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MEDICAL NEGLIGENCE IN INDIA: AN ANALYTICAL STUDY OF  
MISDIAGNOSIS AND SURGICAL ERRORS WITH PROVISIONS FOR  
MEDICAL MALPRACTICE<sup>1</sup>

**ABSTRACT**

Negligence is any act that has been omitted or a failure of or procedure or fulfilling a duty towards a particular task designated to a person entrusted to perform. Negligence can be catastrophic in consequences. But more devastating would be any negligence in the field of medicine. Even the minute detail omitted can lead to a grievous consequence regarding any person's health. In this article, we will explore a rising concern of medical negligence. The noble profession known to humankind hasn't always been immune to errors, and most of those errors made in the initial stages of medical treatment of a person with an ailment or during its treatment. Instances recorded in the archives of law shed light upon the deliberation of medical practitioners whose incompetency and lack of experience have led to impairment of the patient or even death. This research paper will explore the concept of medical negligence and its interpretation by legal jurists of India.

**Keywords: Medical negligence, Medical malpractice, surgical errors,**

**INTRODUCTION**

The right to life, 'the' cardinal right known to the modern world community specified in every democracy and monarchy. Irrespective of the social status or economic background, every citizen of the world has been provided with one set of provisions to safeguard themselves under international law, to which the right to life is one of the primary ones. The right to life is more like an umbrella term and is open to interpretation. This implies the same for article 21 of the Indian constitution. Many such provisions are provided under this fundamental right, and one of them interpreted is the right to medical care.

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But what if, in a scenario, someone's mistake or incompetency leads to this right being violated, and the person ends up paying the repercussions with their lives? During a medical emergency, a medical professional is expected to deliver more from what is expected of him in a life or death situation, the room for error decimates to none, but what if there is an omission of a surgical step or an error which could've been corrected but overlooked happens and lead to grave consequences?

The medical profession is considered to be the most selfless and noble one of all in the eyes of society and humankind as in India, we like to refer the medical practitioners as miracle workers and gods who can make all illness go away, but when logic dictates the doctors are just professionals with high knowledge and skills to cure the patients, human beings like one another, like ourselves and human make mistakes. The field of medicine has the highest faith and standards of the people of the society, which often expects them to deliver more than they are capable of. Mistakes can be made by anyone, the doctor examining a patient, a surgeon performing a complex procedure or the support staff and so on. In these kinds of scenarios, it is crucial to determine the degree of mistake, whether evitable or inevitable as in a legal trial where the representatives aren't proficient in medicine who have to work on expert's opinion should be reasonable to whether it was an error or gross negligence and incompetency to which it caused catastrophic anguish to the family of the patient.

### MEDICAL NEGLIGENCE IN INDIA

The If to define medical negligence in simple terms, that would be any reckless act or mistake done on the part of the medical practitioner resulting in misconduct of ethics and breach of duties which harms the patient. The negligence by professionals as defined in the text of *Dr R.K.Bangia's law of torts*<sup>2</sup> that any task which is required to be performed with a special skill would generally be admitted or undertaken to be performed only if the person possesses the requisite skill for performing the task.

Further, the concept of the negligence by professionals by the apex court in the matter of *Jacob Mathew v. State of Punjab*<sup>3</sup> is that –

"A physician could not assure any patient a full recovery in every case. A surgeon would not assure 100% beneficial result after every procedure. The only assurance understood to have given by the implication is that he possessed of the requisite skill in that branch of profession

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<sup>2</sup> Dr R.K.Bangia,law of torts, 24th edition, 2017, 262

<sup>3</sup> Jacob Mathew v. state of Punjab, A.I.R. 2005, 3180

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and the undertaking of the task entrusted to him would be performed with reasonable competence".

Judged by this standard, 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.

#### **Sima Sunil Chaudhry v. Dr Nilesh Lathi<sup>4</sup>**

The aggrieved after a procedure suffered from postpartum haemorrhage with haemoperitium with severe anaemia with septicemia shock with acute renal failure, so the complainant sued the doctor for medical negligence, and after all arguments and evaluation of evidence and facts, the commission came to a decision that the medical practitioner is simply not liable for medical negligence just because things went from mischance/misadventure through an error of judgment – the medical practitioner will only be liable where his action fell below the standards of any reasonably competent practitioner. The standard of care had to be judged in light of the knowledge available at the time of the incident. Simply because the patient did not respond favourably to the procedure or treatment given by the doctor immediately, the doctor couldn't be held liable for negligence by applying the *doctrine of res ipsa loquitur*.

As we discussed earlier, any surgical procedure or treatment plan of action can't necessarily be panned out or be beneficial in favour of the patient. Given the reason as everybody responds differently to the common course of medicine, that's why the practitioner can never guarantee the entire favourable results or any surgeon couldn't guarantee the successful effect of the procedure performed to the patient given in every scenario, the regular standard of care was maintained towards patient without any breach of duty or omission.

But in certain unfortunate instances occur where a number of the situation presents themselves towards the medical professional where any mistake, misconduct or omission can lead to severe consequences.

#### **Ajit Singh v. S.G.Hospital<sup>5</sup>**

The complainant is a small businessman who had a condition of broken Hus, i.e. the collar bone. For the treatment of the same, he approached the opposite party and, as per advised, the

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<sup>4</sup> Sima sunil Chaudhry v. Dr.Nilesh Lathi, DCDRC, 2007/159

<sup>5</sup> Ajit singh v. S.G.Hospital, CC/55/2017

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complainant paid 30,000/- for the required surgery, and he was operated on the same day of payment with wires and screws implants and discharged on the next day. He was advised to change the bandages every two days, which was duly followed. Even after taking the prescription on time and with the utmost care taken, the complainant was feeling the same problem of broken bone which could be noticed with the bare eye.

The complainant approached another hospital where he was informed that the surgery seems to be done by incompetent doctors and was advised immediate removal of the screws and wires in the shoulders, which have been developed into an infectious area and when he sought a second opinion, he was advised the same. The surgery costs were unaffordable by the aggrieved. After the trial, the court ruled in favour of the complainant with ordering the opp. Party to refund the 30,000/- of the surgery and on top of that to pay 20,000/- in the restitution of mental agony and harassment.

As according to the case decided, we can understand the surgical procedure performed required a certain skill which the doctors completely lacked and hence it resulted in no resolve of the patient but instead resulting in infection in the area of surgery which gave more agonizing pain to the patient and hence a breach of trust between a doctor and patient.

Every year the in every medical college and academy the passing out graduates are made to take the Hippocratic oath as they are awarded the right to practice the art of medicine that to swear by Apollo, the physician that to teach and impart the knowledge they possess, to consider for the benefit of their patients to the best of their ability and judgment, to practice their art with purity and holiness and never shall trespass or violate the oath. Where the masters of medicine aren't bounded by morality and code of ethics, they are bounded by the law of the society.

The doctor's duty to attend to a patient ensures the guarantee of service and medical help, which every citizen deserves, and when a doctor fails to do so and if anything happens to the patient, the medical practitioner will be held liable for repercussions of his ignorance.

### **Sishir Ranjan v. State of Tripura<sup>6</sup>**

Here, in this case, the petitioner's son met a scooter accident while coming from Agartala to Udaipur, and so he was admitted to the emergency ward of G.B. hospital, Agartala. The specialist doctor Dr P.Roy was not available at the hospital. Despite being repeatedly called to the hospital, he was busy attending to his private patients and did not bother to come to the hospital to attend to the accident victim resulting in the patient succumbed to his injuries, and

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<sup>6</sup> A.I.R. 2002 Gauhati 102

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Dr P.Roy was held liable and ordered to pay 1,25,000/- as compensation of the death of the deceased.

Whenever a medical practitioner tends to a patient's ailment, he is always expected and required to maintain a certain standard of duty of care. Every medical practitioner owes the following duties to all of his patients, which are-

- i. duty of care in deciding whether to undertake the case
- ii. Duty of care in deciding what treatment to advice
- iii. Duty of care in the administration of treatment.

Any breach in the aforementioned duties gives the right of action to the patient for medical negligence. And the nature of maintaining the standard of duty of care in the medical profession was explained in the case of *Dr Lakshman Balakrishna Joshi v. Trimbak Babu Godebole*.<sup>7</sup>

Where in this case, the son of the respondent, aged about 20 years, met with an accident on a beach resulting in a fracture of the femur of his left leg. He was taken to the appellant's hospital for treatment. What the appellant did was reduced the fracture without giving an anaesthetic to the patient but contented himself with a single dose of morphia injection. He used extensive force in going through his treatment, using three of his attendants for pulling the injured leg of the patient. He then put the leg in plaster of Paris splints. The treatment resulted in shock, causing the death of the patient. The doctor was held liable for medical negligence in Supreme Court.

### **MISDIAGNOSIS**

In a situation when a medical practitioner comes to a conclusion about any patient's condition or illness with the information provided to him but turns out to be incorrect is referred to misdiagnosis. For example, when a patient comes in complaining about cough, headaches and wheezing, it is common to be diagnosed as the common cold or the flu and given the respective medical course, but the same aforesaid symptoms mentioned can also pan out to be something grave and severe such as lung cancer and Lyme disease.

Many would agree that in order to come up with a plan to deal with the ailment, one should first know the disease ailing the patient. During a medical emergency, a medical practitioner is expected to come up with a plan to action in a limited amount of time with only the available tools and information provided, such as the initial symptoms and family history of diseases, which helps them to come up with a course of action but despite all the provided details, there

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<sup>7</sup> A.I.R. 1989, PH 185

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are instances to which a diagnostic error happens. The estimation of diagnostic errors is ranged between 10-15% in the initial stages.

Despite having revolutionary innovations and state of the art technologies in western medicine, the cases of misdiagnosis prevail at an alarming rate. Developed countries like Australia faces a similar problem of diagnostic errors of 140,000 cases annually, out of which 21,000 cases end up causing consequential harm to the patient, and the mortality rate of cases is clocked between 2000-4000 cases per annum. These figures alone raise concerns on a global platform of medicine and give more of a reason for the research labs and institutions to take an extensive probing investigation of the concern as in some questionnaires and social surveys it has come up that one of the main reason which makes the people question faith in the healthcare system of any nation is diagnostic errors. America alone holds the prime position of medical malpractice lawsuits related to misdiagnosis claims for the greatest proportion. The situation in Australia may be somewhat considered to be stable, but the reality of these errors causing a substantial amount of suffering still remains with the global community. In an address by Dr Mark Graber to the hospital alliance for research collaboration in Sydney, he pointed out that the main cause of the problem is the lack of consensus on describing the definition of misdiagnosis. Further explained that the tools and instruments of modern medicine to constantly scan for the patient's safety is unable to detect any diagnostic error if made, and then there's the ownership issue of the error that makes the misdiagnosis fall upon a collective blind spot. Medical institutions and health care organizations assume the doctor's liability, and furthermore, the doctor slides it to other departments assigned to the case creating an infinite loop while educators refrain from any responsibility altogether.

With the given drawbacks of maintaining reasonable care by the medical staff and institutions, there also has been many reviews and amendments in-laws of various countries to ensure the aggrieved be compensated for the loss of their loved ones in restitution, and one such event was of the supreme court of Alabama in the case of *Hallmark v. Shipman*.<sup>8</sup>

According to the facts of the case, when Terry Hallmark (deceased) began feeling nauseated, shortness of breath and chest pains, he was rushed to the emergency department where he was examined by Dr Shipman, and he diagnosed him with a gastrointestinal issue before sending him home. According to the plaintiff Donna Hallmark, the wife of the deceased rushed her husband to the hospital when she found him fallen on his back, clutching his chest asking to call

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<sup>8</sup> Donna Ann HALLMARK, as administratrix of the estate of Terry Lynn Hallmark, deceased v. Charles E. SHIPMAN, M.D. Supreme Court of Alabama. May 13, 2016

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911. The same day he was pronounced dead when he couldn't be revived. Upon a subsequent autopsy by a cardiac pathologist, his discovery stated the issue to be caused by triple vessel coronary artery disease where the three main arteries were blocked 75%, 60% and 100%, respectively.

The case centred on whether the medical practitioner performed the duty of care expected, which would have required him to consider the possible heart condition of the patient and then rule it out before discharging Hallmark. Experts for the plaintiff testified that Shipman should have ordered blood tests to look for cardiac damage, but no blood tests were ordered.

The jury, in their verdict, stated that Shipman had not performed the duty of care required in treating his patient and was negligent. Hence he was liable for his untimely death. The plaintiff's counsel stated that he hoped the verdict would improve treatment for patients in emergency departments. The wife Donna Hallmark was paid 4 million USD in restitution by the medical authorities in this malpractice lawsuit for the negligence of one of the staff.

Similarly in the healthcare system in India is also not have been immune to this rampant drawback. On the contrary, the medical healthcare system in India has registered 5.2 million cases of misdiagnosis annually, as analyzed in a Harvard study headed by professor Jha. Adding to that study, the British medical journal cited that India, like any other evolving country, is recording a concerning amount of medical errors, with the reason being the lack of trained medical professionals and support staff to ensure a positive amount of outcomes. India, being subjected to an investment paradise for foreign entities in the medical industry it has been clocking a growth of 18% annually and making real strides in the field of the healthcare industry. Mostly attracting foreign direct investment worth 6 billion USD in-hospital diagnostic centres alone hence leaving the command in charge of the industry with the private sector for Indian healthcare. The leading issue being the availability of quality technology and infrastructure but registering shortages of general practitioners and specialists. As said by Dr Girdhar.J.Gyani, the director-general, Association of healthcare providers – patient safety and affordability are linked, but patient safety means good technology, good doctors, good medical protocols, which we call standard treatment guidelines, and these are missing in our healthcare scenario. The shortage of medical practitioners and doctors who were unable to diagnose has amounted to drastic consequences like contribution to the mortality rate of the patient in the initial stages of treatment or disabling the patient entirely.

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As discussed in the case of *Harwinder Singh v. Dr. Prabhjeet Singh*,<sup>9</sup> In which a fatality occurred when the doctor was unable to diagnose the exact ailment of a 14-year-old boy complaining of severe headaches and was ordered several M.R.I. scans and prescribed the medicines for the headaches accordingly, but still the patient complained about the headaches, and his mother revisited the doctor again and by this time the condition of the boy was worsening, and after consulting with other diagnostic centres and hospitals the boy was diagnosed with medulloblastoma which is the most common type of cancerous brain tumor in children. And due to not getting adequate care and medical treatment the patient developed anaemia and septicaemia due to the tumour and ultimately expired. But the question and at this point, the parents of the patient has borrowed a huge amount of money from their relatives and friends only to lose their son so the question arose that had Dr. Prabhjeet diagnosed the problem at the early stage would their son be alive? And subsequently, after the trial for gross negligence for deficiency in service and misdiagnosis, the defendant was ordered to pay Rs. 50, 00,000 with the annual interest of 9% p.a from the date of filing the complaint till the date of actual payment to the complainants for the loss of life for the patient, including all expenses incurred during the course of treatment.

### SURGICAL ERRORS

The art of surgery being the most boldest and fearless of all skills known to man where only the finest gets the right to hold a scalpel after years of practice and studies. India has always held a prominent place in the world for having a renowned history in the field of surgery as described in the Hindu mythology of the exceptional and primitive knowledge of advance medicine as we know held by Lord dhanvantri and then passed on to sushruta, the founding father of surgery, listed as one of the 10 sages of the Himalayas who taught and practiced surgery on the banks of Ganges and authored sushruta samhita in which he describes the examination, treatment and diagnosis of various ailments with a few number of surgical procedures.

In the modern medicine there are "N" numbers of surgical procedures to cure the ailments of the body which can be cured by medication. Procedures more complex than the last one requiring precision, specific skill set and qualification to perform an invasive approach but even after the years of qualifications one can make mistakes even after due care. Every surgical procedure evolves a risk factor to it and hence requires a certain amount of trust and faith between patient and doctor. To clarify further that surgical error can and do happen in the operation room but

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<sup>9</sup> *Harwinder Singh v. Dr. Prabhjeet Singh*, CC/23/2016

not all surgical errors are qualified for malpractice but only those errors which leads to the failure of procedure or causes actual and proximate cause of the harm. If no harm is inflicted during the procedure the surgical team would assumed to be maintained the duty of care during the whole procedure expected of them. But we will explore the instances and situations where serious harm was inflicted which could have been avoided as studies confirm the claim by 75% of the errors are inflicted during the procedure. Some of the most common surgical errors registered in the Indian healthcare organizations are-

- Foreign objects left in the body
- Anesthesia mistakes

#### FOREIGN OBJECTS LEFT IN THE BODY

During a surgical procedure on a patient there is a constant risk of infection, blood loss or any other factors which can present before the surgeon that can lead to grave results but far too frequently there is also the possibility of human errors which are common, in high tense situations where the primary objective is focused on to keep the patient stable, and in order to do so some things might just slip of the mind like leaving a foreign object in the body like scalpels, clamps, pads, gauze etc., which can cause drastic pains to the patient in post-op running a high risk of being infected or even prone to the possibility of death. This common error can be avoided just by implementing a thorough re-examinations of the patients by providing an extensive checklist of materials issued in the operation theater for the medical procedure.

#### **Smt.A. Mallikamba v. The Director, Nizams institute of medical sciences and others<sup>10</sup>**

In this case the complainant Smt.Mallikamba was suffering for abdominal pains to which she sought the services of NIMS for consultation and further guidance for her ailment and then after going through a battery of diagnostic screenings she was advised to undergo a surgical procedure for cystic lesion for pancreas so she got herself admitted in NIMS where she went under the procedure by the head of department (surgical gastro logy) and professor DR.R.A. Sastry. The procedure was a success and the complainant was discharged.

After two years since her procedure she started suffering from an unbearable abdominal pain again and so she decided to consult with sakhamuri narayana memorial nursing home and underwent an investigative diagnostic test again and found a tumor like object in her abdomen which needed to be surgically removed and then she underwent to do the same. Later on the

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<sup>10</sup> Smt.A.Mallikamba v. The Director,Nizams Institute Of Medical Sciences And Others CC/673/2012  
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doctors informed her that she had a surgical M.O.P. which was left behind during a previous surgery which developed into a cystic lesion.

Shocked by that statement she filed a malpractice lawsuit against NIMS hospital for medical negligence and deficiency of service and lack of duty of care to which after the trial she was compensated around Rs. 13, 20,000 in restitution for her permanent disability and mental agony suffered by her.

### **Yudhir vir singh Chauhan v. The Manager, Parmarth Mission Hospital<sup>11</sup>**

In this case the aggrieved wife was admitted for delivery in the opposite party's hospital to which she gave birth to a male child through a cesarean section. And since there was an infection in the uterus of the patient it had to be removed. But while performing the surgery the medical team negligently left a sponge like specimen of 17x17cm along with a tag of 11cm in the abdomen of the patient. Since the hospital did not have the basic requirements for a nursery the complainant was asked to transfer his wife and new born to a hospital 20 kms away due to the reason the infant died after 3 days. And after 10 days of the surgical procedure the patient started to experience acute pain and she visited the opposite party's hospital a number of times but to no avail. The patient was then after admitted in Bara Rao Hindu hospital after diagnostic tests and went under knife for the removal of foreign objects. The patient died and the complainant filed a lawsuit in NCDRC and the state commission finding the hospital guilty for medical negligence and deficiency in service to which a total amount of Rs. 15, 11,000 in restitution was awarded to the aggrieved.

### ANESTHESIA MISTAKES

While a patient goes under a procedure it is crucial for him to numb the pain receptors for the patient to make the surgery possible and painless. Errors made in the anesthetic dose to the patient can be fatal as it is considered the most serious surgical error. Excess of anesthetic dose and the oxygen supply is reduced to the body which can lead to a considerable brain damage or even death while an insufficient amount of the anesthetic dose can result in the possibility of patient awakening during the procedure and will go under a traumatic pain or shock. Among the errors and mistakes happening in the Omni umbrella term of medical negligence in India instances of anesthetic errors occurs like -

### **Pusp Lata vs Dr. Rajesh Badyal & Ors.<sup>12</sup>**

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<sup>11</sup> Yudhir vir singh Chauhan v. The Manager, Parmarth Mission Hospital F.A./16/2008

<sup>12</sup> Pusp Lata vs Dr. Rajesh Badyal & Ors. on 31 May, 2012, STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PUNJAB, F.A./557/2007

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Where the husband of the petitioner who was a bank employee withdrawing a net salary of 10,000/- incurred injuries on his right elbow due to taking a fall in his house. And they consulted Dr. Rajesh Badyal for the same as after his prognosis of the injury he advised for a surgical procedure under general anesthesia. It was then after an hour the patient started to experience major heart ailments and while this episode some time was lost as when the doctor present in the hospital couldn't provide medical help immediately. After a while the anesthetist was called but to no avail as the patient's condition kept deteriorating and he had to be shifted to Nova Heart Institute and from there D.M.C. Ludhiana where the patient expired. Upon the death of the husband the wife filed the petition suing the doctor and anesthetist for gross negligence and deficiency of service where the aggrieved were awarded the compensation of 7, 00,000/- by the doctors and anaesthetist.

#### PROVISIONS FOR MEDICAL MALPRACTICE

The medical and healthcare service in India has been covered by the consumer protection act of 1986. And after this act the people have started to stand up against medical negligence where India saw a considerable amount of increase in the cases against the hospital administration and doctor for medical negligence. As the public awareness among the common populace grew of their rights to adequate medical services and healthcare people sought justice who have been wronged and by that the legislative and judiciary of India got the opportunity to work on provisions and laws by revising acts and giving landmark judgments to make healthcare and medical practices more safer and easy to access for the citizens.

#### PROVISIONS: CONSUMER PROTECTION ACT

Under the consumer protection act of 1986 the very definition of consumer is defined as to one who buys goods or hire any services, used the goods or hires the services by the approval of any buyer or service provider and uses the goods and services to earn a livelihood. Now coming to sought relief for medical negligence. The complaint for medical negligence can be filed in the following instances –

- The liability of the doctor is when the patient has suffered injuries due to the misconduct and reckless or negligent act which at the time wasn't appropriate according to the standards of the medical profession.
- The medical practitioner is only liable for the consequences which resulted from his breach of duty.
- The burden of proof falls upon the plaintiff as to show the causation and breach of duty.

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- In the cases of *res ipsa loquitur* the plaintiff is discharged from the burden of proving negligence.

The above mentioned cases can only be filed by the one who was a consumer who hired the services or any recognized consumer association or the state or central government.

There are three tiers of consumer forums one can go to seek restitution for medical negligence. The district forum having the pecuniary jurisdiction of less than 20 lakh rupees, the state commission with more than 20 lakh but less than one crore and lastly the national commission with more than 1 crore. The consumer protection act has jurisdiction over the civil cases only to which the complaint in the matter of civil cases have the position under the civil laws for negligence which is considered to have an excessive value as it encompasses diverse elements of the particular litigation. Under the tort law the principle is still valid even if the service in question has been provided free of charge by the medical professionals hence, it can be said where C.P.A. ends the civil law begins. The burden of proof befalls upon the patient for proving the doctor's actions has been the primary causation of the injury or harm done.

Another provision available to the consumer is the *doctrine of res ipsa loquitur* which translates to the things which speaks for itself. The doctrine insinuates that the nature of injury caused is impossible to happen without medical negligence assuring that there was no involvement of the patient himself in the injury caused in any possible way and the circumstances which led to the harm or injury were under the control and supervision of the doctor. By applying this principle the judge accepts the occurrence of negligence. But to prove this principle that the injury in question cannot be assumed voluntarily and the equipment utilized in the treatment of the patient which caused the damage was under the direct control and administration of the medical practitioner.

One such example would be in the case of *P.Dharmar v.The Managing Director, Vadamalayan Hospital*<sup>13</sup> where the complainant was suffering from appendicitis and a surgery had to be performed immediately. The complainant was asked to pay and do he complied. But even after the surgery he suffered from the same problem and so he consulted with appan hospital where he was admitted as an outpatient and after medical scans a foreign body was found in rectus sheath measuring 1.2x0.81 cms. And so after the surgery the complainant was cured completely. And so by examining the facts we can conclude that the medical practitioner who conducted the preliminary surgery was negligent and the doctrine of *res ipsa loquitur* can be applied. And so after the arguments of the leading counsels of both the party the court decided

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<sup>13</sup> P.Dharmar v.The Managing Director, Vadamalayan Hospital CC/192/2015

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to award the compensation of 50,000/- with 6% interest for mental agony and other inconveniences along with 1, 75,546/- which the complainant spent on medical expenses.

### PROVISIONS UNDER CRIMINAL LAW

The provisions under the criminal law are measured and quantitated on the bases of factors like magnitude or intention or any motive malicious in nature. There are many instances in which the medical negligence so severe in nature where the medical practitioners can be charged under the criminal law such as in situations like using aused medical injection which was laced with deadly disease or virus like H1N1 or HIV/AIDS, and if so any patient contracts such kind of disease under the direct supervision of the medical professional then the liability shall befall on the medical professional by taking account of the negligent behavior for failing the standards of duty of care and breach of trust. The provisions under the Indian penal code are specifically stated as –

1. Under section 304A of the Indian penal code, 1860, that if a person commits a rash or negligent act which amounts to culpable homicide then the person will be punished with imprisonment for a term which may extend to two years or with fine or both.
2. Under Section 337 of the Indian penal code, 1860, if a person commits a rash or negligent act due to which human life or personal safety of others gets threatened. The person will be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or both.
3. Under Section 338 of the Indian penal code, 1860, if a person commits a rash or negligent act due to which human life or personal safety of others gets threatened. The person will be punished with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or both.

### CONCLUSION

After interpreting and analyzing the topic I came to the conclusion that in most of the cases the doctors are primarily liable for medical negligence as compared to the cases influenced by other factors like liability of the administration or the staff of the hospital considered as causation of malpractice. India being a haven for medical tourism shows an alarming rates of statistics in medical negligence where the key demographic is the middle class and the poor more susceptible to these mishaps due to lack of infrastructure, technology or the amount of skilled doctors stationed to central government owned hospitals. The lack of awareness of consumer

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rights can be taken into consideration as the main cause for not coming forward. The courts depend on experts on the matters of negligence which can leave room for discretion and can be easily be subjected to exploitation of the interpretation of the subjectivity of medical field. The paper mainly focuses on the two main types of medical negligence which are the most common in India- misdiagnosis and surgical errors. To avoid in future violation of protocol, the legislature can consider revising the medical council act of 1956. Also the healthcare units owned privately should introduce a digital database of medical history available universally under the digital India campaign and upgrade their medical technology to cut the risks in half for misdiagnosis. A series of standards created for the medical colleges to qualify for surgery so that the patients handled and treated by skilled medical professionals and staff with a detailed checklist for instruments issued and used before and after procedures to ensure the standard of duty of care. The law needs to be more certain and detailed on the subject to be understood and benefitted by a common man. The provisions and precedents set from landmark case laws on medical negligence to assure the safety of a consumer are not enough to those who seek services from this ever-evolving profession and hence should be reviewed than relying on old provisions and standards set and the law should also be compatible with the current need of the situation and consumers.

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