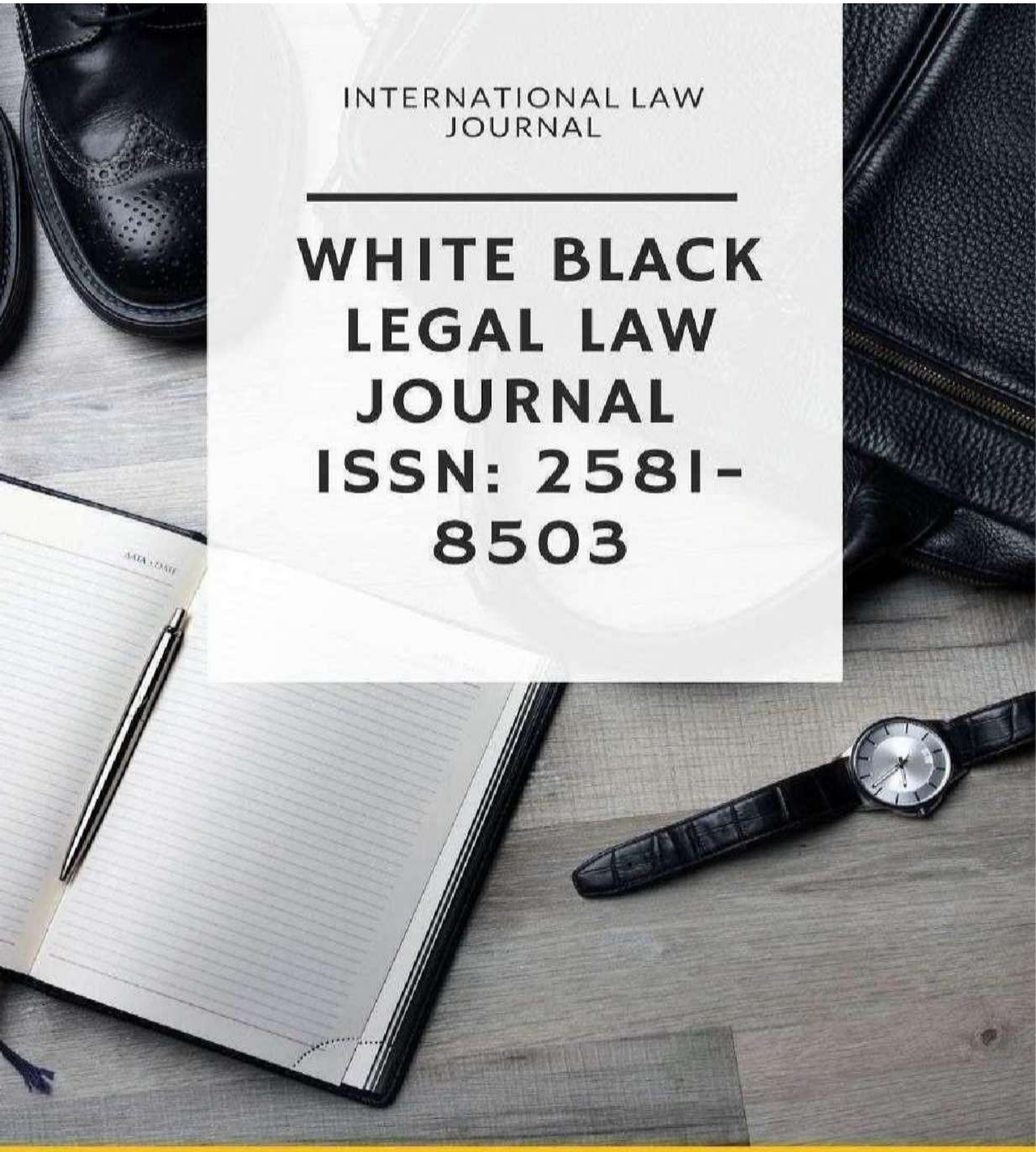

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ABOUT US

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

LAW AS AN INSTRUMENT TO PREVENT CLINICAL MALPRACTICE AND MEDICAL NEGLGENCE

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ABSTRACT

The **Right to health care** is an age old phenomenon. The Practice of medicine existed when the human race started existing in the world. But in today's society there is a great threat of commercialization. There is a growth of polyclinics, diagnostics centers, nursing homes, fertility clinics, multi-specialty hospitals etc. mushrooming across the country. This no doubt has benefitted the rich and those employed in the public sector authorized to avail of such services, but such services are rarely available to a common man. Due to increased marketing in health care services illegal practices has been evolved in medical profession. The changing **doctor-patient relationship** and commercialization of modern medical practices has affected the practice of medicine. Unethical practices have been evolved due to commercialization like unnecessary operations, check-ups, medical scams, trafficking human organs, negligent activities etc. It may lead to describe these activities as a crime at some point of time in the eyes of law.

Medical profession is regarded as noble calling. However, due to various reasons, with time, this noble vacation has underwent a phase of moral decadence and professional ethics which is used to be the hallmark of the calling has been swept by the unforgiving winds of **commercialization**. Professional misconduct by doctors is indeed a serious offence which is unfortunately spreading fast in the medical community in varied forms and ways. In this paper, the researcher has made an attempt to analyse the challenges before the right to health of the citizens like **medical negligence and malpractice** and suggest appropriate measures for remedy.

KEYWORDS: *Commercialization, Doctor-patient Relationship, Medical negligence and malpractice, Medical Profession, Right to health care*

INTRODUCTION

In the field of medicine when the ethics are violated it can be corrected as the morality of the human nature gets affected, but when the actual care has not been taken or due to lack of diligence when a mistake happens it comes under medical negligence. The concept of medical negligence and clinical malpractice are not one and the same but they travel parallel to each other. Values in medical ethics were recognised as four principles,

- respect for autonomy (the patient has the right to refuse or choose treatment),
- beneficence (the doctor should act in the best interest of the patient,
- non-malfeasance- "first, do no harm" **(primum non nocere)** and
- Justice (fairness and equality).

Other values include respect for the patient, (right to be treated with dignity), truthfulness and honesty (informed consent) moral values in conflict (conflict of interest).[1]

When the standard care has not been taken, it can cause various effects to the people. The doctor-patient contract is almost always of implied type, except where a written, informed consent is obtained. While a doctor cannot be forced to treat any person, he has a certain possibilities for those whom he accepts as patience. It is an implied contract. Implied contract is not established when:

- The Doctor renders first aid in an emergency
- He makes a pre-employment medical examination for a prospective employer
- He performs an examination for life insurance purpose
- He is appointed by the trial court to examine the accused for any reason
- When he makes an examination at the request of any attorney for law suit purposes.

A doctor-patient contract requires that the doctor must:

- Continue to treat such a person
- With reasonable care
- Reasonable skill
- Not undertake any procedure/treatment beyond his skill

[1]An Article written by Dr.Y.M.Fazil Maricker, principal of Mount Zion Medical college, Thiruvananthapuram,India available at http:/www.indus.org/law regarding medical practice.

- Must not divulge professional secrets.[2]

When the doctor fails to take all these due diligence it seems he has committed a clinical malpractice or negligence.

CONCEPT OF MEDICAL NEGLIGENCE AND MALPRACTICE:

Medical negligence is a combination of two words. The second word solely describes the meaning, though the meaning of negligence has not been described in a proper way but it is an act recklessly done by a person resulting in foreseeable damages to the other. Negligence is an offence under tort, IPC, Indian Contracts Act, Consumer Protection Act and many more.

Medical Negligence basically is the misconduct by a medical practitioner or doctor by not providing enough care resulting in breach of their duties and harming the patients which are their consumers. A professional is deemed to be an expert in that field at least; a patient getting treated under any doctor surely expects to get healed and at least expects the doctor to be careful while performing his duties. Medical negligence has caused many deaths as well as adverse results to the patient's health. Negligence can be generally defined as 'Conduct that is culpable because it falls short of what a reasonable person would do to protect another individual from foreseeable risks of harm'.

Medical negligence is a complicated subject, since medical treatments are inherently risky. A medical treatment always involves a basic risk that something might go wrong. In addition, human body of patients can react differently to the same treatment. There are occasions when patients are harmed as a consequence of their treatment or absence or even delay of it Lord President Clyde gave a concise and succinct definition of medical negligence, he said: "*The true test for establishing negligence in diagnosis or treatment on the part of the doctor is whether he has been proved to be guilty of such failure as no doctor of ordinary skill would have been guilty of, if acting with reasonable care*"[3].

In order to prove medical negligence under the negligence rule, the aggrieved patient must be able to establish to the satisfaction of the court that:

[2]Health laws and health care systems, Dr.S.Porkodi and Dr.Ansarul Haque,p.15, (2011)
[3]Hunter Vs.Hanley, 1955 SC 200 (scotland)

(a) The doctor owed him a duty of care of a particular standard of professional conduct.

(b) The doctor contravened the duty.

(c) The patient suffered damage.

(d) The doctor's conduct was the direct and the proximate cause of damage.[4]

"No doctor knows everything. There's a reason why it's called "practising" medicine." To err is human. Though patients see the doctors as God and believe that their disease will be cured and they will be healed by the treatment but sometimes even the doctors makes mistakes which can cost a lot to the patients in many ways. Sometimes the mistakes are so dangerous that a patient has to suffer immensely.

Medical malpractice is an act of negligence committed by a medical provider, a physician in most situations. It is defined as doing something a medical provider of ordinary skill would not have done, or failing to do that which a medical provider of ordinary skill would have done. **Black's Law dictionary** defines Malpractice as *"any professional misconduct, unreasonable lack of skill or fidelity in professional or fiduciary duties, evil practice or illegal or immoral conduct."* Any professional man may be sued for malpractice.[5]

An individual may be subject to one of the various forms of medical malpractice whenever he or she seeks the care of a medical provider. Malpractice can be constituted by something as simple as failing to put the rails of a hospital bed in the upright position, to something as complex as improperly performing open heart surgery. A related issue in these cases is whether a patient has provided informed consent to a particular treatment. Only if a patient has been informed of the details, risks, benefits and alternatives to a recommended form of care can he or she rightly be said to have given informed consent.

Medical negligence also known as **medical malpractice** is improper, unskilled, or negligent treatment of a patient by a physician, dentist, nurse, pharmacist, or other health care professional. Medical malpractice occurs when a health-care provider strays from the recognized "standard of care"

[4]Medical negligence in India, Shwetha Thakur and Vikram Singh Jaswal, p.3, (2013)
[5]Medical problems and the law, Kent Lowis Brown, p.211

in the treatment of a patient.

The "**standard of care**" is defined as what a reasonably prudent medical provider would or would not have done under the same or similar circumstances. The important question isn't how to keep bad physicians from harming patient; it's how to keep good physicians from harming patients.[6]

Negligence as a crime has a different yardstick. Negligence under tort is determined on the extent of the loss caused whereas negligence under criminal law is dependent on the degree or amount of negligence. Courts have repeatedly held that the burden of proving criminal negligence rests heavily on the person claiming it. Criminal law requires a guilty mind. If there is a guilty mind, a practitioner will be liable in any case.

But if, under the criminal law, rashness and recklessness amount to crime, then also a very high degree of rashness would be required to prove charges of criminal negligence against a medical practitioner. In other words, the element of criminality is introduced not only by a guilty mind, but by the practitioner having run the risk of doing something with recklessness and indifference to the consequences. It should be added that this negligence or rashness or must be 'gross' in nature.

MEDICAL NEGLIGENCE -Vs- MEDICAL MALPRACTICE:

When you are the victim of medical malpractice or medical negligence, the difference in these two legal terms may not mean much to you; however, to your attorney they should mean quite a bit. It must be understood that the difference between medical malpractice and medical negligence in order to obtain a successful outcome in your malpractice claim.

First, not every bad outcome in the medical field rises to the level of medical malpractice. Doctors and other medical providers can only do some much in any situation. Sometimes they will not be able to save a life or prevent a bad outcome. However, doctors and medical providers have a duty of care that they owe their patients.

The duty of care is based on what a prudent person in the same position and with the same knowledge

[6]Hospitals and Law, Brig.M.A.George, p.13(2013)

would have done in that situation. Medical malpractice is the breach of the duty of care by a medical provider or medical facility. It has an element of "intent" that medical negligence does not have in it. The doctor or provider knew he should have done something to treat the patient but he failed to do so knowing that his failure may result in harm to the patient. It was not intentional in that he wanted to harm the patient but it was intentional because he knew that by doing so the risk of harm was present. For example, a doctor decides to forego an expense diagnostic test because the person's insurance company will not pay for the expense of running the test; therefore, the doctor would bear the financial burden if he the test.

On the other hand, medical negligence does not involve intent. Medical negligence applies when a medical provider makes a "mistake" in treating patient and that mistake results in harm to the patient. While the act or omission is definitely negligence, it does not rise to the point of medical malpractice because the medical provider did not commit the action either with the intent to cause harm or the knowledge that the patient might suffer harm. An example of medical negligence may be when a nurse accidentally leaves a sponge inside a surgical wound. She did not intend to harm the patient but her action may not rise to the level of medical malpractice.

The last few decades have seen many scientific and technological advances, decreasing mortality, morbidity and overall improvement in quality of life at the same time there are some negative changes such as decreasing standard of medical attention, decreasing ethical values, commercialization and corporate culture in the managements of patients.

These changes have significantly affected the doctor-patient relationship which was based on mutual trust. In today's situation this relationship is strained and is bringing doctors under the ambit of consumer protection Act. Of the challenges, in all likelihood, none can be so threatening and draining for a doctor, on an emotional, personal and professional level, as being a defendant in a medical malpractice claim.

An extreme care and caution should be exercised by initiating criminal proceedings against medical practitioners for alleged medical negligence and drew up elaborate safeguards for them, including avoiding arrest unless it was inevitable. Drawing elaborately from established provisions of law and

practice, the bench ruled that this was necessary for, the service which medical profession renders to human being is probably the noblest of all and hence there is a need for protecting doctors from unjust prosecutions. Negligence in the context of medical profession necessarily calls for a treatment with a difference. A simple lack of care, an error of judgments or an accident is not proof of negligence on the part of the medical professional, it stated.

Thus, medical malpractice and medical negligence differs under the basic component called intention. Public awareness of medical negligence in India is growing. Hospital managements are increasingly facing complaints regarding the facilities, standards of professional competence, and the appropriateness of their therapeutic and diagnostic methods. After the Consumer Protection Act, 1986, has come into force some patients have filed legal cases against doctors, have established that the doctors were negligent in their medical service, and have claimed and received compensation. As a result, a number of legal decisions have been made on what constitutes negligence and what is required to prove it.

In the Tort of Negligence, professionals such as lawyers, architects and doctors are included in the category of persons who profess some special type of skill or are skilled persons. Therefore, the person performing should possess the requisite skill to do the work. Similarly, the patients, as soon as they step into the premises of the hospital, they equate the doctor to God and believe that he possesses the requisite medical expertise. Here, the standard to be applied to adjudge the case at hand would be that of an ordinary competent person exercising ordinary skill in the profession.

ROLE OF JUDICIARY IN PREVENTING MEDICAL NEGLIGENCE:

The Judgment that clicks our mind whenever we think about medical negligence is none other than the high-profile case in which the highest compensation till date was granted, in the case of ***Kunal Saha v. AMRI*** **(Advanced Medical Research Institute)**[7]which is popularly known as Anuradha Saha case,. The case was filed back in 1998 with the alleged medical negligence by 3 doctors of AMRI hospital; Dr. Sukumar Mukherjee, Dr. Baidyanath Haldar, and Dr. Balram Prasad as well as

[7](2006) CPJ 142 NC.

AMRI hospital.

The facts of the case, simply speaking, are that there was a drug allergy from which Mrs. Saha was suffering. When the duo approached the concerned hospitals, the three doctors prescribed such medicine which further aggravated the condition of the woman which led to her death. The Apex Court (Supreme Court) gave the final verdict of the case in the year 2013 and also compensated the victim with 6.08 crore. This particular case expanded the scope of medical negligence in India and took it to a whole new level.

In the case of ***V. Krishna Rao v. Nikhil Super Speciality Hospital 2010***, Krishna Rao, an officer in malaria department filed a complaint against the hospital for negligent conduct in treating his wife. His wife was wrongly treated for typhoid fever instead of malaria fever, due to the wrong medication provided by the hospital. Finally, the verdict was given, and Rao was awarded a compensation of Rs 2 lakhs. In this case, the principle of *res ipsa loquitor*[8] was applied, and the compensation was given to the plaintiff.

In a popular case, ***Achutrao Haribhau khodwa and Ors v. the State of Maharashtra***[9],the Supreme Court noticed that in the very nature of the medical profession, skills differ from doctor to doctor, and there is more than 1 admissible course of operation. Therefore, negligence cannot be attributed to a doctor so long as he is performing his duty with due care, caution, and attention. Merely because the doctor chooses one course of action over other, he won't be liable.

In **Indian Medical Association v. V.P. Shantha and Ors.**[10] , on an issue whether a medical practitioner can be regarded as rendering 'service' under Section 2 (1)(o) of the Consumer Protection Act, 1986. This case can be held to be good law and an authority on this point of law. It was held that Sec. 2 (1) (o) of Consumer Protection Act, 1986, Constitution of India and Indian Medical Council Act. The amenability of services rendered by medical professionals and hospitals under the Act of 1986. All kinds of services rendered by medical practitioner except where such services are rendered free of charges to all and under contract of personal service comes within term service under the Act.

[8] legal principle for a 'thing speak for itself'
[9](1996) 2 SCC 634.
[10] (1995) 6 SCC 651.

A contract of personal service cannot be assumed in absence of relationship of master and servant and service rendered by hospitals and a doctor working therein where services are rendered free of cost to all does not come within purview of Act. Payment of token charges will not alter the nature of services rendered by such hospitals, also the services rendered by non-governmental hospital where charges are required to be paid for availing services comes within Act. Hospital where charges are collected from persons who are in a position to pay for service comes within the purview of the Act notwithstanding free services rendered to persons who are not in position to pay, so services rendered to both category are covered under the Act. Act is not applicable to Government hospitals where services are rendered absolutely free of cost to everyone. But in government hospitals where services are rendered free of cost and also on payment of fee comes under Act. Cases where payment of cost for medical services are paid by insurance company on behalf of insured patient does not change nature of service availed by persons to be free service. Even the services availed by dependents of any persons and charges of such service paid by employer as part of conditions of service will not make such service as free service.

Similarly in **Jacob Mathew v. State of Punjab and Anr[11],** the FIR states "...the death of my father was occurred due to the carelessness of doctors and nurses and non availability of oxygen cylinder and the empty cylinder was fixed on the mouth of my father and his breathing was totally stopped hence my father died. I sent the dead body of my father to my village for last cremation and for information I have come to you. As per statement of imitator the death of Jiwan Lal Sharma has occurred due to carelessness of doctors and nurses concerned and to fit empty gas cylinder."

On the above said report, an offence under Section 304A/34 IPC was registered and investigated. Challan was filed against the two doctors. This judgment laid down broad general principles of medical negligence, which have to be considered by Courts in deciding matters since medical profession was placed within the purview of the Consumer Protection Act. Conclusions arrived at by the Supreme Court are as under:

1. Negligence is the breach of a duty caused 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. Negligence

[11] (2005) 6 SCC 1

becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', ' breach' and 'resulting damage'.

2. Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.
3. A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.
4. The test for determining medical negligence as laid down in *Bolam Vs Friern Hospital*

Management[12], holds good in its applicability in India.

5. The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mensrea[13] must be shown to exist. 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. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.
6. The word 'gross' has not been used in Section 304A of I.P.C., yet it is settled that in criminal law, negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act', as occurring in Section 304A of the I.P.C., has to be read as qualified by the word 'grossly'.
7. To prosecute a medical professional for negligence under criminal law, it must be shown that the accused did something or failed to do something which, in the given facts and circumstances, no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.
8. Res ipsa loquitur[14] is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence.

Passage defining negligence by professionals, generally and not necessarily confined to doctors, is to be found in the opinion of McNair J. in **Bolam v. Friern Hospital Management Committee**, [15]in the following words:

"Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham

[12] (1957) 1 WLR 582, 586.
[13]Mental element of a person's intention to commit a crime.- an element of crime.
[14] "The things speak for itself"- the principle that the mere occurrence of some types of accident is sufficient to imply negligence.
[15] (1957) 1 WLR 582, 586.

omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art." After a review of various authorities Bingham L.J. in his speech in **Eckersley v. Binnie**[16], summarised the **Bolam test** in the following words:

"From these general statements it follows that a professional man should command the corpus of knowledge which forms part of the professional equipment of the ordinary member of his profession. He should not lag behind other ordinary assiduous and intelligent members of his profession in knowledge of the new advances, discoveries and developments in his field. He should have such awareness as an ordinarily competent practitioner would have of the deficiencies in his knowledge and the limitations on his skill. He should be alert to the hazards and risks in any professional task he undertakes to the extent that other ordinarily competent members of the profession would be alert. He must bring to any professional task he undertakes no less expertise, skill and care than other ordinarily competent members of his profession would bring, but need bring no more. The standard is that of the reasonable average. The law does not require of a professional man that he be a paragon combining the qualities of polymath and prophet."

The classical statement of law in Bolam Vs Friern hospital management case has been widely accepted as decisive of the standard of care required both of professional men generally and medical practitioners in particular. It has been invariably cited with approval before Courts in India and applied to as touchstone to test the pleas of medical negligence.

The cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase. Sometimes, such prosecutions are filed by private complainants and sometimes by police on an F.I.R. being lodged and cognizance taken. The Investigating Officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to rash or negligent act within the domain of criminal law under Section 304A of I.P.C. The criminal process, once initiated, subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him.

[16] (1988) 18 Con LR 1, 79.

At the end, he may be exonerated by acquittal or discharge but the loss which he has suffered in his reputation cannot be compensated by any standards. Statutory rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, the Supreme Court proposes to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant had produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor.

The Investigating Officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in Government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam's test to the facts collected in the investigation. A doctor accused or rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the Investigation Officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.

Martin F. D'Souza v. Mohd. Ishfaq[17]

Sections 2 (1) (g), 21 and 23 of Consumer Protection Act, 1986 was invoked for deficiency in service i.e Medical negligence. The Judicial law was examined exhaustively as revolving around Bolam's Rule. The Respondent was suffering from chronic renal failure and severe urinary tract infection only to be treated by Amikacin or Methenamine Mandelate (MM). Since MM cannot be used for patients suffering from renal failure, the Amikacin injection was administered to him. The Respondent complained to appellant doctor of slight tinnitus or ringing in ear and the Appellant immediately asked the respondent and his attendant (wife) to stop injection Amikacin and cap. Augmentine. But respondent on his own kept on taking Amikacin injections. Thus, appellant was not to be blamed in

[17] (2009) 3 SCC 1.

any way. It was the non-co-operative attitude of respondent and his continuing with Amikacin injection which was the cause of his ailment, i.e., impairment of his hearing.

It was held that nothing on evidence to show that appellant was negligent in any way. Rather he did his best to give good treatment to respondent to save his life, but respondent himself did not co-operate. In view of opinion of expert doctor from A.I.I.M.S121. the appellant doctor not guilty of medical negligence.

A Medical practitioner is not liable to be held negligent simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another. He would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field. For instance, he would be liable if he leaves a surgical gauze inside the patient after an operation vide *Achutrao Haribhau Khodwa and others v. State of Maharashtra and others*[18], or operates on the wrong part of the body, and he would be also criminally liable if he operates on someone for removing an organ for illegitimate trade.

The professional is one who professes to have some special skill. A professional impliedly assures the person dealing with him,

i. That he has the skill which he professes to possess,
ii. That skill shall be exercised with reasonable care and caution.

Judged by this standard, the professional may be held liable for negligence on the ground that he was not possessed of the requisite skill which he professes to have. Thus a doctor who has a qualification in Ayurvedic or Homeopathic medicine will be liable if he prescribes Allopathic treatment which causes some harm.

Ratio Decidendi[19]*:* "Whenever a complaint is received against a doctor or hospital by the Consumer Forum, then it should first refer the matter to a competent doctor or committee of doctors, specialized in the field and only on their report a prima facie case of medical negligence can be made out and a

[18] (1996) 2 SCC 634.
[19]The rule of law on which the judicial decision is based on. The phrase means, “the reason”.

notice can be issued to the concerned doctor/hospital."

The above Judgments show that the Courts have refashioned its institutional role to readily enforce social rights and even impose positive obligations on the State. There has been some concern about the legitimacy and accountability of such overt judicial activism but the Court, however, continues to justify its interventions by asserting that it is temporarily filling the void created by the lack of strong executive and legislature branches.

CONCLUSION AND SUGGESTIONS

The Practice of medicine is capable of rendering great service to the society provided due care, sincerity, efficiency, and skill are observed by doctors. The cordial relationship between doctor and patient has undergone drastic changes due to the corporatization of medical profession, resulting in commercialization of the noble profession, much against the letter and the spirit of the Hippocratic Oath. Although rapid advancements in medical science and technology have proved to be efficacious tools for the doctors in the better diagnosis and treatment of the patients, they have equally become tools for the commercial exploitation of the patients. Medical law is undergoing a massive change.

The Development of law pertaining to professional misconduct and negligence is far from satisfactory. The legislations are not adequate and do not cover the entire field of medical negligence. Lawsuits for medical negligence can be minimized or avoided by taking steps to keep patients satisfied, adhering to policies and procedures, developing patient-centered care, and knowing ways of defending against malpractice judgments.Thus to conclude it can be said that law and medicine cannot be separated as both works to serve the human society. Its aim is to make the nation progress by safeguarding the people.

SUGGESTIONS:

There are regulatory bodies, council's works to regulate the medical institution. Only when the institutions work properly all the other wings do. Here are some of the suggestions to properly regulate the working of various mechanisms.

- ***The trust of innocent is the liar's useful tool***. Penalizing the person who is guilty of negligence and wants to blame others to prove himself as innocent will not serve the purpose

rather making all the members liable for the act of one single person will reduce these negligent practices. There are provisions in the regulations which emphasis to regulate the medical institution but it fails to say if the regulatory body doesn't work properly what needs to done. Thus, an amendment has to be made, to penalize when the regulatory body fails to do the work properly even if one member does a mistake, all the members of the NMC must be removed. This can pave way for all the members to do the work diligently.

- ❖ Malpractice and negligence must be brought under same scale. ***Life is short; do not shorten it with negligence***. For both the acts; negligence and malpractice, even if it is done with or without intention, punishment needs to be provided. May be punishment for negligent acts can be harsher than how it is mentioned in the acts. For.eg. if a negligent act has been done the doctor must be deprived of practicing medicine for at least five or more years. ***In person grafted in a serious trust, negligence is a crime***. And I believe that medical negligence must come under concept of crime as it involves human life as it valuable than any other things in the world. There can be no happiness without good health.
- ❖ ***Health is not valued till sickness comes***. Right to health has been included under various provisions of the constitution under Fundamental rights and DPSP. Eating crappy food isn't a reward it is a punishment. Only when it is constitutionally guaranteed under separate Article its importance would be governed by the state. Thus, I feel why not right to health be added in constitution through an amendment. An importance for health would be satisfied only when a separate article has been enacted under our Indian Constitution.

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