kohli v. Dr. Prabha Manchanda & Another, Case No. Appeal (Civil) 1949 of 2004.

It found that the US standards were too high and not right for Indian conditions, so it rejected them outright. It was also decided that a doctor must get the patient's permission, and that permission must be "real and valid." The patient must be given "adequate information" so that he or she can make an informed decision. Doctors don't have to talk about remote possibilities, and the information given will be what is "normal and proper by a body of medical men skilled and experienced in the particular field."

11. Malay Kumar Ganguly v. Sukumar Mukherjee.[88]

India had never seen a case like this before. It was huge amount ever given as compensation for bad medical care in India. The court gave compensation of Rs. 6.08 crore, which has now grown to over Rs. 11 crores because of interest. More importantly, the verdict in this case was meant to be a "warning and a deterrent to the medical community."

This was the first time this had happened in an Indian medical negligence case. The judge's criticism of how the doctor treated the patient in India, where the relationship between doctor and patient is still very unequal, was the start of "something big."

Some of the important analytical points brought up by this relationship are the idea of a consumer, whether victims of mass torts and patients hurt by medical negligence are included in this definition, and the economic and policy effects of this extraordinary exemplary damages judgement. It shows that medical mistakes are getting worse in India and should stop other cases like this from happening.

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[88] Malay Kumar Ganguly v. Sukumar Mukherjee, SC Criminal Appeal No- 1191-1194 of 2005.

Patients feel unaware of the extent of a structure that is misleading and gives them few choices. In this kind of situation, it's very hard for victims and their families to show that doctors did something wrong. Low-effort healthcare can't take the place of quality healthcare. In the above case, the specialist, is responsible for making sure the patient is safe, coming to the right conclusion, and getting the right treatment. This is how it should be.

SC said that after Kunal's initial proof that the respondents were careless by giving Anuradha high doses of steroids, the burden of proof now falls on the respondents.

In this case, the respondents were found to be negligent because they gave more than the maximum recommended dose. Also, "Depomedrol" was given out without knowing what kind of illness it was for. No treatment for the symptoms was given. No care was given in an emergency. There were no other normal pathological tests done.

Concerning whether or not 304A IPC applies in this case, the patient died because of a series of careless acts. In criminal law, there is no such thing as the "doctrine of cumulative effects." There are a lot of different things going on, and the different kinds of negligence make it hard to figure out how much each respondent was at fault. In this case, it is not possible to find medical negligence under Section 304A.

So, the criminal appeals by the complainant were turned down. But the civil appeal for compensation is allowed because of the accused's carelessness. This means that AMRI and Dr. Mukherjee will have to pay the complainant costs of 5,00,000/- and 1,00,000/- respectively.

12. Dr. Laxman Balakrishna Joshi v. Dr. Trimbak Bapu

Godbole & Another.[89]

This case that was investigated under the Fatal Accidents Act of 1855. The responsibilities that a physician has toward his patients were brought up for discussion at one point. The court arrived to the conclusion that an individual who advertises his availability to provide medical advice and treatment implicitly commits that he is skilled and knowledgeable for the purpose of performing those duties.

While consulted by a patient, such a person owes the patient specific duties, including a duty of care when deciding whether or not to take on the case, a duty of care when deciding what treatment should be offered, or a duty of care when administering that treatment. The patient has the legal right to pursue legal action for negligence in the event that any of these duties are violated. The practitioner is expected to contribute a reasonable amount of expertise and understanding to the task at hand, in addition to a reasonable amount of care and caution.

The legislation does not require an extremely high level of care and competence, nor does it mandate an extremely low level of care and competence. Instead, the level of care and skill required is somewhere in the middle. There is no doubt that the physician has some flexibility in selecting the treatment that he intends to provide to the patient, and this flexibility is likely to be considerably expanded in the event of an emergency.

In this particular instance, the patient passed away as a result of shock brought on by the doctor's unsuccessful attempt to reduce the fracture without first administering anesthesia to the patient.

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[89] Dr. Laxman Balakrishna Joshi v. Dr. Trimbak Bapu Godbole & Another, (1969) 1 SCR 206.

This basic precaution would have prevented the patient's death. In a court of civil law, the physician was found to be responsible for both carelessness and culpability for damages.

13. Poonam Verma v. Ashwin Patel and others.[90]

An allopathic medication was recommended to the patient by a physician who was only licenced to practice homoeopathy. The physician had no authority to practice any other form of medicine. The patient did not survive. Since the doctor was only licenced to practice homoeopathy, he was under a statutory duty not to explore the arena of any other system of medicine.

Since the doctor practiced into a prohibited field and specified the allopathic medicine to the patient, causing the patient's death, his conduct "amounted to negligence per se actionable in civil law," it was determined that the doctor was negligent and liable to compensate the wife of the deceased man for the death of her husband.

14. Juggankhan v. The State of Madhya Pradesh.[91]

A certified Homoeopath is being accused of giving a guinea-worm patient 24 droplets of stramonium and one Dhatura leaf. The accused had not researched the effects of administering such medications to humans. The prosecution failed to prove that the Dhatura leaf contained any harmful substances. In this case, the Hon'ble Supreme Court overturned a conviction for violating Indian Penal Code section 302. This is because it was found out that Stramonium and the Dhatura leaves are both poisonous and are not used as a cure for Guinea Worm in any other system of medicine, apart from Ayurvedic medicine.

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[90] Poonam Verma v. Ashwin Patel and Others, (1996) 4 SCC 332.

[91] JugganKhan v. State of Madhya Pradesh, 1965 AIR 831.

This was considered to be a rash and negligent act by the accused, who prescribed poisonous substance without studying its probable effects. We can infer from this that the accused's purported profession as a Homoeopath forbade the use of the substance given to the patient. The defendant recklessly administered the chemical without understanding its potential consequences.

Given these circumstances, it was easy to conclude that the accused was responsible for a reckless and careless deed. In light of this, the Supreme Court of India issued the following opinion: "In our opinion, the principle that emerges is that a doctor who gives a medicine known to or used in a certain branch of medicine is implying that he knows that branch of science, and if he doesn't have that knowledge, he is acting rashly or negligently at first glance."

15. Shivaji Gendeo Chavan v. Chief Director, Wanless Hospital & another.[92]

The complainant's 18-year-old son was diagnosed with chronic renal failure and it was recommended to undergo a kidney transplant. As he required regular dialysis, he was brought to the hospital and underwent dialysis, for which a venous tube was placed in his right thigh and left in place (identical position of the body).

This led in pus formation, A.V. fistula, and gangrene of the right leg due to a lack of basic treatment, such as frequent dressings and medical attention. In order to save the patient's life, amputation of the leg was required. The patient died twenty days later.

The opposite was absent from the state commission. On the basis of

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[92] Shivaji Gendeo Chavan v. Chief Director, Wanless Hospital & another (1995) 3 C.P.J. 43 (Maharastra S.C.D.R.C.).

the affidavits provided by the complaint and another expert doctor who testified in favour of the complainant, the matter was ruled in favour of the complainant. A compensation of Rs. 2,00,000 plus Rs. 1,000 in fees is due from the opposing party within 30 days of receipt of this letter; otherwise, the sum would accrue interest at the rate of 18 percent per annum until realisation.

16. Subh Lata v. Christian Medical College.[93]

The plaintiff alleged that her spouse died as a result of kidney biopsy complications. The state commission determined that the complainant omitted key details from her complaint. In addition to life-threatening illnesses, the deceased also had tuberculosis and staphylococcus aureus septicaemia (a critical infection of the blood bacteria).

Particularly when the heart, lungs, and brain are affected, these are extremely dangerous diseases with a high death rate. Consequently, the complainant did not qualify for remedy under this section of the consumer protection act because she did not arrive with clean hands. The complaint was rejected with costs of Rs. 1,500.

17. Jayantilal Govindalal Parmar v. Managing Trustee & Others.[94]

After having gall stone surgery, the complainant developed a structure near the bulbous urethra, making it difficult for him to urinate and have intercourse. Ultimately, he had to undergo surgery at an urology hospital for relief, and the cost was high because the initial operation had been botched.

The state commission made the following findings, and they

[93] Subh Lata v. Christian Medical College, 1995 CCJ 512.

[94] Jayantilal Govindalal Parmar v. Managing Trustee & Others, 1997 (1) CPJ 295.

decided to throw out the case. There is no evidence to suggest that the opponent was careless in carrying out the procedure on 30 July 1992, which necessitated the subsequent surgery. It was determined that multiple gallstones necessitated the initial operation, and the second operation was deemed necessary due to its critical nature.

It was the presence of little structures close to the bulbous urethra that necessitated the initial surgery. There is no clear link between the two processes. In other words, it has not been established that substandard care during the first procedure led to the need for a second, unrelated one.

There is no record of a certificate from the doctor at the Nadiad urology hospital stating that the second procedure was required because of the first. Since there is no expert testimony to contradict the opponent's claim that he performed a cautious procedure on the complaint and that the complainant did not report any pain after being released from the hospital, the opponent is not guilty of any wrongdoing.

There is some merit to the open inference that the complainant would not have waited seven months to see Dr.Rajguru if he were in as much agony as he claims to be in. There is no record of any documents that would lend credence to the complainant's claim. The case was dismissed with no costs imposed.

18. Shashi Bala v. Sushil Kumar.[95]

A 5-year-old girl was told to get a blood test. The respondent said that they had "Austratia Antigen", which is a sign of liver dysfunction. But because people were suspicious, the tests were done again at other labs and came back negative.

Held, in this day and age, running a lab to do pathological tests,

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[95] Shashi Bala v. Sushil Kumar, 2002 CCJ 48.

charging the public for them, or making wrong or fake reports by people who aren't qualified is an unfair business practice that should be stopped. Medical malpractice that is going on with the help of the owners of these labs needs to be dealt with harshly, because in the end, it is the public's health that is at risk and they are the ones who have to suffer. In this case, if a second report hadn't been gotten, it's possible that the patient would have been given unnecessary drugs and put through mental torture by a doctor who relied on a false report. Rs 5,000 was given as compensation.

19. R. L Sethi v. Dr. Somnath Chakraborti.[96]

In this particular case, the complainant had cataract surgery, during which his eye was left utterly damaged. Despite the fact that the plaintiff had surgery in the states to correct both his cornea and his iris, his vision was not fully restored. The complainant argued that there was a gap in the services provided and demanded compensation.

None of the physicians who examined the complainant in the aftermath of the incident came to the conclusion that the patient experienced difficulties as a result of improper surgical application or procedure. There was information in the file that demonstrated the surgeon used a new technique, which led to problems in the operation. The court came to the conclusion that the doctor had not acted negligently in any way.

20. Kanaiyalal Ramanlal Trivedi v. Dr. Satyanarayan Vishwakarma.[97]

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[96] R. L Sethi v. Dr. Somnath Chakraborti, 2001(2) CPR 379.

[97] Kanaiyalal Ramanlal Trivedi v. Dr. Satyanarayan Vishwakarma, 1996 (2) CPR 24. 2003.

The patient suffered from dental issues. The respondent began the medication with certain aggressive medicines, such as steroids, despite having no training in dental care. Subsequently, a tumour grew at the injection site. as a result of that the patient died. The doctor was unable to defend the treatment he provided, nor could he substantiate it with any accepted medical practice. Two lakhs in compensation was granted by the court.

21. Adarsh Bararia v. P.S. Hardia.[98]

In this instance, a Radical Keratotomy procedure was performed on the left eye of a 14-year-old boy, resulting in total blindness. As the operation in question is not recommended for patients under the age of 21, the doctor failed to explain why he did it on a teenager. The complainant was awarded a compensation of one lakh rupees.

22. S. Rama Rao v. Bantwal Sulochana Madhava Shenoy Trust.[99]

During hernia surgery, the complaint allegedly suffered paralysis due to the improper administration of anaesthesia.

The doctors' explanation was that they had administered spinal anaesthesia to the patient, which did not affect the entire body but only the area operated on, and that the operation area was cleaned up a few hours after the surgery. The patient was conscious during and after the operation, and he disobeyed strict instructions not to move without the assistance of a nurse by sitting down and exerting himself. In the absence of evidence of the doctor's carelessness during the hernia procedure and treatment, the complaint was dismissed.

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[98] Adarsh Bararia v. P.S. Hardia, 2000 (2) CPR 188.

[99] S. Rama Rao v. Bantwal Sulochana Madhava Shenoy Trust, I (1997) CPJ 301.

23. C. J Lawrence v. Apollo Hospitals.[100]

Because of right-shoulder pain, the complainant had to be taken to a private hospital. In addition to being diabetic, tests determined that he had right hydro hydronephrosis with blockage and right at the ureterovesical junction. Retroperitoneal surgery was performed on the complainant.

Ureteric reimplantation was performed after the diseased part was removed. The complainant experienced severe fever after surgery, and additional examination revealed the presence of a stapler pin in the patient's digestive tract. The complaint was released despite medical advice to the contrary.

A pin was allegedly left in the patient during surgery. The physician explained that the V and U-shaped surgical staplers are utilised in groups during big intestine procedures. The x-ray shows something that looks like a stapler pin, but it isn't a stapler pin. It looks like the pins on a stapler that are used to seal food packages. This stapler pin, it seems, is swallowed whole. The state commission found no evidence of hospital malpractice or inadequate care, thus it dropped the case without imposing any costs.

24. Nihal Kaur and others v. Director P.G.I Chandigarh.[101]

The patient underwent surgery for a splenic abscess. Later, he died and was cremated, and when his relatives went to collect his ashes, they discovered a pair of scissors, prompting for filing of the complaint. The hospital's director argued that it was arterial forceps, not scissors, that was left in the belly to control bleeding

[100] C.J.Lawrence v. Apollo Hospitals, Tamil Nadu SCDRC O.P.No.8/94.

[101] Nihal Kaur & Others v. Director PGI Chandigarh, 1996 (3) CPJ 112(Chd-UT CDRC).

from the splenic bed and prevent cardiac arrest. The patient experienced three cardiac arrests throughout the operation.

The Chandigarh UT CDRC was negligent since there was manipulation of data and no standard reference was presented to justify leaving a huge pair of forceps measuring 15.5 centimetres inside the abdomen. Rs.120,000 in compensation was awarded.

25. Beti Bai Saxena (Smt) v. Dr. SL Mukherjee and Others.[102]

It was determined that the doctor acted negligently when he failed to remove the mopping gauze pad before closing the surgical area, which led to the creation of sinus and the discharge of pus. The court decided to compensate the plaintiff with 40,168 Rs for treatment expenditures, 25,000 Rs for emotional and physical suffering, and 3000 Rs towards for legal costs.

26. Aparna Dutta v. Apollo Hospital Enterprises Limited.[103]

Following completion of the abdominal hysterectomy, a surgical pack was forgotten behind. Another operation was successful in removing the Pack. an x-ray photograph of the pack as well as the oral testimony of the second surgeon who removed the pack provide evidence that the first surgeon, and consequently the doctor who administered it, acted negligently.

The doctrine of res ipsa liquitor were brought into the case, and after finding the doctor to be irresponsible, the court awarded compensation in the amount of Rs 580,000.

27. Udale v. Bloomsbury Area Health Authority.[104]

The court decided to compensate the plaintiff for the emotional

[102] Beti Bai Saxena v. Dr. SL Mukherjee & Others, 2001(3) CPJ 251.
[103] Aparna Dutta v. Apollo Hospital Enterprises Limited, 2002 ACJ 954 (Mad. HC).
[104] Udale v. Bloomsbury Area Health Authority, [1983] 2 All ER 522.

distress she had as a result of the pregnancy, which should have been the natural consequence of the failed sterilisation attempt. Damages were also granted for the disruption of the family's financial situation, which included the expense of a layette and an increase in the family's accommodation needs.

However, due to public policy concerns, the court did not allow damages to cover the future expense of child's upbringing until the age of 16 years. It was further held that the delight of having a kid and the pleasure obtained in rearing it have to be offset against the cost of upbringing.

28. Digvijay Singh A Zata v. Dr. Narendra T. Vani and Others.[105]

The obstetrician recommended a pregnant woman with a fever to a physician after learning that the patient has bile salt and pigments in her urine. Previously, she had prescribed the patient some medications. The physician admitted the patient, but she died. The Gujarat SCDRC determined that the obstetrician was not negligent since there was insufficient evidence to prove that the care provided was improper.

29. Dr. Biswanath Chakroborty v. Mrs China Sinha and Others.[106]

The district consumer forum compensated the patient who alleged that the treating physician negligently used force without anaesthesia, leading to the death of the male twin. The female twin sustained minimal injury. However, the SCDRC didn't even find

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[105] Digvijay Singh A Zata v. Dr. Narendra T Vani & Others, 1995 (I) CPJ 186 (Guj. SCDRC).

[106] Dr. Bishwanath Chakroborty v. Mrs. China Sinha & Others, 2002 (2) CPJ 329 WB SCDRC.

any merit in the claim and determined that the treating physician was not negligent.

30. Neena Gupta v. Dr. Kanwarjit Kochhar.[107]

As the use of forceps created a uterovesical fistula, the doctor was found negligent. The expert in this instance testified that the uterovesical fistula that developed at the site of a previous caesarean section might have been averted with careful forceps use. It is essential to understand that for birth asphyxia and brain injury compensation is typically claimed by the kid's parents, although the wounded youngster may also file a claim.

31. Kalawati v. State of Himachal Pradesh.[108]

The anaesthesiologist was held liable for the deaths of two patients who underwent general anaesthesia. The state was declared vicariously liable since the patient was provided nitrous oxide instead of oxygen because the pipes of the two gases were switched by the ward boy while cleaning the operating room and these were not examined by the anaesthesiologist before the procedure.

32. Indian Medical Association v. V.P. Shantha.[109]

According to the order issued by NCDRC, the doctor-patient relationship is a contract for personal service and not a master-servant one. Just like a household employee, a doctor is an independent contractor. But the master or principle (the hirer) can only say when and how something should be done. The "how" is entirely up to the discretion of the contractor (doctor). Therefore, the doctor-patient relationship is not exempt from the Consumer

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[107] Neena Gupta v. Dr. Kanwarjit Kochhar, Complaint Case No. 489 of 1993, Chd.-UT CDRC.

[108] Kalawati v. State of Himachal Pradesh, 1988 ACJ 780 HP-HC.

[109] Indian Medical Association v. V.P. Shantha & Others, 1996 AIR 550.

Protection Act because it is a contract for personal service.

In a case of medical negligence, "deficiency in service" refers solely to carelessness, and its determination would be made under the Consumer Protection Act using the same standard as that used to assess damages in a negligence lawsuit brought in civil court. The medical community is now covered by Section 2(1)(o) of the CPA (1986), which also expands the definition of "physician" to encompass the following types of medical facilities:

Everyone who provides medical or dental care as a private practitioner, unless providing a pro bono service.

- All patients are charged by the private hospitals.
- All hospitals that treat both low-income and middle-class patients, and all patients in those hospitals, regardless of their ability to pay.
- Doctors, dentists, and hospitals that are reimbursed by an insurance company for services rendered to policyholders and policyholders' dependents. In particular, it exempts health care facilities and their medical and dental staff who provide care to all patients without charge.

Because of this ruling, the Consumer Protection Act of 1986 can be used to levy fees on virtually all hospitals, both public and private, as well as all employed physicians and dentists, with the exception of those working in primary care settings, in birth control programmes, and in anti-malaria campaigns.

33. Vinod Jain v. Santokba Durlabhji Memorial Hospital & Another.[110]

The Supreme Court recently upheld the National Consumer

[110] Vinod Jain v. Santokba Durlabhji Memorial Hospital & Another, Civil Appeal No. 2024 of 2019.

Disputes Redressal Commission's decision to overturn the State Commission's decision that a doctor and hospital were guilty of alleged medical negligence. The State Commission had found the doctor and hospital guilty because they gave the wrong diagnosis. The doctor was also cleared of the charges by the Supreme Court.

According to the medical reports, the intravenous treatment cannula stopped working, and the doctor gave the patient another antibiotic tablet called Polypod to take by mouth through the nasal tube.

The person was let out of the hospital. The patient's WBC count was high, and she was told to keep taking her medicines for 5 days after she was released from the hospital. According to the appellant, this was done.

In his complaint, the person said that the patient had to be taken to a surrounding Heart and General Hospital, in which she was put on a ventilator machine to help her stay alive. The appellant's wife's WBC count had gone up even more, and her systolic BP was only 40. Her health kept getting worse, and she had to be taken to the Fortis Escorts Hospital. She died there on October 31, 2011.

A case of medical negligence was filed against a doctor and a hospital with the Rajasthan Medical Council. The complaint was thrown out because the facts of the case did not show any evidence of medical negligence. In order to come to this conclusion, the treating doctor had to tell a group of eleven doctors what he or she thought about the complaint and the information that the appellant gave to the group.

The appellant's second appeal to the Medical Council of India was turned down because it was too late. The complainant then went to the State Consumer Disputes Redressal Commission in Rajasthan,

which ruled in favour of the complainant and awarded Rs. 15 lakh in compensation. The Respondents then went to NCRDC with an appeal, which cleared the doctor and the hospital. The complainant went to the Supreme Court to fight against what NCDRC had said. The appellant wanted to prove that the deceased was given medicines that weren't right for her or didn't work, that the IV cannula wasn't turned back on, that she was sent home too soon even though her condition required treatment in the ICU, and that she was given Polypod antibiotic orally even though her condition was so bad that it should have been given intravenously.

In their defence, the doctor said that when the patient was sent home, she was fine, her vital signs were normal, she was well-hydrated, and neither her chest nor her urinary tract had any infections. She was said to be clinically stable, so she was sent home with the right medicines to take for the next five days.

After reviewing the case, the Supreme Court dismissed the complaint, saying that it was a case of wrong diagnosis, not medical negligence. The Court also took note of how quickly the hospital took care of the appellant's wife. The doctor who was treating her also took care of her quickly and started her on antibiotic treatment. The nasal feed tube was quickly put back in. The Court agreed with the NCRDC's decision and dismissed the complaint. This cleared the doctor of any wrongdoing in medical care.

34. Dr. Ganesh Nayak v. V. Shamanna and Others.[111]

The petitioner, Dr. Ganesh Nayak, went to the High Court to

[111] Dr. Ganesh Nayak v. V. Shamanna and Others, WRIT PETITION NO. 21688 OF 2009.

challenge that the Karnataka Medical Council had given him a "warning" as a punishment. The patient had a lot of different illnesses and was getting care from many doctors at various hospitals. Even so, the negligence claim was only made against the petitioner, and there was no explanation for why all the other doctors who had handled her were not asked to come before the Court.

The Court agreed, noting that the patient was 65 years old and had health problems that come with getting older. She had problems with her heart and blood vessels for a long time, so the petitioner performed her an angioplasty. Medical records showed that she died from a serious bacterial infection that she got after the angioplasty.

There was a long time between the angioplasty and her death. The records also didn't show that the woman's health got worse, which led to her death, because of what the petitioner-doctor was said to have done wrong during a medical procedure, the Court said.

In this situation, the Court then said some things about how the number of false claims against doctors and hospitals has been going up. The Court said that some of them do it for money, others want to be told they are wrong, and some may sue to make sure mistakes don't happen again.

But a lot of the claims aren't true, and this makes doctors and other medical professionals less willing to take risks. The Court also said that it could make them angry, which could lead to a huge rise in the cost of medical services.

In this case, the single judge thought that medical professionals should be protected from making real mistakes in the same way that public servants are.

"Medicine is a field of study of uncertainty and an art of probability," said Canadian doctor William Osler, which the Court used to say that medicine is an area of knowledge that is always getting bigger and more uncertain. Even though science and technology have gotten better, there is still a lot of uncertainty in the medical field. The Court pointed out that the medical field is still in a very fluid stage.

Even if it can be shown that a certain drug or procedure caused the injury, it is hard to know if that procedure was "actionably defective" because it may help the vast majority of people but cause problems for a few. The Court said that the Karnataka Medical Council should have thought about this uncertain cause in the area of medical liability before they ruled against the petitioning doctor. When the judge quashed Medical Council's order, he made it clear that doctors should be motivated by service, not profit. He also pointed out that, just like other professionals, doctors can be sued for negligence, as the Supreme Court said in Indian Medical Association vs. V.P. Shantha.

The court looked into the larger picture by stating that there is a raise in medical negligence cases, where it's hard to filter out the genuine one. The court also stated that the doctors must be protected from such frivolous cases, as this may lead to fear amongst the doctors to take risk. The professions aim must be of service to the society and not profit driven.

4.2 Conclusion

The difficulty of deciding medical cases can be attributed to a number of factors, including the inexact nature of medical knowledge, the intricacy of the human body, and the inherent subjectivity of the process. Cases that have already been decided

show how different techniques are taken by different courts when evaluating whether or not medical negligence occurred.

The actual nature of the method could not be established. It has been abundantly evident, as a result of the decisions that various courts and consumer forums have rendered in various medical litigation, that there is a deficiency in the availability of an appropriate judicial strategy to handle such matters. The rules that deal with cases of medical negligence don't stipulate a specific amount that must be awarded to victims of medical malpractice as compensation for their injuries.

It is the only branch of the judicial system that can use its discretion to address issues arising from medical disciplines that are very technical and sophisticated. When deciding cases of medical negligence, the courts are using methodologies that were developed by courts in other countries over the course of several decades. It is a harsh lesson to learn that in cases with the same facts and conditions, the courts have sometimes absolved the doctors or hospitals of liability and other times they have upheld liability in the same cases.

This does not send a positive message to the medical community or to society as a whole. The functioning of the Indian courts is called into doubt as a result of this. According to the opinions of the medical professionals, the judicial officers have an inadequate level of knowledge and expertise in the field of medicine. They do not have sufficient judicial knowledge in the fields of medical science and biology.

The bulk of judges and lawyers come from academic backgrounds other than the medical field. It is not a justiciable practise, yet the majority of cases are determined based on manufactured

arguments that were presented by lawyers. Other cases are decided with the intention of lightening the financial burden of medical expenses placed on patients. It is the only closure of the cases, despite the fact that the idea of justice requires more than simply a settlement. When deciding whether or not to pay compensation in cases of medical negligence, the Judicial Branch is required to keep in mind that human life is the most valuable asset.

As this chapter is the heart of this research, the researcher has elaborately gone through the landmark judgements given by the Indian courts. Time and again the courts have raised the standards as in this profession one wrong decision can cost a patient's life.

In V.P. Shantha case the court expanded the ambit of deficiency of services and included consumers in them. Then in Shashi Bala case's the court stated that the pathology laboratories are also indulging in unfair trade practices, which at the end of the day costs human life. In Juggankhan case's the court held that practising the field of law in which you are not expert is rash and negligent act.

With references to the above cases, the inference that we can draw from this chapter is that to prove medical negligence in cases has to be beyond reasonable doubt. Time and again the supreme court has interpreted in various case laws that a straight forward formula cannot be adopted while awarding compensation. It must be looked into on case-to-case basis.

As a conclusion, medical professionals might be experiencing elation at the result that the Supreme Court reached in the case of Jacob Mathew. However, it is important to note that in light of its ruling in Jacob Mathew, the Supreme Court did not grant any more concessions to medical practitioners. This is something that should

be kept in mind. It has just acknowledged the use of a worldwide judicial strategy in the adjudication of civil medical negligence cases, in addition to its own observations made in prior judgments on the arrest of a suspect in those situations. In addition, in the subsequent case of State of Punjab vs. Shiv Ram, the court issued a warning to medical practitioners, instructing them to keep an eye out for their erring revenue colleagues.

This was done in response to the fact that the court was hearing the case of State of Punjab vs. Shiv Ram. It was stated that, in recent times, self-regulatory norms in the medical profession have worsened, and that this may be attributed to the overwhelming effect that commercialization has had on the business.

It was stated that, in recent times, self-regulatory norms in the medical profession have worsened, and that this may be attributed to the overwhelming effect that commercialization has had on the business. Allegations have been made that medical professionals have participated in unethical medical practices, such as misusing diagnostic procedures, brokering contracts for the trade of human organs, and engaging in other actions that are analogous to these.

It is indisputable that there have been cases of "black sheep" entering the sector, and it is also indisputable that the profession has been unable to adequately separate them from the rest of the population. There has been a consistent rise in the demand for independent oversight as a supplement to self-policing by professionals in the industry. Because of the substantial costs and investments that are necessary for the provision of medical treatment, it has evolved into an entrepreneurial activity in which the professionals strive to make the most possible profit off of their efforts.

If they were required to wear a halter around their necks whenever they administered medication, it would not assist them perform their jobs. In order for medical professionals to perform their professions without feeling threatened or anxious, it is the obligation and responsibility of civil society to ensure that they are not subjected to harassment or put down for no apparent reason.

It is often necessary to safeguard medical professionals from individuals who use the criminal court system to exert pressure on medical professionals or hospitals, particularly private hospitals or clinics, to give them money. In these instances, protection from such individuals is required. It is not fair that those who work in the medical field have to deal with such a terrible situation.

As long as they perform their professions with a reasonable level of skill and care for their patients, medical professionals such as physicians, nurses, and other healthcare workers have the right to be protected. The health and well-being of the patient should always be the first and foremost concern of the medical staff.

Therefore, a physician cannot be held criminally accountable for the death of a patient unless his negligence or incompetence demonstrated such a lack of concern for the life and safety of his patient that it amounted to a crime against the state.

The precedent set by the Jacob Mathew case law unquestionably establishes a stringent level of scrutiny for frivolous complaints lodged against medical professionals. On the other hand, as a consequence of this, consumers are less likely to take legal action against a physician for negligent behaviour.

The court considered the bigger picture and came to the conclusion that there has been an increase in medical negligence claims, of which it is difficult to determine which ones are legitimate. The

court also remarked that the doctors need to be safeguarded against such meritless lawsuits since they have the potential to cause dread in the minds of doctors, which prevents them from taking risks. The goal of the profession should be to serve the community, not to maximise one's financial gain held in Dr. Ganesh Nayak's case.

Medicine has for a long time been held in high respect by society; however, the balance between service and business is sliding alarmingly towards business, which necessitates the need for more effective and efficient regulation, whether internal or external. Self-reflection is an activity that must be done by members of the medical community, both individually and collectively. As a consequence of this, they need to step up to the challenge and take an active part in maintaining order and setting high standards throughout the industry as a whole. As a consequence of this, the ball has been returned to the medical community, and they have been given an ultimatum to take action in order to halt the rot that has set in within their field.

CHAPTER 5
CONCLUSION AND SUGGESTIONS

5.1 Conclusion

The corporatization of the medical profession has led to the commercialization of the noble profession, which goes against the text and spirit of the Hippocratic oath and has had a devastating effect on the traditionally cordial connection between doctors and their patients. Although new developments in medicine and science have helped doctors improve their ability to diagnose and cure patients, they have also become instruments for the commercial exploitation of those same individuals.

It has been determined that the existing legislative framework on medical negligence is not an appropriate means of addressing the issue at hand. There is no single law that addresses both the issue of medical negligence and the liabilities that medical personnel face as a result of it. Another factor that contributes to the frequent occurrence of medical negligence in India is the inadequate implementation of the rules and policies that are currently in place. According to the findings of the study, the present healthcare infrastructure in the country falls well short of meeting the requirements for medical treatment posed by the country's sizable population. The rise in the number of reported cases of medical negligence can be attributed to a number of causes, including but not limited to: an insufficient number of healthcare providers; an inadequate infrastructure; changing behaviours and preferences of medical professionals; and so on.

The increased frequency of instances of medical negligence is one factor that is contributing to the increased number of medical

claims currently pending before the courts, which has resulted in an enormous backlog of cases. The judicial strategies that are utilized in the conflict resolution process for cases involving allegations of medical negligence have been the primary subject of this study.

Analyses were performed on many judgements handed down by a variety of courts, including consumer courts, in order to deduce the judicial approaches that were used there. According to the findings of the study, the ways in which different courts handle the question of medical negligence can be seen in the cases that have already been determined. There was an absence of preciseness in the procedures taken by the judiciary while deciding medical negligence. As a subject of a highly specialized field, medical negligence cannot be widely construed by the courts in the same way that other types of cases can be.

Traditional courts, such as consumer courts, are currently deciding difficult and technically complicated instances of medical negligence since there is a lack of specialized legislation and experience in the field. In India, there is a deficiency in the amount of interdisciplinary information and expertise that is available. Because there is a shortage of medicolegal knowledge in the country, the weight of deciding medical lawsuits falls on judges who are not trained in medicine or the medical profession. Because of this circumstance, the situation is made more difficult.

In my opinion, the evolution of malpractice and professional misconduct law has been quite promising. When a patient has been suffering due to medical carelessness, they may pursue a number of legal options. Someone could, for instance, file a claim with a consumer protection commission or think about taking legal action

in civil court against the doctor. By comparing the consumer protection act treatment to the other alternative remedies, it is clear that the consumer protection act cure is the most effective remedy. For the simple reason that a civil court case can drag on for years while all the proper steps are taken, it's not the best choice if you need immediate assistance.

The Medical Council of India has established a code of medical ethics and etiquette that governs the medical profession. Although they are for the professional's own self-regulation, patients have some rights and expectations. However, there has been a rapid spread of misconduct among medical personnel, with unethical activities reaching a point where the service to mankind purpose of the medical profession is compromised.

Few unethical behaviours, such as featuring for cut practice (commission), a specifically prescribing a company's drug and selling extra body parts for personal financial advantage, are widely discussed among them, but they are never brought to light because to the absence of clear evidence. It is human nature to err, but medical errors that result in a patient's death or permanent disability can be especially costly. However, the law does not seek to punish doctors for all of their errors, but only for those that are the consequence of negligence. Mistakes are inevitable, but those resulting from carelessness and neglect cannot be excused.

Consumer laws can be of tremendous assistance if consumers are aware of their rights. In India, public awareness of medical negligence suits is increasing. However, hospital administrations are increasingly receiving complaints about the facilities, standards of professional competence, and the suitability of therapeutic and diagnostic procedures. After the Consumer Protection Act of 1986

came into operation, some patients have filed lawsuits against doctors, proven that the doctors provided negligent medical services, and obtained compensation.

Consequently, numerous legal rulings have been made regarding what constitutes negligence and what must be proven. With the recent enactment to the Consumer Protection Act and the National Medical Commission Act.

The law does not intend to make any unnecessary intrusions into areas that should be reserved for medical professionals, and courts do not attempt to impose their knowledge on those who are unqualified. On the other hand, the legal system does not adopt a hands-off attitude. It carefully investigates the activities of medical practitioners, attempting to punish those who fall below the basic standard.

The criterion for setting the minimum standard is highly impacted by the prevailing medical practices and opinions, as well as the existing body of knowledge when the relevant decision is made. By increasing the severity of responsibility in particular circumstances, accountability is reinforced because no one can avoid inspection. While the legislation vigorously respects the autonomy of medical professionals and acknowledges that prescribing unreasonably high standards may have an unwanted chilling effect, it also tries to protect and safeguard the interests of patients who have a right to demand a minimum standard of care.

It is a growing concern that medical practitioners and hospitals may soon face increased litigation from consumers exercising their statutorily enshrined rights, but the Consumer Protection Act comes to your aid because of the growing number of cases of medical negligence. The act establishes Consumer Courts as a

means of achieving protection and speedy enforcement of consumer rights, in the medical industry. In addition, it raises the possibility that the number of cases of medical negligence will continue to rise. Nevertheless, the Consumer Protection Act only offers a limited foundation for complaints to be brought before the Consumer Court. As a consequence of this, it is likely that consumers who are attempting to recover damages will continue to rely on the common law remedies.

The lack of a defined definition of medical negligence in Indian law gives doctors a window of opportunity to avoid prosecution in some circumstances. There are primarily three laws that regulate penalties for carelessness; however, neither the term "medical negligence" nor any severe penalties for such an offence have been specified. The following are three laws:

Criminal Law:

According to Section 304A of the Indian Penal Code, 1860, the penalty for causing the death of a person through a reckless or negligent act that does not amount to culpable homicide is "two years of imprisonment, a fine, or both."

Additionally, numerous other conditions, such as negligence during anesthesia administration or vicarious liability, shall be asserted if his/her employee negligently causes the death of a patient. Although this law has been enacted, Sections 80 and 88 of the Indian Penal Code also provide defenses.

By Section 80 (Accident while performing a legitimate act),

"nothing is an offence if it is done by accident or misfortune and without any criminal intent or knowledge while legally performing a lawful act using lawful methods and with due care and caution."

According to Section 88, a person cannot be charged with a crime if

she/he acts in good faith for the other's benefit, does not intend to harm even if there is a danger, and the patient has provided express or implied consent.

Consumer Protection Act:

The Supreme Court ruled in Indian Medical Association v. VP Shantha in 1995 that the medical profession is now constituted a "service" under the Consumer Protection Act of 1986, which was established to safeguard consumers.

This regulated the relationship between consumers and medical professionals by allowing contractual patients to sue physicians for compensation if they were injured during treatment before "procedure-free" consumer protection courts. Free services are excluded from the services definition under Section 2(o) of the Consumer Protection Act of 1986. In this manner, the problem of medical malpractice persists.

Civil law:

Civil law's view on negligence is particularly crucial because it incorporates many issues in its own right. According to the courts, this concept is relevant under tort or civil law even if medical practitioners provide free services. On the other hand, it could be argued that tort law begins when the Consumer Protection Act expires.

In-State of Haryana v. Smt Santra, the Supreme Court of India ruled that every physician "must act with a reasonable degree of care and skill." In assessing the distinction between carelessness under civil and criminal law, the question of degree has always been essential.

In one case, it was also found that "for criminal accountability under Section 304A, the death must have been the direct result of

the accused's reckless and negligent action without the participation of another" to impose criminal liability. Mistakes have occurred, although medical malpractice is penalized by law. For instance, the level of adequate care is proportionate to the competence of an average physician. However, suppose a patient is paying higher fees relative to the doctor's specialization and has expertise in a certain field.

In that case, the court should base its conclusion on patient expectations rather than an average doctor's. This will lead to hasty judgements in which doctors are handed an advantage over their patients' suffering and sadness.

The standard of negligence that would need to be established in order to successfully prosecute a doctor is extremely high. Criminal liability for medical malpractice requires proof of "gross negligence" on the part of the attending physician.

Even with the consumer protection act in mind, it is unclear what kind of care patients can reasonably expect their doctors to provide. There are two schools of thought on this issue; one is based on the Bolam case, and the other on the idea that a doctor who is a specialist should exercise extreme caution while treating patients and may be sued for negligence if he did not.

Although it is over a century old, the Bolam concept is still widely used today. The Consumer Protection Act, on the other hand, is a two-edged sword that benefits both patients and doctors. In judicial rulings, guidelines or precedents are established for when a doctor may be found liable for negligence in a civil or criminal case.

The doctor or the staff could have been at fault in the event of negligence. Doctor and staff carelessness is a real danger here. Joint and several liability means that the hospital and the doctors will be

held responsible for any damages. What constitutes each party's share of any costs or losses is a matter of agreement between the two parties. Negligence determination must be based on expert opinion unless in circumstances of blatant disregard for established norms and the intentional implementation of actions widely regarded as reckless. Such a conclusion is highly subjective, which runs counter to the spirit of the law, which is to be unambiguous and precise. While recent rulings have been helpful, the courts still have a long way to go in providing clearer judgements for the benefit of the layman in this area.

As it is, the judgement gives medical professionals and judges a lot of freedom to use their own judgments, which can have unintended consequences. In order to better understand the rational man, the law on the issue needs to be transparent and certain.

Restitutio in integrum, which can be translated as "ensuring that the person seeking damages as a result of a wrong committed against him/her is in the position he/she would have been in if the wrong had not been committed," is the basis for determining compensation under common law.

This means that the victim should be compensated for any financial losses incurred due to the doctor's or hospital's negligence, as well as for any future medical expenses and any pain and suffering endured. Consequently, not just mathematical calculations but also other considerations must be taken into account.

Moreover, let's just consider these limiting factors. The person who obtains free services will be entitled to a small compensation, which may not be appropriate in other situations. But the dilemma courts face when deciding whether or not to award compensation in medical negligence cases is primarily attributable to the following

factors:

a) the law must protect the rights of patients, and
b) the law must also grant autonomy to a profession that is, by definition, an imperfect science.

Several pieces of legislation must be altered to eliminate this legal ambiguity, give a suitable remedy acceptable to all parties, and reach an amicable resolution.

The objective of this study is to analyse and evaluate the current state of medical negligence laws and how well they meet the needs of the modern medical community. The findings reveal how courts and quasi-courts have handled the cases they have heard and how their replies have been used to establish precedents for future cases. Physicians have traditionally been regarded as gods on earth when it comes to preserving and extending a person's quality of life. This has persisted to the present day. Doctors and nurses have been accused of medical carelessness and omission for as long as this profession has existed. This research aims to explore the nation's legislative and legal framework for medical negligence and to provide suggestions for future improvement.

It is necessary for the physicians to administer treatment to the patients with their complete dedication. It would appear from reading the various newspapers that there are a great number of instances of doctors acting negligently in their practices. It is the binding obligation of the doctor to perform procedures and provide treatment with due care towards patients, and the doctor must be fully informed of the latest standard medical practice in order to fulfil this duty.

At the time of the operation, the surgeon should make certain that any swabs, instruments, or other objects that were previously

inserted have been removed. Unless it is absolutely necessary, he is not permitted to send the patients to be evaluated by other medical professionals or have clinical tests performed on them. For this reason, it is recommended that medical professionals use "the utmost care" when dealing with patients, both when administering treatment and when performing surgical procedures, in order to preserve the patients' lives.

Current laws are insufficient to address the causes that lead to medical negligence. According to Moni vs. State of Kerala[112] , "in the instance of a medical practitioner, negligence is the failure to act in accordance with the criterion of reasonableness." There may be one or more completely acceptable norms, and if someone complies with one of them, he is not negligent." Consequently, there are three components of negligence:

- a legal obligation on part of the party complained of to exercise reasonable care towards the party complaining of the formers conduct within the scope of his duty;
- a breach of the said application; and
- Consequential damage as a result of the breach of the said obligation.

Regarding the calculation or quantum of compensation in medical negligence, it is true that courts continue to rely on the formula of the perfect mathematical meaning for the calculation of compensation is a given, but that formula may not be valid in the scenario of medical negligence. In contrast, as previously said, a physician's medical specialization enhances the expectations of that patient, who in turn raises their own expectations of the doctors in a similar way.

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[112] Moni vs. State of Kerala, SA.No.832 of 2000(G).

5.2 Suggestions

In the lack of comprehensive and explicit legislation, the legal principles that have been established by the English Courts over the course of several decades continue to serve as guiding principles for the courts. In this day and age of rapid technological advancement, at a time when the state of medical science is at its pinnacle, the manner in which medical cases are decided is archaic and unscientific. This behavior is harmful, not just to doctors but also to their patients.

1. As a result, there is an urgent need for particular law that can define medical negligence, establish the obligation of medical practitioners in cases of carelessness, and also determine all of the elements associated with medical negligence.
2. In many nations and in many different regions of the world, the Alternative Dispute Resolution procedures, such as mediation and arbitration, have proven to be an effective approach in resolving the medical lawsuits that have been filed. In India, alternate methods of resolving consumer issues, particularly medical problems, were utilised only infrequently. These days, the courts are increasingly leaning toward mediation and other forms of alternative dispute resolution procedures as a means to settle legal disagreements. It has come to everyone's attention that in order to offer rapid justice in situations where it is known that only a few cases are necessary to be handled with sensitivity, there is an absolute requirement to participate in the mediation process.
3. Despite the fact that the legal and judicial advancements made in reference to the many alternatives to the procedure of litigation are up to the mark, the nature of the adjudication

system in India has been fundamentally altered as a result. However, the alternative dispute resolution mechanism is not utilised to its full potential, and hence, additional utilisation of this mechanism is required to resolve the conflicts about medical negligence.

4. The idea of carelessness can be comprehended only when there is a clarity about the role of doctor, supporting staff and as a whole. In various circumstances, there is an issue of overlapping obligations and then it becomes hard to draw a line between the job of A and B. In any instance, the doctor is under a responsibility and is personally liable for the acts conducted by him. For the assisting personnel, it is the duty of the hospital as well as the person himself. Each have joint as well as several liability. Thus, it is essential to have a clear-cut duties put down for distinct personnel. But, in practice that's not so straightforward. It cannot be done correctly. The decision is to try doing it in an extremely inadequate fashion or not doing it at all.
5. A lot of problem emerges when a medical professional tries to treat a patient who needs services of a specialized or a super specialized professional. On the other side, there may be problems even in circumstance when the medical professional could have treated a patient, but, forms a view that he cannot do anything and the patient must be referred to a specialist. In such circumstances, time may be a vital element, by the time the patient is taken to a specialized professional, it might be too late. In the both above-mentioned instances, it is to be seen that the medical practitioners have a very crucial function to play in the care of a patient. The general practitioner is not expected to

be an expert in every field, but he should be able to help the patient to the maximum extent possible. Depending on the patient's health, the availability of the nearest specialist, and the time of day, he will need to use his best judgement to choose where and when the patient will receive treatment.

Therefore, the initial physician a patient sees is crucial. No universally applicable rule exists; rather, a doctor should use his or her clinical judgement, informed by the common sense of a trained medical expert rather than that of an uninformed layperson, to make a determination based on the specifics of each case.

6. Some doctors' tendency to experiment on their patients is a common issue. They may have been in practice for quite some time, and as a result, they have accumulated a wealth of knowledge and experience that they would want to use to justify departing from accepted medical practice. Nothing much is wrong here. A difficulty arises, however, when the experimentation goes beyond what is essential. It's not nice to take unnecessary chances for the sake of adventure. A transparent relationship should be maintained between both of them.
7. Things that have been mapped out or are well-established by specialists should have clear rules, techniques, processes, and protocol developed. These standards aid others in providing care to patients in a consistent and reliable manner. The presumptions made throughout the course of such treatment also need to be recorded. The practicing physician is not required to take it at face value. Expert judgement, in this case that of a doctor, must be used.

If common sense isn't used, that's considered negligent. Here's a simple example that even a layman may understand. A standard operating procedure addresses the topic of how to manage a disease that is common in extremely cold climates. If a patient has just travelled from a very cold climate to a hot climate, the doctor must consider the heat of the location where treatment will be administered before proceeding with the procedure. Naturally, the patient cannot be asked to wrap himself in blankets and consume large quantities of warm liquids, as any layperson would see as inappropriate. An expert's common sense should complement the common sense of a layperson. As a result, the recommendations point you in a specific direction and tell you what you should be doing. The guidelines should never be seen as an end in and of themselves. Documentary evidence in the form of case sheets is essential in a court of law and must be prepared with great care. Doctors have an ethical obligation to provide care for their patients, but they must also keep careful records of the care they provide. After many weeks, months, or even years, the case reaches a court, and at that point the only evidence the judge has to go on is the case file submitted by the parties. Witness testimony from doctors and other staff members is helpful, but written records will always take precedence unless they can be shown to be fabricated.

As part of an open and honest system, patients should be provided with their own copies of relevant medical records. A patient's trust in the hospital and the care they will receive would grow under these circumstances. The problem is that some medical professionals and facilities would rather keep

patients in the dark. The question "do you have faith in me?" is posed frequently. The doctor practically has total control over the patient's fate.

8. Electronic records are a significant step forward in reducing administrative burdens, as they can be quickly filed away and retrieved whenever necessary. In the meantime, several copies can be quickly produced. Since most of the contents need to be selected from a drop box, there is also very little room for human error. The problem of illegible doctor handwriting is easily fixed as well.
9. New legislation should be amended, considering the prior experiences of all stakeholders and the scientific and technological advances in medicine. Courts have established several doctrines in the absence of a clear legal framework; consequently, such doctrines should be given legal sanction, and a clear law should be enacted for medical negligence' in particular, defining the responsibility of doctors and ensuring that patients receive the bare minimum of fair treatment during trials.

   Then the establishment of regional tribunals. Civil court proceedings have been extraordinarily sluggish, and judges have been unable to resolve matters on time. These cases involving medical negligence require special and immediate attention because, in many cases, these treatments are expensive, and many people cannot afford the further care that may be required as a result of the negligence unless they receive compensation. Consequently, such matters should be heard by tribunals that have been specifically established for this function.

10. A recommendation may also be made regarding the membership of the panel of judges, with a majority of non-medical judges and a minority of medical professionals, so that the essential medical rationale can be applied to negligence cases. In this circumstance, it is conceivable to replace a system of expert opinion for the panel's makeup.
11. Then there should be a differentiation between conventional and serious medical negligence compensation. Depending on the doctor's experience, competence, and expectations, a reasonable standard of care should be established based on the unwavering expectations of patients receiving treatment. The Supreme Court of India has already determined that no amount may be regarded as reasonable and appropriate in an absolute sense.
12. The courts must be willing to evaluate each case on its own merits, regardless of the circumstances and context, so that their decisions are just, equitable, rational, and prudent in the long term. The suspension of a medical practitioner for a few months or years is insufficient in cases of great carelessness that leave a patient in a deplorable condition for the remainder of his or her life. The Medical Council of India should promptly and indefinitely cancel their licence. As previously indicated, the patient, in this case, does not qualify for a fair verdict. This should be in addition to any compensation the patient may be entitled to due to the doctor's gross negligence.
13. Physicians make blunders even though humans are prone to error, especially when dealing with the most complex organism in the world, humans. However, it should not be taken lightly because it can kill them. Therefore, physicians should be

punished to encourage them to be more honest in their work and refrain from indulging in malpractice. These cases should be separated from those listed previously, and a law should be passed to explicitly address them.

14. There should be frequent conduct of awareness programmes for medical professionals and as well as consumers. So that they are aware for their rights and duties towards each other. In the recent times, the medical fraternity has gone through a lot work pressure, that doesn't mean they can be exempted from their responsibilities. But at the same time the aggrieved persons shouldn't take law at their own hands and peacefully take the action lawfully. In short, the violence against doctors must be avoided.

So, the time has come for the Supreme Court to make clear rules about how to handle cases of medical negligence. Also, the Supreme court must come down heavily on frivolous complaints, they should set a precedence in such a way that only genuine cases must reach the court and the so called "compensation scheme" should be eradicated. The Supreme Court might find the following ideas helpful:

- A committee made up of people from the Supreme Court and the Medical Council of India (MCI) should be set up to make sure that all of the laws and guidelines from the MCI fit together.
- This committee should also come up with clear rules for deciding medical negligence cases.
- Specialized courts can be set up to decide cases of medical negligence, or the ethics committee of the National Medical Commission can be led by a Supreme Court

judge who is still working or who has retired.

- Section 1.2.3 of the MCI Act, which says that doctors need 30 hours of continuing education and a written test every five years, must be strictly followed, and a doctor's licence should only be renewed if they pass the test.
- In cases of medical negligence, strict enforcement of Sections 191 and 192 of the Indian Penal Code of 1860.

Bibliography

Books

- Ratan Lal Dhiraj Lal, the Law of Torts, 441 (2nd Edition. 2005).
- M. N. Shukla, The Law of Torts, 2016 (13th Edition. 1990).
- SS Rana & Co, Medical Negligence India, lexology.
- Tapas Kumar Koley, Medical Negligence and the Law in India (Oxford University Press, NewDelhi 1st edn. 2010).
- Jonathan Herring, Medical Law and Ethics, (Oxford University Press, UK 4th edn. 2012).
- Henry SE, A history of medicine, Vol II, Early Greek, Hindu and Persian medicine, Oxford University Press, 142-143 (1987).
- Rangarajan LN, Kautilya's Arthashastra, New Delhi, Penguin Books, 1st ed. 130-131.
- Singh J, Medical Negligence and Compensation, Bharat Law Publication,3rd edition.
- Bindumol WC, Medical Law, Allahabad Law Agency,2nd edition 2012.
- Anoop K. Kausal, "Medical Negligence and Legal remedies" Second edition New Delhi Universal Law Publishing Co.Pvt. Ltd 1998.
- Bernard Knight, "Legal Aspects of Medical Practice" Fourth Edition New York Churchill Livingstone, 1987.
- Brian Hurwitz, "Clinical Guidelines and the Law- Negligence, Discretion and Judgment" Oxon Radclife Medical Press Ltd, 1998.
- British Medical Association, "The Medical Profession and Human Rights" London Zed Books Ltd, First Published, 2001.
- Charles J. Lewis, "MEDICAL NEGLIGENCE – A Practical

Guide" England Tolly Publishing Company Limited, Third edition, 1995.

- D. J. Gee and J. K. Mason, "The Courts and the Doctor" United States Oxford University Press, 1990.
- Das & Sodhi, "Negligence Medical & Non-Medical Along with Legal Remedies" India Sodhi Publications 1999.

Articles

- Carter, L. Williams, Evidence-Based Medicine in the Law Beyond Clinical Practice Guidelines: What Effect Will EBM Have on the Standard of Care? 61 WASH & LEE L. REV. 479, (2004).
- Clare, Dyer, UK to Limit Aid for Medical Negligence Cases to Specialist Lawyers, British Medical Journal, Vol. 317, No. 7169 (Nov. 14, 1998).
- David, Annoussamy, Medical Profession and the Consumer Protection Act, Journal of the Indian Law Institute, Vol. 41 No.¾ 1999.
- K. K. S. R. Murthy, Medical Negligence and the law, Indian Journal of medical ethics, Vol. -3, No-4 (2007) 116.
- K.K. Agarwal, Criminal Appellate Jurisdiction, Medical Negligence and Supreme Court Verdict 1-2.
- Juhi Yadav., Mukesh Yadav and Sharad Chand, Medical Negligence and Its Determinants, Int J Recent Sci Res, (2020).
- Nancy E. Epstein), Legal and evidenced-based definitions of standard of care: Implications for code of ethics of professional medical societies, 9 Surg Neurol Int, 255, 2018.
- Mudur G., 'Indian Supreme Court ruling makes the arrest of doctors harder, bmj, 331(7514) 422, 2005.

- Samanta A, Samanta J, Legal standard of care: a shift from the traditional Bolam test, 3(5) Clin Med, 443, 2003.
- Kumar L, Bastia B.K., Medical negligence- Meaning and Scope in India, 51(181) J Nepal Med Assoc, 49-52, 2005.
- Gupta RL, Consent to treatment. In: The Medico-legal Aspects of Surgery, 16-30, 1st Ed. New Delhi; Jaypee Brothers: 1999.
- B. Sonny Bal, An Introduction to Medical Malpractice in the United States, 467(2) clin orthop relat res, 339-347 (2009).
- S. K. Palo, Consumer Rights relating to Medical Negligence, 2006.
- Vikas Bajpai, "The Challenges Confronting Public Hospitals in India, Their Origins, and Possible Solutions", Advances in Public Health, vol. 2014, 27 pages, 2014.
- Karunakaran Mathiharan, Supreme Court on Medical Negligence, Vol. 41 No. 2 Economic and political weekly, pp. 111-115 (Jan. 14-20, 2006).
- Amit Agrawal, Medical negligence: Indian legal perspective, 1 Ann Indian Acad Neurol, S9–S14 (2016).
- Puneet Yadav & Prashant R. Dahat, Medical negligence and criminal law: An Indian Perspective, ssrn (2010).
- CARBALLIDO CORIA, Laura. The Mudaliar Committee (1962): Assessing the beginnings. Estud. Asia Áfr, vol.55, n.3, pp.571-598. Epub 13-Nov-2020. ISSN 2448-654X.
- SEN, GITA. "Universal Health Coverage in India: A Long and Winding Road." 47, no. 8 (2012): 45-52. Economic and Political Weekly.
- Priya Adlakha, Nihit Nagpal, India: Medical Negligence India, Monday, 29 April 2021.
- Smreeti Prakash, A Comparative Analysis of various Indian

legal system regarding medical negligence, legal services India.

- Sylvine, Medical Negligence and Law in India– An Analysis, ipleaders, July18,2016.
- Puneet Yadav & Prashant R. Dahat, Medical n negligence and criminal law: An Indian Perspective, ssrn (2010).
- International comparison often regulatory medical systems.
- Healthcare system in India, internet student insurance.
- Konstantina Grosios, Overview of healthcare in the UK, 1(4) epma, (2010).
- UK National Health Service law, socialist health association.
- Charles Foster, Medical law – A very short introduction, oxford university press (2013).
- George J. Annas, Health law, brittanica.
- Abortion laws in the US – 10 things you need to know, Amnesty International (11 June 2019).
- Meghana S. Chandra, Progress in Medicine: Compensation and medical negligence in India: Does the system need a quick fix or an overhaul? NCBI.
- Richa Singh Faculty of Law, Aligarh Muslim University: Medical Negligence in India.
- Priya Adlakha and Nihit Nagpal: Medical Negligence India.
- Amit Agrawal: Medical Negligence: Indian legal perspective.
- Daya Tiwari: Medical Negligence in India: A critical study of medical negligence in India.
- Shivani Upadhyay: Medical Negligence and Malpractice: A threat to Humanity.
- Dr. Mukesh Yadav, "Recent Scenario of Criminal Negligence in India, Doctor, Community & Apex Court".
- Prof. (Dr.) Subhash Chandra Gupta and Shikha Dimri,

"Remedies for the Victims of Medical Negligence: Responsibilities in Criminal Law".

Journals

- Smreeti Prakash, 'A Comparative Analysis of various Indian legal system regarding medical negligence.' International Journal of Law Management & Humanities, 2020.
- Ravi Duggal, Bhore Committee (1946) and its relevance today, 58(4): 395-406, The Indian Journal of Pediatrics, 1991.
- Samuels. Alec, 'The Doctor and the Law', Vol 49 (4), The Medico-Legal Journal, p 139 (1981).
- Singh G., Medical Negligence and the widening ambit of the consumer protection Act, 1986 – A comment on spring Meadows Hospital v. Harjol Ahluwalia, 42(1), Journal of the Indian Law Institute, 78-85 (2000).
- Annoussamy, D, Medical profession and the Consumer Protection Act, 41(3/4), Journal of the Indian Law Institute, 460-466 (1999).
- Jyoti Dogra Sood, Responsibility of Doctors for Rash or Negligent Act, Vol. 46, No. 4, Journal of the Indian Law Institute ,588 - 592 (2004).
- Upinder Singh, Nayanjot Lahiri, Ancient India: New Research, Oxford University Press, India 2010.
- Talha Abdul Rahman, Medical Negligence and Doctor's Liability, 2(2) Indian Journal of Medical Ethics,60-61(2005).
- M.Choksi,Health systems in India, 36(3) journal of perinatology,9-12(2016).
- Kate Diesfeld, Introduction to Medical Law, 27(3) journal of

medical ethics, available at https://jme.bmj.com/content/27/3/209.1 (last visited on August 10th,2021).

Websites

- http://www.jstor.org
- https://www.mondaq.com
- https://www.legalserviceindia.com
- https://blog.ipleaders
- https://www.medindia.net/indianhealthact/acts.asp
- https://www.rand.org
- https://www.internationalstudentinsurance.com
- https://www.ncbi.nlm.nih.gov/pmc/articles
- https://www.sochealth.co.uk/national-health-service/health-law
- https://www.britannica.com
- https://www.amnesty.org
- https://www.nimh.nih.gov
- http://supremecourtofindiD.nic.in/supremecourt/
- http://www.supremecourtcases.com
- https://heinonline.org
- https://www.nhp.gov.in/miscellaneous/committees-and-commissions
- https://indiankanoon.org
- www.lawotopus.com
- Docs.manupatra.in
- https://www.nih.gov/about-nih/what-we-do/nih-almanac/national-library-medicine-nlm
- www.iafmonline.in

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