

ABOUT INNOVATIVE GROUP OF INSTITUTIONS

Innovative Welfare and Educational Society (Regd.) was incorporated more than a decade back with the avowed objective of dissemination of literacy amongst the under-privileged segment of society in India and to provide an impetus to growth of professional education in varied streams for self-reliance amongst future generations.

FROM CHAIRMAN'S DESK

Innovative Institute of Law is an initiative of Innovative Welfare and Educational Society, Greater Noida which is established in the year 2005. Innovative Institute of Law aims to attract the best talents among the aspiring students who shall be admitted in accordance with the rules and regulations of the Ch. Charan Singh University and the Bar Council of India. The faculty, staff and students share a deep belief in and commitment to the Institution's programmes. The teaching and learning process happens in a unique atmosphere of mutual respect, participation and interaction. I take this opportunity to assure full support from us at Innovative Welfare and Educational Society to develop the school of law into one of the premier institutions not only in this part of the country but in the whole world in the years to come.



Prof. (Dr.) K. R. Sharma

Chairperson-

Mrs Neelam Dhaka ADJ
Dr Rajesh Gupta
Dr K R Sharma

Convenor-

Mr Rabul Singh

Co- Convenor-

Ms Rolly singh

HOD-

Dr Akhilesh Kumar Pandey

Organising Secretary-

Mr Anand Singh

Organising Co- Secretary-

Ms Divya Jaiswal

Student Convenor-

Simran

Student Co- convenor -

Arundhati

INTRA-COLLEGE MOOT COURT COMPETITION

12th - 13th Feb., 2020

Organized By:



INNOVATIVE INSTITUTE OF LAW

Affiliated to C.C.S. University, Meerut & Approved by Bar Council of India, New Delhi

VENUE: MOOT COURT ROOM

Plot No.-6, Knowledge Park-2, Greater Noida

Mob. 8800596847, 8800200053

E-mail: innovativelaw2005@gmail.com

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RULES AND REGULATIONS FOR MOOT COURT COMPETITION 2021

1. STRUCTURE OF THE COMPETITION:

The Competition will be structured as per the following format:

- a. Preliminary Rounds
- b. Semi Final Rounds
- c. Final Round

2. LANGUAGE

The language of the Competition shall be English.

3. ELIGIBILITY

Students pursuing 3 years/ 5 years undergraduate LL.B. degree course are eligible to participate in this competition.

4. TEAM COMPOSITION

The team composition, for the competition, three members (two of them shall be designated as Speakers and one Researcher). The Researcher may be permitted to argue as Speaker in case of illness or any unforeseen event, but the permission of the Moot Court Convener in such case shall be mandatory. Their shall be a researcher test also before the final round.

5. DRESS CODE

The participants shall adhere to following dress code when present in any court room during the Competition.

- a. **Girls:** White salwar and kurta or white shirt and black trousers along with black coat, black tie and black shoes.
- b. **Boys:** White shirt, black trousers and black tie along with black coat and black shoes.

Note: The participating teams shall also adhere to the above mentioned dress code while attending the inaugural and valedictory ceremonies of the Competition.

6. MEMORIALS

All memorials submitted for all purposes of the Competition shall strictly adhere to the rules of the Competition. Each Team participating in the Competition must prepare one Memorial on behalf of Petitioner(s)/ Appellant(s) and one on behalf of the Respondent(s). Further each team has to submit 4 hard copies of the Memorials from each side. Non-compliance will entail a penalty of 5 point per copy not submitted. Hard copies of the memorial must reach the organizers latest by 17th December, 2021, failing which, the same shall not be considered and would lead to disqualification.

Petitioner's memorials are required to have a Blue cover and Respondents memorials are required to have a Red cover. The memorials shall not contain any form of identification apart from the team code. If any such identification or mark, symbol, etc. which has the effect of identifying the team is found on the memorial, then it shall result in instant disqualification. A penalty of 5 mark shall be levied in case the memorial is submitted in any other format or as a multiple file by the team. The hard copy of memorial must be exact replica of the soft copy submitted with the Organizers. Any difference in the same will result in disqualification from the Competition.

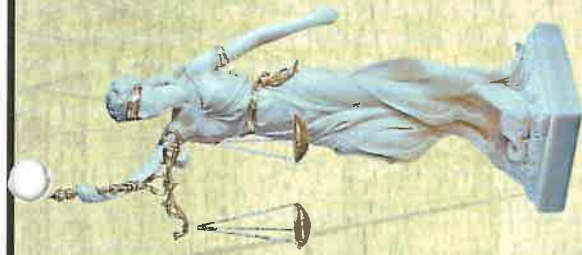
Each Team must send a soft copy of their memorials, in pdf format only, for evaluation by 17th December, 2021 before 11:59 P.M. Memorials submitted beyond the deadline shall incur a liability of 3 points for the first day of delay, and 5 points each day for every subsequent day. No extensions will be granted with respect to this deadline. However, teams submitting soft copy of memorials anytime after 17th December, 2021 will be subject to immediate disqualification. Memorials shall be sent as an attachment with the mail in the form of single file for each side of memorial.

MARKING CRITERIA FOR MEMORIAL

MARKING CRITERIA	MARKS ALLOTTED
Evidence of Original Thought	20
Knowledge of Law and Facts	20
Proper and Articulate Analysis	20
Correct format and Citation	20
Extent and Use of Research	20
TOTAL MARKS	100

DEAD LINE

LAST DATE OF REGISTRATION	: 08/12/2021
LAST DATE OF SOFT COPY SUBMISSION	: 16/12/2021
LAST DATE OF HARD COPY	: 17/12/2021



INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION

2019-2020

MOOT COURT PROBLEM

CONSTITUTIONAL LAW

Maratha Butchers' Association, a Registered Society and Others Petitioner

v.

State of Maratha and Others Respondent

The Republic of Indica is located in the South Asian Region of Asia. It is one of the ancient nations in the world. Till 1947, Republic of Indica was a British colony for about 150 years. It achieved independence in 1947. Now the Republic of Indica is a democratic country with a written Constitution which came into force in 1950. It has 29 States and 7 Union Territories. The Constitution has adopted Parliamentary system wherein President is the executive Head of the government. The majority of the population of the country belongs to Hindu religion. Buddhism, Christianity, Islam, Jainism and Sikhism are the other major religions followed by the people of Republic of Indica. The Republic of Indica is characterized by a diversity of religious beliefs and practices, dressing, cultural outlook, food-habits etc. Some religion like Jainism strictly follow the principle of non-violence and therefore stressed upon vegetarian food habit. This is not so in case of other religions. Under Hindu religion some are vegetarians and some are non-vegetarians. Throughout the Republic of Indica's history, religion has been an important part of the country's culture. The history of Republic of Indica has witnessed some prominent instances of religious disharmony amongst various religious groups.

The Constitution of Republic of Indica declares various rights as fundamental rights. Some of the fundamental rights are the right to freedom of religion, freedom to carry on any trade, profession and business, right to life and personal liberty etc. The fundamental rights are mostly enforceable against the 'State'. The concept of 'State' is defined by the Constitution of Republic

of India. The Constitution also incorporates some features of secularism. The Supreme Court of Republic of India, in its few landmark judgments has expanded the meaning of 'right to life and personal liberty'. Almost everything which has connection with person's meaningful life has been held as integral part of this right. Recently the Supreme Court of Republic of India held that right to privacy is a part of right to life and personal liberty'.

The Constitution on India also laid down some Directive Principles of State Policy. These directives are not enforceable in the court of law, nevertheless these principles are to be looked into while formulating any policy and enacting any law. One of those directives laid down that the **"State shall endeavor to organize agriculture and animal husbandry on modern and scientific line and shall take steps in particular for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle."** This directive was inserted in the Constitution of India after a long-heated debate. On the one hand the economy of the Republic of India is largely based upon agriculture and on the other hand cow is treated as 'Holy' under Hindu religion. Therefore, the above-mentioned directive was perceived to be an outcome of a compromise between the scientific rationality and religious sentiments of the majority Hindu citizens.

The Constitution on India also laid down some fundamental duties for its citizens. One of the fundamental duty of the citizens is to protect and improve the natural environment and to have compassion for living creatures.

Since 1950 Republic of India and various States enacted laws for the protection of Cows. Some of these laws are enacted with specific object of protection of cow whereas some of them were enacted in the name of 'protection of animals from cruelty'.

State of Maratha is situated in western region of Republic of India and second most populous state of the Republic of India. In 1978 it enacted the Maratha Animal Preservation Act, 1978. In 1995, amendments were made in 1978 Act and Amendment Act of 1995 was reserved for the assent of the President. (Under the Constitution of the Republic of India, if on a subject-matter both the Republic as well as state legislature enacted a law, then the state law will prevail over the Republic Law only if it has been reserved for the President's assent and received such assent). These amendments sought to make following changes in the Act of 1978-

1. It sought to extend the bans on the slaughter of cows and calves to bulls and bullocks.

2. It sought to prohibit the transport (from the State of Maratha to another state), the export, as well as purchase, sale and disposal of cows, bulls and bullocks for the purpose of slaughter.
3. It sought to prohibit the possession of the flesh of the cow, bull or bullock slaughtered in contravention of the provisions of the Act.
4. It also criminalizes the possession of beef *per se*, whether or not this was obtained through lawful slaughter from another state.
5. The amendment sought to put the burden on the accused that he/she was not in contravention of provisions of the Act.
6. The amendment also stipulated punishment for the contravention of the Act.

The Amendment Act, 1995 received the assent of the President in 2015 and came into force immediately. Meanwhile there was a political turmoil throughout the Republic of India. Various religious organizations started large scale mobilization against slaughter of cows. Few individuals were attacked on the accusation that they stored cow-flesh in their home. It created the tension between those who were beef-eater and those who were not. More particularly, a minority community 'X' was affected drastically as beef eating was their common food habit. Moreover, beef was less costly as compared to other non-vegetarian food. As the degree of poverty is higher in community 'X', beef eating was an easy source of protein for them. But with the new amended law by the state of Maratha, they were deprived of this source.

In this background, writ petitions were filled by various associations and individuals before the Hon'ble High Court of State of Maratha challenging the constitutional validity of the Amendment Act of 1995. Maratha Butchers' Association, a Registered Society is one of the petitioner working for the protection of the interest of minority community 'X'.

This petition is posted for final arguments and for disposal on 20th January, 2018.

Note: The students have to frame the issues and make submissions by presuming that the Constitution of India and all other laws applicable in India are applicable in Republic of India. With reference to the Act of 1978 and amendment of 1995, the students shall refer to the Maharashtra Animal Preservation Act, 1978 along with the amendments made to it from time to time.

PRINCIPAL
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Greater Noida-201308



INNOVATIVE INSTITUTE OF LAW

Approved by Bar Council of India (BCI), Delhi & Affiliated To CCS University, Meerut, U. P.

Dated: 28-01-2020

NOTICE

Dear all,

The Innovative Institute of Law is pleased to announce the organization of a **Workshop on Moot Court Competition** scheduled to be held on **12th February 2020**. The competition aims to provide students with a platform to hone their advocacy skills and enhance their understanding of legal procedures.

Date: 12th February 2020

Venue: Innovative Institute of Law


Time: 10:00 am

Registration: Interested participants are requested to register their teams by 4th February 2020.

Each team should consist of 3 members.

For further details and registration, please contact your class coordinator.

We look forward to your active participation in making this event a success.

Principal  PRINCIPAL
Innovative Institute of Law
Plot No -6 Knowledge Park-2
Greater Noida-201308
Copy to...

1. Chairman
2. IQAC Coordinator
3. All Faculty Members



REPORT

MOOT COURT COMPETITION

Report on the recently announced Moot Court Competition scheduled to be held on 12th February 2020 at the Innovative Institute of Law. The competition aims to provide students with a platform to hone their advocacy skills and enhance their understanding of legal procedures.

Moot Court is a mock court competition which is organised to give the students an idea as to how the court proceedings take place. This activity builds their confidence and gives them an idea as to how courts operate, how to speak confidently, and understanding Law cases and how to present in front of the panel of judges, lawyers etc.

The competition, as announced, will commence at 10:00 am and will be held at the Innovative Institute of Law. It will be judged by a panel of esteemed judges from the legal fraternity, ensuring a fair and competitive environment for all participants. Participants will be required to argue on a hypothetical case, presenting their arguments and legal analysis in front of the judges.

Interested participants are requested to register their teams by 4th February 2020. Each team should consist of 3 members. For further details and registration, participants have been advised to contact their class coordinator.

.Participants:

The competition saw enthusiastic participation from students across various batches of the law program. Teams consisted of three members each, who prepared diligently to argue on a hypothetical case provided by the organizing committee.

Judges:

A panel of esteemed judges from the legal fraternity presided over the competition. Their expertise and experience added immense value to the event, ensuring a fair and competitive environment for all participants.



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Format:

The competition followed a structured format, with each team presenting their arguments and legal analysis before the judges. The format allowed participants to showcase their research, analytical, and oratory skills, crucial for a successful legal career.

Winners:

After a series of rigorous rounds, the team with the most convincing arguments and thorough legal analysis was declared the winner. The runners-up were also acknowledged for their commendable performance.

Conclusion:

The Moot Court Competition organized by the Innovative Institute of Law was a resounding success. It provided students with a practical experience of courtroom proceedings, helping them develop essential skills required in the legal profession. Such events play a vital role in shaping the future legal luminaries of our society.

Acknowledgments:

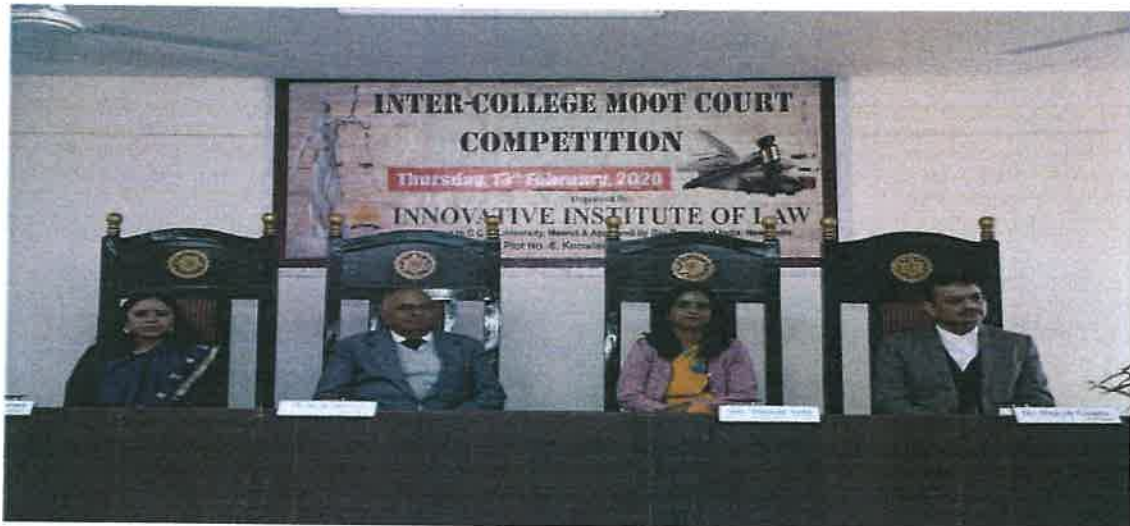
We extend our sincere gratitude to the Principal, faculty members, and staff of the Innovative Institute of Law for their support in organizing this competition. We also thank the participating teams for their enthusiastic participation and the judges for their valuable time and expertise.

We look forward to organizing more such events in the future to further enrich the academic and practical learning experience of our students.



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Inter-College Moot Court Competition

13.02.2020



Students actively debating in front of the esteemed judges



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Prize Distribution to the Winners

INNOVATIVE INSTITUTE OF LAW

Team Registered For Intra Moot Court Competition

Team 1

- Speaker 1: Roll No: RK190640153001, Candidate Name: ABHILASH JAIN
- Speaker 2: Roll No: RK190640153002, Candidate Name: ABHIMANYU DRALL
- Researcher: Roll No: RK190640153003, Candidate Name: ABHISHEK

Team 2

- Speaker 1: Roll No: RK190640153004, Candidate Name: ABHISHEK CHOUDHARY
- Speaker 2: Roll No: RK190640153005, Candidate Name: ABHISHEK DAHIYA
- Researcher: Roll No: RK190640153006, Candidate Name: AFSAR ALAM

Team 3

- Speaker 1: Roll No: RK190640153007, Candidate Name: AJAY KUMAR SHARMA
- Speaker 2: Roll No: RK190640153008, Candidate Name: AKHIL JAIN
- Researcher: Roll No: RK190640153009, Candidate Name: AKSHAR SHARMA

Team 4

- Speaker 1: Roll No: RK190640153010, Candidate Name: ALKA
- Speaker 2: Roll No: RK190640153011, Candidate Name: AMARDEEP SINGH
- Researcher: Roll No: RK190640153012, Candidate Name: AMIT SHOKEEN

Team 5

- Speaker 1: Roll No: RK190640153013, Candidate Name: ANANT BHARGAVA
- Speaker 2: Roll No: RK190640153014, Candidate Name: ANIKET MISHRA
- Researcher: Roll No: RK190640153015, Candidate Name: ANIL KUMAR

Team 6

- Speaker 1: Roll No: RK190640153016, Candidate Name: ANIL KUMAR GEHLOT
- Speaker 2: Roll No: RK190640153017, Candidate Name: ANISHA SHARMA
- Researcher: Roll No: RK190640153018, Candidate Name: ANITA KUMAR

Team 7

- Speaker 1: Roll No: RK190640153019, Candidate Name: ANJU BATRA
- Speaker 2: Roll No: RK190640153020, Candidate Name: ANKAJ SAMKARIA
- Researcher: Roll No: RK190640153021, Candidate Name: ANKIT CHOUDHARY

Team 8

- Speaker 1: Roll No: RK190640153022, Candidate Name: ANSHITA
- Speaker 2: Roll No: RK190640153023, Candidate Name: ANUJ KUMAR
- Researcher: Roll No: RK190640153024, Candidate Name: ASHISH BHATT

Team 9

- Speaker 1: Roll No: RK190640153025, Candidate Name: ASHUTOSH MISHRA
- Speaker 2: Roll No: RK190640153026, Candidate Name: ASHUTOSH UPADHYAY
- Researcher: Roll No: RK190640153027, Candidate Name: AVDESH KASHYAP

Team 10

- Speaker 1: Roll No: RK190640153028, Candidate Name: AVINASH KUMAR
- Speaker 2: Roll No: RK190640153029, Candidate Name: BABITA
- Researcher: Roll No: RK190640153030, Candidate Name: BUDHA RAM

INNOVATIVE INSTITUTE OF LAW

Team Registered For Intra Moot Court Competition

Team 11

- Speaker 1: Roll No: RK190640153031, Candidate Name: CHAVI SHARMA
- Speaker 2: Roll No: RK190640153032, Candidate Name: DALBIR SINGH
- Researcher: Roll No: RK190640153033, Candidate Name: DEEPAK MISHRA

Team 12

- Speaker 1: Roll No: RK190640153034, Candidate Name: DEEPTI MISHRA
- Speaker 2: Roll No: RK190640153035, Candidate Name: DURGA SHARAN SHRIVASTAVA
- Researcher: Roll No: RK190640153036, Candidate Name: GARIMA PARASHAR

Team 13

- Speaker 1: Roll No: RK190640153037, Candidate Name: GAURANG KAUSHIK
- Speaker 2: Roll No: RK190640153038, Candidate Name: GAURAV GARG
- Researcher: Roll No: RK190640153039, Candidate Name: GAURAV SAXENA

Team 14

- Speaker 1: Roll No: RK190640153040, Candidate Name: GINNI GARG
- Speaker 2: Roll No: RK190640153041, Candidate Name: GOUTAM KUMAR SINGH
- Researcher: Roll No: RK190640153042, Candidate Name: GOVINDA SHARMA

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Greater Noida-201308

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Intra Moot Court Competition Registration Form

TEAM CODE: IMC-2

	Student Name	Roll No.
Speaker 1	ABHILASH JAIN	RK190640153001
Speaker 2	ABHIMANYU DRALL	RK190640153002
Researcher	ABHISHEK	RK190640153003

Team Declaration:

We, the undersigned, hereby declare that the information provided above is true to the best of our knowledge. We agree to adhere to the rules and regulations of the competition.

Signatures of Team Members:

1.  (Speaker 1)

2.  (Speaker 2)

3.  (Researcher)

INNOVATIVE INSTITUTE OF LAW

Intra Moot Court Competition Registration Form




TEAM CODE: IMC-3

	Student Name	Roll No
Speaker 1	ABHISHEK CHOUDHARY	RK190640153004
Speaker 2	ABHISHEK DAHIYA	RK190640153005
Researcher	AFSAR ALAM	RK190640153006

Team Declaration:

We, the undersigned, hereby declare that the information provided above is true to the best of our knowledge. We agree to adhere to the rules and regulations of the competition.

Signatures of Team Members:

1.  _____ (Speaker 1)
2.  _____ (Speaker 2)
3.  _____ (Researcher)

INNOVATIVE INSTITUTE OF LAW

Intra Moot Court Competition Registration Form




TEAM CODE: IMC-4

	Student Name	Roll No.
Speaker 1	AJAY KUMAR SHARMA	RK190640153007
Speaker 2	AKHIL JAIN	RK190640153008
Researcher	AKSHAR SHARMA	RK190640153009

Team Declaration:

We, the undersigned, hereby declare that the information provided above is true to the best of our knowledge. We agree to adhere to the rules and regulations of the competition.

Signatures of Team Members:

1.  (Speaker 1)
2.  (Speaker 2)
3.  (Researcher)

INNOVATIVE INSTITUTE OF LAW

Intra Moot Court Competition Registration Form

TEAM CODE: IMC-5

	Student Name	Roll No.
Speaker 1	ALKA	RK190640153010
Speaker 2	AMARDEEP SINGH	RK190640153011
Researcher	AMIT SHOKEEN	RK190640153012

Team Declaration:

We, the undersigned, hereby declare that the information provided above is true to the best of our knowledge. We agree to adhere to the rules and regulations of the competition.

Signatures of Team Members:

1.  _____ (Speaker 1)
2.  _____ (Speaker 2)
3.  _____ (Researcher)

INNOVATIVE INSTITUTE OF LAW

Intra Moot Court Competition Registration Form

TEAM CODE: IMC-6

	Student Name	Roll No.
Speaker 1	ANANT BHARGAVA	RK190640153013
Speaker 2	ANIKET MISHRA	RK190640153014
Researcher	ANIL KUMAR	RK190640153015

Team Declaration:

We, the undersigned, hereby declare that the information provided above is true to the best of our knowledge. We agree to adhere to the rules and regulations of the competition.

Signatures of Team Members:

1.  (Speaker 1)

2.  (Speaker 2)

3.  (Researcher)

INNOVATIVE INSTITUTE OF LAW

Intra Moot Court Competition Registration Form

TEAM CODE: IMC-7

	Student Name	Roll No.
Speaker 1	ANIL KUMAR GEHLOT	RK190640153016
Speaker 2	ANISHA SHARMA	RK190640153017
Researcher	ANITA KUMAR	RK190640153018

Team Declaration:

We, the undersigned, hereby declare that the information provided above is true to the best of our knowledge. We agree to adhere to the rules and regulations of the competition.

Signatures of Team Members:

1.  (Speaker 1)

2.  (Speaker 2)

3.  (Researcher)

INNOVATIVE INSTITUTE OF LAW

Intra Moot Court Competition Registration Form




TEAM CODE: IMC-8

Role	Student Name	Roll No.
Speaker 1	ANJU BATRA	RK190640153019
Speaker 2	ANKAJ SAMKARIA	RK190640153020
Researcher	ANKIT CHOUDHARY	RK190640153021

Team Declaration:

We, the undersigned, hereby declare that the information provided above is true to the best of our knowledge. We agree to adhere to the rules and regulations of the competition.

Signatures of Team Members:

1.  _____ (Speaker 1)
2.  _____ (Speaker 2)
3.  _____ (Researcher)

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Intra Moot Court Competition Registration Form



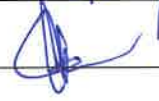
TEAM CODE: IMC-9

	Student Name	Roll No.
Speaker 1	ANSHITA	RK190640153022
Speaker 2	ANUJ KUMAR	RK190640153023
Researcher	ASHISH BHATT	RK190640153024

Team Declaration:

We, the undersigned, hereby declare that the information provided above is true to the best of our knowledge. We agree to adhere to the rules and regulations of the competition.

Signatures of Team Members:

1.  (Speaker 1)
2.  (Speaker 2)
3.  (Researcher)

47
50

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NATIONAL MOOT COURT COMPETITION RESEARCHER TEST

TEAM CODE -

1. The term "jurisdiction" refers to:
 - A) The authority of a court to hear a case
 - B) The process of legal discovery
 - C) The ability to create laws
 - D) The role of a judge
2. Which of the following is a characteristic of civil law systems?
 - A) Reliance on case law
 - B) Codified statutes
 - C) Jury trials
 - D) Inquisitorial procedures
3. The Bill of Rights includes how many amendments?
 - A) 10
 - B) 12
 - C) 15
 - D) 27
4. The "establishment clause" is found in which amendment?
 - A) First Amendment
 - B) Second Amendment
 - C) Fourth Amendment
 - D) Fifth Amendment
5. Which of the following is considered a white-collar crime?
 - A) Burglary
 - B) Fraud
 - C) Robbery
 - D) Assault
6. The "felony-murder rule" applies when:
 - A) A death occurs during the commission of a felony
 - B) A defendant has prior felony convictions
 - C) A defendant is charged with a lesser offense
 - D) None of the above
7. A "breach of contract" occurs when:
 - A) One party fails to fulfill their contractual obligations
 - B) Both parties agree to modify the contract
 - C) A contract is executed
 - D) A contract is verbal
8. What type of contract is formed when one party accepts an offer through performance?
 - A) Bilateral
 - B) Unilateral
 - C) Implied
 - D) Express

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION RESEARCHER TEST

9. The doctrine of "res ipsa loquitur" is used in:
- A) Criminal law
 - B) Contract law
 - C) Tort law
 - D) Property law
10. What type of damages is awarded to punish a wrongdoer?
- A) Compensatory damages
 - B) Nominal damages
 - C) Punitive damages
 - D) Special damages
11. A deed is:
- A) A written contract for rental
 - B) A document that transfers ownership of real property
 - C) A tax document
 - D) A court order
12. "Adverse possession" allows a person to:
- A) Claim ownership of land through continuous use
 - B) Evict tenants without cause
 - C) Rent property without a lease
 - D) Negotiate property taxes
13. In divorce proceedings, "discovery" refers to:
- A) The process of finding a new partner
 - B) The gathering of financial information and evidence
 - C) The final decision by a judge
 - D) The division of assets
14. What is "spousal support"?
- A) Money paid for child care
 - B) Financial support from one spouse to another after divorce
 - C) Legal fees in a divorce case
 - D) Alimony for a child
15. Administrative agencies derive their powers from:
- A) The Constitution
 - B) State laws only
 - C) Congressional statutes
 - D) International treaties
16. What is the purpose of an administrative hearing?
- A) To prosecute criminals
 - B) To resolve disputes involving agency regulations
 - C) To appeal court decisions
 - D) To conduct jury trials.

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION

RESEARCHER TEST

17. Which of the following is a principle of customary international law?
- A) Treaties are binding on nations
 - B) Nations must respect sovereignty
 - C) International courts must follow domestic laws
 - D) All of the above
18. The Vienna Convention on the Law of Treaties governs:
- A) Diplomatic relations
 - B) The creation and interpretation of treaties
 - C) War crimes
 - D) Human rights
19. A trade secret is:
- A) A patent that has expired
 - B) Any confidential business information
 - C) A publicly disclosed invention
 - D) A type of copyright
20. Which of the following is protected by copyright law?
- A) Ideas
 - B) Facts
 - C) Original works of authorship
 - D) Government documents
21. The Family and Medical Leave Act (FMLA) provides eligible employees with:
- A) Paid time off for any reason
 - B) Unpaid leave for family and medical reasons
 - C) Job security without any leave
 - D) Mandatory overtime
22. Which of the following is a protected class under federal employment discrimination laws?
- A) Race
 - B) Religion
 - C) Gender
 - D) All of the above
23. The National Environmental Policy Act (NEPA) requires federal agencies to:
- A) Develop pollution control plans
 - B) Conduct environmental assessments for major projects
 - C) Regulate waste disposal
 - D) Manage public lands
24. The Endangered Species Act aims to:
- A) Protect biodiversity
 - B) Promote wildlife hunting
 - C) Increase industrial development
 - D) Limit federal land use

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION RESEARCHER TEST

25. Which type of business entity is owned by shareholders?
- A) Sole proprietorship
 - B) Partnership
 - C) Corporation
 - D) Cooperative
26. A "limited liability partnership" (LLP) provides:
- A) No liability protection
 - B) Limited liability for all partners
 - C) Full liability for all partners
 - D) Tax benefits for corporations
27. What is the primary purpose of the hearsay rule?
- A) To admit witness testimony
 - B) To exclude unreliable evidence
 - C) To allow expert opinions
 - D) To present character evidence
28. Which of the following is an example of direct evidence?
- A) A witness's testimony about what they saw
 - B) An expert opinion
 - C) Circumstantial evidence
 - D) Hearsay
29. The term "conflict of interest" in legal ethics refers to:
- A) An attorney representing opposing parties
 - B) An attorney having a personal stake in a case
 - C) An attorney's prior relationship with a client
 - D) All of the above
30. What is the primary goal of legal ethics?
- A) To maximize profits for law firms
 - B) To ensure justice and maintain public confidence in the legal system
 - C) To eliminate all litigation
 - D) To promote attorneys' interests
31. In arbitration, the arbitrator's decision is called:
- A) A ruling
 - B) An award
 - C) A judgment
 - D) A decree
32. Mediation is best described as:
- A) A court-mandated procedure
 - B) A collaborative process facilitated by a neutral third party
 - C) A binding decision made by a judge
 - D) A negotiation between two lawyers

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION RESEARCHER TEST

33. The General Data Protection Regulation (GDPR) is a law governing:

- A) Taxation
- B) Data privacy in the European Union
- C) Trade practices
- D) Cybersecurity

34. Which of the following is an illegal act under cyber law?

- A) Hacking into a computer system
- B) Sharing passwords with friends
- C) Downloading free software
- D) Creating a personal website

35. The Fair Debt Collection Practices Act (FDCPA) regulates:

- A) Credit card companies
- B) Debt collectors and their practices
- C) Bank loans
- D) Mortgage lenders

36. Which of the following is NOT a false advertising practice?

- A) Misleading product claims
- B) Honest customer testimonials
- C) Bait and switch
- D) Falsely claiming endorsements

37. A "trustee" in bankruptcy is responsible for:

- A) Administering the bankruptcy estate
- B) Representing creditors
- C) Making bankruptcy laws
- D) Setting up payment plans

38. In Chapter 7 bankruptcy, what happens to non-exempt assets?

- A) They are liquidated to pay creditors
- B) They are retained by the debtor
- C) They are transferred to the trustee permanently
- D) They are sold to cover taxes

39. A prospectus is:

- A) A legal document for private companies
- B) A summary of the financial status of a public company
- C) A document required for public offerings to disclose risks
- D) An informal report on market trends

40. Insider trading is illegal because:

- A) It creates unfair advantages in the market
- B) It is a form of gambling
- C) It is based on speculation
- D) It is not regulated

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION RESEARCHER TEST

41. The Diversity Visa Lottery is designed to:
- A) Provide visas to individuals from underrepresented countries
 - B) Offer visas to skilled workers
 - C) Facilitate family reunification
 - D) Allow students to study in the U.S.
42. Refugee status is granted based on:
- A) Employment opportunities in the U.S.
 - B) Fear of persecution based on certain characteristics
 - C) Family connections
 - D) Education level
43. The Right to Free Speech is protected by:
- A) The Constitution
 - B) International Treaties
 - C) Local Laws
 - D) State Constitutions
44. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) seeks to:
- A) Promote gender equality
 - B) Protect women's rights
 - C) Eliminate violence against women
 - D) All of the above
45. The term "custodial parent" refers to:
- A) The parent with whom the child primarily resides
 - B) The parent who pays child support
 - C) The parent with legal rights to make decisions
 - D) Both A and C
46. Adoption involves:
- A) A legal process to create a parent-child relationship
 - B) The temporary care of a child
 - C) A foster care arrangement
 - D) Guardianship
47. Capital gains tax applies to:
- A) Income earned from wages
 - B) Profits from the sale of an asset
 - C) Interest from savings accounts
 - D) Dividends from stocks
48. The tax year for most individual taxpayers in the U.S. runs from:
- A) January 1 to December 31
 - B) April 15 to April 14
 - C) July 1 to June 30
 - D) October 1 to September 30

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION RESEARCHER TEST

49. A "warrant" is:

- A) A court order authorizing law enforcement to take a specific action
- B) A legal document proving innocence
- C) A type of bail agreement
- D) An official pardon

50. The term "arraignment" refers to:

- A) The process of a trial
- B) The formal reading of charges in court
- C) The sentencing phase
- D) The plea negotiation process

Preliminary Round Conducted by Random Lucky Draw

Moot Court Competition: Preliminary Round Overview

The preliminary round of the Moot Court Competition was successfully conducted using a randomized lucky draw method to ensure a fair and impartial selection process for all participating teams. This approach not only added an element of excitement but also aimed to promote equality among competitors by eliminating any biases in team pairings.

Process:

1. **Team Registration:** All teams from INC -1 to IMC -14 were registered and assigned a unique identification number.
2. **Random Draw:** A random draw was conducted, with each team's name placed into a draw container. The pairs of petitioners and defendants were then drawn without any predetermined order, ensuring a completely random selection.
3. **Announcement :** Once the draw was complete, the matches were announced to all participants. The teams were notified of their respective roles as either petitioners or defendants.

Matches: The following pairings were established for the preliminary round:

Preliminary Round Matrix

	Petitioner	Defendant
1	INC -1	IMC -14
1	INC -5	INC -2
1	INC -3	INC -6
1	INC -7	INC -9
1	INC -4	INC -10
1	INC -11	INC -8
1	INC -12	INC -13

Conclusion: The use of a random lucky draw for the preliminary round not only fostered a spirit of fair competition but also engaged participants in a unique and memorable way. The excitement generated by the random selection set a positive tone for the remainder of the competition. We look forward to the outstanding performances from all teams as they showcase their skills in the upcoming rounds.

**INNOVATIVE INSTITUTE OF LAW
INTRA MOOT COURT COMPETITION
FINAL ROUND**

JUDGE NAME - *Dr. Abdulchek Fatih*

TEAM CODES- *INC-2 And INC5*

Marking Matrix for final Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	16	16	
Argumentation and Reasoning	30	17	17	
Oral Advocacy Skills	20	15	16	
Response to Questions	20	08	06	
Written Submissions	10	10	12	
Total	100			



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**INNOVATIVE INSTITUTE OF LAW
INTRA MOOT COURT COMPETITION
PRELIMINARY ROUND**

JUDGE NAME - Prof. Ishita Goshu

TEAM CODES- INC-1 And INC-14.

Marking Matrix for Preliminary Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	18	17	
Argumentation and Reasoning	30	17	16	
Oral Advocacy Skills	20	19	18	
Response to Questions	20	03	02	
Written Submissions	10	10	12	
Total	100	67	65	


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**INNOVATIVE INSTITUTE OF LAW
INTRA MOOT COURT COMPETITION
PRELIMINARY ROUND**

JUDGE NAME - *Prof. Swati Ranjan*
TEAM CODES- *INC-2 And INC-2*

Marking Matrix for Preliminary Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	19	16	
Argumentation and Reasoning	30	16	17	
Oral Advocacy Skills	20	17	14	
Response to Questions	20	02	03	
Written Submissions	10	12	14	
Total	100	66	61	


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**INNOVATIVE INSTITUTE OF LAW
INTRA MOOT COURT COMPETITION
PRELIMINARY ROUND**

JUDGE NAME - *Dr. Rupal Shah*
TEAM CODES- *INC-4 And INC-10*

Marking Matrix for Preliminary Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	16	17	
Argumentation and Reasoning	30	17	18	
Oral Advocacy Skills	20	18	16	
Response to Questions	20	19	14	
Written Submissions	10	19	18	
Total	100	89	83	



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**INNOVATIVE INSTITUTE OF LAW
INTRA MOOT COURT COMPETITION
PRELIMINARY ROUND**

JUDGE NAME - Prof. Arun Joshi

TEAM CODES- INC-7 And INC-9

Marking Matrix for Preliminary Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	16	17	
Argumentation and Reasoning	30	17	18	
Oral Advocacy Skills	20	15	16	
Response to Questions	20	14	16	
Written Submissions	10	10	09	
Total	100	72	76	



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**INNOVATIVE INSTITUTE OF LAW
INTRA MOOT COURT COMPETITION
PRELIMINARY ROUND**

JUDGE NAME - *Dr Nisha Verma*

TEAM CODES- *INC-3 Amd IN6-6*

Marking Matrix for Preliminary Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	<i>19</i>	<i>17</i>	
Argumentation and Reasoning	30	<i>16</i>	<i>15</i>	
Oral Advocacy Skills	20	<i>18</i>	<i>15</i>	
Response to Questions	20	<i>16</i>	<i>16</i>	
Written Submissions	10	<i>10</i>	<i>12</i>	
Total	100	<i>79.</i>	<i>75</i>	



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**INNOVATIVE INSTITUTE OF LAW
INTRA MOOT COURT COMPETITION
PRELIMINARY ROUND**

JUDGE NAME - *Dr. Rajhar Mehta*

TEAM CODES- *INC-11 AND INC-8*

Marking Matrix for Preliminary Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	17	17	
Argumentation and Reasoning	30	16	16	
Oral Advocacy Skills	20	19	18	
Response to Questions	20	18	07	
Written Submissions	10	10	10	
Total	100	80	68	



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**INNOVATIVE INSTITUTE OF LAW
INTRA MOOT COURT COMPETITION
PRELIMINARY ROUND**

JUDGE NAME - Prof. Deepika Sharma

TEAM CODES- INC-12 And INC-13

Marking Matrix for Preliminary Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	18	17	
Argumentation and Reasoning	30	17	16	
Oral Advocacy Skills	20	12	18	
Response to Questions	20	08	07	
Written Submissions	10	07	10	
Total	100	62	68	


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Preliminary Round



Preliminary Round

Moot Court Competition: Semifinal Round Overview

The semifinal round of the Moot Court Competition was conducted with a randomized lucky draw to ensure fairness and transparency in the selection of matches. This exciting approach not only maintained the integrity of the competition but also engaged participants in a unique way, enhancing the overall experience.

Process:

1. **Team Selection:** Eight teams, consisting of both INC and IMC representatives, were randomly chosen to compete in the semifinals. Each team was assigned a unique identifier to facilitate the draw.
2. **Lucky Draw:** A draw was held in the presence of all participants and judges. Each team's name was placed in a draw container, ensuring that the selection process was impartial and random.
3. **Match Announcement:** After the draw, the semifinal matches were announced, revealing the roles of petitioners and defendants for each pairing.

Semifinal Matrix

Semifinal Match	Petitioner	Defendant
1	INC -2	IMC -3
2	INC -5	IMC -1
3	INC -7	INC -11
4	INC -1	IMC -14

**INNOVATIVE INSTITUTE OF LAW
INTRA MOOT COURT COMPETITION
SEMIFINAL ROUND**

JUDGE NAME - *Prof. Samir Kumar*
TEAM CODES- *INC2 And IMC3*

Marking Matrix for Semifinal Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	16	17	
Argumentation and Reasoning	30	17	18	
Oral Advocacy Skills	20	18	19	
Response to Questions	20	05	06	
Written Submissions	10	10	11	
Total	100	66	71	


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**INNOVATIVE INSTITUTE OF LAW
INTRA MOOT COURT COMPETITION
SEMIFINAL ROUND**

JUDGE NAME - *Dr. Kanya Nair*

TEAM CODES- *INC-1 And IMC-14*

Marking Matrix for Semifinal Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	17	19	
Argumentation and Reasoning	30	16	15	
Oral Advocacy Skills	20	18	19	
Response to Questions	20	06	07	
Written Submissions	10	12	13	
Total	100	69	73	



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**INNOVATIVE INSTITUTE OF LAW
INTRA MOOT COURT COMPETITION
SEMIFINAL ROUND**

JUDGE NAME - Prof. Anil Agarwal.

TEAM CODES- INC-7 And INC-11

Marking Matrix for Semifinal Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	17	16	
Argumentation and Reasoning	30	18	17	
Oral Advocacy Skills	20	16	14	
Response to Questions	20	05	04	
Written Submissions	10	10	12	
Total	100	66	63	



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**INNOVATIVE INSTITUTE OF LAW
INTRA MOOT COURT COMPETITION
SEMIFINAL ROUND**

JUDGE NAME - *Dr Tanya Singh*
TEAM CODES- *INC 2 And IMC I*

Marking Matrix for Semifinal Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	16	16	
Argumentation and Reasoning	30	17	17	
Oral Advocacy Skills	20	18	19	
Response to Questions	20	07	08	
Written Submissions	10	12	13	
Total	100	70	73	


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Semi-Final Round



Semi-Final Round

Moot Court Competition: Final Round Overview

The final round of the Moot Court Competition represents the culmination of a rigorous selection process, showcasing the skills and talents of the top-performing teams. After an exciting semifinal round, two teams have emerged to compete for the prestigious title.

Final Round Matrix

Final Match	Team 1	Team 2
Final Match	INC -2	INC -5

The final match promises to be a thrilling conclusion to the competition, as both teams prepare to present their cases with the goal of claiming victory. The judges will evaluate their arguments based on clarity, persuasiveness, and adherence to legal principles. We encourage all participants and spectators to join us in supporting these teams as they compete for the championship title.

**INNOVATIVE INSTITUTE OF LAW
INTRA MOOT COURT COMPETITION
FINAL ROUND**

JUDGE NAME - *Dr Riya Mishra*

TEAM CODES- *INC-2 And INC 5*

Marking Matrix for final Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	17	18	
Argumentation and Reasoning	30	16	19	
Oral Advocacy Skills	20	14	15	
Response to Questions	20	06	05	
Written Submissions	10	13	14	
Total	100	66.	71	



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INNOVATIVE INSTITUTE OF LAW MOOT COURT COMPETITION 2019-20

IN THE MATTER OF

MARATHA BUTCHERS' ASSOCIATION ----- APPELLANT

STATE OF MARATHA & OTHERS ----- RESPONDENT

BEFORE THE HONOURABLE HIGH COURT OF STATE OF MARATHA

WRITTEN SUBMISSION ON BEHALF OF THE APPELLANT

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1.	All India Reporter
2.	Supreme Court Cases
3.	JAMA Internal Medicine
4.	Harvard Women's Health Watch
5.	Indian Journal of Clinical Practice
6.	Medical News Today
7.	JSTOR
8.	Manupatra

C. DATABASE REFERRED

1.	www.aironline.in
2.	www.scconline.com
3.	indiankanoon.org
4.	www.jstor.org
5.	health.harvard.edu
6.	ojs.ijcp.in/IJCP
7.	www.medicalnews today.com

D. STATUTES REFERRED

1.	The Indian Penal Code, 1860
2.	The Consumer Protection Act, 2019
3.	Universal Declaration of Human Rights, 1948
4.	International Covenant on Civil and Political Rights, 1966
5.	The United Nations Convention on the Rights of Child, 1989

STATEMENT OF JURISDICTION

THE PETITIONERS HUMBLY SUBMIT THIS PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF REPUBLIC OF INDIA BEFORE THIS HON'BLE HIGH COURT OF STATE OF MARATHA.

¹**Article 136.** Special leave to appeal by the Supreme Court

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

STATEMENT OF FACTS

1. The Republic of Indica is a democratic country with a written Constitution that came into force in 1950.
2. The Constitution of Indica declares various rights as fundamental rights, including the right to freedom of religion, freedom to carry on any trade, profession and business, and right to life and personal liberty.
3. In 1978, the State of Maratha enacted the Maratha Animal Preservation Act, 1978.
4. In 1995, amendments were made to the 1978 Act, which received the President's assent in 2015 and came into force immediately.
5. The Amendment Act of 1995 extended the ban on slaughter to bulls and bullocks, prohibited transport and sale of cattle for slaughter, criminalized possession of beef, and shifted the burden of proof to the accused.
6. The amendments have severely affected minority community 'X', for whom beef was a common and affordable source of protein.
7. Writ petitions have been filed challenging the constitutional validity of the Amendment Act of 1995, with Maratha Butchers' Association as one of the petitioners.

STATEMENT OF ISSUES

1. Whether the Maratha Animal Preservation (Amendment) Act, 1995 violates the fundamental right to equality under Article 14 of the Constitution?
2. Whether the Amendment Act infringes upon the right to freedom of trade and profession under Article 19(1)(g) of the Constitution?
3. Whether the Amendment Act violates the right to life and personal liberty under Article 21 of the Constitution?
4. Whether the Amendment Act infringes upon the right to freedom of religion under Article 25 of the Constitution?
5. Whether the Amendment Act is ultra vires the Constitution as it goes beyond the scope of the Directive Principles of State Policy?

SUMMARY OF ARGUMENTS

QUES-1 WHETHER PRESCRIPTION WITHOUT DIAGNOSIS AND HENCE RESULTING IN THE DEATH OF THE FOETUS IN THE WOMB OF THE PATIENT IS CRIMINAL OR CIVIL NEGLIGENCE ON THE PART OF THE DOCTOR?

Ans. It is humbly submitted that the prescription without diagnosis and hence resulting in the death of the foetus in the womb of the patient is a criminal negligence on the part of the doctors. The respondents had full knowledge of the advisory and guidelines, yet they failed to comply with the advisory as they did not diagnose or examine her obstetrics history. It is a clear case of negligence. In view of this, they must be held accountable and made answerable for non-compliance of the advisory which was published in the national newspaper of Indiyana. The Bail granted by the district court and the decision upheld by the High court against the offence under Section- 304A of IPC was wrongly decided.

QUES-2 WHETHER THE CASE RAISES THE ISSUE OF ETHICAL AND PROFESSIONAL NEGLIGENCE AS A SPECIALIST FAILED TO PERFORM HIS/HER DUTY WITH DUE CARE AND DILIGENCE?

Ans. It is humbly submitted by the counsel of the appellant that in the present case, the respondents are liable for professional negligence. They have failed to perform their duty as per reasonable standard care. The medical act must be surrounded by the medical ethics and this is based on the moral values and principles that define what is done right or not under the use of reason (ethics) and rule of conduct for the benefit of the patient. Further, professional conduct must be placed on a higher footing than ethical conduct. But in the given case, the doctors violated the very code of professional conduct which every medical professional is bound to follow and must adhere to.

QUES-3 WHETHER INACCURACY IN DIAGNOSING AMOUNTS TO NEGLIGENCE COUPLED WITH INTENTION?

Ans. It is humbly submitted by the counsel for the appellant that inaccuracy in diagnosing represents a major public health problem likely to affect every one of us at least once in our lifetime, sometimes with devastating consequences. It amounts to negligence or more specifically gross negligence. It is a general principle of medical profession that doctors should not over-prescribe or administer too much of the drug, too large a dose, for too long without diagnosis at regular requisite intervals. In the present case there was diagnosing error amounts to negligence coupled with intention as Dr. Radha Raman advised to get ultrasound done from the Greenlab which was run by her brother-in-law and those ultrasound report directly sent to Dr. Radha Raman and she knew the fact the reports were uncertified, yet she accepted the report.

QUES-4 WHETHER NEGLIGENCE IN PERFORMING PROFESSIONAL DUTIES VIOLATES THE FUNDAMENTAL AND HUMAN RIGHTS?

Ans. It is humbly submitted by the counsel for the appellant that negligence in performing fundamental duties does violate the fundamental and human rights. The most common source of patient harm is Medication errors. Medication-related harm affects 1 out of every 30 patients in health care, with more than a quarter of this harm regarded as severe or life threatening. During the pregnancy if the antidepressant pills are not taken as per requirement it will result in miscarriage or premature delivery. In the instant case Mr. Zee kept on increasing the dosage without diagnosis of her present condition when her blood sugar level went down, suffering from abdominal pain, dizziness. That gross negligence on the part of respondents violated the right to life and health of the Sudha.

ARGUMENTS ADVANCED

QUES-1 WHETHER PRESCRIPTION WITHOUT DIAGNOSIS AND HENCE RESULTING IN THE DEATH OF THE FOETUS IN THE WOMB OF THE PATIENT IS CRIMINAL OR CIVIL NEGLIGENCE ON THE PART OF THE DOCTOR?

Ans. It is humbly submitted that the prescription without diagnosis and hence resulting in the death of the foetus in the womb of the patient is a criminal negligence on the part of the doctors. The Bail granted by the district court and the decision upheld by the High court against the offence under Section- 304A of IPC was wrongly decided.

Section 304A² - Causing death by negligence.— “Whoever causes the death of another person by reckless or careless conduct that does not amount to culpable homicide, shall be punished with imprisonment for up to two years or fine or both”. It comes into the picture in cases where death is caused due to gross negligence by medical professionals. In this section, the existence of intention (mens rea) is immaterial.

The main ingredient to hold person liable under Section- 304A is negligence. Negligence and what amounts to negligence has been defined by different Scholars and courts while deciding the cases of negligence.

According to *Winfield* and *Jolowicz*, Negligence is the breach of a legal duty of care by the defendant which results in an undesired damage to the plaintiff.

In *Blyth v. Birmingham Water Works Co.*³, Negligence was defined as the omission to do something which a reasonable man would do or doing something which a prudent or reasonable man would not do.

In context to the medical sphere, “Negligence” has been defined in *Halsbury's Laws of England*⁴, and extracted in *Kusum Sharma & Ors. v. Batra Hospital & Medical Research*

² The Indian Penal Code, 1860, § 304A, No. 45, Acts of Parliament, 1860 (India).

³ *Blyth v. Birmingham Water Works Co.* (1856) 11 Ex Ch 781.

⁴ 26 HALSBURY'S LAWS OF ENGLAND 17-18 (4th ed. 2004).

*Centre & Ors.*⁵ Case as follows: A person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient owes him certain duties, namely ‘a duty of care in deciding whether to undertake the case; a duty of care in deciding what treatment to give; and a duty of care in his administration of that treatment. A breach of any of these duties will support an action for negligence by the patient.’

In the instant case, while giving the treatment Dr. Zee did not coordinate with the gynecologist to ensure whether the increased dosage of antidepressant drug would impact her pregnancy or not, and if there was any complication in her pregnancy. He did not check her obstetrics history before increasing the dosage. This act of Dr. Zee amounts to gross negligence as it is not expected of a sound medical practitioner.

The suit for medical negligence can be filed, either under criminal law or civil law (law of tort).

Civil Negligence - Civil negligence occurs when a person fails to exercise ordinary care, sometimes referred to as ‘due diligence’. The standard is measured by what a reasonable person would do under the same or similar circumstances. It is carelessness in a matter in which law mandates carefulness. In civil medical negligence, medical professionals have to pay damages to the patient because the prime aim of this type of litigation is to compensate the injured person. The Consumer Protection Act is a civil safeguard to protect the interests of the aggrieved parties.

Criminal Medical Negligence - Where carelessness has been so severe that it is judged to be gross, the doctor may be subject to charge under criminal negligence. Lord Diplock in *R v. Lawrence* defines criminal negligence as “doing an act without having given any thought to the possibility of there being such risk or having recognized that there was some risk involved, had nevertheless gone on to take it.”

Difference between civil and criminal negligence -

⁵ Kusum Sharma & Ors. v. Batra Hospital & Medical Research Centre & Ors., (2010) 3 SCC 480.

1) The reason for constituting the criminal suit rather than civil suit in the cases of medical negligence is determined by the degree of negligence on the part of the doctors, i.e. whether the medical professional was grossly negligent or not. The Supreme Court in the case of *Syad Akbar v. State of Karnataka*⁶ opined, “In the criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the court, as a reasonable man, beyond all reasonable doubt. Where negligence is an essential ingredient of the offence, the negligence must be gross and not the negligence merely based upon an error of judgment”.

2) In case of civil negligence, the loss can be compensated by monetary value which means it involves lesser amount of negligence, unlike criminal negligence which involves higher degree of negligence and the loss cannot be compensated by monetary value.

The reason why Mr. Partho Pradhan filed a criminal case rather than civil case is that in the civil case the remedy is monetary compensation only but, the petitioner doesn't want compensation as his loss is irrecoverable and beyond any compensation. In the present case, due to the Gross negligence on the part of the respondents (Dr. Zee, Dr. Radha Raman and Hospital) the appellant's child didn't see the light of the day. Therefore giving rise to criminal liability. We demand the license of such doctors be cancelled and stringent action be taken against them.

INGREDIENTS OF NEGLIGENCE

In the case of *Dr. Laxman Balkrishna Joshi v. Dr. Trimbarik Babu Godbole and Anr*⁷. and *A.S. Mittal v. State of U.P. & Ors*⁸, it was laid down that when a doctor is consulted by a patient, the doctor owes to his patient certain duties which are: (a) duty of care in deciding whether to undertake the case, (b) duty of care in deciding what treatment to give, and (c) duty of care in the administration of that treatment. A breach of any of the above duties may give a cause of action for negligence and the patient may, on that basis, recover damages from his doctor.

In the law of torts, there are three ingredients of Negligence that is

- a) Duty to take care,
- b) Breach of that duty,

⁶ *Syad Akbar v. State of Karnataka*, (1980) SCC (1) 30.

⁷ *Dr. Laxman Balkrishna Joshi v. Dr. Trimbarik Babu Godbole and Anr.* (1969) AIR 128.

⁸ *A.S. Mittal v. State of U.P. & Ors*, (1989) AIR 1570.

c) Damage

Duty to take care

In *Jacob Mathew v. State of Punjab & Anr*⁹, the learned bench held that a person who holds himself out ready to give medical advice and treatment impliedly undertakes that he possesses skill and knowledge for that purpose. Such a person when consulted by a patient owes him certain duties viz, a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to be given or a duty of care in the administration of that treatment.

In the present case, as per the advisory issued by the Ministry of Health and Family welfare on December 09, 2018 imposes a duty on doctors to give prescription after thorough examination of patient's medical history and ongoing medication. Further, Sudha Pradhan was nine week pregnant and during first trimester the chances of miscarriage increase when the woman is under medication. So in such cases duty of doctors increases manifold.

Breach of the Duty- It occurs when a person's conduct fails to meet an applicable standard of care. There was breach of the duty by Dr. Zee by not diagnosing her present health condition when her health were deteriorating, before increasing the dosage of the medicine. Dr. Radha Raman when informed by Mr. Partho about Sudha's condition instead of diagnosing her, she directed Mr. Partho to consult Dr. Zee without even considering that she was duty bound as a doctor to check, whether the antidepressant drug were having any negative effect on the foetus. Here, both the doctors failed in performing their respective duties.

Damage - It can be physical or mental. Here in the present case they lost their child in the womb because of the gross negligent act of the respondents. The damage is of such a nature which can't be restored by any form of compensation.

In the given case all the ingredients are found to constitute the offence of negligence.

Non observance of guidelines amounts to gross negligence

⁹ Jacob Mathew v. State of Punjab & Anr. (2005) 6 SCC 1.

One of the consequential observations of the report submitted by ICMR to the Ministry of Health and Family Welfare, highlighted an increased impact of the overdose or negligent use of antidepressant drug on other medication. Taking cognizance of the findings, guidelines were framed and an advisory was issued for doctors as follows -

1. To give prescriptions after a complete and thorough diagnosis of the patient.
2. Duty of every doctor to examine a patient's medical history and on-going medication before giving a prescription.
3. Minimum consultation time which a doctor must devote to each patient.
4. Restraint on doctors to give prescriptions without thorough examination of patients' medical history and ongoing medication.

The profession of healthcare is more of a service to mankind and brings along with it many responsibilities and duties. Being a doctor, there is an inherent and implied duty of care and accountability towards the patient. And after the issued advisory by the Health Ministry and also being informed of the same by the appellant, Mr. Partho Pradhan, this duty increases multifold. This advisory, instead of being circulated among hospitals, was published in the national newspaper of Indiyana, which makes its intent clear to raise awareness among the public as well. There was no chance of missing out on this information. In this case, the appellant was more aware of the duties of doctors than the doctors themselves. Even if the latter missed out on this advisory somehow, the appellant had already contacted the gynecologist, Dr. Radha Raman, to enquire and ensure if the patient's ongoing medication for anxiety and insomnia, the dose of which was doubled by the psychiatrist, Dr. Zee, was safe during her pregnancy. Dr. Radha Raman assured that the increased dose of antidepressant drug would not have any adverse effect on the foetus. But as per a research conducted by a team of experts and published in *Epidemiology*¹⁰:

“Antidepressant use in the first trimester is associated with an increased risk of miscarriage when compared with either non-depressed or depressed unexposed women, even after accounting for induced abortions.”

¹⁰ Vol. 27 No. 4 NISHA D. ALMEIDA ET. AL., EPIDEMIOLOGY 538-546 (Lippincott Williams & Wilkins 2016) available at : JSTOR, <https://www.jstor.org/stable/26511768#:~:text=Conclusions%3A%20antidepressant%20use%20in%20the.after%20accounting%20for%20induced%20abortions.> (last visited Nov. 17, 2023).

Thus, in the instant case, it is well settled that the respondents had full knowledge of the advisory and guidelines, yet they failed to comply with the advisory as they did not diagnose or examine her obstetrics history. It is a clear case of negligence. In view of this, they must be held accountable and made answerable for non-compliance of the advisory which was published in the national newspaper of Indiyana.

Negligence endangering Human life.

The act of the respondents put Sudha's life at greater risk which would have proved to be beyond recovery. The respondents can also be held liable under the below mentioned provision of IPC.

(Section 336 of the IPC)¹¹ - Act endangering life or personal safety of others.— “Whoever does 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 a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.”

From the leading cases referred below we can understand the gravity of negligent act, which not only endangered human life but also resulted in the death of the patient.

Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Babu Godbole¹² -In this case, the respondent's son suffered an injury in his left leg. The accused doctor while putting the plaster used manual traction with excessive force with the help of three men, although such traction is never done under morphia alone but done under proper general anaesthesia. This gave a tremendous shock causing the death of the boy. On these facts, the Supreme Court held that the doctor was liable to pay damages to the parents of the boy.

Dr. Balram Prasad v. Dr. Kunal Saha and Ors.¹³-The respondent along with his wife Anuradha Saha, came from the USA on a visit to their hometown. The respondent, a doctor himself, noticed that his wife had a sore throat and low-grade temperature. Within no time, Anuradha's condition became worse and she continued suffering from high fever. On consultation with the opposite party doctor again, it was found that Anuradha was suffering

¹¹ The Indian Penal Code, 1860, § 304A, No. 45, Acts of Parliament, 1860 (India).

¹² Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Babu Godbole, (1969) AIR 128.

¹³ Dr. Balram Prasad v. Dr. Kunal Saha and Ors. (2014) 1 SCC 384.

from Angio-neurotic Oedema with Allergic Vasculitis. She was administered depomedrol as a treatment for the same. However, Anuradha's condition had deteriorated to a point where no treatment could save her, and she died after a few days.

The Supreme Court made an important observation that there was an increasing trend of medicolegal cases concerning negligence on the part of doctors, meaning that there was a need for strict rules in the conduct of doctors and appropriate penalties for negligent treatment. The Court stated that the compensation, which is the highest amount awarded in a medico-legal case in India, should act as a “deterrent and a reminder” to those doctors and hospitals who do not take their responsibility towards patients seriously. This is important because it was the first time the Court awarded compensation as a deterrent to other medical practitioners. The case also saw the first time when the potential income of the deceased was calculated up to 30 years in deciding the compensation instead of the normal practice of taking account of 10-18 years. Thus, the Kunal Saha case continues to be a landmark case in the medico-legal arena as it sets new standards of determination of compensation for medical negligence.

In the instant case, use of antidepressant drug administered inappropriately could have led to **Nervous breakdown** of the patient. When a woman carries a child in her womb, it accompanies many hopes with it, and when such hope breaks down, it can cause all the more anxiety and depression which would have resulted in serious health issues.

The medical professionals have been put on a pedestal and time has come to weed out careless and negligent persons in the medical profession. “Segregation of reckless and negligent doctors in the profession will go a great way in restoring the honor and prestige of large number of doctors and hospitals who are devoted to their profession and scrupulously follow the ethics and principles of the noble profession.”

Ques-2 Whether the case raises the issue of ethical and professional negligence as a specialist failed to perform his/her duty with due care and diligence?

Ans. It is humbly submitted by the counsel of the appellant that in the present case, the respondents are liable for professional negligence. They have failed to perform their duty as per reasonable standard care.

The Supreme Court of India discussed the conduct of professionals and what may amount to negligence by professionals in Jacob Mathew's case: ¹⁴. *Any task which is required to be performed with a special skill would generally be admitted or undertaken to be performed only if the person possesses the requisite skill for performing that task and, impliedly assures the person dealing with him that the skill which he professes to possess shall be exercised and exercised with reasonable degree of care and caution*".

We are of the view that, in the present case, the respondents are liable for professional negligence. Professional code of conduct is the same for all medical professionals which is laid down by various medical authorities at state level and national level. But where the procedure performed or act done by medical professionals goes beyond the purview of professional code of conduct, there comes the role of medical ethics, which differs from doctor to doctor. "The medical act must be surrounded by the medical ethics and this is based on the moral values and principles that define what is done right or not under the use of reason (ethics) and rule of conduct for the benefit of the patient." Further, professional conduct must be placed on a higher footing than ethical conduct. But in the given case, the doctors violated the very code of professional conduct which every medical professional is bound to follow and must adhere to.

CODE OF MEDICAL ETHICS REGULATIONS, 2002

Duties of Physician to their patients (Obligations to the Sick) - Though a physician is not bound to treat each and every person asking his services, he should not only be ever ready to respond to the calls of the sick and the injured, but should be mindful of the high character of his mission and the responsibility he discharges in the course of his professional duties. In his treatment, he should never forget that the health and the lives of those entrusted to his care depend on his skill and attention. A physician should endeavour to add to the comfort of the sick by making his visits at the hour indicated to the patients. A physician advising a patient to seek service of another physician is acceptable, however, in case of emergency a physician must treat the patient. No physician shall arbitrarily refuse treatment to a patient. However for good reason, when a patient is suffering from an ailment which is not within the range of experience of the treating physician, the physician may refuse treatment and refer the patient

¹⁴ Jacob Mathew v. State of Punjab & Anr. (2005) 6 SCC 1.

Medical practitioner having any incapacity detrimental to the patient or which can affect his performance vis-à-vis the patient is not permitted to practice his profession.

Bolam test

In the case of *Bolam v. Friern Hospital Management Committee*¹⁵, The defendant was the body who employed a doctor who had not given a mentally-ill patient (the claimant) muscle-relaxant drugs nor restrained them prior to giving them electro-convulsive therapy. The claimant suffered injuries during the procedure.

MC Nair, J laid down the standard test that has been used to establish whether duty has been breached. He wrote in his judgment "*The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill: It is a well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art. In the case of a medical man, negligence means failure to act in accordance with the standards of reasonably competent medical men at the time. There may be one or more perfectly proper standards, and if he confirms with one of these proper standards, then he is not negligent.*"

In *Poonam Verma v. Ashwin Patel and Ors.*¹⁶ a doctor registered as medical practitioner and entitled to practice in Homoeopathy only, prescribed an allopathic medicine to the patient. The patient died. The doctor was held to be negligent and liable to compensate the wife of the deceased, since he trespassed into a prohibited field and prescribed the allopathic medicine to the patient causing the death, his conduct amounted to negligence per se actionable in civil law.

In *Juggankhan v. State of Madhya Pradesh*¹⁷ the accused, a registered Homoeopath, administered 24 drops of stramonium and a leaf of dhatura to the patient suffering from guinea worm. The accused had no knowledge of the effect of such substances being administered and yet he did so. In this background, the inference of the accused being guilty of rash and negligent act was drawn against him.

¹⁵ Bolam v. Friern Hospital Management Committee (1957) 2 All ER 118.

¹⁶ Poonam Verma v. Ashwin Patel and Ors. (1996) 4 SCC 332.

¹⁷ Juggankhan v. State of Madhya Pradesh, (1965) AIR 831.

So, the principle which emerges is that a doctor who administers medicine known to or used in a particular branch of medical profession impliedly declares that he has knowledge of that branch of science and if he does not, in fact, possess that knowledge, he is prima facie acting with rashness or negligence.

On 15 Dec, 2018, when Sudha had an anxiety attack and when it was informed to Dr. Zee by Mr. Partho, he said that PERHAPS the anxiety attack was not due to the increased dosage of the antidepressant drug and Sudha should continue the dosage. Here, the question arises that if he was not sure of the reason of recurrent anxiety attack he should have diagnosed her or, as he was not present at that time, should have advised to consult other psychiatrist as asked by Mr. Partho. On the Part of Dr. Radha Raman, despite knowing the fact that ultrasound reports were uncertified, she accepted the reports only because the lab was run by her brother-in-law. It shows gross negligence and malpractice on her part.

Martin F. D'Souza v. Mohd. Ishfaq¹⁸ - In this case, the Supreme Court outlined the standard of care that medical professionals must adhere to. The court held that a medical professional must have the knowledge and skills that are expected of a reasonably competent practitioner in their field.

No requirement of bolam test as principle of Res Ipsa Loquitor applicable.

Dr. Ravishankar v. Jery K. Thomas and Anr.¹⁹ - An appellant (doctor) was found by the State Commission to be responsible for leaving ribbon gauze in the right side of the nose after a septoplasty resulting in several complications. The complainant suffered and had to be under treatment, all the while the National Commission confirmed the order and observed that it has no option but to deduce that it was a clear case of medical negligence on the part of the appellant. The National Commission held that based on the facts and circumstances, the obvious deduction is that the appellant doctor is responsible for leaving behind ribbon gauze resulting in complications. Medical negligence was proved.

I. Kishan Rao v. Nikhil Super Speciality Hospital²⁰ - The principle of 'res ipsa loquitor' being applied in cases of medical negligence was upheld in *V. Kishan-Rao v. Nikhil Super*

¹⁸ Martin F. D'Souza v. Mohd. Ishfaq (2009) 3 SCC 1.

¹⁹ Dr. Ravishankar v. Jery K. Thomas and Anr II (2006) CPJ 138 NC.

²⁰ V. Kishan Rao v. Nikhil Super Speciality Hospital (2010) 5 SCC 513.

Speciality Hospital, wherein the appellant got his wife admitted as she was suffering from fever. When the treatment did not have any effect on the appellant's wife, he shifted her to a different hospital, where she died within hours. On appeal before the Supreme Court, it was observed that the patient was shifted from the respondent hospital to another hospital in a 'clinically dead' condition. The Court made an important note that no expert evidence was needed to prove medical negligence. The principle of *res ipsa loquitur* will operate, which means that the complainant will not have to prove the negligence where the 'res' (thing) proves it. Instead, it is for the respondent to prove that he/she had acted reasonably and taken sufficient care to negate the allegation of negligence.

When Sudha was undergoing anxiety attack, Partho updated her condition to Dr. Radha Raman but she directed him to Sudha's psychiatrist and escaped from her responsibility, which was not the right thing to do as a doctor. At that time, she was duty bound to coordinate with the psychiatrist, Dr. Zee, as Sudha's mental health would also impact her pregnancy. In living organisms, no body part / organ works in isolation but there is coordination among every organ through the nervous system. Similarly, the treatment of different systems of the human body cannot be divided into water-tight compartments, there is bound to be coordination among them. In addition to this, when a woman is pregnant, it is a very delicate condition wherein every minute health problem requires much greater attention, as everything impacts the foetus, even the mental condition and mindset of the mother.

Ques-3 Whether inaccuracy in diagnosing amounts to negligence coupled with intention?

Ans. It is humbly submitted by the counsel for the appellant that inaccuracy in diagnosing represents a major public health problem likely to affect every one of us at least once in our lifetime, sometimes with devastating consequences. It amounts to negligence or more specifically gross negligence.

It is an accepted principle of medicine that Doctors should not prescribe without examining the patient, even if he is a close friend or relative. Telephone advice is an exception. Video consultancy is also allowed but consultation via whatsapp is not allowed. If done through WhatsApp, the medication prescribed should be written on a prescription paper and its

picture be sent to the patient, rather than just typing and sending the medicine dose... which in the present case was done by Dr. Zee.

Various studies show that diagnostic error can result in severe complications during pregnancy, can result in the fetus being deprived of oxygen, cognitive disabilities in the infant, or even death of the fetus or newborn. Other possible consequences of failing to diagnose during pregnancy include Erb's palsy, Brachial plexus injuries, infant stroke, nerve damage to the infant, permanent physical injuries, reduced blood flow to the infant, developmental delays, and other conditions, many of which will require surgical procedures and continuing medical care.

In the news article published by *CNN*²¹, it shows that diagnosing error leads to hundreds of thousands of deaths and permanent disabilities each year in the United States.

It is a general principle of medical profession that doctors should not over-prescribe or administer too much of the drug, too large a dose, for too long without diagnosis at regular requisite intervals. And especially when a female patient is pregnant, the doctor must restrict the dosage giving regard to the patient's pregnancy, and also consult the gynecologist of the patient before prescribing, administering or increasing the dosage of any medicine. The duty of care on part of the doctors increases when the patient is pregnant as two lives are at stake. This was blatantly ignored by Dr. Zee. If giving the medicine is more important then it has to be given after informing the patient about the same.

There are many side-effects of antidepressant pills if not taken as per the requirement like, sexual problems, blurred vision, seizures, tremors, etc. which aren't fun to deal with. These problems keep a person away from maintaining a healthy lifestyle which directly violates the fundamental right to health.

In the present case there was diagnosing error amounts to negligence coupled with intention as Dr. Radha Raman advised to get ultrasound done from the Greenlab which was run by her brother-in-law and those ultrasound report directly sent to Dr. Radha Raman and she knew the fact the reports were uncertified, yet she accepted the report.

²¹ Cable News Network, <https://edition.cnn.com/2023/07/19/health/diagnosis-error-study/index.html> (last visited -21/11/2023).

Ques- 4 Whether negligence in performing professional duties violates the fundamental and human rights?

Ans. It is humbly submitted by the counsel for the appellant that negligence in performing fundamental duties does violate the fundamental and human rights.

“We have not lost faith, but we have transferred it from God to the medical profession”²²
 Medical negligence, on part of medical professionals, is just a mistake but it impacts the entire life of the patient and puts their well-being at stake. Thus, it requires utmost care and caution as they deal with human lives. There should be no scope for even the minutest mistake but, if it happens where it was not even expected, it should be met with legal consequences as it straightforwardly affects right to life and right to health and right to proper medical services. Liability for clinical mistake or negligence may likewise truly emerge as a breach of patients fundamental human rights.

According to WHO records on patient safety globally²³,

- Around 1 in every 10 patients is harmed in health care and more than 3 million deaths occur annually due to unsafe care. In low-to-middle income countries, as many as 4 in 100 people die from unsafe care.
- Above 50% of harm (1 in every 20 patients) is preventable; half of this harm is attributed to medications.
- Some estimates suggest that as many as 4 in 10 patients are harmed in primary and ambulatory settings, while up to 80% (23.6–85%) of this harm can be avoided.
- Common adverse events that may result in avoidable patient harm are medication errors, unsafe surgical procedures, health care-associated infections, diagnostic errors, patient falls, pressure ulcers, patient misidentification, unsafe blood transfusion and venous thromboembolism.

²² George Bernard Shaw (26 July 1856 – 2 November 1950), known at his insistence as Bernard Shaw, was an Irish playwright, critic, polemicist and political activist

²³ World Health Organization, <https://www.who.int/news-room/fact-sheets/detail/patient-safety#:~:text=Key%20facts,annually%20due%20to%20unsafe%20care> , (last visited – Nov. 21, 2023)

The most common source of patient harm is Medication errors. Medication-related harm affects 1 out of every 30 patients in health care, with more than a quarter of this harm regarded as severe or life threatening. Half of the avoidable harm in health care is related to medications. “First, do no harm” is the most fundamental principle of any health care service. No one should be harmed in health care; however, there is compelling evidence of a huge burden of avoidable patient harm globally across the developed and developing health care systems. This has major human, moral, ethical and financial implications.

Patient Safety the global concern

The global safety action plan 2021-2030 provides a framework for action for key stakeholders to join efforts and implement patient safety initiatives in a comprehensive manner. The goal is “to achieve the maximum possible reduction in avoidable harm due to unsafe health care globally”, envisioning “a world in which no one is harmed in health care, and every patient receives safe and respectful care, every time, everywhere”.

World Patient Safety Day

Since 2019, World Patient safety day has been celebrated across the world annually on 17 September, calling for global solidarity and concerted action by all countries and international partners to improve patient safety. The global campaign, with its dedicated annual theme, is aimed at enhancing public awareness and global understanding of patient safety and mobilizing action by stakeholders to eliminate avoidable harm in health care and thereby improve patient safety.

WHO Flagship initiative “A Decade of Patient Safety 2021–2030”

WHO has launched the Patient Safety Flagship as a transformative initiative to guide and support strategic action on patient safety at the global, regional and national levels. Its core work involves supporting the implementation of the Global Patient Safety Action Plan 2021–2030.

Further, Right to life is recognized by several international human rights instruments, including the *Universal Declaration of human rights* (Article-3)²⁴ and the *International Covenant on Civil and Political rights* (Article-6)^[21]. Medical negligence can violate this right if it results in the death of a patient who would have otherwise survived if proper

²⁴ Universal Declaration of Human Rights, 1948, § 3, Adopted by UNGA ,(1948).

medical care had been provided. Further right to life not only recognized in literal sense but it includes right to health, right to live with dignity and all that goes along with it.

When an incident of medical negligence takes place, it not only violates the constitutional rights recognized by the states, not only breaches the tortuous and contractual liabilities but also in the very first instance, violates the Human rights. A lot of people die just because of lack of professionalism and care when between death and life there remains the noble profession of medical science.

During the pregnancy if the antidepressant pills are not taken as per requirement it will result in miscarriage or premature delivery. In the instant case Mr. Zee kept on increasing the dosage without diagnosis of her present condition when her blood sugar level went down, suffering from abdominal pain, dizziness. That gross negligence on the part of Dr. Zee violated the right to life and health of the Sudha.

Cases which show direct violation of right to life:

Kunal Saha v. AMRI Hospital²⁵-Anuradha, a child psychologist, she had come to her hometown Kolkata in March 1998 for a summer vacation. She complained to them of her skin rashes on April 25 and had consulted Dr. Sukumar Mukherjee, who, without prescribing any medicine, asked her to take a rest. As rashes appeared more aggressively, on May 7, 1998, Dr Mukherjee prescribed Depomedrol injection 80 mg twice daily, a step that specialists later faulted at the apex court.

V. Krishan Rao v. Nikhil Super Speciality Hospital²⁶- Krishna Rao, an officer in the malaria department, filed a complaint against the hospital for negligently conducting his wife's treatment. The hospital treated her for typhoid and giving medication for the same instead of malaria fever. The complainant's wife complained of respiratory trouble. The complainant also brought forward to the notice of the authorities that artificial oxygen to the patient. In Accordance to the complainant at that stage, artificial oxygen was not necessary, but without ascertaining the patient's actual necessity, the same was given. As the treatment has been given for typhoid, the medicines would have been for the exact cause and cure also

²⁵ Kunal Saha v. AMRI Hospital, SSC 384 (2014).

²⁶ V. Krishan Rao v. Nikhil Super Speciality Hospital, (2010) 5 SCC 513.

has their side effect. They have been very negligent while discharging their sole duty towards their patient.

Spring Meadow Hospital v. Harjot Ahluwalia²⁷ - The National Commission held that a nurse of Spring Meadows Hospital gave a wrong injection to a child . While reading the prescription, she made a mistake and injected ‘Lariago’ instead of ‘ Chloramphenicol’ intravenously. The child collapsed instantly and went into Cardiac arrest. The national Commission held the Hospital responsible for the acts and negligence attributed to the employees and liable for the consequence.

State of Gujarat And Ors. v. Laxmiben Jayantilal Sikligar²⁸ -The Appellant was suffering discomfort and pain in swallowing. He went to Civil Hospital, Godhra, for treatment and the Civil Surgeon performed the surgery on her thyroid gland. After the operation she suffered permanent partial paralysis of larynx(voice box) as a consequence of damage to or cutting recurrent laryngeal nerve. The Court held that the surgeon was negligent as he did not take precaution before and during the surgery and awarded damages amounting to Rs. 1, 20,000 along with interest @12% p.a. from the date of the suit till realization

An article in *The Indian Express*²⁹ dated 14 November 2023, mentioned that the National Consumer Disputes Redressal Commission has directed a doctor to pay Rs 25 lakh to the wife of a patient who died because of medical negligence after he sought treatment for cough, fever and vomiting.

Himangshu Das (53), who was a pharmacist in the West Bengal government service, visited Dr. Kabir Dutta in 2015 with complaints of cough, fever and vomiting. Dr Dutta made him undergo many tests, and despite a tuberculosis test returning negative, prescribed him antitubercular medication.. The bench also held that despite Das complaining to Dr Dutta about the different colour of urine along with other side effects, the doctor committed negligence by asking him to continue with his medication instead of stopping it. Das’s health worsened because of the side effects of this medication, ultimately leading to his death.

²⁷ *Spring Meadow Hospital v. Harjot Ahluwalia*, (1998) 4 SCC 39.

²⁸ *State of Gujarat And Ors. v. Laxmiben Jayantilal Sikligar*, AIR 2000 Guj 180, (2000) 2 GLR 1355.

²⁹ Nirbhay Thakur, *Doctor ordered to pay Rs 25 lakh after patient dies of multiple organ failure caused by anti-TB drugs*, THE INDIAN EXPRESS (Nov. 27, 2023, 4:31 PM),

<https://indianexpress.com/article/cities/delhi/doctor-pay-25-lakh-patient-dies-multiple-organ-failure-anti-tb-drugs-9026263/>.

As it is said *“The best doctors give the least medicine, so take due care and avoid being negligent while providing treatment to the patients”*.

A patient has trust and faith in his doctor. He is under the believe that the doctor having the full knowledge and skill would surely get him back to normal and would not cause any damage to his life or body. But how far is the possible is tough to answer. Every day one gets to read in the newspaper about various negligent acts of doctors resulting in the death of the patients. Though a doctor may not be in the position to save his patient’s life at all times, he is expected to use his special knowledge and skill in the most appropriate manner keeping in mind the interest of the patient who has entrusted his life to him.

Need of the hour is fetal rights.

There are some statutes and constitution of the countries which had given right to foetus.

“The American Convention on Human Rights (ACHR) makes an explicit reference to the protection of life before birth. Indeed, Article 4(1) of this treaty provides, every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception”.³⁰This Article of ACHR was interpreted as per the rules of VCLT, taking into account this treaty's context, object and purpose. It will begin by thoroughly analyzing Article 4(1), which is composed of three sentences:

- (1) "Every person has the right to have his life respected;
- (2) "This right shall be protected by law and, in general, from the moment of conception;"
- (3) "No one shall be arbitrarily deprived of his life."

The second sentence alludes to conception, posing the challenge of determining whether this means that a human organism has rights from this time.

The subject of the sentence "this right shall be protected by law and from the moment of conception" is "this right." The word "this" refers to the right mentioned in the first sentence, which is the right to life. This second sentence is constructed in the passive voice, so there is an action performed on the subject "this right," which is "protection." This sentence does not expand or restrict the right to life; it only establishes an obligation regarding its protection. The expressions "by law" and "from the moment of conception" are qualifying the action of

³⁰ Alvaro Paul, *Controversial Conceptions: The Unborn and the American Convention on Human Rights*, Vol. 9, LUCI, 04-05,(2012).

protection by providing that the safeguard given to the right to life shall have at least these qualities. This mandate to protect life from the moment of conception is based on the understanding that the right to life exists from fertilization onwards. Otherwise, there would be no life to protect at that stage.

Two European Union member states (Hungary and Slovakia) grant the fetus the constitutional right to life. The Constitution of Norway grants the unborn royal children the right of succession to the throne. In English common law, fetus is granted inheritance rights under the born alive rule. Islamic law grants the fetus the right to life particularly after ensoulment, which according to various Islamic jurists happens after 40–42 days after conception.

Fundamental Rights granted to foetus by different Countries.

(Article 19 of Chile's Constitution)³¹ : 1.The right to life and to the physical and mental integrity of the person. The law protects the life of the unborn.

(Article 37 of Dominion Republic Constittution)³²- The right to life is inviolable from conception until death. The death penalty may not be established, pronounced, nor applied in any case.

(Article 45 of Ecuador constitution)³³ - Children and adolescents shall enjoy the rights that are common to all human beings, in addition to those that are specific to their age. The State shall recognize and guarantee life, including care and protection from the time of conception.

(Article 2 of Hungary constitution)³⁴- Human dignity shall be inviolable. Every human being shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception.

(Article 12 of Philippines constitution)³⁵ - The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception.

³¹ Constitution of Chile, 1980, art.19, 1980 (Chile)

³² Constitution of Dominican Republic, 2010, art.7, 2010 (Dominion Republic)

³³ Constitution of Ecuador, 2008, art.45, 2008 (Ecuador)

³⁴ Constitution of Hungary, 2011, art.2, 2011(Hungary)

³⁵ Constitution of Philippines, 1987, art.12, 1987(Philippines)

There are certain duties and obligations on the part of the doctor which have to be fulfilled and breach of which can lead to a cause of action of medical negligence against the doctor or concerned medical personnel. For a wider concern, apart from these tortious liabilities, the concerned medical personnel has also the obligation to uphold the basic human rights of the patients and medical negligence eventually give rise to breach of these rights which go beyond mere tortious liability breach and fall under the sphere of international human rights law. It's a clear violation of several fundamental human rights by a professional group who are actually on duty to protect when emergency strikes and the health rights are under threat.

Medical negligence is an issue of serious human rights concern that straightforwardly affects right to life and right to health and right to proper medical services. Liability for clinical mistake or negligence may likewise truly emerge as a breach of a patient's fundamental human rights. The relevant basic human rights of a patient should be borne as a main priority and securely protected, in course of the medical treatment and therapy by clinical experts. The patient's independence ought to likewise not be ignored by the doctors. The right of the patient to make final and conclusive decision about his medical care is very much perceived under the principle of patient's autonomy and also cherished in the fundamental human rights of people.

“Of all forms of inequality, injustice in health care is the most shocking and inhumane.”

PRAYER

We therefore in the light of facts presented, issues raised, arguments advanced and authorities cited, the Counsels on behalf of the Appellant humbly pray before this Hon'ble Court that it may be pleased to adjudge and declare that:

1. Stringent action be taken against the respondents
2. The license to practice of the respondents be cancelled

Or pass any other order that the court may deem fit in the light of equity, justice and good conscience and for this Act of kindness of Your Lordships the Appellant shall as duty bound ever pray.

VERIFICATION

TO WHOMSOEVER IT MAY CONCERN

This is to verify that the law applied, the authorities cited and arguments advance in the memorial is best of substantive and procedural knowledge of law by the appellant, and all the pleadings taken up by the counsel are fully acknowledged by him.

This verification is based on requirements of the moot court organized by Innovative Institute of Law.

TEAM CODE - IMC08

INNOVATIVE INSTITUTE OF LAW MOOT COURT COMPETITION 2019

IN THE MATTER OF

STATE OF MARATHA & OTHERS----- APPELLANT

MARATHA BUTCHERS' ASSOCIATION & OTHERS----- RESPONDENT

BEFORE THE HONORABLE HIGH COURT OF STATE OF MARATHA

WRITTEN SUBMISSION ON BEHALF OF THE RESPONDENTS

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2.	Supreme Court Cases
3.	JAMA Internal Medicine
4.	Harvard Women's Health Watch
5.	Indian Journal of Clinical Practice
6.	Medical News Today
7.	JSTOR
8.	Manupatra

C. DATABASE REFERRED

1.	www.aironline.in
2.	www.scconline.com
3.	indiankanoon.org
4.	www.jstor.org
5.	health.harvard.edu
6.	ojs.ijcp.in/IJCP
7.	www.medicalnewstoday.com

D. STATUTES REFERRED

1.	The Indian Penal Code, 1860
2.	The Consumer Protection Act, 2019
3.	Universal Declaration of Human Rights, 1948
4.	International Covenant on Civil and Political Rights, 1966
5.	The United Nations Convention on the Rights of Child, 1989

STATEMENT OF JURISDICTION

THE RESPONDENTS HUMBLY SUBMIT TO THE JURISDICTION OF THIS HON'BLE HIGH COURT OF STATE OF MARATHA UNDER ARTICLE 226 OF THE CONSTITUTION OF REPUBLIC OF INDIA.

¹ **Article 136.** Special leave to appeal by the Supreme Court

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

STATEMENT OF FACTS

1. The Republic of Indica is a democratic country with a written Constitution that came into force in 1950.
 2. The Constitution of Indica declares various rights as fundamental rights and also lays down Directive Principles of State Policy and Fundamental Duties.
 3. Article 48 of the Constitution directs the State to take steps to prohibit the slaughter of cows, calves, and other milch and draught cattle.
 4. In 1978, the State of Maratha enacted the Maratha Animal Preservation Act, 1978.
 5. In 1995, amendments were made to the 1978 Act, which received the President's assent in 2015 and came into force immediately.
 6. The Amendment Act of 1995 extended the ban on slaughter to bulls and bullocks, prohibited transport and sale of cattle for slaughter, criminalized possession of beef, and shifted the burden of proof to the accused.
 7. The amendments were enacted to fulfill the State's constitutional obligation under Article 48 and to protect the sentiments of the majority population.
 8. Writ petitions have been filed challenging the constitutional validity of the Amendment Act of 1995.
-

STATEMENT OF ISSUES

1. Whether the Maratha Animal Preservation (Amendment) Act, 1995 is in consonance with Article 48 of the Constitution?
2. Whether the Amendment Act violates the fundamental right to equality under Article 14 of the Constitution?
3. Whether the Amendment Act infringes upon the right to freedom of trade and profession under Article 19(1)(g) of the Constitution?
4. Whether the Amendment Act violates the right to life and personal liberty under Article 21 of the Constitution?
5. Whether the Amendment Act infringes upon the right to freedom of religion under Article 25 of the Constitution?

SUMMARY OF ARGUMENTS

QUES-1 WHETHER PRESCRIPTION WITHOUT DIAGNOSIS AND HENCE RESULTING IN THE DEATH OF THE FOETUS IN THE WOMB OF THE PATIENT IS CRIMINAL OR CIVIL NEGLIGENCE ON THE PART OF THE DOCTOR?

Ans. The council on behalf of respondent most humbly submits that the appeal filed under section- 304A is not maintainable. For proving negligence under the Criminal law, the prosecution must prove- that *there exists a duty, there was breach of the duty causing death and that breach to be characterised as gross negligence.* Respondents (Dr. Zee, Dr. Radha Raman and Hospital Authorities) performed their duties as per the required standard and there was no gross negligence on their part to hold them criminally liable.

QUES-2 WHETHER THE CASE RAISES THE ISSUE OF ETHICAL AND PROFESSIONAL NEGLIGENCE AS A SPECIALIST FAILED TO PERFORM HIS/HER DUTY WITH DUE CARE AND DILIGENCE?

Ans. It is humbly submitted that there is no proof of prima facie negligence on the part of the respondents. There was no ethical and professional negligence on the part of the respondents as they acted as per the reasonable standard and as any reasonable practitioner in that field would have acted. Further, no evidence has been found which shows that the death of foetus was due to the negligent act of the respondents as Dr. Zee prescribed the increased dosage of the medicine which was required at that time to treat the illness. Dr. Radha Raman and Dr. Zee gave the right treatment and medication respectively.

QUES-3 WHETHER INACCURACY IN DIAGNOSING AMOUNTS TO NEGLIGENCE COUPLED WITH INTENTION?

Ans. It is humbly submitted that there was no negligence coupled with intention on the part of the doctors. As intention in negligence simply means that the acting person is aware that occurrence of harm is possible and consents to the harm if it should occur. In the given facts, nowhere is mentioned that there was inaccuracy in diagnosis on the part of the respondents to hold them liable. There is no concrete proof or record which can fasten liability to the respondents for wrong diagnosis.

QUES-4 WHETHER NEGLIGENCE IN PERFORMING PROFESSIONAL DUTIES VIOLATES THE FUNDAMENTAL AND HUMAN RIGHTS ?

Ans. It is humbly submitted that negligence in performing professional duties does violate the fundamental and human rights, but in the present case no professional negligence can be attributed to the respondents. Hence, there is no violation of fundamental rights as well.

The patient Sudha Pradhan did not suffer any injury during the treatment so there was no violation of her right, the only loss she incurred was the death of her foetus, which is again no violation of fundamental right because a foetus has **no fundamental rights** in law.

ARGUMENTS ADVANCED

QUES-1 WHETHER PRESCRIPTION WITHOUT DIAGNOSIS AND HENCE RESULTING IN THE DEATH OF THE FOETUS IN THE WOMB OF THE PATIENT IS CRIMINAL OR CIVIL NEGLIGENCE ON THE PART OF THE DOCTOR?

Ans. It is humbly submitted that appeal filed under section- 304A² is not maintainable. Respondents (Dr. Radha Raman, Dr. Zee and Hospital Authorities) performed their duties as per the required standard and there was no gross negligence on their part.

Section 304A of the IPC - Causing death by negligence.— “Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

For proving negligence under the Criminal law, the prosecution must prove- that *there exists a duty, there was breach of the duty causing death and that breach to be characterised as gross negligence.*

In the case of ***Dr. Vishwanath ShivlingBirajdar v. Gangadhar Sangram Mitkari & Ors.*** on 7 March, 2014³, Para10- There are four basic elements to a medical negligence/ malpractice case. The four legal elements (4 Ds) must be proven by complainant to succeed in a medical negligence case.

- (1) Duty - a professional duty owed to the patient;
- (2) Deficiency / Breach of such Duty;
- (3) Direct Causation-injury caused by the breach (Causa Causans)
- (4) Resulting Damages.

²The Indian Penal Code, 1860, § 304A, No. 45, Acts of Parliament, 1860 (India).

³Dr. Vishwanath ShivlingBirajdar v. Gangadhar Sangram Mitkari & Ors., (2014).

To impose criminal liability under section-304A, it is necessary for the death to be a direct result of the negligent act of the doctor, and the act must be a proximate and efficient cause without the intervention of another's negligence.

In the instant case, the prosecution has not been able to establish a causal connection between the administration of overdose of medicine and the death of the foetus. There can be other reasons for the death of the foetus.

It was held in the case of *Kurban Hussein Mohammedali v. State of Maharashtra*⁴, "To impose criminal liability under Section 304A of IPC, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence."

Civil and Criminal Negligence

In order to constitute criminal negligence simple lack of care is not sufficient, the negligence must be of high degree to amount to an offence with the element of mens rea. "The essential ingredient of mens rea cannot be excluded from consideration when the charge in a criminal court consists of criminal negligence"- held in *Jacob Mathew's Case*.

In the case of *Jacob Mathew v. State of Punjab and Anr.*⁵, it was laid down by the Honourable Supreme court in context of Civil and Criminal liability in case of medical negligence - "Negligence as a tort and as a crime. The term 'negligence' is used for the purpose of fastening the defendant with liability under the Civil Law and, at times, under the Criminal Law. It is contended on behalf of the respondents that in both the jurisdictions, negligence is negligence, and jurisprudentially no distinction can be drawn between negligence under civil law and negligence under criminal law. The submission so made cannot be countenanced inasmuch as it is based upon a total departure from the established terrain of thought running ever since the beginning of the emergence of the concept of negligence upto the modern times. Generally speaking, it is the amount of damages incurred which is determinative of the extent of liability in tort; but in criminal law it is not the amount of damages but the amount and degree of negligence that is determinative of liability. To fasten liability in Criminal Law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in Civil Law.

⁴ *Kurban Hussein Mohammedali v. State of Maharashtra*, (1965) AIR 1616.

⁵ *Jacob Mathew v. State of Punjab and Anr.*, (2005) 6 SCC 1.

In the case of *Umesh Chandra Samal v. State of Bihar*⁶, the complainant's wife was suffering from ailment, she was firstly attended by Dr. Rasheed but there was no improvement in her health. Subsequently she went to Dr. Samal, who prescribed medicine but as there was no improvement, he advised to inject intravenous injection but still there was no sign of improvement. Dr. Samal advised to transfer her to Magadh hospital but due to unavailability of vacant bed at that time, she was not admitted and eventually she died. The complaint was filed against the doctor for negligence in treatment of the deceased but the order of cognizance was quashed as the negligence alleged was not of the nature to fasten criminal liability on the doctor.

In the case of *Dr. Mohd. Azam Hasin v. State of U.P.*⁷, it was held – “When a patient agrees to go for medical treatment or a surgical operation, every careless act of the medical man cannot be termed as "criminal". It can be termed "criminal" only when the medical man exhibits a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence.”

(The study, published online Oct. 3, 2022, by JAMA Internal Medicine, compared data from nearly 146,000 women who took antidepressants when pregnant with data from more than three million women who did not take these drugs during pregnancy. Unlike older studies — whose results were considered limited by various factors — the new analysis indicated antidepressant use during pregnancy wasn't linked to autism, attention deficit hyperactivity disorder, behaviour disorders, or problems with speech, language, learning, or coordination. The analysis showed that, not treating a mother's mental health disorder has been linked to serious problems, including stillbirth, premature birth, low birth weight, and poor bonding after birth)⁸.

The death of the foetus in the womb neither gives rise to civil nor criminal liability as Dr. Zee and Dr. Radha Raman already knew about Sudha's medical history. Sudha also went to her gynaecologist for regular checkup and advice, and according to her the increased dosage of the antidepressant drug would not have any adverse effect on the foetus. Also, when she conceived, the dose was doubled by Dr. Zee because he knew that non-treatment of

⁶ *Umesh Chandra Samal v. State of Bihar*, 2006 (1) PLJR 194.

⁷ *Dr. Mohd. Azam Hasin v. State of U.P.*, (2019)

⁸ Maureen Salamon, *Expectant mothers can rest easier about taking antidepressants*, HEALTH HARVARD EDUCATION (Nov. 21, 2023, 6:43 PM), <https://www.health.harvard.edu/womens-health/expectant-mothers-can-rest-easier-about-taking-antidepressants>

depression during pregnancy could have severely impacted the child and the mother. Further, Hospital authorities attended Sudha when she was suffering from acute abdominal pain, loss of bladder control and anxiety attacks (which happen in the normal course of pregnancy), without any lack of care and they provided the best possible treatment at that time. Hence, the facts of the case show no gross negligence on the part of any of the respondents.

QUES-2 WHETHER THE CASE RAISES THE ISSUE OF ETHICAL AND PROFESSIONAL NEGLIGENCE AS A SPECIALIST FAILED TO PERFORM HIS/HER DUTY WITH DUE CARE AND DILIGENCE?

Ans. A) It is humbly submitted that there is no proof of prima facie negligence on the part of the respondents. There was no ethical and professional negligence on the part of the respondents as they acted as per the reasonable standard and as any reasonable practitioner in that field would have acted.

Professional negligence is different from other kinds of negligence because its main focus is on a professional's duty of care when carrying out their work. Professional negligence occurs where a professional fails to perform one's responsibilities to the required standard. If you receive professional service, you expect the professional to exercise his duties with a reasonable degree of care or skill. When they don't, they may have failed in their duty of care. Professional negligence occurs when the standard of service the professional has provided, falls below the standard of care expected and carried out by similar professionals with the same skills and abilities.

Suppose while giving CPR to a patient with the intent of reviving him, the doctor applies pressure and the ribs of the patient break, he cannot hold the doctor liable for breaking his ribs. The ribs of the patient often get broken in the course of giving CPR. It does not mean he has not taken reasonable degree of care or skill.

Rupert M. Jackson and John L. Powell observed in *Indian Medical Association v. V.P. Shantha*⁹ that occupations which are regarded as professions have 4 characteristics, they are:
(1) The nature of the work is skilled and specialised, and a substantial part is mental than manual;

⁹ *Indian Medical Association v. V.P. Shantha*, (1996) AIR 550.

- (2) Commitment to moral principles which go beyond the general duty of honesty and a wider duty to community which may transcend the duty to a particular client or patient;
- (3) Professional association which regulates admission and seeks to uphold the standards of the profession through professional codes on matters of conduct and ethics; and
- (4) High status in the community.

On the point of professional medical negligence, there is a famous case mentioned below, which for the first time evolved a test to determine medical negligence. This test is known as the Bolam test and has gained worldwide acceptance and application by various countries including India.

THE BOLAM TEST

Bolam v. Friern Hospital Management Committee¹⁰

(Brief facts of the case)¹¹-The defendant was the body who employed a doctor who had not given a mentally-ill patient (the claimant) muscle-relaxant drugs nor restrained them prior to giving them electro-convulsive therapy. The claimant suffered injuries during the procedure.

MC Nair, J laid down the standard test that has been used to establish whether duty has been breached. He wrote in his judgement *“The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill: It is a well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art. In the case of a medical man, negligence means failure to act in accordance with the standards of reasonably competent medical men at the time. There may be one or more perfectly proper standards, and if he conforms with one of these proper standards, then he is not negligent.”*

Application of Bolam Test in other cases -

Dr. (Mrs.) Chanda Rani Akhouri & Ors. v. Dr. M.A. Methusethupathi & Ors.¹² - A simple lack of care, an error of judgement or an accident, is not proof of negligence on the part of a

¹⁰Bolam v. Friern Hospital Management Committee, (1957) 2 All ER 118.

¹¹Manupatra- Indian legal impetus, www.manupatra.com (last visited Nov. 15, 2023).

medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure.

The Court in the case of *Dr. Suresh Gupta v. Govt. of NCT of Delhi and Anr.*¹³ opined that the carelessness or want of due attention and skill cannot be described to be reckless or gross negligence as to make the doctor criminally liable. Thereby, any act performed in furtherance of lack of care even does not amount to criminal liability on the medical professionals.

Since no man is perfect in this world, it is evident that a person who is skilled and has knowledge over a particular subject can also commit mistakes during his practice.

If the doctor is giving the medicine and saying no harm will occur, then probably it won't. All the medicines can lead to harm in pregnancy but medicines have to be prescribed on the basis of risk v/s benefit ratio. Drugs play an important role in improving human health and promoting well-being. In general, drugs unless absolutely necessary should not be used during pregnancy because drugs taken by a pregnant woman can reach the foetus and harm it by crossing the placenta, but avoiding medications when pregnancy may be desirable, it is often not possible and may be dangerous because some women enter pregnancy with medical conditions that require ongoing and episodic treatment (eg. asthma, epilepsy, hypertension, insomnia, anxiety and depression).

The doctor takes every action in favour of the patient and there is no intention to kill, or cause harm to the patient. The act of the respondent was under **Medical Necessity**. It is pertinent to note that in the course of a medical treatment, if there is a medical emergency requiring a medical procedure or certain medication, the doctor can apply that procedure or administer that medicine to the patient, and is protected by the defence of medical necessity. It means that the doctor can proceed with the treatment and do whatever is necessary in the best interest of the patient.

In the instant case, when the patient's anxiety was not coming under control and anxiety attacks were happening frequently, the doctor had no option apart from increasing the dosage of medication, which he did not increase more than the permissible limit. It does not

¹²Dr. (Mrs.) Chanda Rani Akhouri&ors. v. Dr. M.A. Methusethupathi&ors., Civil Appeal No(s).6507 OF 2009.

¹³Dr. Suresh Gupta v. Govt. of NCT of Delhi and Anr., (2004) 6 SCC 422.

encumber any liability on the doctors as they proceeded for the best interest of the patient considering her mental health and delicate condition. The dose of medication was prescribed after consideration of the critical situation of the patient wherein delay might have resulted in further complications. Not increasing the dose would have exacerbated her mental health and would have caused more harm to the foetus, thereby resulting in more complications in pregnancy. The doctor did risk-benefit analysis and chose the lesser evil consequence.

Thus, we come to the conclusion that in the present case, the respondents cannot be held liable without applying the Bolam test. As per the given facts, Bolam test has not been applied and neither has any expert opinion been taken regarding the conduct of respondents. Further, no evidence has been found which shows that the death of foetus was due to the negligent act of the respondents as Dr. Zee prescribed the increased dosage of the medicine which was required at that time to treat the illness. Dr. Radha Raman and Dr. Zee gave the right treatment and medication respectively. No doctor would risk his patient's life unnecessarily. If the medicine, treatment or procedure produces undesired results on a patient, the doctor cannot be blamed because every body reacts differently to drugs. Hence the doctor is not responsible for the effect every drug has on every individual patient.

QUES-3 WHETHER INACCURACY IN DIAGNOSING AMOUNTS TO NEGLIGENCE COUPLED WITH INTENTION?

Ans. It is humbly submitted that there was no negligence coupled with intention on the part of the doctors. As intention in negligence simply means that the acting person is aware that occurrence of harm is possible and consents to the harm if it should occur. In the given facts, nowhere is mentioned that there was inaccuracy in diagnosis on the part of the respondents to hold them liable.

Diagnostic error, as defined by the National Academy of Medicine in 2015, is “the failure to
(a) establish an accurate and timely explanation of the patient's health problem or
(b) communicate that explanation to the patient.”

In the given facts, Mrs. Sudha Pradhan was informed about her health issues by the respondent and treatment for the same was going on. Further there was no abnormality found by Dr. Radha Raman during the course of Sudha's pregnancy.

(Wrong Diagnosis does not Amount to Medical Negligence: Supreme Court)¹⁴

In case of *Vinod Jain v. SantokbaDurlabhji Memorial Hospital &Anr.*¹⁵, the honourable Supreme Court dismissed an appeal filed by a man against order of the National Consumer Disputes Redressal Commission (NCDRC), which dismissed his complaint alleging medical negligence on the part of a hospital in the death of his wife. The bench comprising Justice *L. Nageswara Rao* and Justice *Sanjay Kishan Kaul* upheld the NCDRC order which had held that the case “would at best be a case of wrong diagnosis, but not medical negligence.”

The Apex Court discussed all the legal principles, namely *Bolam Test*, *Kusum Sharma &Ors. v. Batra Hospital & Medical Research Centre* and *Jacob Mathew v. State of Punjab*, while deciding the case.

In para 89 of the judgement in *Kusum Sharma &Ors*¹⁶, honourable Supreme Court laid down that while deciding whether the medical professional is guilty of medical negligence, following the well-known principles must be kept in view on the basis of scrutiny and on the basis of leading cases of medical negligence in our country and in other countries.

- a) “Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross, and not the negligence merely based upon an error of judgement.
- b) It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessarily harassed or humiliated so that they can perform their professional duties without fear and apprehension.
- c) The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurising the medical professionals/hospitals, particularly private hospitals or clinics, for extracting uncalled compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.
- d) The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.

¹⁴DR. KK AGGARWAL, INDIAN JOURNAL OF CLINICAL PRACTICE(Vol. 29, No. 10, March 2019).

¹⁵Vinod Jain v. SantokbaDurlabhji Memorial Hospital &Anr., (2019) Civil Appeal No. 2024 of 2019.

¹⁶Kusum Sharma &Ors. v. Batra Hospital & Medical Research Centre&Ors., (2010) 3 SCC 480.

- e) It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck.”

In the case of *Akash Dora v. Dr. Dinesh Sharma &Anr.*¹⁷, the complainant had alleged that he consulted the respondent doctor regarding the problem of squint in his left eye and for the removal of the said problem, he was operated upon by the doctor. But even after the operation, his problem did not subside and to the contrary, it increased. On consultation to various other doctors, they opined after examination that the concerned doctor had badly damaged the eye of the complainant and the same could not be cured. Learned counsel for the appellant argued that the concerned doctor had also adopted a wrong diagnosis in the treatment of the complainant.

The Court decided the case in favour of the respondents, stating “There is nothing on record to show that the concerned doctor did not exercise the skill possessed by him to the best of his ability and even the doctors consulted by the complainant have also confirmed that the line of treatment adopted by him in the case of the complainant was correct. The said doctors also prescribed the same medicines as prescribed by the concerned doctor, and there was no deviation from the prescribed line of treatment. We are of the definite view that no wrong diagnosis was done by the concerned doctor.”

In the case of *T. Rama Devi v. Sai Krishna Super Speciality Neuro Hospital*,¹⁸ the complainant was suffering from severe pain in her leg. She took treatment from the doctor (respondent 2) at the Sai Krishna Super speciality hospital (Respondent 1). During the course of treatment, the respondent changed the prescription. It was alleged that respondents were using trial and error method.

The contention given by respondents was that there was no wrong diagnosis or wrong treatment by them. It may be due to heavy bodily movements contrary to the advised bed rest, that the complainant might have been suffering with the said back ache and the same being aggravated, but not due to wrong treatment nor diagnosis by the opposite parties. Hence the complaint is liable to be dismissed with costs.

The court came to the conclusion that the complainant has not filed any evidence to prove that the treatment given by the doctor was not according to the established procedure. Except

¹⁷*Akash Dora v. Dr. Dinesh Sharma &Anr.*, (2012).

¹⁸*T. Rama Devi v. Sai Krishna Super Speciality Neuro Hospital*, (2014).

for making bald statements, the complainant did not place any legally acceptable evidence before the District Forum to come to a definite conclusion that there is negligence in treatment and wrong diagnosis on the part of the opposite parties. Absolutely there is no material on record to show that the doctor wrongly treated the complainant for pain in her leg.

In the instant case also, there is no concrete proof or record which can fasten liability to the respondents for wrong diagnosis.

Further, an article published in the *Medical News Today*¹⁹ shows that “most pregnancy losses are due to factors that the person cannot control. Early in pregnancy, genetic issues are a major cause of miscarriage. Around 80% of pregnancy losses occur during the first trimester, between 0 and 13 weeks”.

Also, some studies show that there are 5% chances of death in every case, even where the patient is healthy. So the doctor is not responsible if some patient reacts abnormally to the drug or treatment or is sensitive to it.

So, it can be concluded that there are some drugs that are safe in pregnancy which can be continued. And secondly there are risk-benefit ratios that doctors consider before giving any treatment. If the foetus survives the first trimester, it is considered that it will go through the complete pregnancy as well. Mostly first trimester abortions and miscarriages are common, and there are many other factors for miscarriage. The side-effects of any medication depend upon person to person, but it cannot be claimed that it happened because of wrong diagnosis and treatment by the doctor without having any concrete evidence or expert opinion. The doctor is not responsible for any particular effect. A doctor works in good faith and in the best interest of the patient even though it involves risk. In the present case, even if the patient, Mrs. Sudha Pradhan, would not be taking the drug then also she might have had some chances of miscarriage. It is very difficult to prove that the death of the foetus was caused due to that anti-depressant drug.

¹⁹Catherine McQueen, *What are the average miscarriage rates by week?*, MEDICAL NEWS TODAY (Nov. 21, 2023, 6:58 PM), <https://www.medicalnewstoday.com/articles/322634>.

It is unjustified to impose on those engaged in medical treatment, an undue degree of additional stress and anxiety in the conduct of their profession. Equally, it would be wrong to impose such stress and anxiety on any other person performing a demanding function in society. While expectations from the professionals must be realistic and the expected standards attainable, this implies recognition of the nature of ordinary human error and human limitations in the performance of complex tasks. There is no scope of intention on part of doctors in the medical profession, as doctors have nothing to gain but only to lose if they intentionally cause hurt or harm to patients.

QUES-4WHETHER NEGLIGENCE IN PERFORMING PROFESSIONAL DUTIES VIOLATES THE FUNDAMENTAL AND HUMAN RIGHTS ?

Ans. It is humbly submitted that negligence in performing professional duties does violate the fundamental and human rights, but in the present case no professional negligence can be attributed to the respondents. Hence, there is no violation of fundamental rights as well.

Human rights and medical ethics are parallel mechanisms, the former working at the sociopolitical level and the latter more at the level of the doctor-patient relationship. Human rights place a duty on the state and on healthcare providers to comply with minimum standards. Medical ethics place a duty on individual doctors to comply with parallel standards. Human rights and medical ethics are complementary, and use of the two together maximises the protection available to the vulnerable patients.

There has been a paradigm shift in the doctor-patient relationship over the years. Patients are becoming customers now which has created a trust deficit between doctors and patients. On part of patients, there is lack of faith and they see doctors as agents for minting money. That is why, they put the blame on doctors for every complication that arises in their case. Even if the doctor has tried his best to save the life of the patient and still the latter succumbs to the disease/ health issue, the relatives of the patient or so-called customers sue doctors in the court of law. Consequently, the fear of litigation leads to hesitancy in practice among doctors. Understanding the underlying causes of errors in medical care thus requires shifting from the traditional blaming approach to a more system-based thinking. Errors in healthcare should be attributed to poorly designed system structures and processes, not to human errors.

It is also pertinent to note that since healthcare and medical profession has come within the ambit of the Consumer Protection Act²⁰, there has been a rise in unnecessary claims for compensation which has resulted in frivolous litigation and plethora of cases registered against doctors.

Doctors remain on emergency duty 24 hours a day to save human lives and without those lives, fundamental rights have no existence. Sometimes, even if they fail in their duty that doesn't mean it is a violation of fundamental rights because no doctor will intentionally put human life at risk. Even if they are not able to save some lives, we cannot claim them to be negligent and it does not amount to violation of Fundamental rights, as doctors are equivalent to God but they are not God. Some things are beyond their control. They try their best to save the lives of patients and their every action is in favour of their patients.

In the leading case of *Martin F. D' Souza v. Mohd. Ishfaq*²¹, Para 113 of the judgement states, "While this Court has no sympathy for doctors who are negligent, it must also be said that frivolous complaints against doctors have increased by leaps and bounds in our country particularly after the medical profession was placed within the purview of the Consumer Protection Act.

To give an example, earlier when a patient who had a symptom of having a heart attack would come to a doctor, the doctor would immediately inject him with Morphine or Pethidine injection before sending him to the Cardiac Care Unit (CCU) because in cases of heart attack time is the essence of the matter. However, in some cases the patient died before he reached the hospital. After the medical profession was brought under the Consumer Protection Act vide *Indian Medical Association v. V.P. Shantha*²², doctors who administer the Morphine or Pethidine injection are often blamed and cases of medical negligence are filed against them. The result is that many doctors have stopped giving (even as family physicians) Morphine or Pethidine injection even in emergencies despite the fact that from the symptoms the doctor honestly thought that the patient was having a heart attack. This was out of fear that if the patient died, the doctor would have to face legal proceedings.

We, therefore, direct that whenever a complaint is received against a doctor or hospital by the Consumer Fora (whether District, State or National) or by the Criminal Court, then before

²⁰The Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).

²¹*Martin F. D' Souza v. Mohd. Ishfaq*, (2009) Civil Appeal No. 3541 OF 2002.

²²*Indian Medical Association v. V.P. Shantha*, 1995 (6) SCC 651.

issuing notice to the doctor or hospital against whom the complaint was made, the Consumer Forum or Criminal Court should first refer the matter to a competent doctor or committee of doctors, specialised in the field relating to which the medical negligence is attributed, and only after that doctor or committee reports that there is a prima facie case of medical negligence, should notice be then issued to the concerned doctor/hospital. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. We further warn the police officials not to arrest or harass doctors unless the facts clearly come within the parameters laid down in Jacob Mathew's case²³, otherwise the policemen will themselves have to face legal action.”

Even in the case of *Lalita Kumari v. Govt. of U.P.*,²⁴ hon'ble Supreme Court had laid down the circumstances in which registration of FIR is not mandatory and preliminary enquiry should be conducted to check the veracity of the information. These circumstances also include cases of medical negligence, which shows that even the hon'ble Supreme Court has recognized that many false and frivolous cases get reported against doctors and enquiry must be conducted before taking cognizance against doctors.

Role of doctors in patient education which strengthens the concept of Human Rights :

In addition to providing medical care, doctors play a vital role in patient education. They take the time to explain diagnoses, treatments and preventive measures, empowering individuals to make informed decisions about their health. By educating patients about their conditions, doctors promote active participation in their own well-being, enabling them to manage their health and prevent future illnesses. Through patient education, doctors contribute to the overall improvement of public health by fostering a culture of awareness and personal responsibility.

Doctors also serve as advocates for their patients. They strive to ensure that their patients' rights and needs are respected within the healthcare system. Doctors act as a voice for patients, communicating their concerns, wishes, and preferences to other healthcare professionals. They collaborate with multidisciplinary teams to coordinate care, advocate for improved healthcare policies, and address issues of social justice and healthcare disparities.

²³ Jacob Mathew v. State of Punjab and Anr., (2005) 6 SCC 1.

²⁴ Lalita Kumari v. Government of Uttar Pradesh, (2014) 2 SCC 1.

By advocating for equitable access to quality care, doctors work towards a more just and inclusive society.

In the given case, the facts show that Indiyana has the second largest population in the world, there is huge pressure on its healthcare workers and high disparity in doctor-patient ratio. Doctors are also human beings and there can be chances of error sometimes due to many circumstances but still doctors try their best to minimise every risk and protect the life of patients. Yet if a patient suffers any injury during the course of treatment and it results in infringement of fundamental rights of the patient, doctors can't be blamed unless prima facie gross negligence is shown on their part.

In the instant case, nowhere in the facts it is shown that there is violation of any fundamental right by any of the respondents. Sudha Pradhan did not suffer any injury during the treatment so there was no violation of her right, the only loss she incurred was the death of her foetus, which is again no violation of fundamental right because a foetus has **no fundamental rights** in law.

No fundamental rights to foetus -

In support of our argument, we have cited below some international statutes which throw light on human and fetal rights.

Universal Declaration of Human Rights²⁵- "All human beings are born free and equal in dignity and rights" (Art. 1)²⁶. Significantly, the word "born" was used intentionally to exclude the foetus from the definition of human rights. An amendment was proposed and rejected that would have deleted the word "born", in part, it was argued, to protect the right to life from the moment of conception. The Representative from France explained that the statement "All human beings are born free and equal..." meant that the right to freedom and equality was "inherent from the moment of birth". Article 1 was adopted with this language by 45 votes, with nine abstentions. Thus, a foetus has no rights under the Universal Declaration of Human Rights.

²⁵Rhonda Copelon Et. Al., *Human Rights Begin at Birth: International Law and the Claim of Fetal Rights*, Vol. 13, No. 26 JSTOR 120, 120-129 (2005), available at: <https://www.jstor.org/stable/3776483?seq=3>.

²⁶The Universal Declaration of Human Rights, 1948, § 1, Resolution 217 A (III) of 1948 (United Nations General Assembly).

The International Covenant on Civil and Political Rights (ICCPR)²⁷—The ICCPR likewise rejects the proposition that the right to life, protected in Article 6(1), applies before birth.

The Convention on the Rights of the Child(CRC)²⁸ - likewise, both the negotiations and the interpretation by its expert treaty body make it clear that the Convention on the Rights of the Child (CRC) does not recognise the right to life until birth.

Like the above-mentioned world laws, other world statutes and many countries' constitutions which deal with the concept of human rights, have not given rights to unborn children. Moreover, organogenesis (organ formation) of a foetus happens after the first trimester of pregnancy. Therefore, the countries which have given rights to a foetus, they are given after the foetus begins taking the shape of a human.

Thus, in reference to the instant case, we reiterate that there is no violation of any fundamental right by any of the respondents. The miscarriage of Sudha Pradhan is no violation of fundamental rights because a foetus has **no fundamental rights** in law.

"We have sympathy for the appellant, but sympathy cannot translate into a legal remedy."

²⁷ The International Covenant on Civil and Political Rights, 1966, § 6(1), Treaty Series 999, 171 (United Nations General Assembly).

²⁸ Convention on the Rights of the Child, 1989, Treaty Series 1577 (United Nations General Assembly).

PRAYER

We therefore in the light of facts presented, issues raised, arguments advanced and authorities cited, the Counsels on behalf of the Respondents humbly pray before this Hon'ble Court that it may be pleased to adjudge and declare that:

1. The appeal of the appellant be dismissed.

Or pass any other order that the court may deem fit in the light of equity, justice and good conscience and for this Act of kindness of Your Lordships the Respondents shall as duty bound ever pray.

VERIFICATION

TO WHOMSOEVER IT MAY CONCERN

This is to verify that the law applied, the authorities cited and arguments advance in the memorial is best of substantive and procedural knowledge of law by the respondents, and all the pleadings taken up by the counsel are fully acknowledged by him.

This verification is based on requirements of the moot court organized by Innovative Institute of Law.