**LICENSE TO KILL?**

**A critical analysis over the pros and cons of the concept of Medical Negligence, in both civil and criminal aspects**

**Introduction**

Disease, its cause, what may abate the ill:
Let leech examine these, then use his skill- Kural

All professions are noble as long as they are performed honestly. Professionals like Doctors, Lawyers, Teachers etc. are in the category of persons professing special skills. Any man practicing a profession requires particular level of learning, which impliedly assures a person dealing with him, that he possesses such requisite knowledge, expertise and will profess his skill with reasonable degree of care and caution. It should be taken in to consideration that the professional should command the “corpus of knowledge” of his profession. Since long the medical profession is highly respected, but today a decline in the standard of the medical profession can be attributed to increasing number of litigations against doctors for being negligent narrowing down to “medical negligence”.

Public awareness on medical negligence in India is growing. Hospital managements are increasingly facing complaints regarding the facilities, standards of professional competence, and the appropriateness of their therapeutic and diagnostic methods. The health service has been under the purview of the Consumer Protection Act, 1986 and subsequently the commercialization of the health sector has had adverse effects on doctor and patient relationship. The landmark case **Indian Medical Association Vs. V.P.Shantha** brought the medical professionals within the ambit of “service” as defined in the Consumer Protection Act, 1986. Many patients have filed legal cases against the negligent doctors and received compensation from them after establishing their negligence before the court of law. As a result, a number of legal decisions have been made on what constitutes negligence and what is required to prove it.

It's a common observation that medical practitioners, hospitals are being attacked by family members of patient for alleged medical negligence. The doctor- patient relationship is one of the most unique and privileged based on mutual trust and faith. But presently there is a great decline in the doctor-patient relationship. The reason may be communication gap between them, commercialization of health services, raising expectations from doctors or increased consumer awareness.

**Civil law and negligence**

Negligence is the breach of a legal duty to care. It means carelessness in a matter in which the law mandates carefulness. A breach of this duty gives a patient the right to initiate action against negligence.

Negligence is a breach of duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the contract of human affairs would do which a prudent and reasonable man would not do. The components of negligence are duty, breach and resulting damage. Definition above is mainly in purview of negligence as tort. Persons who offer medical advice and treatment implicitly state that they have the skill and knowledge to do so, that they have the skill to decide whether to take a case, to decide the treatment, and to administer that treatment. This is known as an “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”.

Doctors in India may be held liable for their services individually or vicariously unless they come within the exceptions specified in the case of **Indian Medical Association vs V P Shantha**. Doctors are not liable for their services individually or vicariously if they do not charge fees. Thus free treatment at a non-government hospital, governmental hospital, health centre, dispensary or nursing home would not be considered a “service” as defined in Section 2 (1) (0) of the Consumer Protection Act, 1986.

However, no human being is perfect and even the most renowned specialist could make a mistake in detecting or diagnosing the true nature of a disease. A doctor can be held liable for negligence only if one can prove that she/ he is guilty of a failure that no doctor with ordinary skills would be guilty of if acting with reasonable care. An error of judgment constitutes negligence only if a reasonably competent professional with the standard skills that the defendant professes to have, and acting with ordinary care, would not have made the same error.

In a key decision on this matter in the case of **Dr Laxman Balkrishna Joshi vs Dr Trimbak Bapu Godbole**, the Supreme Court held that if a doctor has adopted a practice that is considered “proper” by a reasonable body of medical professionals who are skilled in that particular field, he or she will not be held negligent only because something went wrong.

Doctors must exercise an ordinary degree of skill. However, they cannot give a warranty of the perfection of their skill or a guarantee of cure. If the doctor has adopted the right course of treatment, if she/ he is skilled and has worked with a method and manner best suited to the patient, she/ he cannot be blamed for negligence if the patient is not totally cured.

Certain conditions must be satisfied before liability can be considered. The person who is accused must have committed an act of omission or commission; this act must have been in breach of the person’s duty; and this must have caused harm to the injured person. The complainant must prove the allegation against the doctor by citing the best evidence available in medical science and by presenting expert opinion.

In some situations the complainant can invoke the principle of *res ispa loquitur* or “*the thing speaks for itself*”. In certain circumstances no proof of negligence is required beyond the accident itself. The National Consumer Disputes Redressal Commission applied this principle in **Dr Janak Kantimathi Nathan vs Murlidhar Eknath Masane**.

The principle of *res ipsa loquitur* comes into operation only when there is proof that the occurrence was unexpected, that the accident could not have happened without negligence and lapses on the part of the doctor, and that the circumstances conclusively show that the doctor and not any other person was negligent.

**Criminal negligence and relevant legal provisions**

In tort it is an amount of damage which is an issue but in criminal law it is the amount of degree of negligence that determines the liability. The ingredient of *mens rea* exist where there is a charge of criminal negligence. Criminal negligence is gross and culpable neglect or failure to exercise reasonable and proper care to guard against injury when it was the imperative duty of the accused person to adopt.

According to S. 304A of the Indian Penal Code, whoever causes the death of any person by a rash or negligent act not amounting to culpable homicide shall be punished by imprisonment for up to two years, or by fine, or both.

According to S. 80 of the IPC, 'nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act, in a lawful manner, by lawful means and with proper care and caution.' In other words, if a person commits an act by accident or misfortune without a criminal intention, using lawful means and with proper care and caution, his action cannot be labelled as criminal offence.

Again, S. 88 of the IPC provides that nothing which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm. In other words, an act, not intended to cause death, and done in good faith and with the consent of the other party, cannot be labelled an offence even if it leads to the other party's death or disability. It may also be mentioned here that the word 'good faith' used here has a special meaning. It means an act done with due care and attention.

In the **Santra case**, the Supreme Court has pointed out that liability in civil law is based upon the amount of damages incurred; in criminal law, the amount and degree of negligence is a factor in determining liability. However, certain elements must be established to determine criminal liability in any particular case, the motive of the offence, the magnitude of the offence, and the character of the offender.

In **Poonam Verma vs Ashwin Patel** the Supreme Court distinguished between negligence, rashness, and recklessness.

A negligent person is one who inadvertently commits an act of omission and violates a positive duty. A person who is rash knows the consequences but foolishly thinks that they will not occur as a result of her/ his act. A reckless person knows the consequences but does not care whether or not they result from her/ his act. Any conduct falling short of recklessness and deliberate wrongdoing should not be the subject of criminal liability.

Thus a doctor cannot be held criminally responsible for a patient’s death unless it is shown that she/ he was negligent or incompetent, with such disregard for the life and safety of his patient that it amounted to a crime against the State.

The essential components for liability for negligence are as follows.

1. The existence of a duty to take care, which is owed by the defendant (doctor) to the complainant (patient).
2. The failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty and
3. Damage, which is both causally, connected with such breach and recognized by the law.

**Duty of Care**

The word ‘duty’ connotes the relationship between one party and another, imposing on the one an obligation for the benefit of that other to take reasonable care. The duties, which a doctor owes to his patient, are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed with skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties.

1. A duty of care in deciding whether to undertake the case.
2. A duty of care in deciding what treatment to give.
3. A duty of care in the administration of that treatment.

The standard of care and skill is that of the reasonable average. He need not possess the highest nor a very low degree of care and competence.

**Proof of Negligence**

A doctor should not be held negligent simply because something goes wrong. He should not be held liable for mischance and/or for taking one choice out of two or favouring one school rather than another in choosing as to what treatment is to be given to patient. He is only liable when he falls below the standard of reasonable competent practitioner with equal skills. The standard of reasonable care is a flexible criteria capable of setting the boundaries of legal liability of the professionals depending on the duties founded on principles of torts or contracts. The ‘negligence’ is not an absolute term, but is a relative one; it is rather a comparative term. No absolute standard can be fixed and no mathematically exact formula can be laid down by which negligence or lack of it can be infallibly measured in a given case. What constitute negligence varies under different conditions and in determining whether negligence exist in a particular case, all the attending and surrounding facts and circumstances have to be taken into account.

**Bolam Principle**

In case of **Bolam v Friern Hospital Management Committee** (1957) the test for establishing medical negligence was set out. The doctor is required to exercise the ordinary skill of a competent doctor in his or her field. He or she must exercise this skill in accordance with a responsible body of medical opinion skilled in that area of medicine. A doctor is not negligent if there is another responsible body of medical opinion who would have acted in the same way as the treating clinician. The Bolam principle states that a doctor can be charged with "criminal negligence" if he acts in a manner not followed by other "responsible" medical bodies and if the treatment results in a loss of life.

**Burden of proof and chances of error**

The burden of proof of negligence, carelessness, or insufficiency generally lies with the complainant. The law requires a higher standard of evidence than otherwise, to support an allegation of negligence against a doctor. In cases of medical negligence the patient must establish her/ his claim against the doctor.

In **Calcutta Medical Research Institute vs Bimalesh Chatterjee** it was held that the onus of proving negligence and the resultant deficiency in service was clearly on the complainant. In **Kanhaiya Kumar Singh vs Park Medicare & Research Centre**, it was held that negligence has to be established and cannot be presumed. Even after adopting all medical procedures as prescribed, a qualified doctor may commit an error. The National Consumer Disputes Redressal Commission and the Supreme Court have held, in several decisions, that a doctor is not liable for negligence or medical deficiency if some wrong is caused in her/ his treatment or in her/ his diagnosis if she/ he has acted in accordance with the practice accepted as proper by a reasonable body of medical professionals skilled in that particular art, though the result may be wrong. In various kinds of medical and surgical treatment, the likelihood of an accident leading to death cannot be ruled out. It is implied that a patient willingly takes such a risk as part of the doctor-patient relationship and the attendant mutual trust.

**Supreme Court rulings**

Before the case of **Jacob Mathew Vs State of Punjab**, the Supreme Court of India delivered two different opinions on doctors’ liability. In **Mohanan vs Prabha G Nair and another**, it ruled that a doctor’s negligence could be ascertained only by scanning the material and expert evidence that might be presented during a trial. In **Suresh Gupta’s case** in August 2004 the standard of negligence that had to be proved to fix a doctor’s or surgeon’s criminal liability was set at “gross negligence” or “recklessness.”

In Suresh Gupta’s case the Supreme Court distinguished between an error of judgment and culpable negligence. It held that criminal prosecution of doctors without adequate medical opinion pointing to their guilt would do great disservice to the community. A doctor cannot be tried for culpable or criminal negligence in all cases of medical mishaps or misfortunes.

A doctor may be liable in a civil case for negligence but mere carelessness or want of due attention and skill cannot be described as so reckless or grossly negligent as to make her/ him criminally liable. The courts held that this distinction was necessary so that the hazards of medical professionals being exposed to civil liability may not unreasonably extend to criminal liability and expose them to the risk of imprisonment for alleged criminal negligence.

Hence the complaint against the doctor must show negligence or rashness of such a degree as to indicate a mental state that can be described as totally apathetic towards the patient. Such gross negligence alone is punishable.

On September 9, 2004, Justices Arijit Pasayat and CK Thakker referred the question of medical negligence to a larger Bench of the Supreme Court. They observed that words such as “gross”, “reckless”, “competence”, and “indifference” did not occur anywhere in the definition of “negligence” under Section 304A of the Indian Penal Code and hence they could not agree with the judgement delivered in the case of Dr Suresh Gupta.

**Jacob Mathew Case**

The above issue was decided in the Supreme Court in the case of **Jacob Mathew vs State of Punjab**. The court directed the central government to frame guidelines to save doctors from unnecessary harassment and undue pressure in performing their duties.

The Supreme Court observed that

In order to make a doctor criminally responsible for the death of a patient, it must be established that there was negligence or incompetence on the doctors part which went beyond a mere question of compensation on the basis of civil liability. Criminal liability would arise only if the doctor did something in disregard of the life and safety of the patient.

Negligence, in simple terms, is the failure to take due care and caution. It is a breach of a duty caused by the omission to do something which a reasonable person guided by those considerations which ordinarily regulate the conduct of human affairs should have done. It may also be doing something, which a prudent and reasonable person would not have done.

The essential components of negligence are: duty, breach and resulting damage. These definitions are rather relative and can change with the circumstances. When trying to drag a person away from the clutches of an attacking animal, one cannot ask whether this would cause damage to the persons limbs. Doctors can also be faced with similar contingencies. On finding an accident victim in a dangerous condition, a doctor may have to attempt a crude form of emergency surgery to try

and save the persons life. No negligence is involved in such cases.

Under the civil law, victims of negligence can get relief in the form of compensation from a civil court or the consumer forum. Here, the applicant only needs to prove that an act took place that was wanting in due care and caution, and the victim consequently suffered damage. There is a difference between civil and criminal negligence. However, in certain circumstances, the same negligent act may also be seen as criminal if it constitutes an offence under any law of the land.

According to Section 304A of the Indian Penal Code, causing death by doing a rash and negligent act attracts imprisonment for up to two years, or a fine, or both. The burden to collect evidence of criminal liability is upon the complainant. The accused person will be presumed innocent until proof beyond reasonable doubt is adduced by the prosecution; a mere preponderance of probabilities would satisfy the civil court. For these reasons, an act that is seen as negligent in a civil court need not necessarily be culpable negligence in the criminal court.

The main question in the above case was whether different standards could be applied to professionals (doctors) alone, placing them on a higher pedestal for finding criminal liability for their acts or omissions. The Court noted that as citizens become increasingly conscious of their rights, they are filing more cases against doctors in the civil courts, as also under the Consumer Protection Act, 1986, alleging deficiency in service. Furthermore, doctors are being prosecuted under Section 304A of the IPC (causing death of any person by doing any rash or negligent act which does not amount to culpable homicide) which is punishable with imprisonment for a term which may extend to two years. They are also being prosecuted under Section 336 (rash or negligent act endangering human life), Section 337 (causing hurt to any person by doing any rash or negligent act as would endanger human life) or Section 338 of the IPC (causing grievous hurt to any person by doing any rash or negligent act so as to endanger human life). The Court observed that allegations of rashness or negligence are often raised against doctors by persons without adequate medical knowledge, to extract unjust compensation. This results in serious embarrassment and harassment to doctors who are forced to seek bail to escape arrest. If bail is not granted, they will have to suffer incarceration. They may be exonerated of the charges at the end; but in the meantime they would have suffered a loss of reputation; often irreversible. The tendency to initiate such cases has therefore to be curbed.

Since the medical profession renders a noble service, it must be shielded from frivolous or unjust prosecutions. With this perspective in mind the Court went into the question as to what is actionable negligence in the case of professionals. The law now laid down is as follows:

1. A simple lack of care, an error of judgment or an accident, even fatal, will not constitute culpable medical negligence. If the doctor had followed a practice acceptable to the medical profession at the relevant time, he or she 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.

2. Professionals may certainly be held liable for negligence if they were not possessed of the requisite skill which they claimed, or if they did not exercise, with reasonable competence, the skill which they did possess.

3. The word gross has not been used in Section 304A of IPC. However, as far as professionals are concerned, it is to be read into it so as to insist on proof of gross negligence for a finding of guilty.

4. The maxim Res ipsa loquitur (Let the event speak for itself; no other evidence need be insisted) is only a rule of evidence. It might operate in the domain of civil law; but that by itself cannot be pressed into service for determining the liability for negligence within the domain of criminal law. It has only a limited application in trial on a charge of criminal negligence.

5. Statutory Rules or executive instructions incorporating definite guidelines governing the prosecution of doctors need to be framed and issued by the State and Central governments in consultation with the Medical Council of India (MCI). Until this is done, private complaints must be accompanied by the credible opinion of another competent doctor supporting the charge of rashness or negligence. In the case of police prosecutions, such an opinion should preferably from a doctor in government service.

6. Doctors accused of rashness or negligence may not be arrested simply because

charges have been levelled against them; this may be done only if it is necessary for furthering the investigation, or for collecting evidence, or if the investigating officer fears that the accused will abscond.

The Supreme Court has not stated, even now, that doctors can never be prosecuted

for medical negligence. It has only emphasised the need for care and caution in prosecuting doctors in the interests of society. A certain amount of immunity or extra insulation is now allowed to them considering the noble service rendered by their fraternity and in view of the reports that complainants often use criminal cases to pressurise medical professionals and to extract unjust compensation.

This immunity is available only in criminal courts and not elsewhere. The principles laid down above may apply to other professionals like engineers and lawyers as well. The decision in Jacob Mathews case is thus a landmark judgment though some of the principles mentioned therein have been mentioned in earlier judgments.

**Transfusion of wrong blood group is medical negligence**

The Supreme Court has held that transfusion of wrong blood group to a patient amounted to medical negligence. Doctors are trained to take due care and caution to save a patient by all means. But despite their efforts they may not succeed in all cases. A negligence carried by a professional is highly criticized. A professional should not lag behind other members of his profession in knowledge of new advances. He should be alert to the hazard and risk in any professional task he undertakes. He need not posses highest nor a very low degree of care and competence. A person is not liable because someone of greater skill, knowledge would have done something different or in terms of doctors, would have prescribed different treatment or operated in a different way. Negligence in the context of medical negligence necessarily calls for a treatment with a difference. Medical negligence is clearly defined as want of reasonable degree of care and skill or wilful negligence on the part of medical practitioner in the treatment of patient with whom a relationship of professional attendance is established so as to lead to bodily injuries or as to loss of life. The ingredient of medical negligence is the duty of care. Person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed with skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties.

**Negligence in a sterilization operation**

Negligence in a sterilization operation is a crucial issue in a country like India where sterilization operations form an important part of government programmes. Negligence during a sterilization operation has diverse implications for patients, ranging from serious health problems and threat to life to extreme economic hardships. The implications of such negligence are particularly grave because sterilization operations such as tubectomies are elective, non-therapeutic interventions. In India, sterilization is a primary method of family planning and birth control and is an integral part of the National Family Planning Programme. Hence, the law relating to negligence in such operations becomes even more crucial. Negligence during sterilization procedures can have two major consequences: serious health hazards including death of the patient, and unwanted pregnancy. In either case, the patient and his/her family ultimately have to undergo severe mental agony and suffering, the varied nature of which is reflected on a case to case basis.

The Government of India has issued guidelines for sterilization procedures in India. Sterilization services are provided free of charge in government institutions. Guidelines have been issued from time to time by the government covering various aspects of sterilization. These are: a) the age of the husband should not ordinarily be less than 25 years nor should it be over 50 years. b) The age of the wife should not be less than 20 years or more than 45 years. c) The motivated couple must have two living children at the time of operation. d) If the couple has three or more living children, the lower limit of age of husband or wife may be relaxed at the discretion of the operating surgeon. e) It is sufficient if the acceptor declares having obtained the consent of his / her spouse to undergo sterilization operation without outside pressure, inducement or coercion, and that he /she knows that for all practical purposes, the operation is irreversible and also that the spouse has not been sterilized earlier. However, studies in India by non-governmental organizations such as Health watch indicate high rates of death and failure of the procedure as a consequence of not following the government guidelines.

**Ascertaining negligence**

It is an established fact that no sterilization operation can guarantee success and there are always instances when conception may occur despite the surgery and in the absence of any medical negligence. Hence, the fact that a woman after having undergone a sterilization operation becomes pregnant and delivers a child does not imply that her surgeon is liable; the claim can be sustained only if there is proof of negligence on the part of the surgeon. The doctor will be held liable for negligence if the patient offered himself/herself for complete sterilization and was assured after the operation that no child would be conceived.

**Failure of sterilization: judicial response**

There have been a number of judicial decisions from courts across the country attempting to define the legal standards of negligence in sterilization operations and the loss suffered by patients. The Supreme Court of India has recognised the economic implications of having an unwanted child, which could have been avoided, had the sterilization operation been successful. The court has set a precedent by recognising the liability of the doctor as well as of the government, which advocates family planning as a way of relieving a couple of an economic burden they may not be able to shoulder. The courts have also recognised and compensated the non-pecuniary injuries that might result from such negligence, such as mental trauma and distress. In one case the court ruled that the government was liable to pay compensation to a woman who had become pregnant after her husband underwent vasectomy and had to face humiliation, insult and torture as her integrity was doubted by her husband and his family who were led to believe that after the operation no child would be born. The courts have also granted compensation in instances of death of the patient during a sterilization operation and when severe complications arose after the operation.

SUPREME COURT OF INDIA State of Punjab vs. Shiv Ram and Others (Appeal No:- 5128 of 2002) Date of Judgment: 25/08/2005

Brief Facts:- Recovery of damages Female child born in spite of wife-respondent No. 2 having undergone a tubectomy operation - Compensation granted - Appeal against - Whether State or Surgeon were liable to compensate for the consequences of the operation having failed? - Held, merely because a woman having undergone a sterilization operation became pregnant and delivered a child, operating surgeon or his employer cannot be held liable for compensation on account of unwanted pregnancy or unwanted child Appeal allowed.

SUPREME COURT OF INDIA Date of Judgment: 29/08/2005 Appeal No:- 2743 of 2002 State of Haryana and others vs. Raj Rani

Brief Facts:- After sterilization operation woman became pregnant and delivered a child - Held, in the absence of proof of negligence, surgeon cannot be held liable to pay compensation - Appeal allowed.

**Prashant Dhananka Case**

The Apex Court has passed a historic judgment on “medical negligence” on May 15, 2009.  Prashant Dhananka, became paralyzed from waist down as a result of gross negligence during a routine operation of a benign tumor at the Nizam’s Institute of Medical Sciences (NIMS) in Hyderabad. A 3-member division bench of SC presided by Justice Mr. B.N. Agarwal, awarded Rs. 1.6 crore as compensation against NIMS which includes a 6% interest.   In fact, the Apex Court enhanced previous compensation of Rs. 15 lakh which was initially awarded by the National Consumers Forum (NCDRC) in this case.  The SC has observed that in deaths or permanent injuries caused by reckless practice of medicine, the victim should be compensated not only for direct loss (such as salary) but also for non-pecuinary damages (such as pain and suffering).

**Anuradha Saha Death Case**

Anuradha Saha, a young US-based child psychologist, died from reckless treatment during a social visit to Calcutta in 1998. Dr. Saha, who was diagnosed with toxic epidermal necrolysis was died in 1998. Her husband Dr. Kunal Saha registered a criminal case against three doctors alleging medical negligence and also steroid overdose. This case involves a compensation of Rs. 77.7 crore (plus interest), highest in Indian medico-legal history. The SC has remanded the case back to the National Consumers Forum (NCDRC) to calculate the quantum of compensation that must be paid by these doctors and hospital. Furthermore, in a rare move, the Apex Court has directly imposed an additional fine of Rs. 5 lakh against the hospital plus Rs. 1 lakh against the main culprit doctor (Dr. Sukumar Mukherjee) as penalty for their misconduct which eventually caused death of Anuradha.

The apex court observed:

* By medical opinion that the mortality rate was high in cases of steroid use. “If that be so, we feel the doctors… should have treated the patient (with) more care and caution. We are, therefore, of the opinion that the universally accepted medicated treatment protocol had not been followed
* The treatment protocol for patients suffering from toxic epidermal necrolysis (as Anuradha was), such as limited steroid use and other supportive care, had not been followed.
* Dr. Sukumar Mukherjee, had prescribed steroids twice a day without even being sure of the disease Anuradha was suffering from.
* Dr Baidyanath Halder, failed to monitor her vital signs, and other Dr Abani Roy Choudhury, had not offered any supportive care
* Dr Balaram Das had stood by without applying his mind, but clarified that Dr Kaushik Nandy, a plastic surgeon, had followed the standard protocol.
* "The hospitals are institutions, people expect better and efficient service, if the hospital fails to discharge their duties through their doctors, being employed on job basis or employed on contract basis, it is the hospital which has to justify and not impleading a particular doctor will not absolve the hospital of its responsibilities.
* A hospital not having basic facilities like oxygen cylinders would not be excusable. You can not deny compensation for mental agony suffered by relatives
* The doctors have a duty to inform patients about the adverse effects of a particular medicine prescribed by them or otherwise it might amount to medical negligence.
* The law on medical negligence also has to keep up with the advances in medical science as to treatment as also diagnostics. Doctors must increasingly engage with patients during treatment, especially when the line of treatment is a contested one and hazards are involved. Standards of care in such cases will involve the duty to disclose to patients the risks of serious side-effects or about alternative treatments. In the times to come, litigation may be based on the theory of lack of informed consent
* As regards the civil appeal, the Bench said the Commission was clearly wrong in opining that there was no negligence on the part of the hospital or the doctors. It, therefore, remitted the matter to the Commission for determining the quantum of compensation preferably within six months. “We further direct that if any foreign expert is to be examined, it shall be done only through videoconferencing and at the cost of respondents.”

**Conclusion**

The service which medical professionals render to us is the noblest. Aryans embodied the rule that, Vidyo narayano harihi (which means doctors are equivalent to Lord Vishnu). Medical profession is governed by code of medical ethics and etiquettes laid down by Medical Council of India. Although they are for internal self regulations of the profession, it is an obligation on the part of the professionals to fulfill certain rights, expectations of the patients. But there has been fast spreading misconduct amongst the medical professionals .The unethical practice has gone to a level where the basic purpose of medical profession that is service to humanity fails. Few unethical practices like fee sharing, or cut practice, particularly prescribing a company’s medicine, selling of body parts etc for personal monitory gains are openly discussed among them but they never come up to the surface due to lack of concrete proof. To err is human nature but mistakes of medical professional which may result in death of a person or permanent impairment can be particularly costly but the law does not aim to punish doctors for all their mistakes, but only to those which are committed out of negligence. Mistakes occur but which occurs from carelessness and negligence cannot be let off.

Considering the level of illiteracy, poverty and unaware of legal set up of the country, poor economic conditions of patients in large number would embolden doctors to give scant regard and concern for the patients particularly in government hospitals. The rich could sue doctors for compensation for proven negligence or carelessness and fight it out in courts but the poor section could not afford this .The major criticism is that it’s difficult to find a person of same profession to come and attest the carelessness and negligence of a fellow doctor.

The Medical Council of India should incorporate a provision in the Medical Council of India Act that any complaint against a delinquent doctor should be disposed off by the State Council within three months not only to deal effectively with medical negligence but also to safe guard the interest of poor patients.

One has to hope that professionals will rise to the occasion and start discharging their functions with more care and responsibility rather than trying to hide under the shield provided by the court. Let not the profession be emboldened by the new shield, and turn less careful and inhumane in their dealings and treatment to the patients who approach them. If this happens, that will be a sad day for suffering patients. More Immunity to this group means suffering for vulnerable patients.

The Supreme Court has not stated that doctors cannot be prosecuted for medical negligence. It has emphasized the need for care and caution in prosecuting doctors in the interest of the society. An extra insulation is now allowed to them considering the noble service this fraternity renders to the society. Moreover in the view of the reports that complainants often use criminal cases to pressurize medical professionals and to extract unjust compensation has also been highlighted. This immunity is available only in criminal courts and nowhere else. In the light of Judgment pronounced by the Honourable Supreme Court and from the discussions held in various decided cases it can be concluded that the Supreme Court provides necessary protection, not the license to kill. A doctor’s profession is the noblest profession, and if this profession is clubbed with providing vision to a needy patient, it places the profession of a doctor closest to the Almighty.