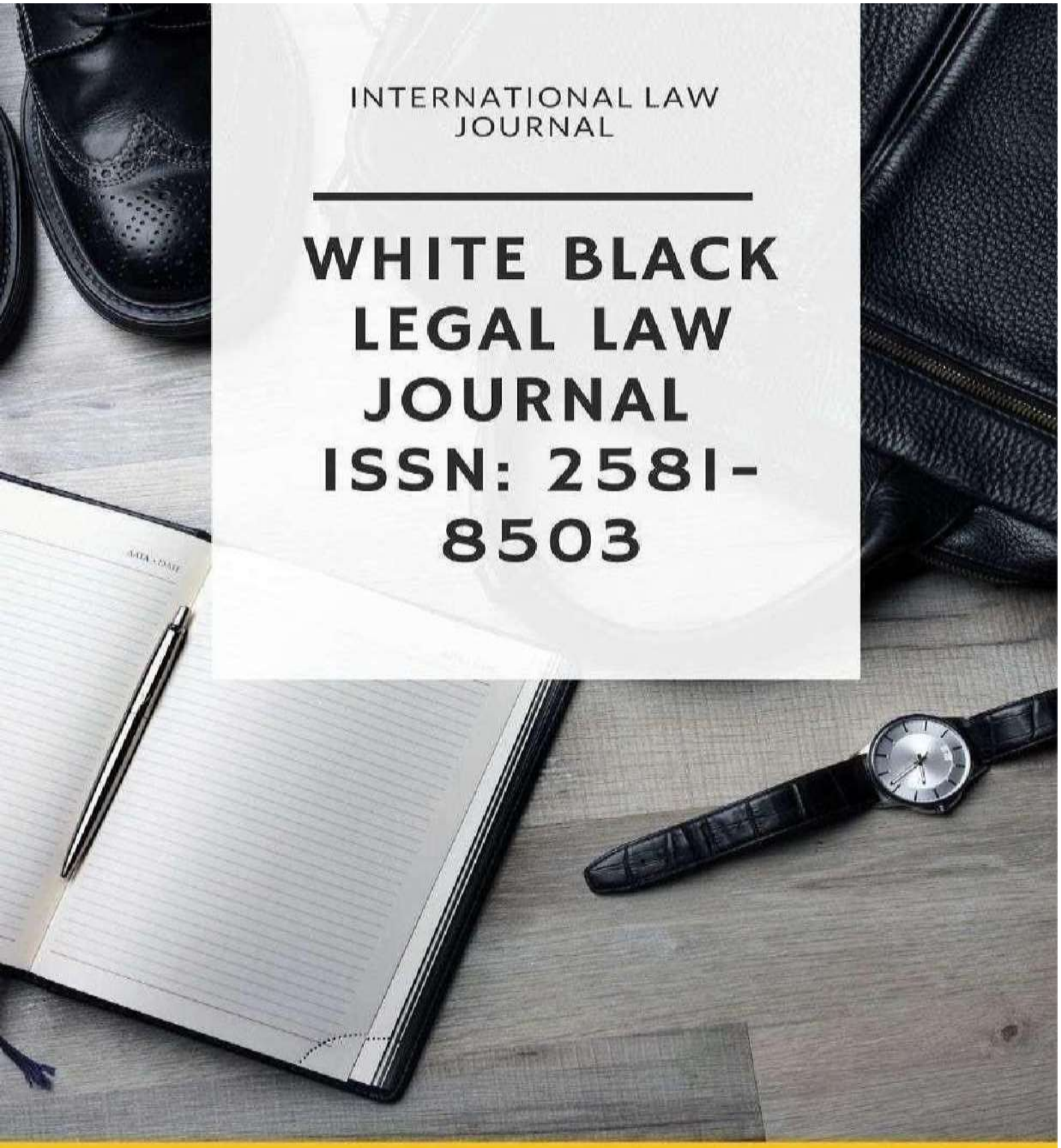

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer

Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.

Senior Editor

Dr. Neha Mishra

Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.

Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM
Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.
More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

www.whiteblacklegal.co.in
Volume 3 Issue 1 | March 2025 ISSN: 2581-8503

MEDICAL NEGLIGENCE

AUTHORED BY - ANUSHKA GUPTA

INTRODUCTION

Man is the only animal who believes in keeping order in his world. This was one of the reasons that he invented the concept of law. Law helped every man who suffered from an injury due to the acts committed by others, to seek remedy by means of compensation or punishment to the person committing that act. It was in this time that the field of medicine was developing. Since no man is perfect in this world, it is evident that a person who is skilled and has knowledge over a particular subject can also commit mistakes during his practice. Such mistakes in the medical profession may lead to minor injuries or some serious kinds of injuries and sometimes these kinds of mistakes may even cause death. In such situations there arises a need for a remedy to the injured people so that justice is upheld and this gave rise to the concept of medical negligence. Professional negligence, more specifically, medical negligence is, as the term suggests, relates to the medical profession and is the result of some irregular conduct on the part of any member of the profession or related service in discharge of professional duties. But first of all it is essential for us to analyse what the terms remedy, legal right, legal duty and most importantly negligence mean. Negligence is the breach of a legal duty to care. Thus legal duty of a person means the duty the law gives to every person to respect the legal rights of the other. Therefore the legal right of a person can be defined as the provisions provided by law to protect the interests of its citizen. We must remember then that where there is a legal right, there is a legal remedy for it. This is inferred from the maxim “ubi jus ibi remedium”.

Medical negligence can be seen in various fields like when reasonable care is not taken during operations, during the diagnosis, during delivery of the child, with issues dealing with anaesthesia etc. Since this field is very vast we will limit ourselves in understanding the basic concepts which are essential for the negligence to be committed. We shall also look into the remedies that the law provides to these patients and on whom the burden of proof lies and when this burden of proof shifts to the other party. We would also be discussing in the following pages the defences used by doctors to rescue themselves from the liability and also compare all these things with the English law and also look into the similarities that the Indian law and English law share.

COMPONENTS OF MEDICAL NEGLIGENCE

Winfield stated that a negligent act comprises of three main components. They are-

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

In order to understand the correct meaning of medical negligence it is essential that we carefully analyse these components because only after we analyse these components will we be able to understand the remedies that the law provides us.

1. **Existence of legal duty:** whenever a person approaches another trusting him to possess certain skill, or special knowledge on a given problem the second party is under an implied legal duty to exercise due diligence as is expected to act at least in such a manner as is expected in the ordinary course from his contemporaries. So it is not that the legal duty can only be contractual and not otherwise. Failure on the part of such a person to do something which was incumbent so, that which would be just and reasonable tantamount to negligence. Every time a patient visits a doctor for his ailments he does not enter into any written contract but there is a contract by implication and any lack of proper care can make the erring doctor liable for breach of professional duty.
2. **Breach of legal duty:** there is a certainly a breach of legal duty if the person exercising the skill does something which an ordinary man would not have done or fails to do that which an ordinary prudent man would have done in a similar situation. The standards are not supposed to be of very high degree or otherwise, but just the relative kind, that is expected from man in the ordinary course of treatment.
3. **Damages caused by the breach:** the wrong, the injury occasioned by such negligence is liable to be compensated I n terms of money and the courts apply the well settled principles for determination of the exact liquidated amount. We must remember that no hard and fast rule can be laid down for universal application. While awarding compensation, the consumer forum has to take into account all relevant factors and assess compensation on the basis of accepted legal principles on moderation. It is for the consumer forum to decide whether the compensation awarded is reasonable, fair and proper according to the facts and circumstances of the case.

   The liability of the person committing the wrong can be of three types depending on the harm caused by him to the injured person, they are-

1. **Civil liability**- as mentioned before, the person who possesses special knowledge and skill in a field and uses this knowledge to treat the other person then he owes a duty of acre to the other person. If a wrong is committed by him in this period, then he is liable to pay damages in the form of compensation to him. In some situation senior doctors or the hospital authorities can also be vicariously held liable for the wrongs committed by junior doctors.
2. **Criminal liability:** there may be an occasion when the patient has died after the treatment and criminal case is filed under section 106 of the BNS of allegedly causing death by rash or negligent act. The commencement or pendency of criminal trial would not act as bar to parallel civil proceedings for recovery of money or a consumer complaint nor can the same be stayed.

   But there are large numbers of cases where criminal law and civil laws can run side by side. The two remedies are not mutually exclusive but clearly co-extensive and essentially differ in their context and consequence. The object of the criminal law is to punish an offender who committed the negligence but in civil law the objective is not to punish but to get compensation from the other person.

DEGREE OF NEGLIGENCE

The Delhi High Court laid down in 2005 that in civil law, there are three degrees of negligence[1]:

i. lata culpa, gross neglect
ii. levis culpa, ordinary neglect, and
iii. levissima culpa, slight neglect.

Every act of negligence by the doctor shall not attract punishment. Slight neglect will surely not be punishable and ordinary neglect, as the name suggests, is also not to be punished. If we club these two, we get two categories: negligence for which the doctor shall be liable and that negligence for which the doctor shall not be liable. In most of the cases, the dividing line shall be quite clear, however, the problem is in those cases where the dividing line is thin.

As regards medical negligence, the legal position has been described in several leading judgments. Some of these are given below:

[1] Smt. Madhubala vs. Government of NCT of Delhi; Delhi High Court, 8 April 2005, Citation: 2005 Indlaw DEL 209 = 2005 (118) DLT 515

Bolam v. Friern Hospital Management Committee[2]

John Hector Bolam suffered from depression and was treated at the Friern Hospital in 1954 by E.C.T. (electro-convulsive therapy). He was not given any relaxant drug, however, nurses were present on either side of the couch to prevent him from falling off. When he consented for the treatment, the hospital did not warm him of the risks, particularly that he would be given the treatment without relaxant drugs. He sustained fractures during the treatment and sued the hospital and claimed damages for negligence. Experts opined that there were two practices accepted by them: treatment with relaxant drugs and treatment without relaxant drugs. Regarding the warning also, there were two practices prevalent: to give the warning to the patients and also to give the warning only when the patients ask about the risks. The court concluded that the doctors and the hospital were not negligent.

Jacob Mathew Vs. State of Punjab[3]

In this case a patient was admitted to CMC Hospital, Ludhiana. He felt difficulty in breathing. No doctor turned up for about 20-25 minutes. Later two doctors – Dr. Jacob Mathew and Dr. Allen Joseph – came and an oxygen cylinder was brought and connected to the mouth of the patient. Surprisingly, the breathing problem increased further. The patient tried to get up. The medical staff asked him to remain in bed. Unfortunately, the oxygen cylinder was found to be empty. Another cylinder was brought. However, by that time the patient had died. The matter against doctors, hospital staff and hospital went up to the Supreme Court of India. The court discussed the matter in great detail and analyzed the aspect of negligence from different perspectives – civil, criminal, torts, by professionals, etc. It was held that there was no case of criminal rashness or negligence.

The Supreme Court in Laxman v. Trimbak[4]**:**

"The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to

[2] (1957) 2 All ER,
[3] 2005) 6 SCC 1
[4] AIR 1969 SC 128

his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires."

In Achutrao Haribhau Khodwa v. State of Maharashtra[5]: The Supreme Court said-

"The skill of medical practitioners differs from doctor to doctor. The very nature of the profession is such that there may be more than one course of treatment which may be advisable for treating a patient. Courts would indeed be slow in attributing negligence on the part of a doctor if he has performed his duties to the best of his ability and with due care and caution. Medical opinion may differ with regard to the course of action to be taken by a doctor treating a patient, but as long as a doctor acts in a manner which is acceptable to the medical profession and the Court finds that he has attended on the patient with due care skill and diligence and if the patient still does not survive or suffers a permanent ailment, it would be difficult to hold the doctor to be guilty of negligence."

In Spring Meadows Hospital & Anr. Vs. Harjol Ahluwalia & Anr[6].

the Apex Court has specifically laid down the following principles for holding doctors negligent: "Gross medical mistake will always result in a finding of negligence. Use of wrong drug or wrong gas during the course of anaesthetic will frequently lead to the imposition of liability and in some situations even the principle of res ipsa loquitur can be applied. Even delegation of responsibility to another may amount to negligence in certain circumstances. A consultant could be negligent where he delegates the responsibility to his junior with the knowledge that the junior was incapable of performing of his duties properly. We are indicating these principles since in the case in hand certain arguments had been advanced in this regard, which will be dealt with while answering the questions posed by us."

In A.S.Mittal v. State of UP [7]:

an irreparable damage was done to the eyes of some of the patients who were operated at an eye camp organized by the government of Uttar Pradesh. Some of the patients who underwent surgery could never see the light of the day, i.e. whatever little vision they had even that was lost. The apex court coming heavily on the erring doctors held that, "the law recognizes the

[5] AIR 1996 SC 2377
[6] (1998) 4 SCC 39 at 47,
[7] AIR 1989 SC 157

dangers which are inherent in surgical operations and that will occur on occasions despite the exercise of reasonable skill and care but a mistake by a medical practitioner which no reasonably competent and a careful practitioner would have committed is a negligent one." The compensation was awarded.

Further, in State of Haryana v. Santra[8]:

the court upheld the decree awarding damages for medical negligence on account of the lady having given birth to an unwanted child due to failure of sterilization operation because it was found on facts that the doctor had operated only the right fallopian tube and had left the left fallopian tube untouched. The patient was informed that the operation was successful and was assured that she would not conceive a child in future. A case of medical negligence was found and a decree for compensation in tort was held justified.

However, the apex court has explained in State of **Punjab v. Shiv Ram[9]**, that "merely because a woman having undergone a sterilization operation becoming pregnant and delivering a child thereafter, the operating surgeon or his employer cannot be held liable on account of the unwarranted pregnancy or unwanted child. Failure due to natural causes, no method of sterilization being fool proof or guaranteeing 100% success, would not provide any ground for a claim of compensation." The court after referring to several books on Gynecology and empirical researches concluded that „authoritative text books on gynecology and empirical researches recognize the failure rate of 0.3% to 7% depending on the technique chosen out of several recognized and accepted ones."

Poonam Verma v. Ashwin Patel[10], reflects yet another reckless act on part of the doctor. In this case a doctor who was registered as a medical practitioner and was entitled to practice in homoeopathy was found to be guilty of negligence for prescribing allopathic medicines resulting in the death of the patient. The doctor was grossly negligent and in clear breach of duty as a doctor. He defied all sense of logic and forgot his ethics. It is submitted that it would have been better had the doctor been prosecuted under criminal negligence as he violated section 15(3) of the Medical Council Act, 1956.

[8] (2000) 5 SCC 182
[9] (2005) 7 SC 1
[10] AIR 1996 SC 2111

In one of the most recent decision in **Kusum Sharma v. Batra Hospital**[11], the Hon'ble Supreme Court has settled the law relating medical negligence. Mr. Dalveer Bandari, J., scrutinizing the cases of medical negligence both in India and abroad specially that of the United Kingdom has laid down certain basic principles to be kept in view while deciding the cases of medical negligence. According to the court, „while deciding whether the medical professional is guilty of medical negligence „the following well-known principles must be kept in view:

1. Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.
2. Negligence is an essential ingredient of the offence. The negligence to be established by prosecution must be culpable or gross and not the negligence based upon the error of judgment.
3. The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law require
4. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.
5. In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of the other professional doctor.
6. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.
7. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of

[11] (2010) 3 SCC 480

action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

8. It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck.
9. It is our bounden duty and obligation of the civil society to ensure that medical professionals are not unnecessarily harassed or humiliated so that they can perform their professional duties without fear and apprehension.
10. The medical practitioners at times have to be saved from such a class of complainants which use criminal process as a tool for pressurizing the medical professionals/hospitals, particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.
11. The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.

The court did not rest the case here, i.e. by laying down eleven principles for determining the breach of duty by medical professionals/hospitals, but went a step ahead by observing that, "In our considered view, the aforementioned principles must be kept in view while deciding the cases of medical negligence." The court further adds a word of caution by stating that, "We should not be understood to have held that doctors can never be prosecuted for medical negligence. As long as the doctors have performed their duties and exercised an ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence. It is imperative that the doctors must be able to perform their professional duty with free mind.

The above listing of basic principles with a direction that they must be kept in view while deciding the cases of medical negligence" reflects the judicial attitude of the hon'ble apex court. It may be noted that any decision, judgment passed by the Supreme Court becomes law of the land and is automatically binding on all other lower courts in the country by virtue of Article 141 of the Constitution of India. Thus the above principles must be taken as „law of the land on medical negligence".

ROLE OF MEDICAL EXPERT'S OPINION:

No case of criminal negligence should be registered without a medical opinion from Expert Committee of doctors and it should be given within a reasonable time. Indian Medical Association (IMA) Punjab claimed "they had secured a directive from Director General of Police (DGP) Punjab that no case of criminal negligence can be registered against a doctor without a report from an Expert Committee. Similar situations exist in the case of State of Delhi where Lieutenant Governor issued directions to the Delhi police regarding how to arrest a doctor in medical negligence case, the Delhi High Court also decided to form guidelines for lower judiciary as well as the police to deal with such cases. Hon'ble Supreme Court endorsed the same view, as "criminal prosecution of doctors without adequate medical opinion would be great disservice to the community – as it would shake the very fabric of doctor- patient relationship with respect to mutual confidence and faith the doctors would be more worried about their own safety instead of giving best treatment to their patients".

APPLICABILITY OF SECTION 106 OF BNS:

"The legal position is almost firmly established that where a patient dies due to the negligent medical treatment of the doctor, the doctor can be made liable in civil law for paying compensation and damages in 'Tort' and at the same time, if the degree of negligence is so gross and his act was reckless as to endanger the life of the patient, he would also be made criminally liable for offence under section 106 of BNS". Incidences are reported in which cases are registered against the doctor' u/s 106(1) as doctors are murderer and even not granted bail.

CONFUSION OVER THE ISSUE OF CRIMINAL NEGLIGENCE:

Doctors are victims of 'Trial by media or post mortem of Court's judgment done by the media' or misinformation spread through the media and technicality of legal words used in the matters of 'Criminal Negligence'. As reported by various leading national newspapers after the recent decision of Supreme Court "Doc not Criminally Liable if Patient Dies", "Saving the Doctors", "SC Judgment Qualifies Medical Negligence", SC Insures Docs Against Patient Death", SC Ruling a Deliverance for Medical Fraternity", "SC Comes to the Rescue of Doctors" etc. "This would mean that the relief the doctors had got due to the Judgment, would not be available to them till the larger Bench give its opinion". Doctors relying on these media reports without verifying the facts from original judgment or through discussion with the legal experts on the issue may fall prey of this misinformation perceived through the eyes of media and may

propagate same feeling and knowledge to other colleagues and junior doctors and always remain confused on the issue of criminal negligence. While SC judgments mention nothing new except verifying the previous established fact that 'error of judgment is not negligence"

STANDARD OF CARE REQUIRED IN INDIA:

There was considerable ambiguity on the standard of care required to be exercised by medical practitioners in order to discharge possible criminal liability arising out of their acts or omissions. Section 106 of Bhartiya Nayaya Sanhita, 2023 [BNS] prescribes punishment for death due to rash or negligent conduct of a person. It is under this section that doctors or other medical practitioners have generally been proceeded against under criminal law. Even though there is protection given to accidents caused during performance of lawful act and acts not intended to cause death and done for the persons benefit by his consent and in good faith , the fear of criminal liability has been lingering while performance of their duty even today.

TESTS USED IN INDIA

In determining the test for medical negligence and prosecution of medical practitioners, the Supreme Court of India has also issued certain guidelines. What goes to the basis of these guidelines is that once a criminal investigation begins against a doctor, the loss of reputation is nearly irreversible. It has also been taken into account that since the nature of work that doctors perform is one involving public service, it is even more necessary that certain guidelines be issued in this regard.

1. Government of India along with the Medical Council of India should formulate certain rules/regulations etc. to regulate aspects of negligence in medical practice. While this exercise is pending, the following guidelines must be kept in mind while prosecuting medical practitioners.
2. To make a case against a doctor, a private complainant has to submit evidence of a prima facie case before the authority taking cognizance of the act. Such authority must also include credible opinion given by another competent doctor to support his case.
3. The investigating officer must also, independently, obtain an impartial ad unbiased opinion of a doctor who practices in the same field in the same regard.
4. The doctor concerned should not be arrested like in a regular prosecution. He may be arrested if there is a fear that the doctor will not make himself available for investigation.

RELATIONSHIP OF A DOCTOR-PATIENT:

The legal duty that a doctor has towards his patients becomes a service that he provides in return for money. In such circumstances the patient of the doctor is the consumer and the rights of every consumer are protected in the consumer protection act, which was founded on 24th December 1986. This act ensures safety for all the consumers from negligent or nasty producers, retailers, etc. the main objective of this act is to ensure that no consumer is being cheated or exploited by the producer and no harm is caused to them due to the negligent act of the sellers. The reason that doctor's job is considered to be service is that, nowadays doctors treat patients only in return of money, therefore wherever there is transaction of money taking place the relationship of the two persons involved becomes a relationship of seller and buyer, therefore the patient automatically becomes a consumer and the requirement to protect his rights and interest arises simultaneously. This is the reason that consumer protection act came into being and the relationship of doctor- patient was included in it. This act provided a number of legal remedies for these injured consumers. Thus the patients of negligent doctors can not only ask for a remedy through a civil suit or a criminal suit but they can also take shelter under the consumer protection act, 1986.

CONSUMER PROTECTION ACT, 1986

As mentioned before the patient is considered to be a consumer and the doctor is considered to be service provider, but in some circumstances the relationship of seller-consumer may not exist, like when the patient doesn't pay for the service of the doctor, thus it is essential that we understand correctly the definition of a consumer and what a service means in terms of the consumer protection act-

Who is a consumer? (Section (1) (d))

Any person who buys any goods against consideration is a consumer (it also includes any user of such goods, other than the person who buys such goods, where such use is made with the original buyer's approval.) However, if the goods are purchased for resale or any commercial purpose, then the buyer is not a consumer and cannot avail the protection under this act. Similarly, any person who hires services against consideration is also a consumer and it included any beneficiary of such services, of course with the approval of the original consumer.

Strictly speaking, the definition penetrates the essence of consumption and not merely the dereliction based on privacy between the parties. Any user of goods or beneficiary of services has also a legal right and locus standi to initiate action under the act. In the course of treatment of a patient, the bills and fees of the doctors may be paid by an attendant or family member. The patient, as beneficiary, remains consumer. The madras high court while deciding Bench of writ petitions in Dr.C.J Subramania v. kumaraswamy,[12] interpreted the provision of the act Vis a Vis medical practitioners as under:

i. The services rendered to a patient by a medical practitioner or a hospital by way of diagnosis and treatment both medical and surgical, would not come within the meaning of service'as defined in section 2 (1)(o)of the consumer protection act.

ii. A patient who undergoes treatment under a medical practitioner or a hospital by way of diagnosis and treatment, both medical and surgical, cannot be considered to be a consumer' within the meaning of section 2(1) (d) of the consumer protection act.

iii. The medical practitioner or the hospital undertaking and providing paramedical services of any category or kind cannot claim similar immunity from the provision of the act and they would fall, to the extent of such services rendered by them, within the definition of service and a person availing of such service would be a consumer' within the meaning of this act (The issue now stands finally decided by the supreme court in V.P Shantha case; Indian medical association v. V.P Shantha.[13]) Patients who avail medical services of government hospitals, where no fee or consideration is charged except a nominal amount as registration charges cannot fall within the ambit of consumer.

What is service? [Section 2 (1) (o)]

Services are defined in a wide terminology to include most of the general facilities which a consumer avails in day to day activities. A very comprehensive definition of services has been incorporated in the Act. It says service means service of any description which is made available to potential users. The word potential gives any potential user the right to move under this Act. But rendering of any service free of charge or under a contract of personal service does not come under the ambit of this act. Services rendered by doctors and hospital have been

[12] 1996 86 CompCas 747 Mad
[13] 1996 AIR 550, 1995 SCC (6) 651

held to be within the jurisdiction of the Act. To understand the depth of the logic applied by the consumer courts it is essential that we understand what rights a patient enjoys as a consumer, for the breach of which he can ask for a legal remedy. The rights of a consumer as a patient in the Act are based on the inherent rights. These inherent rights are-

- The right to be protected against marketing of goods and services which are hazardous to life and property. So one should always sport an attitude of 'beware! Don't sell me goods hazardous to my life and property';
- The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, or as the case may be, so as to protect the consumers against unfair trade practices
- The right to be assured, whenever possible, access to a variety of goods and services at competitive prices.
- The right to be heard and to be assured that the consumers interests will receive due considerations at appropriate forums.
- The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
- The right to consumer education.

Hence a consumer can keep in mind these rights and these important conditions of the consumer protection act before filing a suit in the court regarding medical negligence in India.

Generally there is always confusion whether medical negligence is a tort or is it a deficiency in service. In Dr. Ravinder Gupta v. Ganga Devi, case it has been observed that before the consumer protection act was proposed the laws related to medical negligence was always under the law of torts only. Medical liability under the consumer jurisdiction is on a somewhat different footing and though in certain areas the matter (consumer law & tort law) may overlap, there is a clear line distinction between the two, medical liabilities within the consumer jurisdiction is only a species of the genus of deficiency in services hired. The definition casts the very net wide and extends the somewhat narrower concept of negligence in the law of torts. Medical liability under the consumer jurisdiction undoubtedly includes what is negligence in the law f torts, but is somewhat wider and more than the strict liability under the law of torts. A practitioner can be held to be liable if his mistake is of such a nature as to imply an absence of reasonable skill and care on his part, regard being to the ordinary level of skill in the profession.

English law

The English law is also known as the common law and is one of the most ancient laws. Most of the laws prevailing in the world have been derived from the English laws with some minute changes according to the citizen's interest. The Indian law is also inspired by the English law. In English law also the concept of legal right, legal duty of care and a legal remedy is seen. Before going into the details it is necessary that we see as to who is considered to be a plaintiff and the defendant in the English law, in respect to medical negligence by a doctor. The plaintiff is or was the patient, or a legally designated party acting on behalf of the patient, or in the case of a wrongful-death suit – the executor or administrator of a deceased patient's estate.

The defendant on the other hand is the health care provider. Although a 'health care provider' usually refers to a physician, the term includes any medical care provider, including dentists, nurses, and therapists. But it was illustrated in Columbia Medical Centre of Las Colinas v Bush, that the "following orders" may not protect nurses and other non-physicians from liability when committing negligent acts. Relying on vicarious liability or direct corporate negligence, claims may also be brought against hospitals, clinics, managed care organizations or medical corporations for the mistakes of their employees.

According to the English law, the duty of care arises as soon as the person agrees to treat the patient using his skill and special knowledge. This kind of duty of care is also seen in case where the patient is in a contractual relationship with the doctor for his treatment. The English law believes that the when a patient gives a contractual consent to the doctor or any of the family members give consent then the doctor cannot be held liable for the wrongs committed by him but even in such circumstances it cannot be said that the doctor doesn't have a duty of care as in that case the law expects the doctor to act with a standard of care. The duties in law could be assumed or imposed. The duty is said to be imposed when the patient comes to the doctor with his problem and puts his trust on him and seeks advice but the duty is said to be assumed when the patient enters into a contract with the doctor for an operation or other treatments available in the hospitals.

The term '**standard of care** has not been defined anywhere but the definition can be understood under the various cases that has been decided by the courts of England. We shall now consider the following cases to understand this term-

Barnett v. Chelsea and Kensington Hospital Management Committee[14]

Facts; in this case there were three workmen who suffered with violent illness after drinking tea. They were presented to the local cottage hospital, but the doctor was ill himself. The nurse phoned the doctor with the symptoms and the doctor advised that the men go home and see their own doctors. In the event one of the patients died and his widow filed a petition in the court against the doctor who advised the man to see his own doctor

Issue; whether the doctor had a duty of care towards his patient even though he did not treat him Judgment; the court held that the doctor not only owed a duty of care to those who were presented to him in his casualty unit but that, in these circumstances he should have ensured that the patients were properly examined. Ultimately the court claimed that the requisite standard of care was not maintained by the doctor.

- Personal opinion; in this case the standard was about examining emergency patients. To answer the question as to what the standard is across the whole spectrum of medical care, I would use the famous judgment given by Tindall C.J in the year 1838.

"Every person who enters into a learned profession undertakes to bring to exercise of it a reasonable degree of care and skill. He does not undertake, if he is an attorney, that at all events you shall gain your case, nor does a surgeon undertake that he will perform a cure; nor does he undertake to use the highest possible degree of skill".

Generally the question that arises in peoples mind is that why a doctor is punished when he did not treat the patient instead directed him elsewhere? The answer to this question is that, in English law a place which provides the emergency service cannot refuse the performance of their usual acts of treating the patient as the law assumes that a hospital holding itself to be offering emergency services will respond to the public need, however unpleasant it may be. This rule doesn't apply everywhere as it is arguably fair for the hospital to refuse to provide medical services but once it takes in-charge of emergency services then it cannot back out.

TESTS USED TO DETERMINE NEGLIGENCE:

The test that was most commonly used in the English law was the custom test'. It was a test whereby the defendants conduct is tested against the normal usage of his professional calling.

[14] [1968] 2 WLR 422

This test is one that is applied to all kinds of negligence and not only medical negligence. There are three criteria that have to be fulfilled for the test to show a positive result, they are-

1) It must be proved that the there is a usual and normal practice
2) It must be proved that the defender has not adopted that practice
3) It must be established that the course the doctor adopted is one which no professional man of ordinary skill would have taken if he had been acting with ordinary care. [this is the most important criteria of the test out of the other three.]

This principle was tried and tested in many cases and was also proven to be successful. But in 1957 a case of Bolam where the defendant who was a doctor claimed that when a doctor practices it is quite possible that to cure a problem there could be different ways and no doctor in the world can certify one of the ways to be the correct and the most practiced and accepted way following which the chances of negligence becomes minimum. This Bolam case has been a matter of sustained criticism as the judge held that the a doctor would not be held liable only if he acted in accordance with the practice accepted by a responsible body of medical men skilled in that particular act. Basically the judgement didn't support the defendant support the defendant's plea of not being negligent. In the later stages, due to the variety of cases that came in front of the court, the courts had decided to loosen this test so that cases such as the Bolam's case can be decided. After the partial failure of this case the courts tried to come up with innovative and alternative techniques like the concept of reasonability etc but again these techniques could not be applied to all kinds of cases and the necessity to remember to take caution before applying the tests on a case made it a little inconvenient for the courts to take the correct judgement. It is therefore a case where the object-oriented approach is being adopted. Though the test given in Bolam's case is still holding good ground on the given factors, the changing scenario has been taking into account by the House of Lords in the present cases. It also hints towards the acceptance of a broader liability regime under the consumer protection law when it discusses the issue similarity of liability in cases of loss of business opportunity as a result of deficient advice and medical negligence leading to loss of opportunity to recover.

The basic principle of law in regard to medical negligence has not changed in England in approximately the last fifty years. Therefore, if one would want to sum up the broad principles operating in the sphere of medical negligence in England, the following may emerge:

1. The test of negligence is the test of the reasonable man. What a reasonable man must have done, if not done or vice versa would result in an inference of negligence.

2. The test of a skilled man [professional] is the test of an ordinary skilled man and not one with a higher degree of knowledge.
3. What is required to be seen is that in the given circumstances, was the course taken by the practitioner justified.
4. Mere difference of opinion in opinions of medical persons would not confer liability upon a medical practitioner on the course adopted by him.

We have now seen that the English law is stricter with its rules, regulations and its laws when compared to the Indian law. We changed our laws according to our interests, customs and traditions, so that it is easy for our people. Even then we have a lot of things in relation to medical negligence that is common for both English law and Indian law. I would now be discussing these similarities so that the principles that are followed in both the countries is understood and cleared from the differences mentioned above. These principles are very basic and these are also seen in other countries like Australia, Scotland, United state of America, and a few other Asian and European countries. These are considered to be the fundamentals requirements of constituting negligence.

BURDEN OF PROOF

The burden of proof of negligence, carelessness, or insufficiency generally lies with the complainant. The law requires a higher standard of evidence than otherwise, to support an allegation of negligence against a doctor. In cases of medical negligence the patient must establish her/ his claim against the doctor because even though the right to life is an absolute right in the law of torts, some situations arise in which this right becomes a qualified right and it is essential for the plaintiff to prove not only that he suffered from a special injury but also to prove that the act of the doctor was performed negligently.

In Calcutta Medical Research Institute vs. Bimalesh Chatterjee[15] it was held that the onus of proving negligence and the resultant deficiency in service was clearly on the complainant. In Kanhaiya Kumar Singh vs. Park Medicare & Research Centre[16], it was held that negligence has to be established and cannot be presumed.

[15] (1999) CPJ 13 (NC)
[16] (1999) CPJ 9 (NC)

Even after adopting all medical procedures as prescribed, a qualified doctor may commit an error. The National Consumer Disputes Redressal Commission and the Supreme Court have held, in several decisions, that a doctor is not liable for negligence or medical deficiency if some wrong is caused in her/ his treatment or in her/ his diagnosis if she/ he has acted in accordance with the practice accepted as proper by a reasonable body of medical professionals skilled in that particular art, though the result may be wrong. In various kinds of medical and surgical treatment, the likelihood of an accident leading to death cannot be ruled out. It is implied that a patient willingly takes such a risk as part of the doctor-patient relationship and the attendant mutual trust.

This kind of a situation is also seen in the English law wherein the plaintiff only has to prove that the doctor committed his acts negligently.

SHIFTING OF ONUS

As discussed earlier, normally the burden of proof is on the complainant. But under circumstances when the conduct of medical men betrays proper management, the burden shifts on the doctor. In one such case of eye surgery, the diagnosis, the pathology of the disease, the contents of the consent form, the expected treatment and the actual surgery carried out on the patient were all in different directions. Held, in doctrine of common knowledge, the patient must prove positive act of omission, but they need not produce evidence to establish the standard of care as the entire surgical procedure is carried out inside the operation theatre in the absence of patient's attendants. Therefore, there is no witness to the actual procedure carried out. Hence, in these cases it is quite evident that the courts will support the patient who suffered injuries due to the acts of another person who is skilled in his work but committed the act negligently. Therefore it is always not necessary that the plaintiff is responsible to provide evidence in the court to prove that the doctor committed the act negligently.

In English law, the shifting of onus takes place with the application of the maxim 'res ipsa loquitor' 'Res ipsa loquitor' means that the act speaks for itself. In some cases it becomes difficult to establish negligence in many personal injury actions. In these cases, sometimes the court helps the plaintiff by applying this maxim. The doctrine is most useful in cases where damage has occurred in an incident involving machinery or in the context of damage suffered while the plaintiff was involved in some sort of complex process. It can be applied only where

the plaintiff is unable to identify the precise nature of the negligence which caused his injury and where no explanation of the way in which the injury came to be inflicted has been offered by the defendant. The injury itself must be of such a kind as 'does not normally happen' in the circumstances unless there is negligence.

DAMAGES

The damages in both of the laws is given in the following ways-

Compensation: In Indian as well as English law the concept of awarding compensation is the most usual form of providing a remedy to the injured party. Basically the concept behind providing compensation is not punishment the guilty but providing help to the injured party to at least partially recover the loss that he has suffered due to the negligent act of a doctor. In India the amount of compensation can start from a few thousands an can increase up to a value in lacs, whereas in the English law the compensation amount goes in millions as their standards is more and their law is more stricter. The compensation awarded need not be always put on the doctor committing the mistake but it can also be put on the hospital under the principle of vicarious liability wherein the doctor is the employee of the hospital and thus as the relationship becomes that of a employer-employee, the plaintiff has also the right to claim damages from the hospital who employed him, in cases where the defendants is not in the position of paying the compensation amount.

Punishment through imprisonment: this is provided by the courts when a criminal suit is filed in the court by the plaintiff. The period of imprisonment changes with the circumstances of the cases and is decided by the courts. Even though the whole section of medical negligence comes under civil liability, in some cases the negligent act committed is so grievous that the injured party is not interested in compensation as it won't make a difference to them and they believe that the doctor who committed the act must be punished severely. The idea behind the concept of imprisonment is not only to punish the wrongdoer but also to bring a change in him and bring order in the society, so that such acts are not committed so carelessly and proper and necessary precautions are taken by the doctors before diagnosing, treating or performing an operation on the patient.

Compensation and imprisonment: in certain cases it is possible that the courts award compensation to the injured party and also punish the wrongdoer for his acts. This is sometimes

rare and sometimes quite frequently used by the courts. The remedy provided completely depends on the facts of the case and the plea of the plaintiff.

DEFENCES FOR THE ACCUSED PARTY

It is not necessary that the defendant is always at fault. Hence some of the following defences are generally used by the accused doctors to protect themselves from liability. To protect oneself from criminal liability [in India], the doctor has an option of using the sections (BNS). These sections deal with hurt caused by the doctor or any medical practitioner when a consent is given either by the party who wishes to be treated or the legal heirs of the party like for e.g. Section 313 of the BNS talks about situation where the parents give a consent in place of their children who are unable to judge what is right for them and what is not right for them. Therefore when the injured party gives consent for a particular treatment or operation then the doctor or the hospital cannot be held liable. Another situation could be when the injured party got himself treated in a government hospital and paid only nominal charges for registration. In this case the hospital cannot be held liable as under the consumer protection act when the patient does not pay for the service provided by the hospital, he is not considered to be a consumer and therefore the duty of safeguarding the patient as such does not lie on the hospital,. This does not mean that the doctor is also not held liable. When the damage is too remote. This means that when the damages cause is too remote and was not caused as an immediate result of the doctor's negligence. Take for instance a person is treated by a doctor who performs cosmetic surgery but during one of the operations the person gets a scar on her face and later the plaintiff asks for compensation as because of the scar on her face she couldn't get married and also lost her job. The court can award damages for the scar on her face if it was due to the negligent act of the surgeon but not for the personal injuries that she is facing If the defendant can prove in the court that the damage suffered by the plaintiff was the violation of a qualified right and that no special injury was caused by the defendant's acts to the plaintiff, then there is possibility that the court may exempt the defendant from paying the damages to the plaintiff. To explain these concepts and other concepts mentioned in the above pages, we would now illustrate a few cases where such principles were applied.

CASE LAWS

Case 1: **Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole**[17]

Facts: a young man aged 20, met with an accident on the sea beach in a village far away from the city of Pune, which resulted in the fracture of the femur of his left leg. After some temporary treatment by a local doctor who tied wooden planks to his leg, he was brought to the respondent's hospital for treatment. The respondent had given specific instructions to his assistant to give 2 proper injection doses of injection of morphia before bringing the patient to the operation theatre. But the assistant gave the patient only one injection. The young boy died as the result of shock suffered for not having given the adequate amount of anesthesia.

Issue: the plaintiffs, who were the legal heirs of the boy claimed compensation for the negligent act committed by the employee of the respondent.

Judgment: the lower court and the high court held that the respondent was liable for the death of the young boy and a compensation of Rs.3000 was awarded to the plaintiffs. The Supreme Court also agreed with the judgments of the lower court and stated that this was a clear case of medical negligence and the respondent is liable to pay damages to the family of the young boy and there was a clear breach of his legal duty of taking the necessary precautions before performing an operation.

Personal opinion: in this case we see that the patient breached his duty of care that he had towards the patient. Cases on wrong dosage of anesthesia is very commonly seen, this is the reason that nowadays even other medical practitioners like dentists refuse to give injections even though they are skilled in this field and wait for an authorized anesthetist to come and give the injection with proper care and precaution.

Case 2: **Shakoor v. Situ**[18]

Facts: a patient died of idiosyncratic liver reaction after taking nine doses of a traditional Chinese remedy prescribed by an herbal medicinalist. The skin condition from which the patient had been suffering could only be treated by surgery in orthodox medicine. His widow sued in negligence.

[17] 1969AIR128SCR(1)206
[18][2000] 4 All ER 181; [2001] 1 W.L.R. 410; (2001) 57 B.M.L.R. 178 Sited in http://en.wikipedia.org/wiki/Shakoor_v_Situ

Issue: the issue was as to what is the appropriate standard of care.

Judgment: the court held that an alternative medical practitioner could not be judged by the standard of orthodox medicine because he did not hold himself out as professing that 'art'; rather, he would be judged by the prevailing standard in his own 'art' subject to the caveat that it would be that it would be negligence if it could be shown that that standard itself was regarded as deficient in the UK having regard to the inherent risks involved. In the event, the negligence action failed because the court held that the practitioner had acted in accordance with the standard of care appropriate to the traditional Chinese medicine as properly practiced in accordance with the standards required in the UK.

Personal opinion: we see here that the court of UK has cleared the doubt about standard of care. Standard of care prescribed in one field need not be the same in the other and thus the suit of the plaintiffs failed simply because the standard of care taken by the practitioner was correct according to the Chinese herbal medicine and the law of UK. As I have mentioned standard of care cannot be defined easily, it just arises out of different situations, circumstances and different facts of different cases.

Case 3: **Sishir Ranjan Saha v. State of Tripura**[19]

Facts: the victim of the road accident was brought to a hospital. He needed major surgery. The specialist doctor was not available as he was busy attending to the other patients and did not respond to the call of emergency. The victim filed a suit in the court claiming compensation.

Issue: whether the doctor was liable for not attending to the victim

Judgment: the court held that the doctor was liable for not attending the emergency patient in time especially after claiming to provide emergency services. It ordered the defendant to pay a compensation of Rs.1,25,000. It also ordered the hospital to improve its quality of service.

Personal opinion: we see here that the court applied the principle of the English law where when a hospital claims to provide emergency services it has to provide these services whenever asked for. The unavailability of the specialist doctor clearly shows a negligence on the part of the hospital authorities and since the patient required urgently an operation it was a duty that the doctor had towards his patient. Thus there was a breach of duty on his part. It is very essential to understand here that the hospital authorities are also liable as it is their

[19] AIR2002 Gau102

responsibility to appoint another doctor to take care of emergency cases or appoint more specialists as in a hospital different kinds of cases come and the hospital should be in a position to take control of all these cases. In recent times only we have seen that when incidents such as fire etc come up the hospitals are not equipped with good specialist doctors to take care of such cases. A recent example that India is facing is of swine flu. We see that not many hospitals have the knowledge to conduct the appropriate tests and provide the necessary treatment due to which a large number of people are being targeted by this disease also resulting in death. Thus in my opinion private as well as government hospitals must maintain proper services and standard of care so that the best services are offered to the patients.

Case 4: **Cassidy v. Ministry of Health**[20]

Facts: in this case the plaintiff went to the doctor to cure his two stiff fingers. When the doctor operated him and when he was brought out it was seen that his two fingers were not cured but instead his two other fingers also became stiff. Due it this he almost couldn't use his full hand. Hence the plaintiff filed a petition in the court asking for compensation

Issue: whether in this case the principle of res ipsa loquitor can be applied or not

Judgment: the court held that the act committed by the doctor was so negligent that the plaintiff need not even prove that how the act was committed negligence. It said that this case was the classic example of res ipsa loquitor and the defendant was made liable for the wrongs committed negligently by him.

Personal opinion: the maxim states it very clearly that 'the act speaks for itself'. This kind of a situation was also seen in an Indian case i.e. Janak Kanthimati v. Murlidhar Eknath Masine, in which the plaintiff suffering from epilepsy died within 2 days after admitting him in the hospital due to the negligent acts of the doctor. In this case and the above mentioned case the act was so negligent that the requirement of proving negligence by the plaintiff doesn't arise and therefore even without proof the court can held the defendant liable for their acts. But in cases where special damage needs to be proved, this maxim cannot be applied as when there is a special damage the right is a qualified right and the requirement to show that the person who committed the act was negligent with the necessary evidence and proof's becomes important. It is only in a few cases that the court allows the plaintiff to use this principle as every case

[20] [1951] 2 KB 343

need not be as obvious as some cases in which the injury suffered due to negligence is quite evident.

CONCLUSION

After reading the above mentioned matter and the mentioned cases we can now formulate the following points about the law relating to medical negligence in India-

1. Negligence has three essential components – duty, breach and resulting damage.
2. Cases of medical negligence have to be dealt with a difference. It is not the same as occupational negligence. Simple lack of proof or error of judgment will not amount to professional negligence.
3. The only two cases in which such negligence would be attributed are when the professional did not hold the requisite skill that he professed to have possessed or non-exercise with reasonable care of the skill possessed.
4. Bolam test would be applicable in India also.
5. Negligence under civil and criminal law are different.
6. Under section 304-A of the Indian Penal Code, the 'rash or negligent' conduct must be 'gross' in nature.
7. To make a medical practitioner liable, it has to be shown that the injury resulted was most likely imminent and that no medical practitioner in his ordinary senses and prudence would have committed that act or omission.

In India almost every day there is a case of medical negligence which is seen. It is seen in the big as well as in the small hospitals, clinics, dispensaries etc. Due to this a number of people are suffering in our country. The most common type of medical negligence is seen in operations and during the delivery of the child etc. a number o cases has been filed against doctors who negligently leave their surgical instruments in the body of the patient etc, still a number of doctors leave their instruments in the stomach of the patient which could be fatal. In India doctors are treated as gods, hence when some kind of negligent acts are carried out by them, they think that it was the wish of god and don't make the doctor responsible for this. Illiteracy is another big factor that is not letting our people to know what kinds of wrongs are being committed in our country. Our country is facing a terrible time today as the doctors also are taking advantage of poor people and are making their service sector, a profit oriented sector and changing their vision from providing good health to gaining profits from innocent people by asking them to undergo 1000 tests before treating them for a common cold. The environment

in the hospitals like the cleanliness etc is also not maintained by most of the hospitals not only in the rural region but also in the urban region which results in the spread of communicable diseases faster and easier.

The relaxed behaviour by the people, by the hospital authorities and the government officers who check these places has resulted in the relaxed behavior of the doctors, which is the main reason that the number of cases of medical negligence is increasing. In my opinion if the common people with the support of the government impose rules on these hospitals and also see to it that these rules are implemented then there is a chance that the standards of our hospitals would improve and automatically the skill and knowledge of specialized and authorized doctors would be used to the fullest. We must also spread awareness in the rural areas [especially] so that poor people don't get exploited and fight for their rights and ask for the required remedy from the medical practitioner causing them the harm. When all these matters are looked into and the necessary action is taken, our standards will also match the standards of other good foreign hospitals located in places like united states of America, the great Britain etc.

BIBLIOGRAPHY

"Medical Negligence: A Legal and Medical Guide''
"Medical Negligence: Law and Practice" by R. W. M. Dias
National Health Service (NHS) - Medical Negligence
"Principles of Medical Law" by Andrew Grubb
Wikipedia
Newspaper