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Medical Negligence and Consumer Protection Act, 2019: Judicial Response

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ABSTRACT

The doctor in all realms is considered to be light of God. However, they still are humans and are made up of human elements, which definitely include committing a wrong that may be in the form of an act or omission. This wrong can also be from the end of the support staff. So, in such a scenario, it is imperative to determine who was negligent, and under what circumstances. In India, such matters are delved upon the India Judiciary to decide. But the difficulty arises upon the Judges to decide the matter as they are not medical professionals. They have to put reliance upon the expert's opinion and then apply the basic principles of law of the land. A study shows that there is a 110% rise in the number of medical negligence cases that are reported every year. The study also brings out the fact that 12% of the cases decided by the consumer protection forum are related to medical negligence out of which 90% are the cases involving hospitals. Between 60 to 66 per cent of the cases filed are because hospitals do not take proper consent from relatives before performing certain procedures or changing hospitals, or due to improper documentation throughout the course of diagnosis and treatment. In this paper the authors have talked about the legal aspects associated with Medical Negligence. The paper talks in depth about the treatment of Judicial Response of Medical Negligence under Consumer Protection Act, 2019.

Keywords: *Medical Negligence, Doctor, Patient, Treatment, Disease, Skill, Hospital, Healthcare, Liability.*

I. INTRODUCTION

Medical profession is considered to be a noble profession however, it has been time and again placed under scrutiny and so have all persons working in this profession. Medical negligence is considered to be one of the most crucial concerns not just in our country but throughout the world. The primary reason is that numerous cases have been reported where an under qualified medical professional has been taken under inquiry for not taking reasonable care during the time of operation, diagnosis, etc. One of the most respectable professions in the world is the

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medical profession. Commercialisation and manipulation of the medical industry, however, has made it like every other enterprise and the medical profession is being gradually motivated by the motive for benefit rather than that of service. Such a circumstance has given rise to immoral and negligent activities. Medical negligence is a mixture of two words i.e. Medical and Negligence. The word Negligence has not been adequately defined, but it can be seen as an act that a person carelessly commits, resulting in foreseeable harm to the other. Recently, the Indian population has become increasingly conscious of the rights of patients. The famous Latin Maxim, "ubi jus ibi remedium" means "*where there is a wrong, there is a remedy*". This maxim shows that a corresponding remedy for the infringement should be given if the statute has laid down a right. In any legal system one of the human rights known traditionally is the right to a remedy. The idea that rights must have remedies is old and revered. Remedies are, thus, an operational promise that a duty will be upheld and executed.

Chief Justice Marshall in Marbury v. Madison stated "*It is a general and indisputable rule that where there is a legal right, there is also a legal remedy by suit or action at law whenever that right is invaded or it is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper redress."*[3].

Thus, we can see that Negligence comes under the ambit of offense under the Law of Tort, the Indian Penal Code 1860, Indian Contracts Act, Consumer Protection Act and many more.

Scope and ambit of Consumer Protection Act, 2019

The scope of the Consumer Protection Act is quite expansive. The Consumer Protection Act (CPA) aims to protect and encourage the interest of customers by quickly and efficiently addressing their concerns. This Act was passed by the Government of India and is extended to the whole of India. This Act was introduced in order to protect the rights and interests of the consumers.[4]

Section 2(7) of the Consumer Protection Act 2019 defines the term **Consumer** as an individual who buys any goods for a consideration that has been paid or promised or partially paid and partially promised, or under some deferred payment scheme, and covers any consumer of such goods other than the person who purchases such goods, paid or promised for consideration, or partly paid or partly promised, or partly promised for consideration, or where such use is made with permission, or under some scheme of deferred payment, of such a person, but does not

[3] (1803) 5 U.S. 1 Cranch 137, 163–66, quoting William Blackstone, Commentaries on the Laws of England, vol. 3 (1723–1780) 23, Tracy Thomas, 'Ubi Jus, Ibi Remedium: The Fundamental Right to a Remedy Under Due Process' (University of Akron School of Law, Public Law & Legal Theory Working Paper Series No. 04, 2004)
[4] The Consumer Protection Act 1986

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include a person for whom such goods are obtained for resale, or for some commercial reason, and who hires or uses any services for compensation paid or agreed or partly paid and partly promised or under any delayed payment scheme and includes any beneficiary of such services other than the individual who hires or uses the services for consideration paid or promised or under any deferred payment scheme where such services are used in combination with the customer. This description is sufficiently broad to include even a patient who is clearly promising to pay.

Section 2(11) of the Consumer Protection Act 2019 defines the term ***deficiency*** in service as any error, inconsistency, failure or insufficiency in the standard, manner or method of performance which, for the time being, is needed to be maintained by or under any law or has been committed to be performed by an individual pursuant to a contract or otherwise in conjunction with any service, any act of negligence or omission or commission on the part of the individual concerned that triggered damage or injury to the person concerned; or a deliberate concealment of relevant information by any such person.[5]

II. WHAT IS MEDICAL NEGLIGENCE?

Negligence. - Duties owed to patient. A person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient, owes him certain duties, namely, a duty of care in deciding whether to undertake the case; a duty of care in deciding what treatment to give; and a duty of care in his administration of that treatment. A breach of any of these duties will support an action for negligence by the patient. Thus, there are 3 components of medical negligence:

- Existence of legal duty
- Breach of legal duty
- Damage caused by such breach

There are various kinds of situations which amount to medical negligence by a medical professional such as incorrect diagnosis, deferred diagnosis, inaccurate surgery, long term negligent treatment, childbirth and labour malpractice, needless surgery and erroneous administration of anaesthesia etc.

[5] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2779962/

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(A) Principle of Res Ipsa Loquitur

It has usually been found that, in most cases of negligence, the onus of proof rests with the Plaintiff, however during medical negligence, it is difficult for the Plaintiff to prove the negligence caused to him by the offender. The medical field is considered complex to be understood by a majority of patients, and most patients are unconscious when the act conducted on them tends to cause damage. It is also impossible to show proof that the harm caused to him is due to the doctor's negligence. It is here that the Latin Maxim *"Res ipsa loquitur"* which is a doctrine in the Anglo-American common law that means *"the thing speaks for itself"*. The court will imply negligence from the very existence of an accident or injury in the absence of clear facts about how a suspect acted. It serves as an evidentiary rule for any personal injury committed on a person. By virtue of the doctrine of Res Ipsa Loquitur, the Plaintiff only needs to show some circumstantial proof or evidence which would transfer the onus of proof to the defendant in order to claim that the conduct of the defendant was not the conduct of negligence. Circumstantial evidence contains some details which lead to wrongdoing on the part of the defendant as a pure logic which will not need to be discussed or proven before the court.

(B) What does not amount to medical negligence?

If a patient has suffered an injury the doctor might not be held liable for negligence. In case of error of judgement by the doctor, he shall not be charged against any such actions. Even doctors are humans and, hence are prone to make mistakes, and therefore, they shall be allowed some relief. Merely based on the fact that the decision of the doctor did not turn out to be favourable, he cannot be held against such error in judgement. The Courts have observed that merely because the doctor choose an different procedure/ treatment to cure the problem and it did not work as expected, will not make him liable. One must prove that there was breach of duty on his part. A doctor performing his duty with due care and caution could not be held liable for negligence.[6] However, where error in judgement was due to a negligent act, it shall then be termed breach of duty and the doctor shall be held liable for his actions.

In ***Vinod Jain vs. Santokba Durlabhji Memorial Hospital and Ors.***[7] the Hon'ble Supreme Court observed that the test for negligence shall be from the view point that a doctor who has been accredited with a special skill or competence but does not possess highest expert skill, it would in such case be sufficient that he exercises skill of an ordinary competent man under similar scenario. This is primarily done for greater good of the community at large, to prevent

[6] Achutrao Haribhau Khodwa and Ors v. the State of Maharashtra: 1996 SCC (2) 634.
[7] AIR2019SC1143.

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the doctors from thinking about their own safety instead of the safety of the patients.

(C) Duty of Care

The Hon'ble Supreme Court in ***Dr. Laxman Balkrishna Joshi vs. Dr. Trimbak Bapu Godbole***[8] had observed that every doctor must exercise reasonable "standard of care" that are set out in the profession. Any breach towards these duties shall hold him liable for medical negligence.

The National Consumer Disputes Redressal Commission in ***Chandigarh Clinical Laboratory vs. Jagjeet Kaur***[9] upheld the findings of the District and State commission wherein the appellant was directed to pay the complainant a compensation of Rs.25,000 along with cost of Rs. 2,000. The appellant laboratory had issued the patient with wrong reports for which the Hon'ble Commission held that the appellant had "duty of care" to give accurate findings to the patient and failure of the appellant to take due care shall amount to medical negligence.

(D) When does the liability arise?

A medical professional or hospital shall be held liable for all actions against the patients where they have not taken proper standard of care and it has resulted in suffering on part of the patient. The burden of proof shall lie on the complainant to prove a case of negligence. They have to first establish that there was a duty of care on part of the accused and that, there was breach of such duty.

The State Consumer Disputes Redressal Commission of Jharkhand in ***Jagdish Prasad Singh vs. Dr. A.K. Chatterjee***[10] directed the opposite party to pay a sum of Rs. 25,000 to the complainant as compensation for his mental agony and physical harassment and Rs. 5,000 as litigation cost. It was observed that the accused had failed to take due care to return the precise findings in the reports. Whether harm came to the patient or not would not be the criteria for case against negligence.

However, in some case the courts use the principle of "ipsa loquitur" which means things speak for itself. In such a scenario, it is presumed that the medical professional has acted beneath the set standard of care causing negligence. Under this principle it is presumed that the injury could not have been caused from anything but the negligence on part of the medical professional. In practice, the use of this principle by the judge would mean that the negligence has already ensued. Here the burden shifts onto the doctor to prove the case otherwise. Few examples are leaving an object inside the patient's body or operating the wrong patient.

[8] 1969 AIR 128.
[9] IV (2007) CPJ 157 NC.
[10] https://indiankanoon.org/doc/23607173/

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III. REMEDIES- MEDICAL NEGLIGENCE-MEDICAL COUNCIL OF INDIA

An aggrieved party can file a complaint of negligence against a medical practitioner to the concerned State Medical Council as they have the power to take action against the concerned doctor by suspending or cancelling his registration. However, the Indian Medical Council Act, 1956 does not give them the power to compensate the aggrieved party. The accused is required to file a complaint to the council precisely specifying all the facts and relevant details in the concerned matter. The council shall then allow the accused 30 days' time to submit his reply. If the council is not satisfied with the reply then they shall call upon both the parties to present evidence in support of their claims.

(A) Civil liability under Consumer Forum

An aggrieved person can approach the consumer courts to file a case against the accused person and the hospital. ***In Indian Medical Association vs. V.P. Santha***[11] *the* Hon'ble Supreme Court observed that the medical practitioners are covered under the Consumer Protection Act, 1986 and the medical services rendered by them should be treated as services under section 2(1) (o) of the Consumer Protection Act, 1986. Similarly under the new Consumer Protection Act, 2019, the medical services shall fall under the ambit of services as mentioned in section 2(42) of the new Act. Any matter in medical negligence on the part of the service provider will be considered as deficiency under section 42(11) of the new Consumer Protection Act, 2019. Any aggrieved person can claim damages for medical negligence against a doctor or a hospital. Section 69(1) of the Consumer Protection Act, 2019 lays down the time limit within which a complaint for medical negligence must be filed as 2 years from the date of injury.

(B) Criminal liability

Under various provisions of Indian Penal Code, 1860 any person who acts negligently or rashly that results in threat to human life or personal safety or; results in death of a person then the person shall be punished with imprisonment and/or fine. However the court have observed that in a matter of negligence where a criminal case is being perused, the element of "mens rea" must be shown to exist. To check for criminal liability, it must be clearly shown that the accused did something or failed to do something which in the given circumstances no other medical professional in his ordinary senses and prudence would have done or failed to do.[12] The aggrieved party will first file a complaint with the local police authority against the concerned person/persons. If no action is taken, the aggrieved party can file a criminal complaint under

[11] 1995 SCC (6) 651
[12] Malay Kumar Ganguly vs. Sukumar Mukherjee and Ors: AIR2010SC1162

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Criminal Procedure Code, 1973.

(C) What falls within the purview of Medical Negligence?

It is an established legal principle that a medical practitioner needs to carry an appropriate degree of expertise and experience to his assignment and must show an appropriate degree of care. What the law demands is not the very highest nor the very lowest degree of care and competence assessed in the context of instances in each case. Let us now see what falls within the purview of Medical Negligence:

- **The responsibility of the doctor to look after the patient with care**: A reasonable degree of care and ability implies that the level of care and skill that would be exercised in the circumstances in question by a" reasonable member of the profession who professes to have such abilities. If the physician or a specialist may not attend to a patient who is admitted in an emergency or under his supervision and the patient dies or becomes the victim of consequences that could have been prevented by the doctor's due care, the doctor could be held responsible for medical negligence.
- **An injury caused by the negligence of the doctor**: A doctor's responsibility exists not when the patient has sustained any injury, but when the injury has arisen from the doctor's conduct, which has slipped below that of reasonable care. In other terms, the doctor is not responsible for any injury suffered by the patient. He is responsible only for those that are the result of a violation of his duty. Therefore, the patient must establish that he or she has sustained injury that would not have occurred in the absence of negligence. The negative outcome alone is not wrongdoing. The patient has to prove that the accident was caused by negligence.[13]
- **Failure to diagnose or misdiagnosis**: A lot of medical negligence is based on failure to detect and misdiagnose an illness or injury. Misdiagnosis alone is not inherently medical malpractice, but misdiagnosis or inability to detect must result in insufficient medical care, delayed diagnosis, or no treatment, resulting in a deterioration of the medical condition of the patient in order for the malpractice to be actionable. A case of misdiagnosis can include an incorrect diagnosis, a missing diagnosis, a delayed diagnosis, or a failure to detect complications that alter or exacerbate an established condition.
- **Surgical errors or surgery at the incorrect location**: Perhaps the most drastic, noticeable and damaging of all surgical errors is wrong side surgery. It is, arguably, the mistake that

[13] https://www.abpla.org/what-is-malpractice

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most surgeons fear. Research shows that the incidents that contributed to the removal of the wrong kidney was caused due to many factors which could have been avoided, like misunderstanding with the house-officer suggesting, on the admission slip, the wrong side. This information was then moved to the diary of the surgeon.

- **Completely ignoring or not taking the necessary history of patients:** The doctors sometimes ignore the patient's previous history; they forget to check if the patient is allergic to certain drugs which can in some cases cause great injury to the patients.

IV. JUDICIAL RESPONSE: LIABILITIES FACED BY DOCTORS IN CASES OF NEGLIGENCE IN INDIA

- The ***Kunal Saha's AMRI (Advanced Medical Research Institute) case generally referred to as the Anuradha Saha*** Case was filed in 1998 due to medical negligence of three doctors at the AMRI hospital; Dr. Sukumar Mukherjee, Dr. Baidyanath Haldar, and Dr. Balram Prasad and the hospital itself. The facts of the case are that Mrs. Saha suffered from a drug allergy. At the hospital the three doctors administered a drug when she went to this hospital, which further exacerbated her condition and she passed away. The Supreme Court handed down the judgement in 2013 and directed the complainant to obtain compensation of 6.08 crore. The scope of medical negligence in India was widened by this very case and gave it a new dimension.[14]

- In the case ***of Meenakshi Mission Hospital and Research Centre vs. Samuraj and Anr., I(2005)CPJ33(NC),*** the National Commission found the hospital guilty of negligence on the pretext that the name of the anaesthesiologist was not listed in the operation notes, while two anaesthesiologists administered anaesthesia at 10 a.m. and 10.30 a.m. The child was pulseless and the doctor who administered anaesthesia was not produced before the Commission. Two progress cards on two separate papers about the same patient were made. The hospital was unable to explain what the two anaesthetists were doing in the Operation theatre during that time. The hospital was made responsible for all that happened in the hospital and was made liable for paying the compensation and cost. It is important to note that the District Forum considered the hospital negligent in this case and awarded a penalty of Rs 3 lacs and Rs. 2000/- as costs.[15]

[14] https://www.casemine.com/search/in/Kunal%20Saha%20Vs%20AMRI
[15] (2005)CPJ33(NC)

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V. CHALLENGES IN PROVING MEDICAL NEGLIGENCE

Since professionals have been regulated by consumer protection legislation, medical practitioners have also felt its impact. It's different from any other kind of negligence. Within consumer protection legislation, *medical negligence is another type of service deficiency*. It is quite analogous to accountability in the law of tort. However, there is a greater and wider obligation in this case as the inability to exercise skill and care, as is generally required by a medical practitioner, comes under the ambit of the consumer Protection Laws. It gets extremely challenging to prove negligence as most patients are unconscious when the act is conducted on them. It is also impossible to show proof that the harm caused to him is due to the doctor's negligence.[16] The law lays the onus on the patient to show that the medical provider has diverged from the quality of care and caused injury. The very first part of the test, to show that the provider has diverged from the appropriate standard of treatment, can be reasonably simple and is therefore the simpler question to evaluate and respond. It is the next component of the medical negligence check that proves to be harder to formulate. After it has been concluded that the treatment is below the relevant norm, the patient is then expected to show, beyond a reasonable doubt, that the under-standard treatment was a factual cause of harm sustained by the patient. This however isn't as easy as it may sound.

Let us look at a few examples that portrays the challenges faced to prove medical negligence:

- In the event of a surgery, a patient may experience a certain amount of complications that are established and acknowledged risk from the procedure and can also arise even though the procedure is conducted under the norm of care. Thus, it is often difficult to prove, within a reasonable degree of medical certainty, that the negligence of the surgeon "caused" a bad surgical outcome.
- The doctor obviously did not "cause" cancer in case of a delayed cancer diagnosis. Most cancers definitely need extensive and sustained medical attention and bear a high mortality rate. In a case of medical negligence when the claimant alleges that the late diagnosis or untimely diagnosis of a doctor caused injury, the responsibility is on the claimant to show that the initial diagnosis, care or eventual result of the patient is worse due to the delay. Again, this is always difficult to prove.
- In the event of a fracture, where the allegation is that the doctor failed to treat the fracture properly due to his negligence is extremely difficult as often fractures may not heal

[16] https://www.natlawreview.com/article/medical-malpractice-causation-often-most-difficult-element-to-prove

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properly and, even though the doctor treats and handles the fracture within the agreed level of care, a patient has to deal with substantial ongoing complications or disabilities. The law puts the blame on the patient to show, beyond a fair degree of medical probability, that the incompetent care of the doctor actually caused a bad outcome. Because negative outcomes from orthopaedic operations can and do happen even in the absence of a doctor's negligence, it can be very difficult to prove that a doctor caused a negative outcome.

- ***Kishan Rao vs. Nikhil Super Speciality***[17]:-In this landmark judgement the Supreme Court stated that "*there cannot be a mechanical or straitjacket approach that each and every medical negligence case must be referred to experts for evidence."* In this case the wife of the complainant, who suffered from fever and chills was taken to the respondent hospital. For four days, she was mistakenly treated for typhoid rather than malaria. She died as a result of this incorrect treatment. The District Forum identified the hospital's negligence and awarded compensation. The District Forum 's order was overturned by both the and the National Commission, however the Supreme Court set aside the orders of both the State and restored the order of the District forum.

The court further added "this Court makes it clear that in these matters no mechanical approach can be followed by these fora. Each case has to be judged on its own facts. If a decision is taken that in all cases medical negligence has to be proved on the basis of expert evidence, in that event the efficacy of the remedy provided under this Act will be unnecessarily burdened and in many cases such remedy would be illusory". From this landmark judgement we can infer that the Consumer forums in the country would not be obliged to refer the cases of medical negligence to an expert committee before they could issue a notification to the doctor or the particular hospital that is suspected of medical negligence.

VI. EXCLUSION OF 'HEALTHCARE' FROM THE DEFINITION OF 'SERVICE': A DELUSIONAL RELIEF FOR MEDICAL PROFESSIONALS

The Consumer Protection Act, 2019 ('CPA 2019') arrived in full glory and the Central government vide notification dated 15-07-2020 appointed 20-07-2020; and thereafter vide notification dated 23-07-2020 appointed 24-07-2020 to be the dates on which provisions of CPA 2019 shall come into force. It is pertinent to note that the earlier draft of the Consumer Protection Bill that was passed by the Lok Sabha in 2018 had included "healthcare" under

[17] https://blog.ipleaders.in/challenges-proving-medical-negligence-consumer-protection-act/#_ftnref7

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section 2(42) of the Consumer Protection Bill, 2018 (Bill No.1-C of 2018)3. However, the CPA 2019 in its current form does not include ‘healthcare' under section 2(42) that provides the definition of ‘service'. The Healthcare Amendment, more popularly referred and claimed as a ‘technical amendment' was introduced in the Parliament to remove ‘healthcare' from the list of services. The same was brought in in response to the hue and cry of the medical professionals and communities who have expressed strong apprehension that the CPA 2019 would be misused by the consumer against them if the healthcare services are brought under the ambit of the term ‘service'. The CPA 2019 created a loophole pertaining to the inclusion of healthcare as a service and leaves it open to judicial interpretation.

(A) Change in the definition of ‘Service'

The term ‘service' in the Bill of 2018 was earlier defined as hereunder: (42) “service” means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, healthcare, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

However, the same has been modified by deleting “healthcare” in the CPA 2019 which now prescribes as hereunder: (42)"service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

(B) Evolution and inclusion of ‘healthcare' under the Consumer Protection Act

Since 1957, after the case of ***Bolam vs. Friern Hospital Management Committee***[18], the thumb rule which is being followed for deciding the cases of medical negligence is the “Bolam's Test”. The said test can be carried out to ascertain whether a doctor or other medical professional has breached their duty of care to a patient. If a professional who possesses the requisite skill-set, exercises the skill in a situation with a reasonable degree of caution and care, then the said professional cannot be said to be negligent.

[18] [1957] 1 WLR 582

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The Hon'ble Supreme Court of India in ***Indian Medical Association vs. V.P. Shantha***[19] had reiterated that "Service rendered to a patient by a medical practitioner (except where the doctor renders service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of 'service' as defined in Section 2(1) (o) of the Act." Therefore, medical practitioners are also liable for deficiency in service under the Consumer Protection Act.

Furthermore, in ***Jacob Mathew vs. State of Punjab***, the Court had to decide on the issue pertaining to the criminal negligence of doctors under the Indian Penal Code. While reiterating the principle in Bolam case, the Hon'ble Supreme Court held that "For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree".

Despite the caution expressed by the Hon'ble Supreme Court in Jacob Mathew case, the number of cases against doctors seems to be on the rise. In ***Martin F. D'Souza vs. Mohd. Ishfaq***[20] where the Supreme Court held that in both civil and criminal cases against the doctors, prior to issuance of notice to the concerned doctor, the court should refer such case to a competent doctor or committee of doctors and if the report given by them establishes a prima facie proof of negligence, only then, the court should issue a notice to the concerned doctor.

In recent years, the Bolam test has been discarded by the courts in England. *In* ***Bolitho vs. City and Hackney Health Authority,***[21] a bench of five judges of the House of Lords held that*: "…The use of these adjectives—responsible, reasonable and respectable—all show that the court has to be satisfied that the exponents of the body of opinion relied upon can demonstrate that such opinion has a logical basis. In particular in cases involving, as they so often do, the weighing of risks against benefits, the judge before accepting a body of opinion as being responsible, reasonable or respectable, will need to be satisfied that, in forming their views, the experts have directed their minds to the question of comparative risks and benefits and have reached a defensible conclusion on the matter."*

A five-judge bench of the ***Australian High Court in Rogers vs. Whitaker***[22] also held that:

"5. ….The law imposes on a medical practitioner a duty to exercise reasonable care and skill in the provision of professional advice and treatment. That duty is a "single comprehensive duty covering all the ways in which a doctor is called upon to exercise his skill and judgment";

[19] 1995 SCC (6) 651
[20] (2009) 3 SCC 1
[21] [1996] 4 All ER 771
[22] [1992] HCA 58; (1992) 175 CLR 479. F.C. 92/045.

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it extends to the examination, diagnosis and treatment of the patient and the provision of information."

More recently, the Hon'ble Supreme Court in the case of ***Maharaja Agrasen Hospital and others vs. Master Rishabh Sharma***[23] and others placing its reliance on its earlier pronouncement in the case of ***Savita Garg vs. National Heart Institute***[24] reiterated and ruled as hereunder: *"It is well established that a hospital is vicariously liable for the acts of negligence committed by the doctors engaged or empanelled to provide medical care. It is common experience that when a patient goes to a hospital, he/she goes there on account of the reputation of the hospital, and with the hope that due and proper care will be taken by the hospital authorities If the hospital fails to discharge their duties through their doctors, being employed on job basis or employed on contract basis, it is the hospital which has to justify the acts of commission or omission on behalf of their doctors."*

VII. CONCLUSION

In the previous generations the doctor and patient had a cordial relationship with each other however due to the commercialisation of the medical profession, dramatic changes have resulted in this noble profession and we cannot say the same today. The Hippocratic Oath holds no value today. While recent developments in health care technology have proven to be useful tools for physicians to better identify and treat patients, they also have equally effective tools to exploit money from the patients. The patients while in pain approach the doctors for their treatment with a simple hope of speedy recovery. However, sometimes there are situations where the treatment do not go as planned, it may be because the result of natural course of life or due to the doctor's fault. One thing which should be kept in mind is the fact that even they are humans and prone to making mistakes. However, any harm due to the negligent act on part of the doctor or medical staff shall attract liability. Section 2(42) of the CPA 2019 contains the phrase "includes, but not limited to" and the same is an inclusive clause. It directly points out to the fact that 'healthcare' can still be included and interpreted under section 2(42) of the CPA 2019. Thus, this relief which is said to have been provided to the medical professionals by way of a craftily modified definition is nothing but a delusional relief which definitely will create several doubts and ambiguities in the interpretation of the said provision. However, the recent change and deletion of the term 'healthcare' have created panic amongst the general public since there is an infamous apprehension with respect to the blanket exclusion of healthcare from the

[23] https://indiankanoon.org/doc/35792279/
[24] https://indiankanoon.org/doc/150881/

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definition of ‘service' under CPA 2019. As is the case with most laws and regulations in India, there is a dire need to frame guidelines to strike a balance between the protection of patients and safeguard the doctors from undue harassment and humiliation. The government, to date, has failed to come forward with any guidelines whatsoever with respect to the same and the most difficult task of striking the balance has been left to the Courts of Law.

We would like to conclude stating that Medical negligence is one of the most challenging topics in law. The most challenging part is always to prove the “cause.” It is a daunting endeavour to get together and to prove a case of medical negligence. Doctors have many ethical, moral and legal responsibilities. It is very important for any doctor to understand the essence of their duties and then perform their duties to the best of their ability, as the medical profession is a very honourable and noble profession.

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