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Legal Provisions Relating to Medical Negligence in India with Special Reference to Consumer Protection Act 1986

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ABSTRACT

Medical negligence has now become one of India's most serious problems. Even being one of the noblest professions, does not save the medical profession from neglect which results in patient death, complete or partial limb impairment, or another form of agony. This article covers the meaning of negligence as mentioned by the landmark judgements, the essentials of medical negligence, and the remedies available to the plaintiffs. It also analyses the Bolam test with the help of case laws, and it's prevalence in India. The compensation claims in Medical Negligence cases are of the large amount, which may act as an attraction for unnecessary claims adding to the pressure on the already overloaded judiciary system of our country, Moreover, the increase in such claims with false or unnecessary cases can also hinder with the performance of other medical practitioners forcing them to operate only on 'by the book' approach in cases where their own methods could have saved the life of the patient.

Keywords: *Medical, Negligence, Consumer.*

I. INTRODUCTION

For a patient seeking treatment from a medical practitioner, they are like saviors and that they can commit no mistakes. However, every human being, doctor or not can commit mistakes or be negligent. However, being a professional with such important job, a doctor cannot be expected to be casually negligent. They always have to perform with competence and possess their skills and knowledge as professed by them to hold the professional title.

This article covers the Medical Negligence that occurs in the field of medicine, the essentials to constitute an act as negligent. Every doctor and medical practitioner have a duty of care towards the patient that they cannot deny or breach as it could result in disastrous results.

There are various criminal and civil remedies available for patients that have suffered damages owing to the medical negligence of the medical practitioners and doctors. The matters are taken

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to court however, Judges, not being well versed in science and the medical field, end up having to rely on the opinions of specialists to determine whether a certain act is negligent.

The autonomy of a doctor to make decisions and the rights of a patient to be treated equitably must be carefully balanced by the legal system. The complexity of the human body, the imprecision of medical science, the innate subjectivity of the process, the real possibility of judgmental error, and the significance of the autonomy of the medical professional are all factors that Indian courts frequently expressly acknowledge and grant doctors enough latitude for. As per a report from the Indian Medical Times, " Out of the 52 lakh medical injuries reported annually in India, 98,000 result from medical malpractice-related deaths. The fact that 10 individuals in the country die as a result of medical malpractice every minute and more than 11 more are injured is a significant cause for concern for the entire country."[3]

With my research I would like to cover the consequences of breach of duty of care, the remedies available to the plaintiffs. I would also like to bring attention to issue of large compensations attracting unnecessary claims, if these claims affect the performance of doctor by affecting their best judgement. I will also cover the role of consumer protection act in providing remedy in cases of medical negligence. Also, I would like to analyse the use of the Bolam test that acts as a determinant of liability in various cases.

II. NEGLIGENCE

Negligence can be referred to as the non-performance of an act which one is under a duty to perform and that causes risk, danger and harm.[4] It can be defined as the absence of care that the defendant was expected to use.[5]

Professionals like lawyers, doctors, architects are considered to be the persons who possess some kind of special skill and thus the patients of doctors believing that they possess the required skill, agree to be treated by the doctor.

In the *Jacob Mathew v. State of Punjab*[6] case, the Supreme court held:

"Any individual entering into such a profession that requires a particular knowledge and skill set to be recognized as professional automatically makes assures anyone dealing with them that they possess that particular knowledge and skill set and that they would act with a good deal of care and caution. However, being a professional does not mean that they assure the ones dealing

[3] https://www.indiamedicaltimes.com/2016/05/25/98000-people-lose-their-lives-because-of-medical-negligence/
[4] B.N Mani Tripathi, Jurisprudence the Legal Theory 357 (19th ed.,2018)
[5] *Gill v. General Iron Screw Colliery Co*. (1886) L.R. 1 C.P 600
[6] *Jacob Mathew v. State of Punjab*, A.I.R 2005 S.C. 3180

with them of the result. The only assurance that can be given or implied to be given is that the professional would exercise their skill with reasonable competence. The professional may be held liable for negligence on any of the following two circumstances- Either that the professional did not have the knowledge and skill set that is a requisite for the profession or, that the professional did not exercise with the reasonable amount of competence in that particular case, the skill which he actually possessed. The standard of judging as to whether or not the individual has been negligent can be judged on the basis of how any ordinary person who is competent and possesses the requisite skills would act in that situation."

III. MEDICAL NEGLIGENCE

Medical negligence is the failure of a doctor to use the competence and diligence that are expected of them as a medical practitioner, which causes injury to the patient. Deviation from accepted practise, however, does not always indicate negligence.

(A) What doesn't constitute medical negligence

In some situations where a patient has been injured, the doctor may not be liable. He could successfully argue that he did not breach the duty of care. There are two different sorts of judgement errors:

- A mistake in judgement - In these situations, it has been acknowledged that it does not constitute a duty violation. We cannot hold a doctor accountable for medical malpractice just because his judgement turned out to be incorrect.
- The term "mistake of judgement due to negligence" refers to the failure to take all relevant variables into account before making a choice. This constitutes a duty violation.

(B) Types of medical negligence

Medical negligence can take a variety of forms, and no two instances are ever the same. It should not come as a shock that a doctor's even the slightest error could have a profound (or even fatal) impact on one of his or her patients' lives given the complexity of the practise of medicine.

a) Misdiagnosis

- Diagnosis is the initial step after admission to a hospital, medical clinic, emergency department, dental office, or any other type of professional medical facility. A correct diagnosis is essential to providing medical care to any patient, however mistakes in diagnosis can occasionally happen when symptoms are not obvious or informative.
- For Example, failure to diagnose Cancer, misdiagnosis of Stroke, misdiagnosis of

Diabetes, failure to recognize Meningitis, not diagnosing Appendicitis, misdiagnosis of Heart Attack risk, failing to diagnose Pulmonary Embolism.

- Making a mistake to diagnose may attract legal action against the Doctor or Medical Practitioner.

b) Delayed Diagnosis

- If another doctor would have plausibly made the same diagnosis quickly, a delayed diagnosis may constitute medical negligence. If the illness or injury is allowed to worsen rather than being treated, a delay in diagnosis could do the patient unnecessary harm.
- A doctor's workload frequently makes it difficult for him or her to provide effective medical care, which delays the diagnosis of a patient. In these situations, it's even possible to hold the hospital or clinic accountable for any losses brought on by the delay in diagnosis and treatment.
- For Example, Untimely Coronary Artery Disease Diagnosis, Delay in Heart Attack Diagnosis, Stroke diagnosis and treatment delays, Prolonged Cancer Failure to Diagnose Early Identify the appendicitis, Delay in Internal Trauma Injury Diagnosis.

c) Surgical Error

- Medical malpractice during a surgical procedure frequently leads to more surgeries, infection and sepsis, organ damage, weakened immune systems, and even death. Even the smallest errors during surgical operations can have a significant negative impact on the patient.
- The improper site for surgery, inadvertent internal organ laceration, unchecked blood loss, organ perforation, or leaving a foreign item in the patient's body are only a few examples of surgical blunders.

d) Unintentional Laceration

- Cutting, lacerating, or perforating an artery, organ, or vessel is one of the most serious dangers associated with any surgical treatment. A surgeon has a number of opportunities during an operation to make a potentially fatal error.
- Bile can flow into the bodily cavity if a bowel or artery is perforated but not immediately identified. This can eventually result in a serious infection and sepsis, which can result in septic shock and death.
- Organ damage or uncontrolled bleeding might result from other kinds of surgical

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carelessness. In the worst situations, organ failure or internal bleeding might result in death.

e) Surgery at Wrong Site

- Performing surgery on the wrong organ or external appendage is a sort of surgical error that typically results from a breakdown in communication or a discrepancy in the hospital's records.
- In some of the worst instances of wrong site procedures, individuals needing an arm or leg amputated will have the incorrect limb removed, losing both appendages rather than simply one.

f) Foreign Object

- After a surgical procedure, a patient may occasionally start exhibiting signs of infection and sepsis days or weeks later. A foreign object that the surgeon unintentionally left inside the patient's body could be one of the possible explanations.
- Most frequently, gauze or similar soft medical bandage or absorbent material left within the body unintentionally might result in an infection, sepsis, and/or shock.
- This kind of careless medical care may go undetected for weeks, months, or even years until its repercussions start to show up and typically necessitate more surgery. In the worst situations, a patient could get a deadly infection and eventually pass away from septic shock.

g) Unnecessary Surgery

- When a patient's symptoms are misdiagnosed or a medical choice is made without enough evaluation of alternative possibilities or hazards, unnecessary surgery frequently results.
- Alternatively, because it is quicker and easier than other options, surgery is sometimes preferred to more traditional treatments. The most typical needless surgical treatments include Pacemaker Implant, Coronary Bypass Surgery, Cesarean Section, Hysterectomy.
- Even though surgical procedures are often required and can prove to be a saviour for the patients, the patient's situation frequently does not call for such invasive and dramatic procedures.
- An analysis by the Albert Einstein Medical Center found that much more conservative

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treatment might be used to cure patients' irregular heartbeats in roughly 20% of all pacemaker procedures.

- There are always significant dangers involved with any surgical operation, even though proposing an unneeded surgery is not in and of itself a form of medical misconduct. If a surgical operation could have prevented an injury, the choice to order it could be viewed as negligent, and the doctor could be held accountable for any harms brought on by the surgical process.

h) Errors in Anesthesia

- A professional, an anesthesiologist, is needed to administer and supervise anaesthesia because it is an inherently dangerous component of any major medical procedure.
- The optimal drug combinations will be chosen after careful consideration of the patient's medical history, past medical conditions, current medications, any allergies, and the length of the procedure, which must be done before any procedure requiring anaesthesia.
- During the pre-operative medical examination or during the actual procedure, anaesthesia malpractice can occur.

i) Negligence in Anesthesia Performance

- The anesthesiologist may provide medications to which the patient is allergic, leading to harm or death, if he or she neglects to thoroughly study all the patient's medical records.
- Alternately, there may be an anaesthetic contraindication, which means that a particular anaesthetic drug may provide an elevated risk of complication and should not be utilised due to prior medications administered to the patient. The patient could die if this type of anaesthetic negligence is utilised.

j) Failing to Monitor Anesthetic Performance

- If the anesthesiologist fails to monitor the patient and respond promptly in response to changes in vital signs, carelessness may still occur even if the preoperative procedure is done appropriately.
- The anesthesiologist might even experience logistical issues, including a shortage of adequate oxygen. The patient could die as a result of medical malpractice if these conditions are not anticipated throughout the procedure.

(C) Essentials of medical negligence

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In any kind of negligence, the essentials required for an act to be considered as 'Negligence' are:

i. The duty of care owed by the defendant to the plaintiff

ii. Breach of the duty owed by the defendant

iii. Compensation for damages incurred by the plaintiff as a result of breach of duty

Similarly in the case of Medical Negligence, the essentials are a duty of care owed to the patient, a breach of that duty and damages suffered by the patient as a result of that breach of duty.

a. Duty in Medical Profession

- An individual engaged in a profession is required to have a particular skill set and knowledge needed for the profession and is expected to undertake reasonable amount of care while exercising that skill.[7] An anesthesiologist or a doctor shall be judged on the basis of an average practitioner of the category they belong to.[8]
- In the case of *Dr. N. Ummar v. K.M. Hameed,*[9]the Kerala High Court held that "When an individual possessing appropriate qualifications in a field, is ready to give medical advice as an expert, he assumes that he possesses the requisite knowledge for that particular medical treatment and advice. Such individual has a duty to diagnose the illness and decide upon what treatment is to be given and also prescribe proper medicines."

b. Duty of Care

- While attending to a patient, a medical practitioner owes the following to that patient[10]:
    i. A duty of care while deciding whether or not to take the case
    ii. A duty of care while deciding which course of treatment is to be given
    iii. A duty of care while administering the treatment

A breach in any of the abovementioned duties gives the patient the right to file a suit for negligence.

c. Burden Of Proof

In most cases, the claimant bears the burden of proving negligence. A claim of negligence

[7] Dr. R.K. Bangia, Law of Torts 270 (24th ed., 2018)
[8] *Dr. P. Narsimha Rao v. G. Jayaprakasu,* A.I.R 1989 A.P. 207, at 215
[9] *Dr. N. Ummar v. K.M. Hameed,* A.I.R. 2014 (NOC) 49 (Ker.)
[10] *Shyam Sunder v. State of Rajasthan,* A.I.R 1974 S.C. 890; *Scott v. London & St. Katherine Docks,* (1865) 3 H & C 596

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against any doctor must meet a higher standard of proof under the law. In order to succeed in medical negligence proceedings, the plaintiff must first prove a claim against the practitioner.

In the *Calcutta Medical Research Institute vs Bimalesh Chatterjee,*[11] it was held that The burden of producing evidence regarding negligence and shortcoming in service was explicitly on the complainant.

d. Standard Of Care

A standard of care outlines the proper course of treatment and dosage in accordance with the requirements that a doctor should keep in mind when treating his patients. Neither the highest nor the lowest level of care should be provided. In this case, the title refers to the standard of care that a regular health care provider with the same education and experience would provide in the same neighborhood under similar conditions. If the answer to this crucial question is "no" and you were injured as a result of the negligent care, you may be able to bring a medical malpractice claim. The Supreme Court ruled in the case of "Dr. Laxman Balkrishna Joshi vs. Dr. Trimbak Bapu Godbole"[12] and Others that a doctor has specific obligations and that "any violation of those obligations might subject him to legal liability for medical malpractice." A acceptable standard of care is expected of doctors, one that has been established for their profession.

IV. MEDICAL NEGLIGENCE UNDER CRIMINAL LAW

When it is proven that a negligent action was conducted while involving Mens Rea, he will be prosecuted under criminal law. Now, owing to the Code of Criminal Procedure, the patient may also be entitled to compensation. The intent to act in such a negligent manner must be proven in order for a doctor to be held accountable under criminal law. In addition, the Indian penal code provides protection to doctors who operate in good faith.

Under Section 304A of IPC, Doctors can be prosecuted for crimes in which recklessness or negligence is a key component, but they must be protected from frivolous or unjust charges. In the case of *Sukaroo Kobiraj,*[13] the defendant had cut the piles with an ordinary knife instead of a surgical knife or a scalpel which led to the death of patient due to bleeding out.

In the *Jugankhan case,*[14] the defendant, without studying and researching the effects of the herbs, administered them for the treatment which led to the death of the patient due to poisoning

[11] *Calcutta Medical Research Institute vs Bimalesh Chatterjee,* CPJ 13 (NC) 1999
[12] *Dr. Laxman Balkrishna Joshi vs. Dr. Trimbak Bapu Godbole* 1969 AIR 128
[13] *Surkaroo Kobiraj* (1887) 14 Cal 566
[14] *Jugankhan* A.I.R. 1965 S.C. 831

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caused by the herbals. In both these cases, the defendant had been reckless and negligent in their duty while dealing with the patient and hence were held liable.

Sections 312 to 316 (causing abortion), Sections 319 to 322 (causing grievous hurt), Sections 336 to 339 (act endangering the life or personal safety of others), Section 345 (wrongful imprisonment) of the Indian Penal Code directly and indirectly deal with cases relating to criminal offense of medical negligence.[15]

V. CONSUMER PROTECTION ACT AND MEDICAL NEGLIGENCE

With the case of *Indian Medical Association vs. V.P. Santha,*[16] "the medical profession was brought under Section Section 2(1) (o) of CPA, 1986 and the following categories of doctors/ hospitals were included under this section:

- If they do not provide a free service, all doctors and dentists who have their own clinic.
- Private hospitals that charge fees to all patients.
- All hospitals that treat paying and non-paying patients as well as all patients in the paying and non-paying categories.
- Doctors/dentists and hospitals who are compensated by an insurance company for treating a customer or employing an employee.
- The only exceptions are hospitals and their doctors and dentists who provide free services to all patients.

This ruling recognizes that the CPA's summary procedure would only be appropriate in the most extreme situations of negligence, and that in complaints involving complex problems needing expert testimony, the complainant may be directed to the civil courts.

According to this ruling, a deficit in service simply signifies negligence in a medical negligence lawsuit, and it would be considered unjustifiable. According to this decision, a deficit in service in a medical negligence case indicates purely carelessness, and it would be evaluated under CPA by following the same test as in a civil court action for damages for negligence.

This judgement defined the relationship between patients and doctors by allowing contractual patients to sue doctors for compensation in "procedure-free" consumer protection tribunals if

[15] Janane Magesh, Medical Negligence in India, Legal Service India http://www.legalserviceindia.com/legal/article-3640-medical-negligence-in-india-laws-and-remedy.html#:~:text=Any%20person%20incurred%20damages%20due,the%20victim%20of%20such%20misconduct.

[16] *Indian Medical Association vs. V.P. Santha* (1995) 6 S.C.C. 651

they were injured during treatment.

Compensation: The CPA is unable to assist patients who used a doctor's services without payment or who just paid a little registration fee.

However, if a patient was unable to pay due to financial difficulties or other reasons, they would still be covered by the Act, be regarded as consumers, and be eligible to file a claim under the Consumer Protection Act.

VI. EXAMINATION OF WITNESS

In the case of Dr. J.J. Merchant and Ors. vs. Shreenath Chaturvedi[17], the Supreme Court determined that simply mentioning that the Commission or the Forum must conduct a summary trial would hardly be sufficient justification for directing the consumer to file a civil lawsuit. Assuming that because a summary trial is available, justice cannot be served when certain factual issues need to be resolved or resolved would likewise be entirely incorrect. Enough protections are offered under the Act. The Commission is also given the authority to exercise the Civil Court's discovery and production of any document, receipt of evidence on affidavit, and issuance of any commission for the examination of any witness, as noted by the Supreme Court in its observation about S.13(4) of the Act. The complaint and the defence version, as well as any other documents on which the parties have relied, must always be produced, at the Commission's request. Furthermore, the Commission is free to choose whether to conduct an appropriate expert examination, as noted by the Supreme Court. It may take some time to record evidence before a Commission in situations when it is deemed appropriate to question specialists.

Affidavits may be used as evidence when a complaint is being tried under the Act [under section 13(4)(iii)]. Additionally, it gives these Forums the authority to issue any commission for any witness's deposition [under section 13(4)(v)]. It should be noted that Rule 4 in Order XVIII of the C.P.C. has been substituted, which, among other things, states that in every instance, the party calling the witness for evidence must submit copies of the affidavit on which the witness will be cross-examined. Additionally, it stipulates that either the Court or the commissioner that it appoints may question witnesses. The Commission has the authority to adhere to the process. Affidavits from specialists, including doctors, can be used as proof.

Following that, if the other side requests cross-examination and the Commission deems it appropriate, it can quickly develop a procedure allowing the party intending to cross-examine

[17] *Dr. J.J. Merchant and Ors. vs. Shreenath Chaturvedi* 2002 (4) ALL M.R 605 (S.C)

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to submit certain questions in writing, and those questions may also be answered by such experts, including doctors, on affidavits. There can be video conferences or questions posed by setting up a telephone conference in a situation when the stakes are very high and the party plans to cross-examine such doctors or experts. At the beginning, this expense should be covered by the person who claims the video conference. Additionally, the Commissioner assigned at the place of employment of such experts may conduct cross-examination at a predetermined period. In light of this, an interrogation may be prepared by the applicant instead of a cross examination of a witness who is unable to be present, as stated by the Supreme Court in Dr. J.J. Merchant and Ors.

(A) *Res Ipsa Loquitor*

The National Commission ruled that it was improper to perform an operation for glaucoma and cataract without first getting informed consent in the case of Dr. Shyam Kumar vs. Rameshbhai Harmanbhai Kachhiya[18]. As a result, the retina was weakened and eye sight was lost. This information cannot be withheld from a patient. The patient has the right to reimbursement because not even medical records were produced.

(B) Bolam Test

Bolam test is a test developed in the case of *Bolam v. Friern Hospital Management Committee*[19] which is used to determine the liability of the medical practitioner. The honourable court in the case observed that[20] - "In a situation involving the use of some kind of special skill or knowledge, to determine whether or not there was negligence, the test should be comparing the performance with what an ordinary skilled person possessing the requisite skills would do in that particular situation with due care and caution. It has been established by the law that they need not possess the highest standard of skill."

In the case of *Montgomery v Lanarkshire Health Board,*[21] a question was raised that whether the Bolam Test provided the correct results as to the doctor's duty to advice. The Bolam test was not applied to a doctor's duty to advise by the Supreme Court. The test was not whether a doctor followed a procedure that was deemed appropriate by a responsible group of medical practitioners, but rather what a specific patient would expect to know.

In India, Bolam test has been widely accepted.[22]

[18] Dr. Shyam Kumar vs. Rameshbhai Harmanbhai Kachhiya, I(2006)CPJ16(NC)
[19] (1957) 1 W.L.R. 582, 586
[20] *Ibid.*
[21] (2015) UKSC 11
[22] *Achutrao Haribhau Khodwa vs. State of Maharastra* (1996) 2 SCC 634

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VII. DEFENSE AVAILABLE TO MEDICAL PRACTITIONERS

It causes a great deal of emotional distress when a legal notice is received or a consumer case alleging a service deficiency is filed against a doctor because the reputation of medical professionals is built over years through pure hard work, expertise, and skill acquired by demanding training and investment over the years. However, hospitals and doctors must remember that the medical profession is ultimately deemed to be encompassed by the Supreme Court's decision in a number of cases, and that there is no simple technical escape. They must handle the legal obligations and deal with the circumstance head-on.

Don't forget how crucial it is to respond to a legal notice in a detailed manner. In the event that a consumer complaint is lodged against the physician and/or hospital, a well-written response will serve as the foundation for a written statement that will be submitted. Quite frequently, a well-prepared notice reply emphasises the point that the hospital and doctor will resist pressure and will fight speculative cases fiercely. According to our personal experience, a well-written notice reply frequently produces the desired outcome. A hospital or doctor must follow the legal criteria and present a strong defence at the hearing in the event that an unjustified, fraudulent, or speculative consumer lawsuit is filed alleging a deficiency in the service they provided. The case history, clinical data, investigation report, affidavit of dealing doctors, etc., will be of the utmost importance.

Expert testimony from a licenced and impartial medical professional requires special consideration. The complainant must show that the method and nature of the treatment were so inadequate that they fell below the standard anticipated from average medical practitioners and not from a highly qualified individual.

A Consumer Forum must consider the location's qualifications, infrastructure, and amenities when reaching this determination. The defending physician or facility must inform the Consumer Forum of the standard of care, the patient's negligence in failing to seek treatment promptly or follow medical advice, among other things. It goes without saying that medical professionals need to keep good ties with their colleagues. The subject's supporting medical literature must be taken into consideration. Last but not least, pertinent case law will be useful. If a hospital or doctor finds themselves in a situation where it is highly likely that their actions fall into the category of medical negligence, such as res ipsa loquitur or negligence per se, such as when the wrong limb or organ was treated, operated on, amputated, infected blood, the qualification has been entered wrongly etc., such a case does not require any special evidence to prove and it is recommended that such a claim be compromised after taking appropriate steps.

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The doctor and/or hospital are also allowed to hire a lawyer to act as their representative in the case. There is no ignoring the fact that lengthy legal disputes harm a doctor's or hospital's reputation even if they ultimately prevail in the case. The protections against exaggerated and malicious allegations are a concern for the medical community. No one can dispute the existence of actual instances of medical negligence, but the problem that concerns the medical community is that, quite frequently, a doctor or a hospital suffers irreparable harm as a result of several speculative allegations.

VIII. VICARIOUS LIABILITY

The latin proverb "qui facit per alium facit per se," which means "he who acts via another acts in his or her own interest," serves as the foundation for the vicarious responsibility theory. The patient merely needs careful attention; if any member of the medical staff is careless in carrying out their assigned tasks, the hospital will be held accountable for the actions of even hired doctors for specific performance of particular operations. In the case of Aparna Dutt v. Apollo Hospital Enterprises Ltd.[23], this concept was established (Mad. HC).

As stated in Paschim Bengal Khet Mazdoor Samity and Ors. v. State of Bengal[24], hospitals have also been held accountable for failing to provide basic medical facilities.

If hospitals are unable to offer adequate sanitation facilities, as was the case in Mr. M. Ramesh Reddy V. State of Andra Pradesh[25], they are also held vicariously accountable.

IX. SUPREME COURT'S ADVISORY TO HEALTHCARE PROFESSIONALS AND SAFEGUARDS IN CRIMINAL CASES

In "Martin F. D'Souza v. Mohd. Ishfaq"[26] the Supreme Court laid down the following advisory:

a. Strict adherence to current procedures, infrastructure, paramedical staff, and standards for cleanliness and sterility is required. Accordingly, in "Sarwat Ali Khan v. Prof. R. Gogi (OP No. 181 of 1997 determined on July 18, 2007 [NC])", the facts were that 14 patients had their eyesight in the operated eye lost after 52 cataract procedures carried out between September 26, 1995, and September 28, 1995, at an eye hospital. Two of the operation theater's autoclaves were found to be malfunctioning after an investigation. This equipment was damaged since it wasn't in functioning order, even though it is extremely required to sterilise instruments, cotton, pads, and other items. The doctors

[23] *Aparna Dutt v. Apollo Hospital Enterprises Ltd.* (2002 ACJ 954)
[24] *Paschim Bengal Khet Mazdoor Samity and Ors. v. State of Bengal* (1996(4)SC260)
[25] *Mr. M. Ramesh Reddy V. State of Andra Pradesh* 2003 (1) CLD 81 (APSCDRC)
[26] *Martin F. D'Souza v. Mohd. Ishfaq* (2009) 3 SCC 1

were made accountable.

b. Normally, no prescription should be issued without a thorough assessment. Avoid the propensity to issue prescriptions over the phone unless there is an immediate necessity.

c. A doctor should not just depend on the patient's account of his symptoms, but should also conduct any necessary tests and investigations as part of his own analysis.

d. A doctor shouldn't perform experiments unless absolutely essential, and even then, he should typically obtain the patient's written agreement.

e. In the event of any uncertainty, seek the advice of an expert. In order words, the patient in “Indrani Bhattacharjee (OP No. 233 of 1996 decided on 9-8-2007 [NC])” was identified as having "mild lateral wall ischemia." He was given a gastroenteritis prescription by the doctor, but he passed away. It was determined that the doctor was negligent since he ought to have provided written advice about consulting a cardiologist.

f. Maintaining a complete record of the diagnosis, treatment, etc.

(A) Landmark judgements

g. The National Commission rejected the complaint of the wife and two sons of the deceased Mr. M.M. Patel, who died at Breach Candy Hospital, due to the negligence of the staff, the treatment given by Dr. Bhattacharya, a surgeon, and Dr. Mahatra, an anaesthetist. That case was “Ms. Shantaben Muljibhai Patel and Ors. vs. Breach Candy Hospital and Research Center and Ors.” . The excess claim was for Rs. 1.02 lakhs for the death of a patient, Rs. 2.50 Lac for hospitalization expenses, Rs. 25,000 for funeral expenses, Rs. 90 Lacs for loss due to death in business and Rs. 25,000 for legal costs. The deceased underwent a bypass in 1988, in which the mitral valve was replaced. In 1996, it was discovered that the pumping efficiency had decreased by 15%. A procedure was carried out effectively. The endotracheal tube was removed while the patient received post-operative care. According to medical literature, these odds of extubation range from 8.5% to 13%. Extubation happened quickly and abruptly, and the on-call nurse observed it right away. A skilled medical professional was called, but intubation proved challenging, and the patient passed away from cardiac arrest. The hospital had the required tools, and the medical staff did their jobs as skillfully and cautiously as they could. The deceased was a high-risk patient, and an accident of this nature is uncontrollable. Every surgical procedure carries some risk. Since reasonable care was undertaken by the Nursing Staff, thus Negligence did not take place. The National Commission cited Lord Denning's views in “Roe and Woolley v. The Ministry of Health

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and An Anaesthetist"[27], in its ruling, saying that "every surgical operation is surrounded by dangers. Without taking chances, we cannot reap the rewards. Risks accompany every technological breakthrough. Like everyone else, doctors must learn by experience, and experience frequently teaches in a difficult way.

h. The National Commission in "**S.R. Shivaprakash and Ors. vs. Wochardt Hospital Ltd. and Ors"**[28], held that the procedure involved an extremely high risk, all necessary care was taken to save the patient's life and such a transfer is not new to the medical profession. The patient died due to sudden extubation of the endotracheal tube due to a sudden violent cough that resulted in cardiac arrest 2 days after surgery. The patient's poor pre-operative condition was her own fault, not the fault of the doctors or nurses, and the res ipsa loquitor doctrine as alleged was not inferred, hence the opposing parties are not accountable. It was decided that doctors and hospitals must provide all records providing information about the therapy provided, the medications used, and the cause of any adverse events.

i. In **"P. Venkata Laskhmi v. Dr. Y. Savita Devi"**[29], the National Commission upheld the appellant's claim that the medical literature submitted by the complainant was not taken into account. The case's basic facts were as follows: "Complications occurred after delivery; the infant experienced breathing issues and other related issues and was transferred to another hospital." The attending doctors were accused of negligence; the State Commission dismissed the case on the grounds that negligence was not supported by expert testimony, leading to an appeal. The State Commission did not take the complainant's medical literature into consideration. The case was returned for another hearing. The National Commission noted, among other things, that the absence of expert testimony has also been cited as one of the "no-proof" defences against carelessness. We have reviewed the information in the file and conclude that, despite the appellant's failure to submit any expert testimony or have it scrutinised, it is extremely uncommon, if not never, for another doctor to step forward and testify in person or by providing evidence against another doctor. In this instance, the gap was filled by writing books on all the relevant topics.

j. Despite the fact that two anaesthetists provided the anaesthesia between 10 a.m. and 10.30 a.m. in the case of "**Meenakshi Mission Hospital and Research Centre vs.**

[27] *Lord Denning's views in Roe and Woolley v. The Ministry of Health and An Anaesthetist*, (1954) 2 All ER 131
[28] *S.R. Shivaprakash and Ors. vs. Wochardt Hospital Ltd. and Ors*, II(2006)CPJ123(NC)
[29] P. Venkata Laskhmi v. Dr. Y. Savita Devi, II(2004)CPJ14(NC)

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Samuraj and Anr."[30], the National Commission found that "the hospital was guilty of having committed negligence". The physician who gave the anaesthesia failed to appear before the Commission, and the kid was without a pulse. On two different pieces of paper, there were printed two progress cards for the same patient. It was unclear what the two anesthesiologists were doing inside the O.T. The hospital is responsible for everything that happens there and has been ordered to pay all costs and damages. It is important to note that the District Forum held that the hospital was at fault in this case and awarded damages totaling R. 3 lacs and costs totaling Rs. 2000/-. The appeal was subsequently dismissed by the State Commission with costs of Rs. 500

k. In the case of "Spring Meadows Hospital and Anr. v. Harjol Ahluwalia"[31] from 1998, the parents of a child who was left permanently crippled received a payment of Rs. 5 lacs for their mental anguish in addition to a Rs. 12 lacs settlement for the child. The hospital was meant to cover the remaining Rs. 12 lacs after the insurance paid its portion. Although the insurance provider intervened because the nurse who administered the child's adult dose of Lariago injection was ineligible, the Apex Court made no mention of this matter when deciding on negligent cases. Therefore, it is important to remember that doctors and hospitals should not only purchase professional indemnity insurance, but also make sure that the nurses and other hospital staff hired as a result are competent.

l. The Supreme Court of India considered crucial issues in Nizam Institute of Medical Science and Ors v. Prashanth S. Dhananka (2009)[32], including what constitutes medical negligence, the hospital's obligation to hire an expert when available, the vicarious liability of the hospital for the errors of doctors and staff, and compensation for mental and physical torture. The Supreme Court noted that the burden of proving that the attending physician or hospital was not negligent shifts to the hospital once it is established that the patient was admitted to a particular hospital and that there is sufficient evidence to show that he died as a result. from lack of care and negligence. In any case, the hospital is in a better position to reveal the patient's medical history and the medications he has received. The hospital is in charge of making sure that there was no carelessness or inattention to detail. Because hospitals are establishments, customers anticipate better, more effective service. If a hospital fails to fulfil its obligations through its doctors, whether those doctors are employed by the hospital or are under contract,

[30] Meenakshi Mission Hospital and Research Centre vs. Samuraj and Anr., I(2005) CPJ 33 (NC)
[31] https://indiankanoon.org/doc/1715546/
[32] https://indiankanoon.org/doc/1110505/

the hospital must explain why.

X. CONCLUSION

After the research and analysis done for the purpose of this paper, I have come to the following conclusion:

While considering the cases of medical negligence, the general principle is to check whether or not the performance of the doctor or medical practitioner was up to how any local doctor or medical practitioner working in the same field of medicine with the required skill set would act in the given situation. Negligence of the medical practitioner is not judged on the basis of any high standard of skill. This has been mentioned by the court in many case laws as mentioned in the above content. A similar approach was used in the Bolam case which led to the introduction of Bolam test that is used in various cases to determine the extent of liability and whether negligence happened or not.

However, Bolam test is not safe from any criticisms, as was discussed in the Montgomery case wherein the supreme court did not consider this test as a measure of whether the doctor has a duty to advise the patient. After the research, I am of the view that just like the Bolam case, the general principle i.e., comparison of performance of the defendant with a local practitioner with required skills is enough to understand the negligence on the part of the defendant.

No doubt that the severity of medical negligence throughout the country deserves attention and the damages caused due to this should be compensated, however, this could mean that the doctors, instead of doing what they think would we best for the patient in case of a medical emergency, would resort to doing everything by the book as anything unconventional, though done in the best interest of patient could result in unwanted law suits.

The compensation claims as calculated by the court can be large amounts which could be of help for the patient in cases of damages, or the family of the patient in case of death of the patient due to negligence. This also makes the doctors vigilant and prevents doctors from acting negligently while dealing with the patient. However, the large amount compensations can also act as an attraction for unnecessary and insincere claims in cases where the damage was unavoidable and the claims were submitted only for the possibility large compensation.

Medical professionals should not be subjected to unreasonable harassment, and no needless anxiety or fear should be instilled in the medical community so that they cannot provide their best care when necessary. Instead, they should be given some leeway in odd circumstances where they must make decisions free from anxiety. to ensure that society will benefit from it.

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Another important aspect in such cases though, is that of the defense from Medical Practitioners. A strong defence that the doctor should use is the following:

i. Employ the services of a competent attorney. The doctor and/or hospital have the right to hire a lawyer to act as their representative in the case.

ii. Timely submission of an affidavit, written statement, and any other necessary papers.

iii. Maintaining case histories, clinical records, affidavits from all treating physicians, X-rays, laboratory test results, etc. appropriately will be crucial in bolstering the doctor's claim.

iv. Bring in the expert testimony of a licenced and impartial medical professional with special care. Affidavits from experts should be submitted as well.

v. It is recommended to offer supporting medical literature on the subject. Additionally useful will be pertinent case law on the matter.

The life of a human being cannot be valuated into numbers. So, even though a compensation might be calculated at the end of the case, still, it is never sufficient to cover for the loss suffered by those who survived the patients. Medical Negligence is a gross mistake which affects the life of not only the patient but of the ones who are connected to the patient.

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