

CHAPTER-I

INTRODUCTION

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Social Work:

As per Global Definition approved by International Federation of Social Workers (IFSW) in 2014, “Social work is a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility and respect for diversities are central to social work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledge, social work engages people and structures to address life challenges and enhance wellbeing.”

Anderson (1943) defined, “Social Work is a professional service rendered to the people for the purpose of assisting them, as individuals or in groups to attain satisfying relationships and standard of life in accordance with their particular wishes and capacities and in harmony with those of the community.”

Social work is a professional intervention at a micro, mezzo and at macro level. Social work's universal focus adapts to diverse priorities across countries, shaped by historical, cultural, political, and socio-economic factors. Yet, its core mission remains empowering vulnerable communities, evident in varied settings like crime and corrections, rural and urban areas, healthcare, and industries, with a central focus on marginalized groups like the poor, disabled, women, children, and elderly. In healthcare, social workers analyse and address health issues, advocating for health as a fundamental human right.

Health:

Health is recognized as a fundamental aspect of Human Rights and Social Justice, integral to both the quality of life and societal progress, serving as both a precondition and a desired outcome of human development.

Health as a concept is seen from the different perspectives from time to time. It has evolved from concept of individual concerns to world-wide social goal. Various concepts of health are as below:

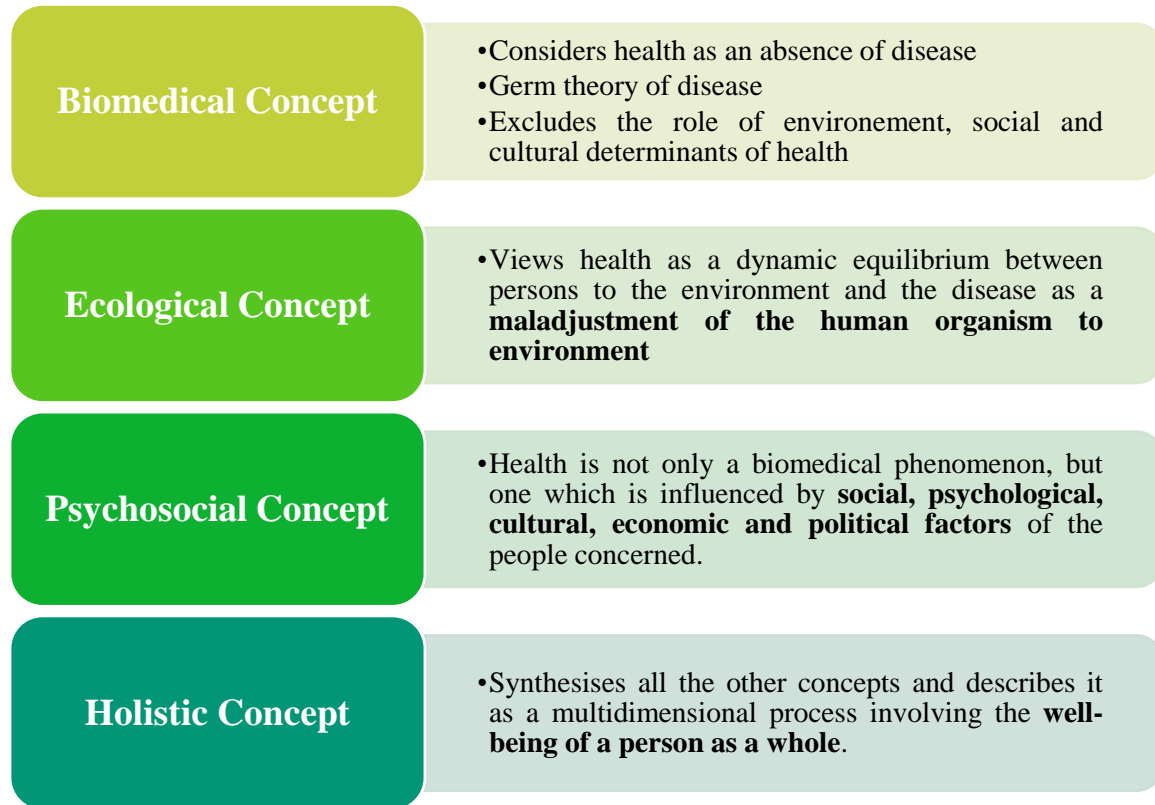


Figure 1: Concepts of Health

Earlier, an absence of disease or sickness was considered as Health. However, a paradigm shift was observed with the definition propounded by World Health Organisation (WHO). In 1948, WHO defines, “Health is a state of complete physical, mental and social well-being and not merely absence of disease or infirmity.” This explains health in the holistic terms. In the year 1986, WHO made further clarification considering Health as “a resource for everyday life, not the objective living. Health is a positive concept emphasizing social and personal resources, as well as physical capacities.” To understand, Health is not considered as an end itself, but a key resource to support the individual functioning in the broader society.

In accordance, the biopsychosocial model considers the health and illness as the product of biological characteristics, behavioural factors and social conditions, as proposed by George L. Engel in the year 1977. The biopsychosocial model is also considered as the “**New Medical Paradigm**”.

Individuals, who were earlier considered as the passive recipients of the medical interventions, are considered as the active contributors to the treatment process.

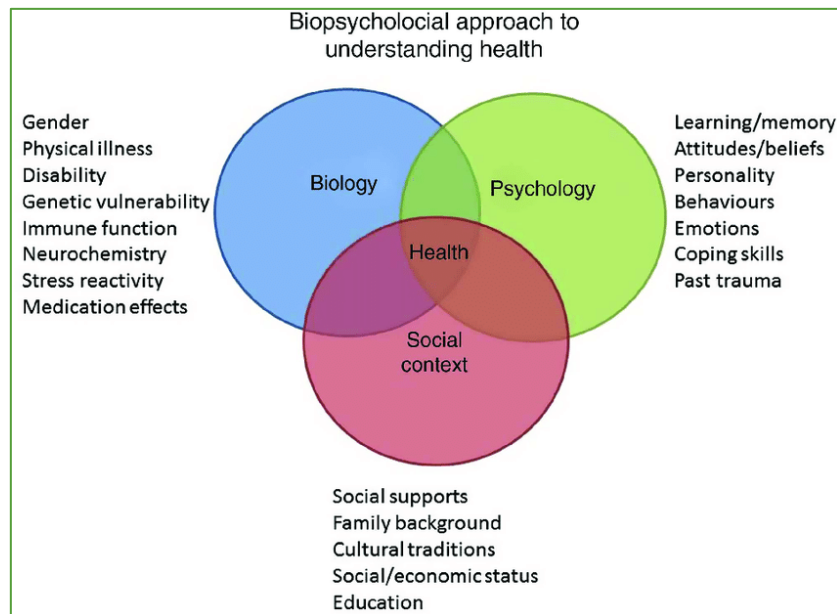


Figure 2 Biopsychosocial model in understanding health

Health, Human Rights, and Development are closely linked, with the promotion of health intertwined with upholding human rights and advancing societal development goals.

The notion of 'Good' Health has been viewed as a globally desired human aspirations, as the attainment of physical, mental, social, and spiritual well-being, the right of the individual to live and lead life to exploit his/her total potential becomes the fundamental prerequisite. Health of the individual obviously leads to the realisation of all human rights.

- **Health as a Human Right:**

Human Rights constitute the set of normative ethics and principles that can be traced back to ancient times of human civilization. Human Rights are best seen as articulations of the commitment in social ethics because their ethical status is socially more relevant and functionally more useful than its legal positions.

With this meaning, it can surely be inferred that Health itself is an important Human Right. The right to Health does not prescribe the right of individual to be healthy but embodies an obligation on part of governance structures to create conditions necessary for the individuals to achieve their optimal and holistic health status.

“It is my aspiration that health will finally be seen not as a blessing to be wished for, but as a human right to be fought for.”

– Kofi Annan, United Nations Secretary General (served 1997-2006)

Health as a human right also underlies the understanding of human life with dignity. Internationally, it was first articulated in the 1946 Constitution of the World Health Organisation (WHO). The preamble, apart from defining Health as stated above, has further added that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.”

The 1948 United Nations (UN) Declaration of Human Rights identified a range of rights which are essential to health which includes *right to life; liberty and security; to participation in policy making; to education and to just and favourable conditions of work*. It is noteworthy that Health was recognised as a Human Right in the 1966 International Covenant on Economic, Social and Cultural Rights.

The goal of ‘Health for All’ was propounded to be achieved by the end of century i.e. year 2000 during the Alma Ata Declaration in the year 1978. It implied that every person is entitled to live a healthy life, and that resources essential for satisfying health needs should be available within the reach of everyone. (World Health Organisation, 1986).

A General Comment explicating the substance of government obligations relating to right to health (UN CESCR General Comment No. 14) was adopted by the United Nations Committee on Economic, Social and Cultural Rights in the year 2000. The comment sets out the requirements for the delivery of health services, including their *availability, acceptability, accessibility* and *quality* along with clarifying governmental responsibility for policies, programs and practices influencing the requirement for the delivery of health services. Since then, Health as a right has been discussed and recognised in various international and state treaties.

- **The Right to Health in Indian Context:**

India's legal framework safeguards the right to health, with the Constitution implicitly recognizing health as a fundamental human right through relevant articles that address related issues.

Health under Fundamental Rights (Part III of Indian Constitution):

As per **Article 21** for 'Protection of life and personal liberty', no person shall be deprived of his life or personal liberty except according to procedure established by law. Here right to health is implied and be seen as extension of right to live with dignity which is also seen in the 1948 United Nations Declaration of Human Rights.

In the case *State of Punjab v. Mohinder Singh Chawla (1996)*, the court pointed out that, since the right to health is inseparable part of the Right to life and hence it is the prime duty of the State Government to provide facilities for the health care.

Article 32 of the Indian Constitution provides for 'Remedies for the Enforcement of rights. The article provides the right to every citizen to move to the court by appropriate proceedings for the enforcement of the rights guaranteed. Moreover, Right to Equality and the constitutional value of Social Justice clearly incorporates the concern for the access of the health care facilities.

Health under Fundamental Duties (Part IV A of Indian Constitution):

The duty to be exercised by the medical practitioners is mentioned in the Fundamental duties of the constitution. As per **Article 51 A(h)** of Indian constitution, there is a moral responsibility of doctor and legal duty of medical practitioner to maintain and preserve medical, medico-legal and legal documents related to patient in best interest of social and professional justice.

Directive Principles of State Policy (Part IV of the Indian Constitution):

The Directive Principles of State Policy, though not legally enforceable, are integral to the Constitution's governance framework. It is the state's duty to adhere to these principles while enacting laws. Specific articles in the Constitution direct the government to ensure and enhance healthcare systems within the state.

Article 41: 'Right to Work, to education and to public assistance in certain cases'. The state shall, within limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement.


Article 42: 'Provision for just and humane conditions of work and maternity relief'. The state shall make the provision for securing just and humane conditions of work and for maternity relief.

Article 47: ‘Duty of the state to raise the level of nutrition and the standard of living and to improve the public health’. The state shall regard the raising level of nutrition and living standard and health improvement of the public as its primary duty and the state shall endeavour to bring about prohibition of the consumption except for medical purpose of the intoxicating drinks and of drugs that are injurious to health.

Universal Healthcare is a responsibility of the state, however, many a times a doctor or nurse fails to provide proper medical care in the way they are supposed to provide.

- **Violation of Right to Health- Grassroot Realities:**

Many news and cases are reported now-a-days where it is observed that the right to health is frequently violated. Doctors, often revered as ‘saviours’/’God’ for their role in saving lives, can also be implicated in cases of gross negligence, leading to severe consequences such as permanent impairment, trauma, financial burden, or even death for the patient.

<h3>Declared dead, newborn found alive at graveyard in J&K’s Ramban district</h3> <p>ARUN SHARMA JAMMU, MAY 23</p> <p>A NEWBORN girl, who after being declared dead by hospital staff in Jammu and Kashmir’s Ramban district was buried in the graveyard of a neighbouring village on Monday, turned out to be alive after her grieving relatives had to exhume her body in view of objections by local villagers.</p> <p>“Two persons – a junior staff nurse and her helper – who declared the newborn dead without informing the gynaecologist have been suspended,” said Ramban Chief Medical Officer (CMO) Dr Fareed Bhat. A three-member team led by Deputy CMO has also been set up to probe the matter.</p> <p>Sources said the staff of government-run sub-district hospital at Banihal declared the baby of Shameema Begum of Gujjar Basti Bankoot dead soon after the delivery and the family buried the child in nearby Hollan village. However, local villagers objected to the burial of an outsider. “As the family exhumed the body, the child started crying,” said Gujjar leader Choudhary Mansoor.</p> <p>The CMO said Shameema was six-month pregnant and as she had a premature delivery, she was straightway taken to the labour room by a junior staff nurse and her helper. “However, instead of calling the gynaecologist, they declared the baby dead on their own. By the time the gynaecologist reached the labour room, the family had left,” the CMO said.</p>	<h3>Private hospitals warned not to look for profit amid crisis</h3> <p><small>TIMES NEWS NETWORK</small></p>  <p>Ahmedabad: The Gujarat high court has said that private hospitals have infrastructure and money to help people in the pandemic and they should not think of profit because “God is watching us and their good deeds would not go unnoticed in the eye of the Almighty”.</p> <p>HC said so while withdrawing its order that the private hospitals should not take advanced deposit from patients other than referred by the government. It said that the hospitals can charge advance deposits also in phased manner. In its order passed on Sunday HC said, “In times of crisis when people are dying, the Association (Ahmedabad Hospitals and Nursing Homes Association) should not think of making profit of one rupee. The private hospitals have adequate infrastructure and materials and financial resources.</p> <p>whether private or public are considered moral agents and hence have a moral responsibility.”</p> <p>The HC said that any patient who is not accommodated by SVP Hospital and Civil Hospital has to go to private hospitals and in such circumstances he should not suffer on account of his financial condition. “It should not happen that because of financial constraint, the patient remains without any adequate medical treatment. The medical fraternity is expected to rise to the occasion.”</p>
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(Illustration from Indian Express- 24/05/2022 & Times of India 01/06/2020)

In present times, commercialisation has knocked the doors of medical profession. Many a times for attracting patient and earn money, deceitful methods are adopted. Unethical collusion between medical practitioners or hospitals and laboratories; prescribing medicines more than needed do not only violate patient’s right to health, but also exploit the patients and their families financially, emotionally and physically.

According to Voluntary Health Association of India, “the present state of medical profession mirrors the rot which seems to have set into our system. Increased mechanisation and commercialisation of the profession has brought on element of dehumanisation in medical

practice.” It's disheartening to acknowledge that healthcare has been commercialized, eroding the essential bond between doctors and patients.

The decline in self-regulatory standards within the medical profession is evident, largely due to the heightened commercialization of the field. The infiltration of unscrupulous individuals into the profession poses a challenge for the medical fraternity to effectively isolate them. As a result, there's a growing need for external regulation through legal systems and laws to uphold standards and ensure accountability.



(Sandesh Newspaper- 11/04/2021; 14/09/2020 & Times of India 07/07/2021 highlighting about irregularities about Remdesivir Injection in COVID times, Removal of patient's organ and mask scam in Banaskantha district)

In the developing country like India, majority of the health care seekers belong from low-income groups with less/no education which at times are subjected to the hostile medical environment, inadequacy in hospitals and beds, non-availability of adequate treatment facilities, corruption and apathy due to limited access to the healthcare systems. Furthermore, the reluctance of qualified doctors to serve in rural and remote areas has led to the proliferation of unqualified practitioners who exploit the ignorance of the population.

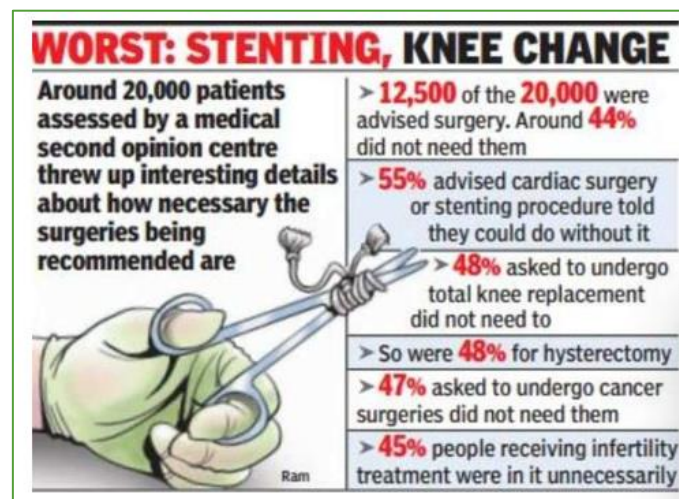


(Illustrations of difficulties to common people for inadequate infrastructure highlighted in Times of India on 11/04/2021 and Sandesh on 27/09/2021)

The healthcare industry is witnessing soaring treatment costs, unwarranted pathological tests for financial gain, preferential prescribing of high-cost medications over generics, unethical patient admissions, and even illegal organ harvesting for profit. These practices are often shielded by powerful lobbies, perpetuating malpractice.

Apart from the malpractices, many a times, doctors and the hospital staff fail to exercise their duty to exercise reasonable skill and care.

A Study showcases that India is recording 5.2 million injuries due to medical errors and adverse events. A landmark report by an Indian Doctor from Harvard School of Public Health (HSPH) has concluded that more than 43 million people are injured worldwide every year due to unsafe medical care. Nearly 3 million years of life are lost in India each year owing to Injuries. With increasing Public Awareness, claims and litigations in this matter is also rising. In the country's consumer courts, they now top the list of 3.5 lakh pending cases.



(Times of India article dated 04/01/2015, based on the research by MediAngels, Mumbai based Medical Second Opinion Services centre)

Dr. Girish Tyagi, registrar of Delhi Medical Council, notes a significant rise in complaints related to overcharging, unnecessary procedures, and wrong decisions, with reported cases increasing from 40 per month to 15 per month in the last two years. Similarly, a report by the Association of Medical Consultants reveals a surge in medico-legal cases against doctors in Mumbai, escalating by 150-200 cases annually. Justice S. Ahmad observes the unpredictable nature of medical negligence, citing a case where a sterilization operation failed, resulting in an unwanted pregnancy for a poor laborer woman who had already opted for sterilization.

- **Medical Malpractice/Negligence:**

The negligence and malpractice by the medical practitioners are covered by many legislations and by a code of ethics. The medical negligence not only includes the careless or reckless or negligence activities conducted by medical practitioners, but also includes nurses, hospitals and any permitted person who is involved in the medical practices.

The word 'negligence' has its roots in the Latin word 'Negligentia' which is synonymous to carelessness, heedlessness, neglect or oversight.

In 1856, B. Alderson, J. provided the definition of negligence in *Blyth v. Birmingham Waterworks Company* as 'The omission to do something which a reasonable man, guided upon 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 defendants might have been liable for negligence, if unintentionally, they omitted to do that which a reasonable person would have done or did that which a person taking reasonable precautions would not have done.'

Medical Negligence may be defined as lack of reasonable degree of skill and care or wilful negligence on account of medical practitioner who is under the professional expressed or implied contract for treatment of the patient, so as to lead loss of life or endure injury. This definition includes two aspects of negligence:

- lack of reasonable care and second, wilful neglect.
- commission of the legal acts beyond one's scope of duty holds the person guilty of negligence.

This does not imply that every error of judgement can be considered as negligence. But those error that a reasonable competent person acting with ordinary care and skill would not commit, can be considered as Negligence.

The law of Tort differentiates amongst those injuries resulting from intentional conduct and from negligence. As per *Moni vs. State of Kerala* "in case of medical man, negligence means failure to act by the standards of reasonably competent medical men at the time. There may be one or more perfectly proper standards, and if he conforms to one of these proper standards, then he is not negligent."

As provided in the case *Jacob Matthew v. State of Punjab and another (2005)*, “Negligence is the breach of a duty caused by the omission to do something which a reasonably competent 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. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property. ... the definition involves three integral constituents of negligence: (1) A Legal duty to exercise due care on the part of the party complained of towards the party complaining the former’s conduct within the scope of the duty; (2) breach of the said duty; and (3) consequential damages. Cause of action for negligence arises only when damage occurs; for, damage is a necessary ingredient of tort.”

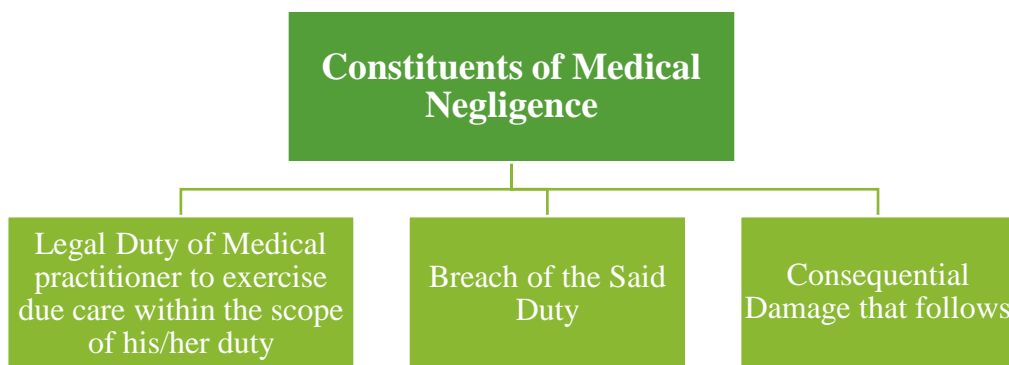


Figure 3: Constituents of Medical Negligence

- **Elements of Medical Negligence:**

For medical negligence to be proven, following elements must be proven in the court of law.

Duty of Care:

Duty of care is the primary condition for establishing liability on medical practitioner for medical negligence. The ‘duty’ is an onus to take proper care to avoid injury or hurt under all the circumstances. The doctor-patient relationship is established upon the patient approaching doctor for the medical treatment. From that moment onwards, it generates the legal duty on part of medical practitioner to exercise and take due care in treatment and its administration.

The three important elements in the duty of care are:

- **Foreseeability of damage:** This implies that the medical practitioner will be liable for the damage to the patient only if it was possible to foresee at the time of breach of duty

that such damage could arise. For e.g. if the surgeon does not arrange for the blood prior to operation where it is foreseeable that blood loss can happen, can be held liable for negligence.

- **Proximity or Neighbourhood between the Parties (doctor-patient):** The degree of proximity or neighbourhood is another important factor. Here proximity implies nearness not in physical terms but in the relationship between the parties. This indicates that the negligent act of the medical professional should be directly or closely linked to the damage or loss sustained by the patient.
- It should be fair, just and reasonable for the courts to impose such duty of care.

Standard of Care:

The skills of the medical practitioners differ from the person to person. In the case of medical negligence, debates have kept on occurring on what is the standard of care. The degree of competence is not a fixed quality that can be measured to be equal in all the medical professionals. A highly experienced medical specialist may be negligent while applying his greater knowledge, while an inexperienced doctor may be negligent in attempting any treatment procedures beyond his scope of practice or experience.

In addition, the medical profession is a kind of profession where there are no quick fixes for every symptom, more than one course of treatment may be advisable for the better and quicker cure of the disease. Hence it becomes very confusing on how to prove that the doctor has breached his duty of maintaining standard of care. Here, standard of care would mean that the care that would have taken by reasonably prudent medical person treating any other patient. In the case of *Jasmine Patel v. R. J. Maneksha (1999)*, it was stated that where the doctor rendered his services with due care under the circumstances, he was not required to guarantee results expected by the patient and therefore cannot be accused of negligence.

The basic principle dealing with the law of medical negligence is **Bolam Rule** derived from *Bolam v. Friern Hospital Management Committee (1957)*. The Bolam rule is the test regarding standard of ordinary skilled man exercised and professing to have that special skill. The rule suggests that the practitioner need not to be displaying/showcasing the highest expertise, it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising particular art. Furthermore, the concept of standard of care also involves 'reasonable foresight'. It means a foresight of a 'reasonably prudent man'. This also implies that the reasonably prudent person will avoid any act that will produce undesirable consequences.

A differential approach for this standard of care was adopted in **Bolitho Principle**. During the judgement in *Bolitho v. City and Hackney Health Authority (1997)*, the House of Lords stated that, “In cases of diagnosis and treatment there are cases where, despite of professional opinion sanctioning the defendant’s conduct, the defendant can properly be held liable for negligence. What other professionals do is persuasive evidence as to what is acceptable, but a consistent body of expert medical opinion may still be ignored by the judge, if he can be sure that no logical basis for the opinion has been shown to the Court.”

Breach of Duty:

Breach of duty is a crucial aspect in establishing medical negligence. It entails a failure to fulfil the legal obligation of care towards the patient, where actions deviate from what a reasonably prudent person would do, or would not do, under similar circumstances.

In the case of Medical Malpractice, the ‘dereliction’ of duty needs to be proven. Dereliction is intentional abandonment from taking necessary action in maintaining the standard of care or demonstrating reasonable skill. Here, dereliction involves intentional breach of duty on part of medical practitioner.

Causation:

Causation is nothing but a proof that the damage or loss is resulting from the action of medical practitioner. To establish a liability for medical negligence, it is essential to prove that the breach or dereliction of the duty has led to the damage to the patient. To determine causation, two important aspects must be taken care:

- (i) Establish how the injury or damage came about; and
- (ii) (ii) establish whether or not it is within the scope of liability to prevent injury.

In the cases of medical negligence, there are two types of causation: (a) Legal Causation: It is determined based on the ‘but for’ test- but for the medical negligence, would the injury still have occurred? (b) Factual Causation: i.e. proving that the injury was caused by the practitioner’s failure.

Consequential Damages:

The supreme Court observed that the damage is necessary component of the tort and hence, cause of the action for negligence arises only when damage occurs. When the plaintiff or

complainant fails to prove that any damage, loss or injury was caused to the patients, although the medical professional was negligent, compensation cannot be claimed.

The damage should be resulting to defendant because of negligent act which was the direct and proximate cause of damage. In the law of torts, the compensation is the principle of redressal, based on the damage suffered by the plaintiff in person, earnings, life expectancy etc. The damage can be economic, non-economic, anguish or mental trauma etc. caused to the patient because of the breach of duty by the doctor.

- **Meaning of Negligence:**

As stated by Charlesworth & Percy on Negligence (2001), in the present forensic understanding, negligence has three meanings which are: (1) a state of mind, in which it is opposed to intention; (2) careless conduct; and (3) the breach of a duty to take care expected by either the common or statute law. These concepts are explained below in detail.

Negligence as a ‘State of Mind’:

Negligence and wilful act are two alternatives of *mens rea*. Out of these alternatives, one is essentially required by law as an essential condition for establishing liability of wrongdoer. The wilful wrongdoer is the one with an intention to harm. Whereas the negligent wrongdoer doesn't sufficiently desire to avoid doing it. Hence, negligence as a state of mind demonstrates the indifference or carelessness on part of medical practitioner in guarding whether the act is going to happen or not.

Negligence as a Careless Conduct:

Negligence as a careless conduct is opposite of diligence. A careless person is not sufficiently diligent that the activities are going to cause harm or loss to others.

Negligence as a breach of duty to take care:

The negligence and duty are correlated. Negligence as a breach of duty to take care is simply a neglect to exercise care that is laid by law to exercise towards somebody. Medical negligence implies the failure to act in accordance with the standards of a reasonably competent medical man at that given time. It is a breach of the duty owed by the doctor towards the patient to exercise reasonable care and skill, which results in some physical, mental or financial disability.

In the case of *Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Babu Godbole and Anr.* and *A. S. Mittal v. State of UP (1969)*, the duties of doctors were specified which are:

- (a) duty of care in deciding whether to undertake the case,
- (b) duty of care in deciding what treatment to give,
- (c) duty of care in administering treatment.

Failure in adherence to any of these duties can be considered as negligence.

The definition of standard of care has been evolved from the practices of competent medical practitioners of the country and the standards which has been prescribed by the medical associations and articulated under laws related to medicine and medical literature.

- **Difference between Medical Malpractice and Medical Negligence:**

Usually, Medical Negligence is considered as medical malpractice when the act of being negligent has been done intentionally. Medical malpractice is a wilful and intentional treatment by the medical professional that does not meet the standards of reasonable care and results in the damage or loss for the patient. When the medical professional knew that he could have done something to treat the patient or prevent the possible harm from the negligence yet does not take necessary steps. In this case, although the intent of the medical professional was not to harm but it will still be considered as ‘intentional’ because the professional knew that by doing or not doing the act, the risk of harm was present.

The basic difference between medical negligence and medical malpractice is as follows:

Medical Malpractice	Medical Negligence
Breach of duty of care by medical provider or medical facility	Failure to act by the standards exercised by reasonably competent man
Element of ‘Intent’: The doctor or provider knew he should have done something to treat patient but he failed to do so knowing that the failure may result in harm to the patient.	No element of ‘Intent’: Medical provider makes a ‘mistake’ in treating patient and that mistake result in harm to the patient.
Act of Commission	Act of Omission

Example: Premature discharge, disregarding or not taking proper medical history, poor follow-up or aftercare etc.	Examples: A nurse accidentally leaves a sponge inside a surgical wound, failure to diagnose disease etc.
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(From the definitions of concepts)

- **Nature of Medical Negligence:**

Medical Negligence is of two types: Civil Negligence and Criminal Negligence. The detailed explanation of both the concepts are as follows:

Civil Medical Negligence:

Civil Medical Negligence is when there is an infringement of the Civil Right of the patient. The basis of civil right in many cases arises from the expressed or implied contract between the parties. The legal remedy in this case is the civil one i.e. payment of compensation or injunction. In addition, some of the rights originate from the breach of agreement. These are the rights provided under constitution or other legislations. The denial of these rights is also considered as civil negligence. The components to prove civil negligence are:

- i. A legal duty to exercise skill or care, and
- ii. A failure to exercise the skill or care necessary in the circumstances of any case.

Civil negligence is a form of negligence which is challenged by the patient in the civil court for the injury a patient sustained because of the negligent act of the doctor. That means, when the doctor has a legal duty to take reasonable care, there is a breach of duty because of which the patient has sustained injury. Civil negligence can be challenged in the civil court even when the treatment has been availed 'free of cost' or in some charitable institution. In the civil negligence, the liability of the medical professional does not decrease by the fact that he/she has treated the patient graciously free of charge; however, the burden to prove the negligence always remains of the plaintiff. In the cases where the plaintiff is unable to provide evidence to prove medical negligence, the principle of *Res Ipsa loquitur* (the thing speaks of itself) is exercised to know the missing links.

The terms 'standard of care' or 'reasonable degree of care' seem ambiguous. To clarify the same Justice Streatfield opined 'The liability of doctors is not unlimited; the standard of care required by them is not that standard shown by exceptional practitioners. Surgeons, doctors, and nurses are not insurers. They are not guarantors of absolute safety. They are not liable in

law merely because a thing goes wrong... The law requires them to exercise professionally that skill and knowledge that belongs to the ordinary practitioner.’

Criminal Medical Negligence:

Medical negligence is considered as criminal negligence when the death of a person or grievous hurt is attributed to the negligent act of medical professional in treatment of the deceased or patient. The degree of negligence is so grievous that goes beyond a mere matter of compensation. For criminal negligence, the medical professional may be prosecuted by police and charged in a criminal court with having caused the death of his patient by doing rash or negligent act not amounting to culpable homicide under Section 304-A of Indian Penal Code, if the death is the result of gross negligence, gross ignorance or gross carelessness displayed by medical practitioner while providing treatment, performing operation or administering anaesthesia.

In the case of *Deepa Sanjeev Pawaskar v. State of Maharashtra (2019)*, Hon’ble Justice Sadhana S. Jadav rejected the application filed under Section 438 of Criminal Procedure Code for granting anticipatory bail for the case registered in Section 304 read with 34 Indian Penal Code on raising a thought that *when a doctor fails in his duty, does it not tantamount to criminal negligence?* The case involved the case of *Prescription without diagnosis and hence resulting into the death of the patient*. The High court on due consideration of the facts and circumstances of the case and observed that the death of the patient amounts to criminal negligence on part of the doctors.

Before the medical practitioner is criminally responsible for death, the matter is necessary to establish the civil responsibility and prove the liability which is beyond a matter of compensation. This implies that there exists civil liability for negligence and criminal liability for gross aberrations. The basic differences between civil and criminal negligence are shown below:

Difference between Civil Negligence and Criminal Negligence:

Factors	Civil Negligence	Criminal Negligence
Offence	No specific and clear violation of law need to be proved	Must have specifically violated a particular criminal law in question
Negligence	Simple absence of care and skill	Wilful, wanton, gross or culpable
Conduct of Physician	Compared to a generally accepted single test	Not a single test
Consent for Act	Good defence; cannot recover damages	Not a defence; can be prosecuted
Trial by	Civil Court	Criminal Court
Evidence	Preponderance of evidence is sufficient	Guilt should be proved beyond reasonable doubt
Punishment	Liable to pay damage	Imprisonment
Double Jeopardy	Can be tried twice	Cannot be tried twice for same

(Porkodi and Haque, 2015)

- **Few Important Concepts:**

Wilful Negligence:

Wilful negligence is synonymous to Medical Malpractice. It refers to the act that is done deliberately, involving the element of intent and not by accident or neglect. A person committing an act of negligence knows what he is doing and when he is reckless in the sense of not caring whether his act or omission of act is or is not a breach of his duty.

Misfeasance, Malfeasance and Nonfeasance:

Reamer (1995) explains in detail the above three concepts.

Misfeasance is doing of proper act in wrongful or injurious manner or improper performance of an act that might have been lawfully done. Malfeasance means a wrongful or unlawful act with mala fide intention. Nonfeasance indicates total omission or failure of an individual to carry out the performance of some distinct duty or undertaking that he or she has agreed to do it.

Gross Negligence:

Gross negligence entails a severe level of careless conduct, characterized by reckless behaviour that exceeds what a reasonable person would commit. It serves as the basis for criminal liability against medical practitioners. Importantly, gross negligence does not necessarily require wilful, wanton, or malicious misconduct to be established.

Actionable Negligence:

An act can be considered as Actionable negligence if it includes three ingredients as follows: (a) There must be duty of care; (2) breach of the duty; (3) consequential damage from the breach of the duty.

Contributory Negligence:

Many a times, it happens that the doctor and other medical staff fail to exercise reasonable skill and standard of care, but at the same time patient also exhibit carelessness in taking care which is prescribed to ease the healing process and as a result sustains trauma called as 'Contributory Negligence'. It is an unreasonable conduct or negligence on the part of the patient, which is the cause of the harm which has been complained of, although the attending doctor was also negligent. For e.g. Discharge against Medical Advice (DAMA) Cases, the patient fails to follow instructions of doctor, refuses to take the treatment suggested etc. Although contributory negligence cannot be used as a defence in the criminal negligence but provides basis of defence in civil liability and while ascertaining the compensation for the damages caused.

Comparative Negligence:

Comparative Negligence is also on the part of patient. If the patient who has sustained injury due to medical negligence is even partially responsible for the injury they have experienced, it is called comparative negligence. For e.g. when a person is instructed to undergo blood test after 12 hours of fasting, still he/she eats a small piece of food assuming it will not differ the results, can be comparative negligence.

Product Liability:

Product Liability is when the medical product or services have failed to provide appropriate level of safety resulting to the injury or damage to the patient. The product manufacturer or the service provider can be held liable for such loss in case of a product liability.

Vicarious Liability:

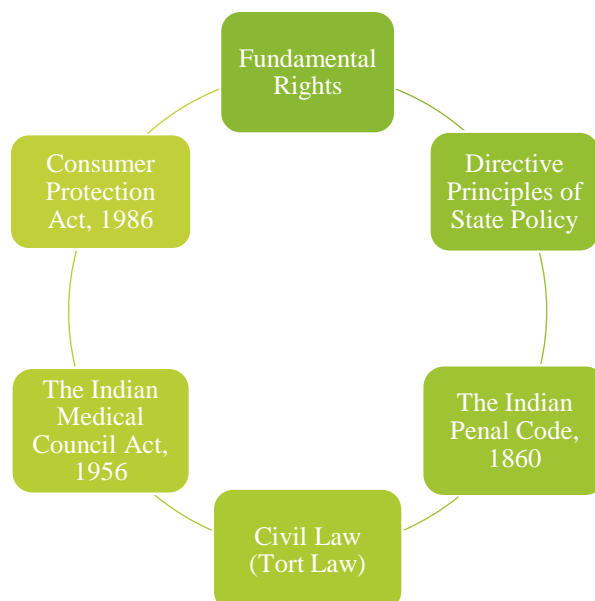
Simple rule of the Vicarious Liability is: *A Master is liable for any tort which servant commits in the course of his employment.* This implies that in the case when a doctor working in the hospital commit a negligent act, the hospital is vicariously liable for the said act. The liability is extended irrespective of any nature of employment of the medical staff whether permanent, temporary, or consulting.

The state is also vicariously liable for the negligent act by its officers. In this case, the state will be held liable for the negligence and malpractices in the government hospital. Vicarious liability also arises on part of the surgeons for the negligent acts of anaesthetist and the nurses for their negligence

- **Legal Framework in India:**

Every system of medicine (be it Allopathy, Homeopathy or Ayurveda), is prone to imperfection as handled by human agency. However, it does not exonerate the human agencies from the liability for causing harm. The focus of law is not necessarily to punish all health professionals, but to expect medical practitioner to be reasonably skilful in adopting reasonable skills and practice. In Indian historical context, *Sushruta Samhita* also states that the physicians who act improperly are liable to punishment. The quantum of penalty varies according to status of victims.

The legal framework in India that affects the medical profession and its working, and which prevents malpractices holds an important place.



Fundamental Rights (Part III of the Indian Constitution)

As mentioned above, Article 21 and Article 32 of Indian Constitution indirectly include right to health within ambit of Fundamental Rights.

Directive Principles of State Policy

The provisions in the directive principles of state policy are not enforced by the courts. But these principals are laid down by the constitution which is fundamental in the governance of the country, and it shall be the duty of the state to apply these principles while enacting the laws. Article 41, 42 and 47 of the Indian Constitution directs the government to ensure and improve the healthcare systems in the state.

The Indian Penal Code, 1860

Numerous sections of the Indian Penal Code, 1860 lays down the provisions under which medical practitioners can be charged for criminal offense and their act of negligence is considered as Criminal Negligence. Various sections applicable to this context are:

Section 52: ‘Good Faith’: nothing is said to be done or believed in ‘good faith’ which is done or believed without due care and attention.

Section 80: ‘Accident in doing wrongful act’.

Section 81: ‘Act likely to cause harm, but done without criminal intent, and to prevent other harm.’

Section 88: ‘Act not intended to cause death, done by consent in good faith for person’s benefit.’

Section 90: ‘Consent known to be given under fear or misconception’.

Section 92: ‘Act done in good faith for benefit of a person without consent.’

Section 304A: ‘**Causing death by negligence**’: whoever causes the death of a person by a rash or negligent act not amounting to culpable homicide shall be punished with imprisonment for a term of two years, or with a fine or with both. This is the relevant provision under which a complaint against medical practitioner for alleged criminal medical negligence is registered.

Section 337: ‘**Causing grievous hurt by act endangering life or personal safety of others**’. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to

endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Section 338: ‘Causing hurt by act endangering life or personal liberty of others’. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

It is important to note that recently, the Indian Penal Code, 1860, is replaced by **Bharatiya Nyay Samhita (Second), 2023**. The provisions in the Bharatiya Nyay Samhita has specified special classification for medical practitioners with respect to the punishment for causing death by the medical negligence. The new Bharatiya Nyay Samhita increases the punishment for causing death by negligence up to 5 years. However, **if the death is caused by negligence of the doctor, then the maximum punishment for imprisonment will be 2 years**. This decision was taken after the written request by the Indian Medical Association considering, the concept of ‘good faith’. It was well received by the medical fraternity by stating that this will help doctors in taking bold treatment decisions in critically ill patient. However, it is important to note that the medical practitioners may misuse this protection in case of reckless and intentional acts of medical malpractice, causing injustice to the victims.



(Times of India- 21/12/2023)

Civil Law

Negligence as a tort is a breach of duty caused by the omission to do something which a reasonable man, under a given set of circumstances, would or doing some act, which a prudent and reasonable man would not do. As mentioned above, the test for determining the negligence of a medical profession was first prescribed by McNair J. In Bolam's case- the standard of the ordinary skilled man exercising and professing to have that skill. In India, the view in Bolam's case was accepted in the landmark case of *Suresh Gupta vs. Govt. of NCT of Delhi and Anr (2004)*. However, that case got referred to a larger bench of the Supreme Court and finally in *Jacob Mathew vs. State of Punjab (2005)* and *Shiv Ram vs. State of Punjab (2005)*, the Bolam test was approved.

Up till as recently as 2005, medical practitioners could be held liable under civil and criminal negligence both. A landmark verdict in this regard was that of *Dr. Suresh Gupta v. Government of NCT of Delhi*. It was felt by the jury that between civil and criminal liability of a doctor causing death to his patient, the court has a difficult task of weighing the degree of carelessness and negligence alleged on the part of doctor. For conviction of a doctor for alleged criminal offence, the standard should be a proof of recklessness and deliberate wrongdoing. To convict, a doctor, therefore the prosecution has to come out with a case of high degree of negligence on the part of doctor. Mere lack of proper care, precaution and attention or inadvertence might create civil liability but not a criminal one.

3.5 The Indian Medical Council Act. 1956

The act confers powers to the Medical Council of India to discipline erring members of the medical profession. However, this act does not have any provision for the award of damages to the complainant, though it has the power to punish medical professional. Section 24 of the act empowers the council to remove the name of any person enrolled on the state medical register on the grounds of professional misconduct. The council also prescribe the professional conduct, etiquette and code of ethics for the medical professionals.

Recently, the **National Medical Commission (NMC) Act, 2019** was enacted which provided a platform to register complaints of medical negligence or professional misconduct to the patients. However, there is an absence of provision of patient's right to appeal in the council.



(Illustration from Times of India- 14/08/2023)

3.6 The Consumer Protection Act, 1986

In the history of Indian Legislation, enactment of Consumer Protection Act, 1986 reveals the recognition and growth of consumer jurisprudence. The consumer Protection Act is a compassionate social legislation which protects the rights of consumers to be protected against hazardous goods and unfair trade practices, also to seek redressal in consumer disputes. It provides a platform for Alternate Dispute Resolution for consumers across the country.

The act applies to all the goods and services, excluding goods for resale or for commercial purpose, services rendered free of charge or under the contract of personal service. In the year 1995, after a decade of enactment of the Consumer Protection Act, 1986, medical profession was included in the purview of the act. In the case of the *Indian Medical Association vs. V. P. Shanta and Ors.*, III (1995) CPJ 1 (SC), the Supreme Court decided on the issue of coverage of medical profession within the ambit of Consumer Protection Act, 1986. In this case, when it was argued on behalf of medical professionals that "the relationship between a medical practitioner and the patient is of trust and confidence and, therefore it is the nature of a contract of personal service", the Supreme Court observed while drawing comparison between what is 'contract for personal service' and what is 'contract of personal service', rejected the arguments and mentioned that "...since there is no relationship of master and servant between the doctor and the patient, the contract between the medical practitioner and his patient cannot be treated as a contract of personal service but a contract for services and the services rendered by the

medical practitioner to his patient under such contract is not covered by the exclusionary part of the definition of ‘service’...”.

The Supreme Court further explained that “expression ‘contract of personal service’ ... cannot be confined to contracts for employment of domestic servants only and the said expression would include the employment of a medical officer for the purpose of rendering medical service to the employer.”

In the same judgement, the Supreme Court examined the liability of the medical professionals and hospitals including Government Hospitals and Charitable Trusts. The Supreme Court Stated:

- i) Service rendered to a patient by a Medical Practitioner by way of consultation, diagnosis or treatment falls under Section 2(1) (o).
- ii) Service rendered free of charge by a Medical Practitioner attached to hospital/nursing home and all medical officers employed in a hospital/nursing home where such services are rendered free of charge to all patients is not a service under the Act.
- iii) Service rendered in a non-government hospital/nursing home where no charge is collected from all patients is covered by the Act.
- iv) Service rendered at non-governmental hospital/nursing home where charges are collected from some and not collected from some others, the service rendered falls under Section 2(1) (o) of the Act irrespective of the fact the service was rendered free of charge to some poor personal. The patient obtaining free service is also a consumer under the Act.
- v) Service rendered at government hospital/health center/dispensary where no charge is levied on any patient is outside the purview of the Act.
- vi) Service rendered at a government hospital/health center/dispensary where services are rendered on payment of charge to some and rendered free of charge to other persons, falls under section 2(1) (o) of the Act irrespective of the Act that the service is rendered free of charge to some poor persons. The patient obtaining free service in such case also is a consumer under the Act.
- vii) Whereas a part of consideration of service the employer bears the expenses of medical treatment of an employee and his family members, the service to such an employee and his dependants by a Medical practitioner or a hospital/nursing home

would not be free of charge and would constitute service under the Act. viii. In most government hospitals there are separate paying wards where affluent patients seek admission and the general ward where poor patients are treated free of charge. Both the type of patients is entitled to protection under the Act.

This cleared the relationship between patient and medical professionals as contractual. Patient who feels that he/she has sustained injuries because of medical negligence can approach 'procedure-free' consumer dispute redressal forums and sue the doctor for compensation.

3.7 The Consumer Protection Act, 2019

Recently, both the houses of parliament of Government of India passed the Consumer Protection Act, 2019 which replaced the Consumer Protection Act, 1986. Similar to earlier act, it is an act for protection of the interest of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumer's disputes and for matters connected therewith or incidental thereto. Earlier there was a debate on whether the medical profession was included in the new bill as it wasn't explicitly mentioned in the bill. It was also expressed by government officials that medical will not be included under the purview of services by incorporating the expressed concerns of medical fraternity.

However, under this new act, Section 2(11) expressed the definition of 'Deficiency' in the goods or services.

Section 2(11)- Deficiency

According to Section 2(11), '**deficiency**' means any fault, imperfection, shortcoming or inadequacy in quality, nature and manner of performance which is required to be maintained by or under any law for time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any services and includes: **(i) any act of negligence or omission or commission by any such person which causes loss or injury to the consumer; and (ii) deliberate withholding of relevant information by such person to the consumer.** Here, although there is no expressed view on whether health is included under the purview of services, the definition of deficiency includes the meaning of medical negligence and medical malpractice in its clause (i) and another important aspect, when doctors do not take informed consent, show indoor and outdoor case papers when asked for in the clause (ii). By inclusion of the word 'negligence' under the definition, the legislature has

explicitly stated that the acts of 'negligence' generally and in particular 'medical negligence' is well covered under this definition.

It is important to note here that the claim for deficiency in service shall be backed by expert evidence. In the case of *Sethuraman Subramaniam Iyer v. Triveni Nursing Home*, the complainant's wife suffered from sinusitis and had to undergo surgery. In operation theatre, she suffered massive cardiac arrest. The state commission found that the necessary precautions were taken by the doctors to save the deceased and dismissed the complaint. The commission relied on the expert affidavit provided by four doctors. Later, the national commission too mentioned that no case can be made against the doctor in absence of expert opinion attached with complaint. Failure on part of complainant to lead expert evidence for the allegations for negligence cannot be treated as 'deficiency of service'.

Transfusion of wrong blood to the patients, not acting diligently, non-timely treatment, individual ability, taking partially unfilled/blank consent form from patients, wrong medical information/report, failure to supply medical records etc. can be examples of deficiency in service.

In *Malay Kumar Ganguly v. Sukumar Mukherjee*, the Supreme court laid down the principles for establishing medical negligence or deficiency in service against the individual doctor which are as follow:

- (i) No guarantee is provided by any doctor or surgeon that the patient would be cured.
- (ii) The doctor, however, must undertake a fair, reasonable and competent degree of skill, which may not be the highest skill.
- (iii) Adoption of one of the many modes of treatment and treating the patient with due care and caution would not constitute any negligence.
- (iv) Failure to act in accordance with the reasonable, standard, competent medical means at the time would not constitute medical negligence. However, the practitioner must exercise reasonable skill and care and the knowledge he possesses. Failure to use due skill in diagnosis with the result that wrong treatment is provided would be a negligence.
- (v) In a complicated case, the court would be slow in contributing negligence on part of doctor, if he is said to performing his duties to the best of his ability.

Furthermore, experts and professionals of integrity and ability and includes professionals who possess knowledge in health and medicine are included in the Central Consumer Protection

Authority. This suffices the concern over its inclusion in the Consumer Protection Act, 2019. It is an important instrument in ensuring justice to the vulnerable populations who have been victimised on account of medical negligence/malpractices.

The COPRA, 2019 also provides for the definition of ‘**Product Liability**’ in Section 2(34) which ‘means the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto’. By closely examining the definition, it is clearly understood that the medical professional or hospital shall be made liable for the harm caused to the patient in case of deficiency in the services.

The legislation provides opportunity to avail justice through the Consumer Dispute Redressal Commissions operating at three levels: District, State and National. Following is the jurisdiction for each one.

Consumer Dispute Redressal Commission	Jurisdiction
District Consumer Dispute Redressal Commission	For complaints where the value of the goods or services paid as consideration does not exceed one crore rupees
State Consumer Dispute Redressal Commission	For complaints where the value of the goods or services paid as consideration exceed one crore but does not exceed ten crore rupees
National Consumer Dispute Redressal Commission	For complaints where the value of the goods or services paid as consideration exceed ten crore rupees

- **Principle of Best Interest:**

In the scenario of Medical Negligence or Malpractice, the trust and confidence that the patient puts on doctors is compromised and the health of the patient is at stake. It is believed that the person who offers medical advice and treatment implicitly states that they have the skill and knowledge to do so, that they have the skills to decide whether to take the case, to decide on the treatment and also to administer the treatment. This is known as ‘implied undertaking’ on the part of a medical professional.

In the case of the State of Haryana vs. Smt. Santra, the Supreme Court held that every doctor “has a duty to act with a reasonable degree of care and skill.” In a full bench decision dated August 25, 2005, Mr. Justice R.C. Lahoti, former C.J.I observed as follows: “Medical profession is one of the oldest professions of the world and is the most humanitarian one. There is no better service than to serve the suffering, wounded, and the sick. Inherent in the concept of any profession is a code of conduct, containing the basic ethics that underline the moral values that govern the professional practice and is aimed at upholding its dignity. Medical ethics underlines the values at the heart of the practitioner-client relationship. In the recent times, professionals are developing a tendency to forget that the self-regulation which is at the heart of their profession is a privilege and not a right and the profession obtains this privilege in return for an implicit contract with society to provide good, competent and accountable service to the public. It must always be kept in mind that a doctor is a noble profession and the aim must be to serve humanity, otherwise the dignified profession will lose its true worth.”

The influence exerted by the doctors is unique. While the patient puts complete trust and confidence on the treatment adopted by the doctor, the relationship between the doctor and the patient is not equally balanced. Another component is the ‘burden of proof’ remains on the plaintiff and not on the doctor. If a patient alleges malpractice in medical, the law will require a higher standard of evidence to support it. In order to prove medical negligence, the aggrieved patient must be able to establish to the satisfaction of court that: The doctor owed him a duty of care of a particular standard of professional conduct; The doctor contravened the duty; The patient suffered damage; The doctor’s conduct was direct and the proximate cause of the damage.

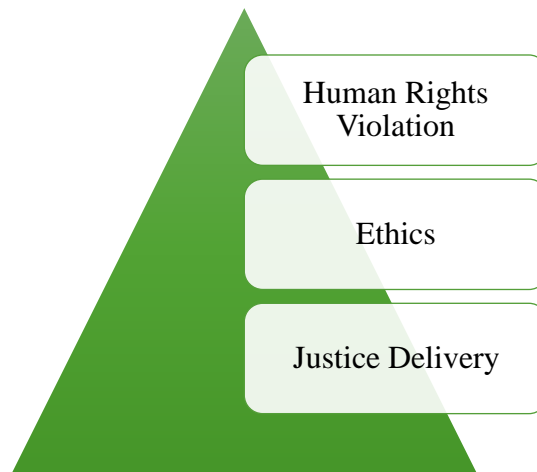
- **Information Asymmetry:**

The doctor-patient relationship is dominated by asymmetric information. First, since the patient as a person not having medical knowledge has a problem to gain insight of the causation of problem makes very difficult for him to determine negligence. In addition to this, it is hard to ascertain who contributed to the malpractice because in a hospital, the medical team of doctors, nurses, assistants etc. is involved in the treatment. Thus, the injury could have multiple causes. Furthermore, due to the complex hierarchical organisation of the hospitals, the problem arises that the patient may not know the names of the persons involved and who is responsible for whom.

Second, the reality that most medical information is technically complex is made worse by the fact that many illnesses do not repeat themselves, so that the cost of gaining information is too high for every patient.

Third, the physician himself can influence his own level of care which belongs to the sphere of his control, where the patient has no influence on the conduct of the physician; he has to rely on the knowledge and qualification of the physician. As a consequence of the inherent information asymmetry in medical care, the patient will have severe difficulties in providing that the doctor acted negligently, i.e. violating the customary skills and practices of the profession.

- **Crucial Issues in Medical Malpractice/Negligence:**



The crucial issues in this whole scenario are (1) Human Rights Violation (2) Ethics and (3) Justice Delivery.

Human Rights Violation: Health is a human rights issue. The WHO Constitution (1946) envisages “...the highest attainable standard of health as a fundamental right of every human being.” To understand health as a human rights issue creates legal obligation on the state to ensure that citizens have the access to timely, acceptable and affordable healthcare of appropriate quality. However, violation or lack of attention to health as a human right can cause serious health consequences. Violation of human rights not only contributes to and exacerbates poor health, but for many, including vulnerable groups such as people with disabilities, indigenous populations, people living with HIV, sex workers etc. the healthcare setting possess the risks of more exposure to human rights abuses-including coercive or forced treatment and procedures. Any act of medical malpractice and negligence, violate the right to life guaranteed under the Constitution of India. The Indian Supreme Court by its innovative judicial

interpretation of various provisions has given new content and scope to the right to life, as embracing the right to live with human dignity, which included the quality of life along with all the basic human needs as food, clothing, shelter, safe drinking water, education and healthcare.

Ethics: As per Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, the principal objective of medical profession is to render services to humanity with full respect for the dignity of profession and man. Physicians should merit the confidence of patients entrusted to their care, rendering to each full measure of service and devotion. In his treatment, he should not forget that the health and the lives of those entrusted to his care depend on his skill and attention. A physician is free to choose whom he will serve. He should, however, respond to any request for his assistance in an emergency. Once having undertaken a case, the physician should not neglect the patient, nor should he withdraw from the case without giving adequate notice to the patient and his family. Provisionally or fully registered medical practitioner shall not wilfully commit any act of negligence that may deprive his patients from necessary medical care. It also regulates unethical and unlawful association of physicians with pharmaceutical companies or any other company for various purposes. Unethical practices are illegal, unprofessional and cause irreparable damages to the service users.

Justice Delivery: The legal framework in India plays a crucial role in regulating the medical profession and addressing malpractices. In Indian law, medical negligence is categorized into criminal negligence, civil negligence, and negligence under the Consumer Protection Act. Each category has specific provisions regarding punishment and compensation. However, with the inclusion of the medical profession under the ambit of services in the Consumer Protection Act, patients now have a more accessible and cost-effective avenue to seek redress against medical negligence or malpractices.

In India, efforts have been made to protect patients' rights, but the true effectiveness lies in their exercise and the ability of individuals to seek legal remedies for violations. The Hon'ble Supreme Court of India, in the case of Jacob Mathew vs. State of Punjab & Anr. (2005), noted the increasing awareness among society and individuals regarding their rights, leading to a rise in actions for damages in tort. However, the reality at the grassroots level may vary as per below:

- Firstly, a patient has difficulties in order to understand the act of negligence.

- Secondly, he/she is less aware on whom to approach in such cases.
- Thirdly, ‘burden of proof’ always remains on patients.

In addition to this, legal and medical both are different profession and studies different subject altogether. Hence, it is also very important for both the professionals to understand reasonably the modalities laid down in both the professions.

Law is considerate to the medical profession. Lord Denny in the case of *Hatcher vs. Black*, opined that the jury must not find a doctor negligent simply because one of the risks inherent in an operation actually took place or because in a matter of opinion, he made an error of judgement. They should be found guilty when he/she had fallen short of the standard of reasonable medical care. Lord Justice Denning in *Roe vs. Ministry of Health*, expressed ‘we should be doing a disservice to the community at large if we were to impose liability for everything that happens to go wrong... We must insist on due care of the patient at every point, but we must not condemn as negligence that which is only a misadventure.’ However, in the interest of justice, a doctor must ensure a reasonable degree of care and understanding of laws which are relevant to the medical professions. Also, when a lawyer while taking a case of medical negligence, need to first understand the legal aspect and most importantly, need to substantiate his arguments by producing evidence verified by other experts in the medical fields.

Healthcare delivery impacts the broader community's interests, involving service providers, users, and their families. Until 1995, medicine fell outside the scope of Consumer Protection Law, marking a newer perspective in medicine, law, and social work practice.

Social work practice becomes relevant in addressing the needs of service users (patients), the legal system (lawyers), and service providers (medical practitioners) through interventions at various stages. Social work, as a profession, offers professional assistance to individuals, groups, and communities, aiming to resolve issues related to structural inequalities, socio-economic injustices, and deprivation. Its primary goal is to promote social change by empowering people, as defined by the International Federation of Social Workers and the International Association of Schools of Social Work, which states that social work promotes social change, problem-solving in human relationships, and the empowerment and liberation of people to enhance well-being, utilizing theories of human behaviour and social systems to intervene where people interact with their environments.

Any Social Legislation (with reference to the subject the Consumer Protection Act, 1986 and the Consumer Protection Act, 2019) is a tool for social advocacy, empowerment to ensure basic human rights, dignity, and conducive environment. Health social workers are positioned to work at an individual level and at community level. Social workers with a specialised knowledge of community health are also well placed to design, implement and manage the aspects of health, which require involvement with the community and groups and with the health system. In the cases of Medical Negligence and Malpractices, the social work has the role in capacity building, advocacy, policy analysis, advisory and consultative services and networking. Medical Malpractices/Negligence is comparatively newer phenomena and very less explored with reference to Social Work. With this background, the research is conceptualised.

This chapter attempted to present the important concepts related to the topic of inquiry through the process of research. In the following chapter, in depth review of literature carried out related to Medical Malpractice/Negligence or Consumer Protection Law is presented.