

The Role of Tort Laws in Healthcare Malpractices With Respect to Indian Legal System

C.L. Avadhani

Research Scholar

B.Sc., AMIE, MBA, M.Phil, MMM, PGDFM, PGDMM, PGDBA, PGDHRM,
PGDPM & IR, PGDIPR, DLL, LLM, Project Consultant, Ph. D. Research Scholar
Department of Business Administration, Annamalai University

I. Abstract

This article examines the critical role of Healthcare laws in addressing healthcare malpractice within the Indian legal system. It defines medical malpractice, distinguishing it from medical negligence and diagnostic errors, as a breach of the standard of care by healthcare professionals/providers/facilities resulting in patient injury or death. The study elucidates the three core characteristics of medical malpractice: deviation from accepted standards of care, demonstrable patient injury, and significant damages stemming from the injury. It emphasizes that medical malpractice liability is primarily rooted in the 'Tort of Negligence' within common law of Jurisprudence. Furthermore, the article highlights the significance of informed consent, where a lack of proper disclosure regarding potential consequences can lead to liability, even without direct medical error. By exploring the legal elements required to prove medical malpractice – duty of care, breach of duty, causation, and resulting damages – the paper provides a comprehensive overview of the legal framework for addressing healthcare malpractice in India. It further analyzes the types of errors that commonly lead to malpractice claims, such as misdiagnosis, incorrect procedures, premature discharge, and medication errors. The study also acknowledges the role of private healthcare and its impact on malpractice. Finally, by referencing landmark judgments like *P. Shanta vs Indian Medical Association*, it reinforces the status of patients as consumers under Indian law, further solidifying their right to seek redressal for medical negligence and malpractice. Legal reforms should adopt a comprehensive approach, recognizing the interdependence of political, social, and economic factors. Fostering political stability and commitment is crucial, as a stable political environment characterized by strong leadership and dedication to legal reform provides the necessary foundation for sustained reform efforts. Increasing awareness and public participation by promoting information campaigns, civic education, and opportunities for public engagement to expand the rights and opportunities of citizens. Inculcating the public's sense of ownership and responsibility towards legal reform processes and active involvement of civil society organizations can bring diverse perspectives and contribute to inclusive decision-making. Promoting the rule of law and anti-corruption measures by establishing an independent and impartial judicial system, improving legal and judicial education, and cultivating a culture of integrity. Addressing socioeconomic inequality, ensuring

that legal changes benefit all segments of society, including marginalized and vulnerable groups. Strengthening international cooperation and exchange of best practices in legal reform. The Law Commission of India has also played a crucial role in proposing changes to electoral laws to enhance transparency and fairness in the election process, identifying and recommending the repeal of numerous outdated laws, and suggesting various reforms to the Indian Penal Code and the Code of Criminal Procedure. Modernizing criminal laws aims to ensure justice resonates with society's changing needs, and giving teeth to the existing laws for proper implementation for better outcome.

II. AIM AND OBJECTIVE:

AIM:

The author aims to provide a clear and informative resource on the legal framework and practical considerations surrounding medical malpractice in the Indian context emphasizing the rights of patients as consumers under Indian law, particularly their right to seek redressal for medical negligence and malpractice.

OBJECTIVE:

The objective of the article is to analyze and explain the application of tort and other relevant laws in healthcare in addressing healthcare malpractice within the Indian legal system, aiming to clarify the legal framework and inform relevant parties (patients, healthcare providers/professionals) about their rights and responsibilities by establishing a clear understanding of terms like "medical malpractice," "medical negligence," and "diagnostic errors," differentiating them for legal accuracy.

III. KEYWORDS: Tort of Negligence, misdiagnosis, Transformation of Information, Medical Malpractice Civil liability, Diagnostic errors, Enforcement Mechanism.

IV. INTRODUCTION:

Medical Malpractices, Medical Negligence, Diagnostic Errors are the major negligent acts by a healthcare professionals or paramedical staff or any person involved in healthcare procedures before and after during the stay of the patient in healthcare facility. Medical Malpractice is a kind of Medical Negligence that it will become sometimes fatal will not take immediate steps.

Medical Malpractice occurs in any healthcare facility, when an healthcare professional's care falls below the standard of care resulting in injury or death to a patient.

“Medical Malpractice is a legal cause of action that occurs when a medical or healthcare professional, through a negligent act or omission, deviates from standards in their profession, thereby causing injury or death to a patient.”

The negligence might arise from errors in diagnosis, treatment/procedure, after care (after the procedure) or health management.

And Act of healthcare malpractice/medical malpractice usually has three characteristics namely,

- a. Firstly, it must be proven that the procedure/treatment has not been consistent or in line with standard of care/protocol, which is the standard healthcare treatment accepted and recognized by the profession at large.
- b. Secondly, it must be proven that the patient has suffered some kind of injury/discomfort. Due to the negligence, without causing of any injury **cannot be considered** as Medical Malpractice.
- c. Thirdly, it must be proven that the injury resulted in significant damages to the patient, such as disability, unusual pain, suffering, hardship, loss of income or a significant burden of healthcare bills (Wikipedia).

In common law jurisdiction, Medical Malpractice liability is normally based on the '**Tort of Negligence**'.

Although the law of Medical Malpractice differs significantly between nations, but, has a broad general rule, liability follows, when a healthcare appropriate procedure for a medical condition, the failure to provide appropriate procedures for a medical condition and unreasonable delay in treating a diagnosed medical or medical condition, the failure to provide appropriate treatment for a medical condition and unreasonable delay in treating a diagnosed medical condition.

In some jurisdictions for a Medical Malpractice, action may be allowed even without a mistake from the doctor/healthcare professional, based upon principles of informed consent, where a patient or the guardian if the patient is a minor and the mother if the minor is a baby girl, where a patient or the persons mentioned above as the case may be were not informed of possible consequences, the course of procedure and would have declined the medical treatment/healthcare procedure and proper information been provided in advance. Medical Malpractice or Negligence (Medical Practice is a kind of Medical Negligence) normally involves,

a. Medical Error: This could be in the diagnosis, medication, disease/discomfort, health management, procedure, aftercare.

b. Medical Malpractice Law makes it possible for patients to recover compensation for any harm that resulted in substandard treatment/procedure.

According to the **Medical Malpractice Rules and Regulations** that differ from country to country and action will follow in accordance with the laws of that country.

The injured patient must show that the healthcare professional acted negligently in rendering/giving care, and that the negligence resulted because of the act in injury to the patient.

To do so the patient or the guardian, if the patient is a minor should prove medical malpractice that have four legal elements they are,

- a. A professional duty owed to the patient by the professional to the patient
 - b. Breach of such duty by the healthcare professional,
 - c. Injury caused by that breach and
 - d. Resulting damages that include,
-
- i. Doing nothing when the healthcare professionals should have done something. This may be considered an act of omission or negligence.
 - ii. Dissatisfaction with the outcome of procedure does not imply malpractice.
 - iii. It is only malpractice when there is negligence and injury and that negligence causes harm or injury.

1. Types of Errors in Malpractice cases:

- a. Misdiagnosis or failure to diagnose
- b. Unnecessary or incorrect injury
- c. Premature discharge from the healthcare facility
- d. Failure to order appropriate tests or to act on the results obtained out of the tests
- e. Not following up once the procedure is started
- f. Prescribing the wrong dosage or wrong medicines or wrong medication
- g. due to the negligence act of healthcare professionals or paramedical staff or the persons involved in the procedure leaving foreign material by oversight or other side inside the patient's body after surgery.
- h. operating on the wrong part of the body of the patient
- i. The patient express persistent pain/discomfort even after procedure that meant for reducing the pain/discomfort.
- j. Potentially fatal infections acquired in the healthcare facility during the sojourn of the patient (healthcare facility acquired infections and ICU infections.
- k. Pressure ulcers are bed soars during patients sojourn during and after the procedure.
- l. Other serious incidents unconnected with healthcare procedures during the patient stay in the healthcare facility that includes,
 - i. Fires in hospitals,
 - ii. Patients committing suicide
 - iii. Negligent acts committed by non-healthcare professionals
 - iv. In addition to the above there are certain actions that may cause harm/injury to the patients such as blood thinners that are being used to lower the risk of stroke and heart attacks by preventing clots from developing in the veins and also at times during wrong dosage/higher doses of the thinners can also increase the risk of bleeding.

Healthcare Professionals, Para Medical Staff and who are attending the patients and assisting the healthcare professionals (Surgeons) does not show a fair, reasonable and competent degree of skill when providing healthcare through established procedures to a patient.

If a practitioner (healthcare professional) holds himself/herself that as a specialist, a higher degree of skill is required.

Jurisdictions has also been increasingly receptive to claims based on informed consent, raised by patients or the guardians if the patient is a minor or any other such organized person, who alleges that (they were not adequately informed of the risks) that involved in the healthcare procedures before giving their consent to the procedure.

As laws varies by jurisdiction in every country should depend upon the laws of that land. The specific professionals who may be targeted by a medical malpractice action will vary depending upon where the action took place.

2. Among healthcare professionals who may be potentially liable under medical malpractice laws of that country are,

- a. Physicians, Surgeons, Physiatrists and Dentists
- b. Para Medical Staff who are assisting the healthcare professionals during and after procedures such as nurses, midwives, assistants to the Para Medical Staff and physicians assistants.
- c. Allied healthcare professionals including i. Physiotherapists, ii. Chiro Practitioners, iii. Pediatrics, iv. Occupational therapists, v. Social workers, vi. Psychologists, vii. Pharmacists, viii. Ophthalmologists and ix. Medical Radiation Practitioners (MRI Scanning).

Among the Acts or Omissions during healthcare procedures by the healthcare professionals and their staff who are assisting them that may potentially support a medical malpractice claims or the failure to properly to diagnose the disease/ailment/medical condition, the failure to provide just and necessary procedures/instructions when the need arises to save the precious life's of the patients or to reduce their discomfort falls under medical practice.

V. LITERATURE REVIEW:

Focusing on the Indian Legal Framework with the context of Tort Law in examination of Medical Malpractice by addressing medical negligence and its impact on healthcare practices defining a legal cause of action arising when healthcare professionals deviate from standards of care resulting patient in cause of injury/discomfort by outlining various negligent acts including diagnostic errors, improper treatment/procedures and post operative care. This article emphasizes that for a valid claim of patient there must be established by three elements such as,

- i. Breach of duty,
- ii. Injury/discomfort
- iii. Cause of damages

In common law jurisdictions including India, Medical Malpractice liability is primarily based on tort of negligence. By highlighting these legal principles governing such type of claims can vary significantly between different jurisdictions by following similar structure.

Where in landmark cases such as VP Shanta vs Indian Medical Association, expanded the definition of patients as consumers under Indian Law by enhancing the rights of the patients seeking compensation for negligence.

The article explains that healthcare providers must adequately inform patients about potential risks associated with treatments. Failure to do so can lead to claims based on lack of informed consent, even in the absence of direct negligence. Evolving nature of patient rights within the healthcare system and underscores the importance of transparency in medical practice. The consequences of medical malpractice extend beyond immediate physical harm and they also encompass psychological distress and financial burdens for patients and their accomplice. It is to note that patients who suffer due to negligence may face long-term repercussions, including disability and increased healthcare costs. This underscores the need for robust legal mechanisms to address grievances effectively. while Tort Law serves as a crucial tool for holding healthcare providers accountable, systemic changes are necessary to improve overall patient safety and care standards. This literature review summarizes key themes while situating them within broader discussions about medical malpractice and tort law's role in enhancing accountability within healthcare systems.

The other important aspect in healthcare malpractices is doctors prescribing names of the medicines not in generic names but on the company's names.

The issue of legible and generic prescriptions/medical practitioners it will now become a court concern because an advocate by name Amit Sahani, a lawyer by profession filed appeal in Delhi High Court seeking directions from the Hon'ble High Court of Delhi in Centre and the Medical Council of India,

"Doctors prescribe medicines by writing their generic names visibly and preferably in capital letters in 2017"

In the words of G. Koteswara Rao, a health records consultant, St. Johns Healthcare College, Bangalore,

"Maintenance of well documented health records correlated to legal and statutory requirements has become absolutely necessary; therefore documentation is an inalienable path in the treatment process of patient."

The Petitioner in this PIL also seeks from the Court,

"Strict compliance of regulation 1.5 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation 2022 which mandates every physician prescribe drugs with generic names legibly and preferably in Capital Letters".

The Petitioner also claims that,

“despite issuance of various notifications and circulars issued by Respondent No. 2 (Medical Council of India) practicing doctors in this regard and even after launching of Prathana Mantri Bharatiya Janaushadi pervojana (PMBJP) by respondent no. 1 (Centre), the respondents have failed to yield any results though this PMBJP was launched in 2008, generic medicines supposed to be made available at affordable prices, in reality is not.”

The Petitioner also mentions,

“the generic medicine worth in the same way and provide the same clinical benefit as its branded version, but generic medicines cost between 5 to 60% less than branded counterparts”.

However, the doctors do not prescribe generic drugs generally not done even on the specific demand due to vested interests. All these come under medical malpractice cases. However, there is a version not providing generic names because if strictly implemented the benefited persons will not get kickbacks/commission from the pharma companies to them. In this regard,

“In 2016 February, Medical Council of India amended the Act to insert a new provision governing payments received by healthcare professionals/providers from Pharma Organizations and Medical Technology Companies.”

This amendment to the Act by the government will give some teeth to Medical Council to punish the guilt which comes under Medical Malpractice.

Though the Legislature and Medical Council made many attempts to eradicate such problems (kickbacks and reforms the healthcare profession but which has not seen the light of the day).

VI. DISCUSSIONS AND ANALYSIS:

In healthcare, Medical Negligence, Medical Malpractice and Diagnostic errors are the three main important components where from, the patient or his/her the authorized agent can claim compensation/punishment to the erring personnel for the act of negligence/malpractice whereby resulting damage (permanent or disable) caused to the patient because of the wrong doings of the malpractices of the healthcare professionals. Healthcare malpractice is a kind of medical negligence where in the patient is a victim physically, mentally, monetarily mainly because of the private players entering into the field of healthcare because of workload, putting targets, getting returns on the investments as early as possible are the main stumbling blocks resulting in medical malpractices.

A few decades back the Hon'ble Supreme Court of India gave a landmark judgment in **P. Shanta vs Indian Medical Association** where in the Hon'ble Apex court **unequivocable terms declared and brought the patient under the spectrum of consumer, provided if the patient pays for the services received either from healthcare facilities or from healthcare professionals.**

1. What is Medical Malpractice?

In legal terminology Healthcare Medical Practice is,

A legal cause of action that occurs when the healthcare professional, healthcare provider through the negligent act or omission and deviates from set standards in their profession thereby causing injury/discomfort to the patient.

“This negligent act might arise from diagnostic errors, procedures or health management before during and after procedures”.

Medical Malpractices normally occur and can be identified when an healthcare professional/healthcare provider/healthcare facility neglects to provide appropriate standard protocol procedures for the ailment or discomfort to the patient, take appropriate actions/decisions in the need of the hour or gives substandard procedures that will not come under standard protocol, that causes harm/injury/death to the patient.

This kind of malpractice in healthcare is not only in developing and under developing but also in developed countries like UK, USA etc because humans are being treated by humans and it is estimated that there are 15 to 18 thousand medical malpractice suits against healthcare professionals/providers every year – these are the only cases that are brought to the court and in many more thousands of cases are not seeing the light of the day because of compromise and inducing the patient and their guardians with money by the healthcare providers so that the name and fame of the healthcare facility, providers and professionals are maligned.

The World Medical Association in 2005 in their general assembly mentioned about, “**the circumstances that lead to healthcare malpractices**”, are

1. The increase in Medical knowledge and the increase in medical technology has allowed the physicians to accomplish medical feats that were not possible in the past, but these accomplishments involves risks of greater severity in many instances.
2. The obligations imposed on physicians to limit the cost of healthcare.
3. Confusing the right to healthcare which is attainable with the right to achieve and maintain health, which cannot be guaranteed.
4. The role played by the media often indangering mistrust in physician in questioning his/her oblique, his/her ability, knowledge, behavior, managing of patient and by promoting patients to submit complaints against physicians.
5. The indirect consequences of an upsurge of a defective medicine endangering by the increase in the number of claims.

The law especially in India requires that an injury/harm that results from negligence/malpractice, if a patient feels that healthcare provider/professional was negligent but no harm or injury occurs due to that negligent act there can be no claim.

In a sense it is mandatory that the patient must prove, that negligence act by the healthcare professional/provider/facility, caused injury/harm and that without the negligence the harm/injury could not have occurred.

The injury/harm due to medical malpractice have the following consequences namely,

(a). Breach of such duty, (b). Injury caused by that breach, (c). Resulting damages

In addition to the above, doing nothing when the healthcare professional/healthcare personal should have done something and this can be considered an act of omission/negligence and can be treated as healthcare malpractice.

However, there are certain exceptions to treat the act of negligence as malpractice are,

“Dissatisfaction with the outcome of procedure does not imply malpractice”. It is only malpractice when there is negligence and injury and that negligence causes/caused the harm or injury.

For better understanding regarding medical malpractices following few examples are given below:

- a. Misdiagnosis or failure to diagnose
- b. Unnecessary or incorrect procedure/surgery
- c. Premature discharge from healthcare facility even when the time is not ripe for the discharge.
- d. Failure to order/direct appropriate tests or to take action on the test results.
- e. No follow up after the procedure/discharge.
- f. Prescribing wrong medication or wrong dosage
- g. Leaving foreign objects inside the patient's body during/after procedures
- h. Operating wrong parts of the body not identified at the time of tests and decision making either due to wrong reporting or the negligent act of para medical staff who are responsible for labeling a particular part of the body that needs a procedure.
- i. The procedure/surgery which is adopted by the healthcare professionals to reduce pain/discomfort of a patient, instead the pain or discomfort becomes unbearable even after the procedure/surgery thereby the patient will feel that there is no remedy after the procedure.
- j. The other important aspect is, **“ICU/healthcare facility acquired infections”** acquired by the patient during sojourn in healthcare facility because of unhealthy conditions, improper management of facility.
- h. Finally, the other important aspect is when the patient is in the healthcare facility during and after the procedure till the patient is discharged especially in ICUs where the attending medical staff (para medical staff) like nurses, midwives, technicians who have failed to provide appropriate procedures, implementing the directions given by the healthcare professionals, omit to take appropriate actions when the need arises especially during emergency, providing substantial procedures that cause harm/injury

and even at times becomes fatal. All come under medical malpractice. Normally these things happen due to the result of wrong diagnosis, medication dosages, health management etc.

In addition to the above, there are certain non medical procedures that can be brought under medical malpractices by the patients or the authorized agent to get compensation and take action against healthcare professionals for their wrong doings.

These non procedural malpractices include,

- (a). Fire in healthcare facilities and patients committing suicide during their stay in healthcare facility under the supervision of an healthcare professional.
- (b). The other non procedural medical practice is about pharmaco therapy and in that blood thinners that are being used indiscriminately, ignoring/neglecting the healthcare professionals directions.
- (c). In 2013, an internationally recognized journal (BMJ) published that, **“the main cause of malpractice was misdiagnosis or delayed diagnosis”**.
- (d). In 2016, Johns Hopkins scientists, suggested that medical errors should rank as the third leading cause of death in the advanced country like US, next to heart diseases and cancer.

Many of the healthcare professionals who are directly involved to reduce healthcare malpractices suggested that,

“the healthcare facility establishment should follow strictly the guidelines provided by different organizations in line with local conditions of each country and implementation of hand hygienic tools strictly”.

The other important aspect that comes under healthcare malpractice is **“Informed Consent”**, it means,

“If the Patient does not give informed consent to a medical procedure, the healthcare professional/healthcare facility/provider may be liable, if the procedure results in harm/injury, even if it is carried out perfectly”.

That is why it is mandatory on the part of the healthcare professional who is attending to inform the patient or his/her authorized agent to give an informed consent to that particular procedure, if not the healthcare professional/healthcare facility/provider may be liable if the procedure results in harm/injury.

A malpractice case can be stressful to all the parties involved in it.

- a). The Plaintiff (Patient or any authorized person on behalf of patient) is the person who complaints and acts on behalf of the patient, if the patient died during the procedure the executor or administrator of the patient's estate.

b). In legal terminology, the plaintiff is a person who brings a case against another in a court of law, the person who initiates the suit, the person who is suing.

c). The defendant is the party who is being sued in a medical malpractice suit. It is the healthcare provider/healthcare professional/paramedical staff or any person who is following the orders of the persons who did negligent act may be liable for negligence.

d). The prevailing party is the party who wins the case, whether the plaintiff or defendant. The defendant wins the case the plaintiff has lost and we receive and he receives no compensation. The fact finder is the Hon'ble judge or judiciary.

Following are some of the essential ingredients that are to be present to file a malpractice case.

In malpractice cases the plaintiff has to prove that four elements existed in order to succeed the medical malpractice claim

- a). A duty was owed by the healthcare provider/facility
- b). That duty was breached, because the healthcare provider or facility did not conform to the expected standard of care.
- c). Considerable/noticeable damage caused to the patient whether it is physical, emotional or financial.

Following are the procedures to file a medical malpractice case.

1. To claim any damages against medical malpractice cases, the plaintiff namely the patient or authorized agent of a patient in an appropriate court of proper jurisdiction where the incident occurred.
2. Before the commencement of the trial, the plaintiff (the patient or the authorized agent) has to file all the necessary documents that are necessary to prove the medical malpractice of the defendants namely the healthcare professionals and providers based on the material available and the evidence that is being adduced by both the parties, the material on record, the judiciary will express their opinion and either of the effected party is at liberty to file an appeal in the higher court.
3. Healthcare malpractices can also be decided before the arguments after agreeing the terms and conditions by both the parties, they can file a compromise petition in the court signed by both the parties agreeing to all the terms and conditions thereon and it will be registered by the court and in such cases there cannot be any appeal because the matter comes to finality.

Since the matter related to healthcare and the Hon'ble Judiciary is not an expert on the healthcare matters. The Hon'ble Court where the complaint is lodged, can appoint an expert committee in particular field to assist the court. It is not mandatory on the part of the Hon'ble court to accept or to go in

accordance with the report but can pay to judicial action on the circumstances, on the evidence adduced and the documents available.

If the malpractice/negligence is proved by the complainant in its entirety to the satisfaction of the Hon'ble Court, the Hon'ble Court can award compensatory and punitive damages. Compensatory damages include, **(a). Economic damages, (b). Loss of earning capacity, (c). Life care expenses and punitive damages.**

While awarding the compensatory damages the Hon'ble Court can take into account past and future losses that includes non economic damages, meaning assess the injury itself, psychological and physical harm, meaning, losing one's vision or any part of the body like hands, legs etc, extreme pain and emotional distress.

Regarding Punitive damages these are awarded by the Hon'ble court in the situation wherein the Plaintiff proved beyond doubt that the defendant is found guilty of malicious or willful misconduct. Punitive damages is a form of punishment and is a compensation in addition to the actual damages awarded. In Indian Legal System, when the Indian Government when introduced Consumer Protection act and by virtue of the Hon'ble Supreme Court Judgment in **VP Shanta vs Indian Medical Association** wherein the patient is declared as a consumer as provided the patients pays an amount for the services received from any healthcare professional/facility.

According to Indian Legal System, a medical malpractice case it is a serious issue that can have serious consequences for the patient who is injured as a result of the malpractice, and is at liberty to file a complaint in an appropriate form. Medical Malpractice is the most common type of claim made by any victim or any authorized agent of the patient against an healthcare professional and such claim refer to as, the healthcare professionals mistake or failure to follow standard medical procedure/healthcare protocol. Also if the patient who is under treatment under a healthcare professional or in any healthcare facility by paying the required amount during such period if the patient is injured or any harm is caused as a result of using defective/faulty product either knowingly or unknowingly can be sued and it is a valid claim for the victim.

By observing some of the essential ingredients, the healthcare professionals/facilities/providers can reduce these kind of medical malpractices if not eliminated totally by,

1. It is always necessary for the healthcare professional to explain to the patient or any authorized agent or guardian if the patient is minor about the real condition of the patient and the aftermath of the patient's situation after during procedure.

This procedure is nothing but the counseling the patients or the authorized agent or guardian as the case may be so that to avoid any claim in that event of any problem. In such cases, the patient or the authorized agent or the guardian should give a written consent stating that you have followed the procedure explained the professionals and agreeing to give their consent for the continuation of procedure in such even no claim can be made against professional/facility/provider. Indiscriminate use

of X-rays, MRI Scans should be avoided by the professionals in the garb of additional information that comes under medical malpractice if proved.

The healthcare facility/providers should appoint properly trained and capable para medical staff and technicians in adopting these tests in the interests of the safety of the patients and to reduce medical malpractices.

Any healthcare facility/provider should have intensive child care facilities and should have special care and attention to the children who cannot express their pain or discomfort. It is the duty of the healthcare professional after examination to identify the pain/discomfort of the child patient by pin pointing the cause and should do needful in the hour of crisis.

In any healthcare facility trust is a primary object between a patient and healthcare professionals and if any patient or their authorized agent or the guardian complaints regarding the procedure/facilities/paramedical staff/activities or personnel concerned with the procedure. The healthcare professional to take into cognizance of such matter not in a lighter vein. To avoid malpractices it is necessary for any healthcare professional/provider/facility not to promise in an elusive manner to give misunderstanding to the patient that will be cured totally. Such kind of false promises are prohibited in healthcare because human error, quality machines, diagnostic errors can always make the situation.

In healthcare malpractices, healthcare errors such as, failure to make the correct diagnosis is the main cause of malpractice causing at times irreparable loss to the patient.

Sometimes not only the healthcare professionals but also nursing malpractices are also the cause of the malpractice errors such as,

- a). doing or saying nothing when action is required.
- b). Injuring a patient at the time of using an equipment.
- c). Improper administration of medicines.
- d). Failure to properly monitor a patient and missing/recording a change in their vital signs.
- e). Failing to respond/attend to a patient in a timely manner.
- f). Failing to update a patients chart/health record with any changes in the patients progress (improvement/deterioration) are some of the main malpractices that are responsible for the care of the patient, even though the negligent act is due to the staff (nursing staff), the healthcare professional or duty doctor is liable for prosecution under vicarious liability.

A malpractice that occurs in an ICU is one of the main problems and is misdiagnosis, and it has become common practice due to various conditions such as immediate changes in patients health, non availability of professionals to take an immediate decision/action, non availability of necessary equipment/medicines are some of the factors that are contributing to medical malpractices. These mistakes at times looks very simple may cause irreparable loss and at times fatal. A Patient who is admitted in ICU it is mandatory on the part of the providers/facilities/professionals the patient should be

under observation 24/7 by specially trained healthcare personnel because the patients are not in a position to express their discomforts/needs, it is the duty of the healthcare personnel to fulfill their all the needs in the interests of patients health to reduce medical malpractices. A study found that 28% of the ICU deaths are due to misdiagnosis and other types of malpractices are not following protocol procedure in ICU, irregular and bad communication and finally treatment errors.

Normally, when an healthcare professional's/provider's, actions or inactions fail to meet the normal healthcare standard of care, their behavior/act constitute healthcare negligence. If such acts of negligence causes the patient to suffer an injury/discomfort it becomes medical malpractice/healthcare malpractice.

The other important aspect in healthcare malpractice is maintenance of health records (HR), it is an ancient Indian practice right from the Vedic Period and **"The earliest documentation of healthcare practice in India is found in Atharvaveda"** in the present form of EHR of each patient who has taken treatment/procedure in any healthcare facility for a period of three years (mandatory) failing which the healthcare facility/professionals can be booked under healthcare malpractice and is a serious crime and the defaulters can be penalized and can be prosecuted in court of law.

Health Records or Electronic Health Records means orderly written documents encompassing the patient identification, health, history, physical examination findings, laboratory test reports, diagnosis, treatment/procedure, surgical procedures and hospital course,

"When complete the records should contain sufficient data to justify the investigation, diagnosis, treatment, length of hospital stay, results of care and future course of action of each patient."

The Medical Council of India in 2002 drafted and implemented,

"The Medical Code of Ethics 2002 (the code) to govern healthcare professionals. However, all the acts of Medical Council of India constitute a legal system under the law enacted in the parliament 1956 as,

The Medical Council of India Act, 1956, this act passed in parliament has given certain teeth to act in certain conditions"

Disclosure of sensitive personal data/information by body corporate to any third party shall require prior permission from the provider of such information, who has provided such information under lawful contract or otherwise, unless such disclosure has been agreed to in the contract between the body corporate and provider of information, or where the disclosure is the necessary for compliance of, **"LEGAL OBLIGATION UNDER SECTION 6 OF THE INFORMATION TECHNOLOGY ACT, 2000 (IT ACT, 2000)"**

A provision is made in the same Act under the heading,

i. Transformation of Information:

A body corporate or any person, may transfer sensitive personal data/information including any information to any other country that ensures the same level of data protection that is adhere to by the corporate as provider for under these rules. The transfer may be allowed only if it is necessary for the performance of the lawful contract between the body corporate or any person on its behalf and provider of information or where such person as consented to, DATA TRANSFER SECTION 7 OF THE INFORMATION TECHNOLOGY ACT, 2000”.

A study by Ritu Agarwal says that,

“The present form of Digitization of Health Records may though gives some positive impact, it will have negative consequences because it involves an individual’s health records. The privacy of one’s personal health information as escalated as a matter of significant consent for the public, now the question arises under what circumstances will individuals willing to disclose identified personal health information and permit to be digitalized”.

The above statements discloses that the role played by the type of information requested (general health, mental health, genetic). The purpose for which it is to be used (Patient care, research, marketing) and the requesting stake holder (healthcare professional, facility, the government, the pharmaceutical companies) in an individual’s willingness to disclose personal health information and also the impact of emotion linked to one’s health condition, a study revealed on the subject shows that,

“Emotion plays a significant role”.

VII. LEGAL ANALYSIS (ENFORCEMENT MECHANISM):

The moral principles have no enforceable mechanism in any legal system because these principles are only advisory in nature even if the violation takes place but no action can be enforced on the erring personal. Hence it is the duty of the government to enact a legal system in accordance with legal provisions including CPC, Cr.PC and Evidence Act to punish the erring personal. In this regard, Medical Council of India has made certain proposals to be taken into consideration by the Government for enactment and an initial opening is made by the Medical Council to have a grievances cell in all the functions of the office of Medical Council. Any affected person can make a compliant by directly contacting or to any electronic form send the grievance to the additional secretary (grievances cell), National Medical Commission, New Delhi; also the grievance can be made through their official number or email.

Medical Malpractices and the role of Indian Legal System, “the entry of private players into healthcare arena because of the opening up of economy and globalization of healthcare and also availability of healthcare information through cell phones, TVs, people are becoming more aware of the remedies that are available for the medical malpractices are coming forward to went their grievances.

After many deliberations in the appropriate form and the subsequent amendments to the act Medical Negligence and Medical Malpractices became an offence and brought under the provisions of the Act in a vague manner; not providing specific sections under which a malpractice comes or a medical negligence comes and the remedy thereof.

However, a ray of hope has come with the Hon'ble Supreme Court Judgment in VP *Shanta vs Indian Medication Association (AIR 1996 SCC 550)* brought healthcare professionals, healthcare providers under the purview of the Consumer Protection Act. This land mark judgment has given some teeth to sue the healthcare professionals and healthcare providers for any deficiency in service or malpractice or negligence provided the patient (victim) or his/her authorized agent or guardian if the patient is a minor provided the patient pays an amount for the services received in healthcare.

VIII. MEDICAL MALPRACTICE CIVIL LIABILITY:

Medical Malpractice is a civil liability and the victim can initiate legal proceedings against the respondent (professional/provider/facility) for medical malpractice and can also face charges of medical negligence. However, in majority of the medical malpractice cases, Criminal Charges will not attract but if the healthcare professional's care falls below standards of negligence and reaches to the bottom of recklessness or intentional misconduct then such professional is liable for criminal prosecution also but for criminal prosecution, the state should prove beyond reasonable doubt and satisfy the Hon'ble court that the malpractice has crossed all reasonable limits in negligence.

To sue an healthcare professional for a medical malpractice, there should be an act that caused harm/injury/death to the patient and that act may be intentional/recklessness/wantonly, because it is the duty of any healthcare professional/provider to save the life of human being/minimize their discomfort/pain otherwise such professionals/providers are liable for action either civil, criminal or consumer court.

When an healthcare professional/provider is criminally liable and a complaint can be filed against them for rash and negligent act, but the burden of proof of criminal charges lies on the patient (victim) to prove that healthcare professional/provider/facility for grossly negligent and in some cases if the patient is under Anesthesia since the patient is not knowing what is happening, the court should summon the healthcare records, medical reports and even can constitute an expert committee to give a comprehensive report on the particular situation.

In some cases, such as, Organ Transplantation (Civil/Multiple) liability is created by some special statutes like Transplantation of Human Organ and Tissues Act 1994 etc, u/s 304 of IPC, an healthcare professional can be punished when causing death by an rash or negligent act such as, death of a patient during procedure which was conducted by a non professional or unqualified.

IX. LAW OF TORT AND MEDICAL MALPRACTICE:

Law of Tort starts from where the protection provided under Consumer Protection Act, 1986, ends with the help of Law of Tort, a victim (patient) can have the right to recover compensation from the

healthcare professional/provider when the victim (patient) pays for the services as defined in the Consumer Protection Act.

In this regard, the Hon'ble Supreme Court defined,

“Patient comes under consumer and stated that a Patient who receives procedure/service in an healthcare facility or from an healthcare professional comes under the provisions of the Consumer Act.”

However, if the circumstances warrants under the Law of Tort, a Patient who receives procedure for free of cost can also claim. To proceed against and healthcare professional/provider, the victim or the authorized agent. If the victim is a minor or no more has to prove and submit the following documents.

- a). Documented proof of injury/discomfort.
- b). Health records or HER and the relevant documents including X-rays, MRI Scan reports of the patients should be provided in the court and they should be provided by the healthcare facility on demand or by a direction from any Hon'ble Court. If the documents are not provided by the Provider/Facility at the time of discharge of the Patient.
- c). The victim (patient) or the authorized agent should specifically mention by specifying who is guilt and on whom legal proceedings are to be initiated. The legal action should be initiated without loss of time, otherwise the healthcare providers/healthcare professionals may tamper or middle with patient health records and the patient cannot bring the true fact to the legal system for reasonable compensation and punishment to the guilt.
- d). Initially in a malpractice case, a petition/complaint should be lodged on a healthcare provider/facility where the victim underwent procedure.

However, recently the Hon'ble Supreme Court in a case of same nature directed the lower courts,

“The case should be numbered only after receiving an expert committee report stating that Prima Facie, there is malpractice/negligence and it has to be thoroughly examined”, else without the expert committee report, the Hon'ble Judiciary cannot number it.

X. MEDICAL MALPRACTICES AND THE ROLE OF INDIAN LEGAL SYSTEM:

Globalization and opening up of economy and the encouragement given by the Government of India to private sector to play a big role in Indian Healthcare System. Many of the Industrial houses many of the healthcare houses entered into this sector in a big way. However, the motto of private entrepreneur is to make profits at the earliest on their investments; this leads to unhealthy malpractices for financial gains even at the loss of human health at times by adopting healthcare malpractices. As already mentioned above though there is a legal system in India to eradicate such malpractices, they have no teeth to take immediate appropriate strong actions on healthcare providers and professionals for the wrong doings

mainly medical malpractices. Though there are many attempts made by the Government of India by amending the acts and the provisions of the acts in healthcare but the main lacuna being the healthcare laws/acts does not specify the provisions or sections under which action can be initiated against the erring personnel in medical malpractices or to impose penalties or to punish the guilt. However, this equilibrium has changed a lot due to the intervention of governments and the Hon'ble courts by giving time to time changes to make the healthcare laws more purposeful. As already mentioned above one such landmark judgment by the Hon'ble Supreme Court in 1996 is, "**Indian Medical Association vs VP Shanta**" where in the highest judiciary of the land brought healthcare professionals, providers and healthcare facilities under the purview of consumer protection act. This landmark judgment by the highest Judiciary of India has given some teeth to sue the healthcare professionals, providers and facilities under the consumer protection act for any deficiency in service to get adequate compensation. But this judgment will give only a financial gain to the victim but cannot punish the guilt. In case if the professional negligence/malpractices either by healthcare professionals/providers/facilities, the victim has to knock the doors of the highest judiciary with the help of CPC, CrPC, IPC and if the malpractice of negligence is proved beyond any reasonable doubt the guilt can be punished in accordance with the Indian Legal System and the provisions.

Since there are number of judgments by Hon'ble Supreme Court and Hon'ble High Courts to punish the guilt's in healthcare sector, some important deliberations are discussed below:

However, it is the responsibility of the victim (patient) or any authorized agent or guardian if the patient is a minor should submit all the documents relevant to the case and it should be proved beyond doubt that the malpractice/negligence took place in the hour of the need and the professional/provider/facility or the responsible personnel for that negligent act.

In this regard, the Hon'ble Apex Court in a landmark judgment in "**Jacob Mathews vs State of Punjab (05.08.2005)**" declared that healthcare professionals can be held liable for the negligence when,

- a. The healthcare professional not possessed with a requisite skill which he/she professed to have possessed.
- b. He/she did not exercise, with reasonable competence in the given case, the skill which he/she did not possess.
- c. The Hon'ble Apex Court also stated that,

"The standard to be applied for finding 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 healthcare professional to have highest degree of experience/skill in a particular branch/field in which he/she claims. Even 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/malpractice.

The Hon'ble Apex Court of India under Article 14 of Indian Constitution lays down law of the land and has given some landmark judgments with respect to medical negligence and medical malpractice cases. In some important cases, the Hon'ble Apex Court of India given two types of legal action,

1. Criminal case u/s 304A of Indian Penal Code,
2. A consumer complaint or a civil case under the law of torts for recovery of compensation.

Guidelines of the Hon'ble Supreme Court to prosecute on healthcare professional:

“(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. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence 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's case \[1957\] 1 W.L.R. 582, 586 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 mens rea 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 IPC, 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 IPC 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 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."

In another case, in [Martin F. D. Souza vs Mohd. Isfaq](#), the Hon'ble Judges justice Markendey Khatju and RN Loha observed that "[this case applied the general principles of guidelines mentioned in Jacob Mathew in Consumer cases](#)".

In another case, the Hon'ble Supreme Court in [V. Krishna Rao vs Nikhil Super Speciality Hospital](#), the Hon'ble Judges G.S. Singhvi and Ashok Kumar Ganguly observed that,

"The Court overruled Martin D Souza to the extent it applied the guidelines/directions in Jacob Mathew in Consumer Cases. In Para 29 of the above said Judgment the Hon'ble Judges observed that,

We are of the view that aforesaid directions are not consistent with the law laid down by the larger bench in Mathew (Supra). In Mathew (Supra) the direction for consulting the opinion of another doctor before proceeding with criminal investigation was confined only in cases of Criminal Complaint and not in respect of cases before the Consumer Fora".

The reason why the larger bench in Mathew (supra) did not equate the two is obvious in view of the jurisprudential and conceptual difference between cases of Negligence in Civil and Criminal matter. This has been elaborately discussed in Mathew (supra). This distinction has been accepted in the judgment of this court in **Maley Kumar Ganguly (supra) Paras 133, 180 and Pages 274, 284.**

The Hon'ble Apex Court in some of the cases pertaining to medical malpractices and Medical Negligence that are reported such as **Kusum Sharma and others vs Batra Hospital and Medical Research Center** laid down few more guidelines with respect to Medical Negligence as,

I. 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.

II. Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

III. The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the 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 requires.

IV. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

V. 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 other professional doctor.

VI. 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.

VII. 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 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.

VIII. It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck.

IX. It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessary harassed or humiliated so that they can perform their professional duties without fear and apprehension.

X. The medical practitioners at times also have to be saved from such a class of complainants who 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.

XI. 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.

In another important Act in Healthcare in India is,

“Indian Healthcare Improvement Act, 1976, this Act after amending many a times and also the Social Security Act are permitted reimbursement by Medicare and Medicaid for services provided to American Indians and Alaska natives in Indian Healthcare Service and Tribal Healthcare Facilities.”

In another landmark Act enacted by the Parliament in India,

“The Patient Safety and Quality Improvement Act, 2005,

The Patient Safety and Quality Improvement Act of 2005 (PSQIA) establishes a voluntary reporting system designed to enhance the data available to assess and dissolve patient safety and healthcare quality issues.”

In a classical example with respect to the above Act, a Patient admitted to **Orthopedic Ward of Vashi General Hospital** complained that,

“A cockroach was found in the food that was served by the Hospital to the Patient, having taken the cognizance of complaint, the Navy Mumbai Municipal Corporation, served a show cause notice to the care taker. The Patient in his complaint mentioned that, ‘I am not sure if the cockroach had fallen from somewhere or was in the food from earlier. But when I saw the cockroach, I shot the video’.

On this complaint after examination the Vashi General Hospital Management gave the following reply that is being submitted to the Court,

“The caterer has been levied a fine and given strict warning as well. In addition, the in charge of the food section of the hospital also to be more alert in future.”

Not only the victims (patients) and also the healthcare professionals/providers/facilities, the Indian Government passed another Act to protect persons who are bringing the malpractice and negligence to

the fore with the Act Indian Whistle Blowers Protection Act, 2011, to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or willful misuse of power or willful misuse of discretion against any public servant and to enquire or cause an enquiry into such disclosure and to provide adequate safeguards against victimization of the person making such complaint and for matters connected there with and incident thereto.

The other important Acts that are of immense use are,

- a. Indian Medical Council (IMC) (Professional Conduct Etiquette and Ethics) Regulations, 2002 made under IMC Act, 1965;
- b. Medical Council of India Act promulgated 10th December 2009

Section 20 of Indian Medical Council Act it is mentioned that,

“The Council may prescribe standards of Professional Conduct and Etiquette and Code of Ethics for Medical Practitioners”.

- i. Regulations made by the Council under subsection 20(a) of the Act, specify,

which violations shall constitute in framing conduct in any professional, respect, to say, Professional Misconduct and provisions shall have effect notwithstanding anything contained in any law for the time being in force.

Article 21 of the Indian Constitution casts and obligation on state to preserve life of an individual, in the government healthcare facility and is under an obligation to meet such obligations as provided in the Constitution. The healthcare professionals are,

“Duty to bound to extend health assistance for preserving life and every healthcare professional whether at the government healthcare facility or private healthcare facility has the professional obligation to extend services with the due expertise for protecting life of an individual. No Law or State action can intervene to avoid/delay the discharge of this paramount obligation cast upon members of healthcare professionals. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must therefore give way”.

In another landmark judgment the Hon’ble Apex Court declared highest compensation for Medical Malpractice in, **“Anuradha Shah vs AMRI Hospital in Kolkata ordered to pay 11.5 crores as compensation for wrongful death of Anuradha Shah against three reputed doctors (healthcare professionals/respondents) of the hospital and also the hospitals. When the Victim’s husband (Anuradha’s Husband) brought to the notice of the Hon’ble Apex Court that the hospital deducted 1.08 crores as Income Tax from the amount payable under TDS and filed a contempt petition against the hospital. The Hon’ble Apex Court declared that deduction of TDS is unlawful and condemned the**

Act of healthcare facility and declared that ‘Compensation cannot be treated as Income for the family, and the Hon’ble Court directed all the respondents herein to clear all the payments within two weeks failing which contempt proceedings will follow.’

In another landmark judgment by the Hon’ble Apex court in **Bolam vs Free Hospital Committee**, set a precedent for the Modern Medical / Clinical Negligence Law,

“The evidence of medical experts is highly important and necessary in Medical Negligence and Medical Malpractice cases, because the Hon’ble Judge cannot decide whether a Medical Negligence has really occurred and only a Medical Professional can explain the medical dispute and also negligence took place in the Procedure/Treatment.”

In their judgment, the Hon’ble Judges of the Hon’ble explained,

“Failure to do some Act which a reasonable man in the circumstances would do or doing of that Act results in enquiry when the cause of action arose”.

The Hon’ble Apex Court also mentioned in the same judgment that,

“In a given situation, that involves the use of special skill or competence then the test is whether there has been negligence or not is not the test of the man on the top of a clap ham ominous because he/she has not got this main exercising and professing to have that special skill. A man need not possess the highest expert skill and the risk being found negligent.”

To sum up any malpractice in an ICU in an healthcare facility will attract all the laws that are applicable in a non ICU situation and in addition the other issues that arise in ICU are,

1. Equipment failures in ICU in healthcare facility.
2. In experienced people in handling the equipment in the ICU.
3. Improper medication and improper dosage
4. Not properly following the instructions of the healthcare professionals and advising same to the patients.

XI. CONCLUSION:

As already mentioned above the subject is very wide, the medical malpractices are on the rise due to technological advancement, loss of human touch and human feeling, widening gap between the healthcare professional and patient with due to various circumstances, the healthcare providers greed of money for their investments in shortest period, stress in healthcare professionals not able to concentrate on the work are some of the factors that are contributing in increasing medical malpractices in negligence. However, many of the cases that have to come up to the judiciary are not, because the fear of patients, guardians/close relatives fearing that the healthcare facility cannot give proper attention to the patient if they go against, longer period of awaiting results from the Indian Legal System due to procedural wrangles, high cost of litigation, not able to proper advice, how to make complaint to whom,

where, when. In addition to all these the healthcare facility management negotiating with the victims and their authorized agents by giving some alms to shut their mouth because if such incidents are made public the reputation of the professionals are at stake, and even it may arise to close the facility. This is not only the case in developing nations but also developed nations like USA and according to some reports only 10 to 15% of the cases are reported. This kind of situation will have its own repercussions because unless the malpractice and negligent acts are not coming to the fore there cannot be a solution but the malpractice cases will increase thereby a situation will arise that it will become very difficult to contain the same. Finally the problem of bringing out these cases to the public not only rests with patients and authorized agents but also by the public, print media, electronic media and those organizations who are involved in the social well being of the society.

References:

1. [R And Anr vs State Of Haryana & Ors on 30 May, 2016](#)

Punjab-Haryana High Court R And Anr vs State Of Haryana & Ors on 30

Punjab-Haryana High Court

[Cites 40 - Cited by 0 - Full Document](#)

2. [Shividhya Koteeswaran vs Dr. Natasha Nanda \(Radiologist\) on 30 April, 2019](#)

parties and the **medical** literature submitted ; the exhaustive list of which is as follows, **Case Laws** by Complainant ... Last chance Doctrine is still alive in **medical malpractice** actions. **Case Laws** by Opposite Parties 1. Master Vaibhav Vohra

State Consumer Disputes Redressal Commission

[Cites 6 - Cited by 0 - Full Document](#)

3. [Minor S. Aswin Kumar vs State Of Tamil Nadu on 27 April, 2007](#)

Madras High Court Minor S. Aswin Kumar vs State Of Tamil Nadu on 27 April

Madras High Court

[Cites 89 - Cited by 5 - Full Document](#)

4. [Indian Medical Association vs V.P. Shantha & Ors on 13 November, 1995](#)

Supreme Court of India Indian **Medical** Association vs V.P. Shantha & Ors on 13

Supreme Court of India

[Cites 44 - Cited by 387 - Full Document](#)

5. [Malay Kumar Ganguly vs Sukumar Mukherjee & Ors on 7 August, 2009](#)

Supreme Court of India Malay Kumar Ganguly vs Sukumar Mukherjee & Ors on 7 August

Supreme Court of India

[Cites 33 - Cited by 72 - Full Document](#)

6. [Bhushan Uttam Khare vs Dean, B.J. Medical College And Ors on 28 January, 1992](#)

State. The results on revaluation intimated to the **Medical** College thus stood cancelled and the final results were delcared ... Ordinance and there was no glaring instance of any **malpractice**, fraud or other course of whatsoever nature to cancel

Supreme Court of India

[Cites 1 - Cited by 25 - Full Document](#)

7. [Pushpagiri Medical Society vs State Of Kerala on 4 January, 2007](#)

Kerala High Court Pushpagiri **Medical** Society vs State Of Kerala on 4 January, 2007 IN

Kerala High Court

[Cites 113](#) - [Cited by 10](#) - [Full Document](#)

8. [P.M. Unni Raja And Ors. vs Principal, Medical College, ... on 28 February, 1983](#)

Kerala High Court P.M. Unni Raja And Ors. vs Principal, **Medical** College, ... on 28

[Kerala High Court](#)

[Cites 17](#) - [Cited by 12](#) - [Full Document](#)

9. [Rk Medical College Hospital And ... vs Union Of India on 1 July, 2015](#)

year 2014-15, the querist **decided** that in the **case** of Malla Reddy **Medical** College the current academic year shall ... Especially in the **case** of **medical** education, as the same will affect the quality of **medical** education provided

[Madhya Pradesh High Court](#)

[Cites 8](#) - [Cited by 1](#) - [Full Document](#)

10. [Chief Executive Trustee vs State Of Kerala on 4 January, 2007](#)

Kerala High Court Chief Executive Trustee vs State Of Kerala on 4 January, 2007 IN

[Kerala High Court](#)

[Cites 113](#) - [Cited by 0](#) - [Full Document](#)

11. [Ms. Prachi Singh Parihar vs The State Of Madhya Pradesh on 23 March, 2018](#)

Madhya Pradesh High Court Ms. Prachi Singh Parihar vs The State Of Madhya Pradesh on

[Madhya Pradesh High Court](#)

[Cites 27](#) - [Cited by 0](#) - [Full Document](#)

12. [Rm. Arun Swaminathan vs The Principal Secretary To The ... on 28 September, 2020](#)

Madras High Court Rm. Arun Swaminathan vs The Principal Secretary To The ... on 28 September

[Madras High Court](#)

[Cites 9](#) - [Cited by 0](#) - [Full Document](#)

13. [Meenakshi Jain vs Delhi Medical Council & Anr. on 22 March, 2018](#)

relating to the eligibility criteria for appointment of a **medical** expert on the DC. Such a requirement was not found ... adopted a set of criteria specifying the eligibility for **medical** experts to be appointed to the DC, for ease

[Delhi High Court](#)

[Cites 20](#) - [Cited by 0](#) - [Full Document](#)

14. [Naman Kuriyal vs State Of Uttarakhand And Others on 4 July, 2018](#)

Apex Court in the **case** of Dar-Us- Slam Educational Trust and others v. **Medical** Council of India and others ... **decided** on 09.05.2017, in order to curb the **malpractices** of filling up of quota seats, as held as under: "After

[Uttarakhand High Court](#)

[Cites 3](#) - [Cited by 0](#) - [Full Document](#)

15. [Ex Constable Ram Karan vs Uoi & Ors. on 11 February, 2016](#)

went to Dr.Abdul Nazir for certification of her **medical** bill, which was needed for submission of application for refund ... words, some **cases** of false reimbursement claims were detected. In order to curb this **malpractice**, the doctors **decided** to check

[Delhi High Court](#)

[Cites 8](#) - [Cited by 0](#) - [Full Document](#)

16. [L. Alagappan vs The Union Of India on 24 November, 2016](#)

circumstances of the **case** for after all it was only on **medical** grounds the letter of resignation has been tendered ... safeguard against **malpractices**, invalidation should be supported by a certificate issued by a Civil Surgeon." The **case** at hand certainly

Madras High Court

[Cites 1](#) - [Cited by 0](#) - [Full Document](#)

17. [241St Report On Passive Euthanasia - A Relook](#)

Law Commission Report 241St Report On Passive Euthanasia - A Relook GOVERNMENT OF INDIA
LAW COMMISSION

Law Commission Report

[Cites 37](#) - [Cited by 0](#) - [Full Document](#)

18. [Dy. Commissioner Of Income Tax ... vs Bayer Pharmaceuticals Private ... on 18 September, 2019](#)

curb the **malpractices** in the **medical** profession and equally binding on both **medical** practitioners and Pharma companies? 3.The appellant ... restored." **Deciding** the appeal, the Tribunal held as under: 2.The brief facts of the **case** qua the issue raised

Income Tax Appellate Tribunal - Mumbai

[Cites 7](#) - [Cited by 0](#) - [Full Document](#)

19. [Soubhik Naskar vs Staff Selection Commission on 10 January, 2018](#)

Central Administrative Tribunal - Kolkata Soubhik Naskar vs Staff Selection Commission on 10 January, 2018 Bench

Central Administrative Tribunal - Kolkata

[Cites 5](#) - [Cited by 0](#) - [Full Document](#)

20. [Soubhik Naskar vs Staff Selection Commission on 10 January, 2018](#)

Central Administrative Tribunal - Kolkata Soubhik Naskar vs Staff Selection Commission on 10 January, 2018 Bench

Central Administrative Tribunal - Kolkata

[Cites 5](#) - [Cited by 0](#) - [Full Document](#)

21. [Mahendra Kumar Soni vs General Manager N C Rly on 1 May, 2018](#)

Central Administrative Tribunal - Allahabad Mahendra Kumar Soni vs General Manager N C Rly on 1

Central Administrative Tribunal - Allahabad

[Cites 3](#) - [Cited by 0](#) - [Full Document](#)

22. [Bayer Pharmaceuticals Pvt. Ltd., ... vs Dcit Range 4\(1\), Mumbai on 6 April, 2018](#)

curb the **malpractices** in the **medical** profession and equally binding on both **medical** practitioners and Pharma companies? 3.The appellant ... restored." **Deciding** the appeal,the Tribunal held as under: 2.The brief facts of the **case** qua the issue

Income Tax Appellate Tribunal - Mumbai

[Cites 7](#) - [Cited by 0](#) - [Full Document](#)

23. [Sri Ram Mishra vs Union Of India on 4 April, 2018](#)

which is not applicable in the **case** of applicant as his **case** is for the period of 2006. However, Rule ... claims- (a) General- As per existing instructions, all **cases** where the **medical** claims are submitted after three months have

Central Administrative Tribunal - Allahabad

[Cites 0](#) - [Cited by 0](#) - [Full Document](#)

24. [Badam Agaiah & Ors. vs Dr. L. Vidya Sagar Reddy on 23 May, 2014](#)

though a body of adverse opinion also existed among **medical** men. Deviation from normal practice is not necessarily evidence ... material in this **case**, was considered by the Ethical and **Malpractice** Committee of the said **Medical** Council in their meeting

National Consumer Disputes Redressal

[Cites 0](#) - [Cited by 0](#) - [Full Document](#)

25. [Dr.\(Smt.\) Malti Manwatkar vs Union Of India on 30 August, 2016](#)

proof and these allegations can not be **decided** in this transfer **case**. 5. Heard the learned counsel for the parties ... **Medical** Officers without any valid prescription, which is **malpractice** and cause unnecessary increase in the budget of the local purchase

Central Administrative Tribunal - Jabalpur

[Cites 0](#) - [Cited by 0](#) - [Full Document](#)

26. [In The Matter Of : vs Ms Nikita on 5 November, 2020](#)

medical condition of the defendant she had applied for various **medical** leaves during her tenure of service alongwith **medical** documents ... plaintiff. DW2 has also supported the **case** of the defendant regarding her **medical** condition. In these circumstances, dismissal

Delhi District Court

[Cites 3](#) - [Cited by 0](#) - [Full Document](#)

27. [Managing Director Ecil Hyderabad ... vs B. Karunakar Etc. Etc on 1 October, 1993](#)

Supreme Court of India Managing Director Ecil Hyderabad ... vs B. Karunakar Etc. Etc on 1

Supreme Court of India

[Cites 64](#) - [Cited by 955](#) - [Full Document](#)

28. [Kartar Singh vs State Of Punjab on 11 March, 1994](#)

Supreme Court of India Kartar Singh vs State Of Punjab on 11 March, 1994 Equivalent

Supreme Court of India

[Cites 337](#) - [Cited by 301](#) - [Full Document](#)

29. [Central Board Of Sec.Education & ... vs Aditya Bandopadhyay & Ors on 9 August, 2011](#)

Supreme Court of India Centrall Board Of Sec.Education & ... vs Aditya Bandopadhyay & Ors

Supreme Court of India

[Cites 35](#) - [Cited by 435](#) - [Full Document](#)

30. [P.A. Inamdar & Ors vs State Of Maharashtra & Ors on 12 August, 2005](#)

Supreme Court of India P.A. Inamdar & Ors vs State Of Maharashtra & Ors

Supreme Court of India

[Cites 23](#) - [Cited by 288](#) - [Full Document](#)

31. [Indian Express Newspapers ... vs Union Of India & Ors. Etc. Etc on 6 December, 1984](#)

Supreme Court of India Indian Express Newspapers ... vs Union Of India & Ors. Etc. Etc

Supreme Court of India

[Cites 53](#) - [Cited by 309](#) - [Full Document](#)

32. [Sahiti & Ors vs Chancellor,Ntr.Univ.Of Health ... on 22 October, 2008](#)

Supreme Court of India Sahiti & Ors vs Chancellor,Ntr.Univ.Of Health ... on 22

Supreme Court of India

[Cites 1](#) - [Cited by 359](#) - [Full Document](#)

33. [Express Newspapers \(Private\) ... vs The Union Of India And Others\(And ... on 8 January, 1958](#)

Supreme Court of India Express Newspapers (Private) ... vs The Union Of India And Others(And
Supreme Court of India

[Cites 99](#) - [Cited by 139](#) - [Full Document](#)

34. [Maharashtra State Board Of ... vs K.S. Gandhi And Ors on 12 March, 1991](#)

Supreme Court of India Maharashtra State Board Of ... vs K.S. Gandhi And Ors on

Supreme Court of India

[Cites 45](#) - [Cited by 183](#) - [Full Document](#)

35. [Sunil Batra Etc vs Delhi Administration And Ors. Etc on 30 August, 1978](#)

Supreme Court of India Sunil Batra Etc vs Delhi Administration And Ors. Etc on 30

Supreme Court of India

[Cites 57](#) - [Cited by 246](#) - [Full Document](#)

36. [M/S. Amar Nath Om Parkash And Ors. ... vs State Of Punjab And Ors. Etc on 29 November, 1984](#)

Supreme Court of India M/S. Amar Nath Om Parkash And Ors. ... vs State Of

Supreme Court of India

[Cites 24](#) - [Cited by 182](#) - [Full Document](#)

37. [Suresh Koshy George vs The University Of Kerala & Ors on 15 July, 1968](#)

Supreme Court of India Suresh Koshy George vs The University Of Kerala & Ors on

Supreme Court of India

[Cites 7](#) - [Cited by 153](#) - [Full Document](#)

38. [St. Stephen'S College Etc., Etc. vs The University Of Delhi Etc., Etc. on 6 December, 1991](#)

Supreme Court of India St. Stephen'S College Etc., Etc. vs The University Of Delhi

Supreme Court of India

[Cites 59](#) - [Cited by 139](#) - [Full Document](#)

39. [Express Newspapers \(Private\) ... vs The Union Of India \(Uoi\) And Ors. on 19 March, 1958](#)

Supreme Court of India Express Newspapers (Private) ... vs The Union Of India (Uoi) And Ors

Supreme Court of India

[Cites 86](#) - [Cited by 89](#) - [Full Document](#)

40. [Lakshmi Kant Pandey vs Union Of India on 6 February, 1984](#)

Supreme Court of India Lakshmi Kant Pandey vs Union Of India on 6 February, 1984

Supreme Court of India

[Cites 16](#) - [Cited by 73](#) - [Full Document](#)