



INNOVATIVE INTRA MOOT COURT COMPETITION

18th-19th DECEMBER

Organised By

INNOVATIVE INSTITUTE OF LAW

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

Contact Information

For any queries/clarifications:

Email: mcc@innovativeinstituteoflaw.com

Anand Singh

Faculty Convener : 9651499636

Rahul Singh

Faculty Co- Convener : 9289554476, 9289554475

Simran Singh

Student Convener : 9319314629

Arundhati Thakur

Student Co- Convener : 9891778222

AWARDS AND PRIZES

- ★ Winner: 21,000/- + Trophy + Certificate of Merit
- ★ Runner Up: 11,000/- + Trophy + Certificate of Merit
- ★ Best Speaker: 5000/- + Memento + Certificate of Merit
- ★ Best Memorial: 5000/- + Memento + Certificate
- ★ Best researcher: 5000/- + Memento + Certificate
- ★ All other participants shall receive participation certificate + Memento



Plot No. 6, Knowledge Park-II, Greater Noida - 201308. (Near Knowledge Park-II Metro Station)

Ph: 8800200053, 8800200051, 8800596847, 8800882073 | Toll Free:- 8448448851

Website - www.innovativeinstituteoflaw.com



INTRA-COLLEGE MOOT COURT COMPETITION

18th-19th DECEMBER

Organised 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-II, Greater Noida - 201308. (Near Knowledge Park-II Metro Station)

Ph: 8800200053, 8800200051, 8800596847, 8800882073 | Toll Free:- 8448448851

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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. There 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

2021-2022

MOOT PROBLEM (CRIMINAL LAW)

The Democratic Republic of *Amphissa* is situated in Asian Subcontinent. *Amphissais* a quasi-federal country comprised of 35 states with strong central Government. The Laws of *Amphissa* are in Pari-materia with the Laws of India. Pallaka is among one of the developed states of *Amphissa*. Michael and Jenny are citizen of *Amphissa*. They are resident of *Flemingo*, a small town of *Pallaka*.

On dated 25th feb.2008, Michael, aged 29, S/O- Late John, R/O- 54/3-New Ext. Apartment, Flemingo, and Jenny, Aged 24 yrs, D/O- Defrado, R/O- Greater Ango Colony, Flemingo, were married according to their religious rituals. Their marital life was going smoothly. On some occasions they used to have few verbal quarrels with each other but they reconciled soon after the verbal fight. Two years after the marriage Jenny gave birth to a baby girl on 4th September 2010. The girl was named as Jennifer. After few months of the birth of Jennifer, Jenny observed certain changes in the behaviour of Michael. Michael started behaving in a rude way and he usually becomes violent on every petty issue without any reason. Initially Jenny did not took the matter in a serious way but when the violent character of Michael continued Jenny took her husband Michael to the doctor Alfered (DW1), who was a psychiatrist. The doctor advised Michael to have control over anger and to take certain medicines. The doctor diagnosed him to be suffering from first stage of Bipolar Mood Disorder (Bipolar disorder, also known as manic-depressive illness, is a brain disorder that causes unusual shifts in mood, energy, activity levels, and the ability to carry out day-to-day tasks. There are four basic types of bipolar disorder; all of them involve clear changes in mood, energy, and activity levels).

In spite of the medical treatment the violent behaviour of Michael continued to exist. On slight issues Michael becomes violent and he also started to fight with Jenny and he also use to beat him without any reason. On dated 5th December 2010 at 11am, loud noise of fighting,

crying and shouting was coming from the house of Michael. On hearing the cry Daniel(PW3) who was neighbour of Michael went in the house of Michael and found Jenny lying unconscious on the floor pooled in blood with various injuries on her body. At that time Daniel saw Michael hiding a 7 inch Iron Axe in the garden. Thereafter Daniel called the police and Jenny was taken to government hospital whereby she was treated by Dr. Andrew (PW2). Michael was arrested by police on the same day and was kept in police custody. On 6th December, 2010 Jenny regained her consciousness and her statement was recorded by Jaison (PW1) SHO of Flemingo Police Station. In her statement she told to the police that on 5th December at 10 am Michael came home and started fighting with her in a violent way and when she resisted Michael attacked him with axe kept in the garden. On 8th December Jenny died because of the injury in her lower abdomen which proved fatal. Jennifer the daughter of Michael was sent to Government Child Care Centre.

On the basis of the statement of Daniel and the dying declaration of Jenny FIR was lodged against Michael vide. 733/2010 in Flemingo police station. Michael was prosecuted under Section 302 of IPC for the murder of Jenny. During interrogation Michael stated that he was unconscious at the time when Jenny was attacked. He told to police that when he regained his consciousness he found Jenny lying on the floor and axe in his hand. He told to the police that he did not know from where the axe came and he also stated that he did not know how Jenny died.

Final Report was submitted on 3rd Feb.2011 in which Michael was charged for murder of Jenny under Section 302 of IPC. The case (State of Pallaka vs. Michael) was tried by the Session Court vide Session Trial No-57/2011.

The prosecution examined the material witnesses in the court as under:-

Prosecution Witness 1 (PW1)- Jaison, SHO, Flemingo Police Station and Investigating Officer of the case deposed before the Court that the deceased Jenny in her dying declaration blamed Accused Michael for the attack over her. PW1 also deposed before the Court that the axe used for attack was recovered from the garden of Michael on which there was finger print of Michael as per forensic report.

Prosecution Witness 2 (PW)3- Dr. Andrew who treated the deceased deposed before the Court that the cause of death was due attack of the axe and the injury on abdomen proved to

be fatal. He also deposed that Jenny was in a mentally fit condition at the time of making dying declaration.

Prosecution Witness 3 (PW3)- Daniel who was neighbour of Michael and informant of the case in FIR deposed that he saw the unconscious body of Jenny on the floor and Michael trying to hide the axe in the garden.

The accused Michael took the plea that he was suffering from Bipolar Mood Disorder and for which he was being treated. He also stated that at the time when Deceased Jenny was attacked he was suffering from the disorder and he was out of his conscience and he did not know the nature of the act and therefore, he could not be made liable by virtue of Section 84 of IPC on ground of insanity.

The defence examined the material witnesses in the court as under:-

Defence Witness1 (DW1)- Dr.Alfered who was treating accused Michael for Bipolar Mood Disorder stated before the Court that accused Michael was suffering from Bipolar Mood Disorder and the disorder was sufficient to enable a person to do any violent act under its influence.

Defence Witness 2 (DW2)- Mathew brother of Michael who stated before the Court that on various occasions Michael was very much aggressive and violent even for slight reasons.


On 3rd September 2014 Michael was found guilty of intentional murder of Jenny and convicted under Section 302 IPC and sentenced to 10 years Rigorous Imprisonment.

The accused feeling aggrieved by the said judgment preferred an appeal before the High Court of Pallaka on dated 9th October 2014 vide Criminal Appeal No. 875/2014. The High Court relying on the version of the doctor treating the accused for Bipolar Mood Disorder found that the accused at the time of committing crime was suffering from both legal and medical insanity and accordingly the Court acquitted the accused from the charge of murder on dated 5th September 2016.

State of Pallaka preferred an appeal before the Supreme Court of *Amphissa* against the order of acquittal by the High Court of Pallaka on 17th of November 2016.

The case of *State of Pallaka vs. Michael* is listed before the Divisional Bench of Supreme Court of *Amphissa* for final hearing on 10th Jan.2017. The respective counsels are expected to submit their considerations on the following issues:-

1. *Whether sufficient ground of legal insanity exists so as to exonerate the accused from liability of murder.*
2. *Whether the burden of proof of legal insanity on the part of Defence is at par with burden of proof on part of Prosecution.*
3. *The parties may raise any other issue on the given facts to advance arguments upon.*



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Plot No.-6, Knowledge Park-2
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Dated: 01-12-2021

NOTICE

Dear Students,

We are pleased to announce to all the LLB & BA;LLB Students the commencement of the Intra Moot Court Competition scheduled for **18th-19th December 2021**. The competition will occur at the college venue in the **Moot Court Room on the ground floor**.

All BA LLB and LLB students are encouraged to participate in this prestigious competition. Interested students must register their names with the undersigned by **3rd December 2021**.

Further details regarding the competition schedule, rules, and evaluation criteria will be provided during the orientation session, which will be held on **18th and 19th December 2021 at 10: 00 am in the Moot Court Room**.

We look forward to your active participation and wish you the best of luck for the competition.

Principal

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Innovative Institute of Law
Plot No -6 Knowledge Park-2
Greater Noida-201308

Copy to...

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



REPORT ON INTRA MOOT COURT COMPETITION 2021-22

Introduction

The Innovative Institute of Law recently conducted its annual Intra Moot Court Competition on **18th & 19th December 2021**. The competition aimed to provide students with a platform to hone their advocacy skills, legal research abilities, and understanding of legal principles. This report highlights the key aspects and outcomes of the competition.

Participants

The competition saw enthusiastic participation from students across various batches and programs. Teams were composed of two members, with each team representing either the appellant or respondent in the moot court case.

Case and Problem

The moot court case for this year's competition was based on a contemporary legal issue, providing participants with a challenging scenario to analyze and argue. The problem was carefully crafted to test the participants' knowledge of law, ability to apply legal principles to real-life situations, and skills in oral advocacy and argumentation.

Preparation and Rounds

Prior to the competition, participating teams were required to prepare written submissions, including memorials for both sides of the case. These submissions were evaluated by a panel of judges to determine seeding for the oral rounds.

The competition consisted of several rounds, including preliminary rounds, quarter-finals, semi-finals, and the final round. Each round was judged by a panel of experienced legal professionals and faculty members who provided valuable feedback to the participants.



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Highlights and Achievements

The Intra Moot Court Competition provided an excellent opportunity for students to showcase their legal acumen and advocacy skills. Participants demonstrated impressive research abilities, understanding of legal principles, and eloquence in presenting arguments.

The final round of the competition was particularly intense, with the finalists delivering compelling arguments and responses to questions from the judges. The winning team displayed exceptional teamwork, legal reasoning, and courtroom demeanor, earning them the title of champions of the competition.

Conclusion

The Intra Moot Court Competition was a resounding success, providing participants with a platform to develop and showcase their legal skills. The competition not only enhanced the participants' understanding of the law but also fostered a spirit of healthy competition and camaraderie among students.



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INTRA MOOT COURT COMPETITION



VOTE OF THANKS BY DR. M. Pandey, PRINCIPAL



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INTRA MOOT COURT COMPETITION

INNOVATIVE INSTITUTE OF LAW

Team Registered For Intra Moot Court Competition

Team No	Speaker 1 Name	Speaker 1 Enrollment No	Speaker 2 Name	Speaker 2 Enrollment No	Researcher Name	Researcher Enrollment No
1	AARAV MISHRA	22402766	KAVYA SHARMA	22402767	RISHABH YADAV	22402768
2	PRIYA KUMARI	22402769	ADITYA RAWAT	22402770	TANVIR SINGH	22402771
3	NEHA AGARWAL	22402772	SHIVANSH SINGH	22402773	ARJUN NAGAR	22402774
4	RIA JAIN	22402775	AYUSH SHARMA	22402776	VISHAL YADAV	22402777
5	MEET GUPTA	22402778	PRIYAM VASHISTH	22402779	NIKHIL CHAURASIA	22402780
6	RAHUL MEHTA	22402781	SIMRAN KHAN	22402782	HARSHIT BAISYA	22402783
7	DISHA PANDEY	22402784	AVYAN TIWARI	22402785	SHREYA RAWAT	22402786
8	KARTIK KUMAR	22402787	RUPALI SHARMA	22402788	GYANENDRA SONI	22402789
9	SIDDHARTH NAYAK	22402790	ANJALI KUMAR	22402791	RANJEET YADAV	22402792
10	TANUSH KUMAR	22402793	NEHA SINGH	22402794	PRIYANSHI JAIN	22402795
11	DEVANSHI RAWAT	22402796	AKSHAT TRIPATHI	22402797	KAPIL AGGARWAL	22402798
12	SONAL SHARMA	22402799	RISHABH SHARMA	22402800	MANIKANT KUMAR	22402801
13	ANURAG SHARMA	22402802	ANKITA SINGH	22402803	SHUBHAM KUMAR	22402804
14	TANU BANSAL	22402805	PARTH GUPTA	22402806	AAKASH NAGAR	22402807
15	SHRIYA YADAV	22402808	SAMRAT JHA	22402809	JITENDRA MEHTA	22402810
16	RIDDHI GUPTA	22402811	ANIKET TRIPATHI	22402812	KUSHAL NAGAR	22402813
17	AYUSH GARG	22402814	DIYA KHAN	22402815	RONIT SHARMA	22402816
18	VARUN MEHRA	22402817	KOMAL AGARWAL	22402818	AMIT RAWAT	22402819

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INTRA MOOT COURT COMPETITION

REGISTRATION FORM

TEAM CODE: IMC-1



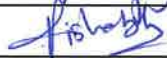
Participants Information:

- **1st Speaker**
 - Name: AARAV MISHRA
 - Enrollment No.: 22402766
- **2nd Speaker**
 - Name: KAVYA SHARMA
 - Enrollment No.: 22402767
- **3rd Researcher**
 - Name: RISHABH YADAV
 - Enrollment No.: 22402768

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.  (1st Speaker)
2.  (2nd Speaker)
3.  (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION

REGISTRATION FORM

TEAM CODE: IMC-2



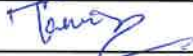
Participants Information:

- **1st Speaker**
 - Name: PRIYA KUMARI
 - Enrollment No.: 22402769
- **2nd Speaker**
 - Name: ADITYA RAWAT
 - Enrollment No.: 22402770
- **3rd Researcher**
 - Name: TANVIR SINGH
 - Enrollment No.: 22402771

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.  _____ (1st Speaker)
2.  _____ (2nd Speaker)
3.  _____ (3rd Researcher)

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INTRA MOOT COURT COMPETITION

REGISTRATION FORM

TEAM CODE: IMC-3

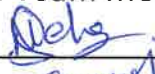
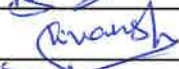

Participants Information:

- **1st Speaker**
 - Name: NEHA AGARWAL
 - Enrollment No.: 22402772
- **2nd Speaker**
 - Name: SHIVANSH SINGH
 - Enrollment No.: 22402773
- **3rd Researcher**
 - Name: ARJUN NAGAR
 - Enrollment No.: 22402774

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.  (1st Speaker)
 2.  (2nd Speaker)
 3.  (3rd Researcher)
-

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION

REGISTRATION FORM

TEAM CODE: IMC-4

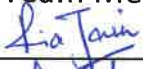
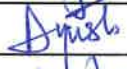
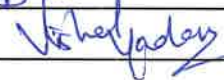
Participants Information:

- **1st Speaker**
 - Name: RIA JAIN
 - Enrollment No.: 22402775
- **2nd Speaker**
 - Name: AYUSH SHARMA
 - Enrollment No.: 22402776
- **3rd Researcher**
 - Name: VISHAL YADAV
 - Enrollment No.: 22402777

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.  (1st Speaker)
2.  (2nd Speaker)
3.  (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION

REGISTRATION FORM

TEAM CODE: IMC-5

Participants Information:

- **1st Speaker**
 - Name: MEET GUPTA
 - Enrollment No.: 22402778
- **2nd Speaker**
 - Name: PRIYAM VASHISTH
 - Enrollment No.: 22402779
- **3rd Researcher**
 - Name: NIKHIL CHAURASIA
 - Enrollment No.: 22402780

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. Meet (1st Speaker)
2. Priyam (2nd Speaker)
3. Nikhil (3rd Researcher)

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INTRA MOOT COURT COMPETITION

REGISTRATION FORM

TEAM CODE: IMC-6

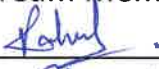
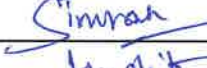

Participants Information:

- **1st Speaker**
 - Name: RAHUL MEHTA
 - Enrollment No.: 22402781
- **2nd Speaker**
 - Name: SIMRAN KHAN
 - Enrollment No.: 22402782
- **3rd Researcher**
 - Name: HARSHIT BAISYA
 - Enrollment No.: 22402783

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.  (1st Speaker)
2.  (2nd Speaker)
3.  (3rd Researcher)

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INTRA MOOT COURT COMPETITION REGISTRATION FORM

TEAM CODE: IMC-7

Participants Information:

- **1st Speaker**
 - Name: DISHA PANDEY
 - Enrollment No.: 22402784
- **2nd Speaker**
 - Name: AVYAN TIWARI
 - Enrollment No.: 22402785
- **3rd Researcher**
 - Name: SHREYA RAWAT
 - Enrollment No.: 22402786

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. _____ (1st Speaker)
2. _____ (2nd Speaker)
3. _____ (3rd Researcher)

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INTRA MOOT COURT COMPETITION

REGISTRATION FORM

TEAM CODE: IMC-8

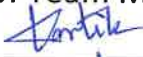
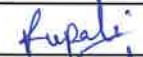
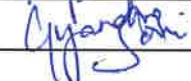
Participants Information:

- **1st Speaker**
 - Name: KARTIK KUMAR
 - Enrollment No.: 22402787
- **2nd Speaker**
 - Name: RUPALI SHARMA
 - Enrollment No.: 22402788
- **3rd Researcher**
 - Name: GYANENDRA SONI
 - Enrollment No.: 22402789

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.  (1st Speaker)
2.  (2nd Speaker)
3.  (3rd Researcher)

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INTRA MOOT COURT COMPETITION REGISTRATION FORM

TEAM CODE: IMC-9

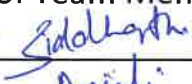
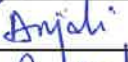
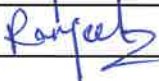
Participants Information:

- **1st Speaker**
 - Name: SIDDHARTH NAYAK
 - Enrollment No.: 22402790
- **2nd Speaker**
 - Name: ANJALI KUMAR
 - Enrollment No.: 22402791
- **3rd Researcher**
 - Name: RANJEET YADAV
 - Enrollment No.: 22402792

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.  (1st Speaker)
2.  (2nd Speaker)
3.  (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION REGISTRATION FORM

TEAM CODE: IMC-10

Participants Information:

- **1st Speaker**
 - Name: TANUSH KUMAR
 - Enrollment No.: 22402793
- **2nd Speaker**
 - Name: NEHA SINGH
 - Enrollment No.: 22402794
- **3rd Researcher**
 - Name: PRIYANSHI JAIN
 - Enrollment No.: 22402795

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. Tanush (1st Speaker)
2. Neha (2nd Speaker)
3. Priyanshi (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION REGISTRATION FORM

TEAM CODE: IMC-11

Participants Information:

- **1st Speaker**
 - Name: DEVANSHI RAWAT
 - Enrollment No.: 22402796
- **2nd Speaker**
 - Name: AKSHAT TRIPATHI
 - Enrollment No.: 22402797
- **3rd Researcher**
 - Name: KAPIL AGGARWAL
 - Enrollment No.: 22402798

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. Devanshi (1st Speaker)
2. Akshat (2nd Speaker)
3. Kapil (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION

REGISTRATION FORM

TEAM CODE: IMC-12

Participants Information:

- **1st Speaker**
 - Name: SONAL SHARMA
 - Enrollment No.: 22402799
- **2nd Speaker**
 - Name: RISHABH SHARMA
 - Enrollment No.: 22402800
- **3rd Researcher**
 - Name: MANIKANT KUMAR
 - Enrollment No.: 22402801

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. Sonal (1st Speaker)
2. Rishabh (2nd Speaker)
3. Manikant (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION REGISTRATION FORM

TEAM CODE: IMC-13

Participants Information:

- **1st Speaker**
 - Name: ANURAG SHARMA
 - Enrollment No.: 22402802
- **2nd Speaker**
 - Name: ANKITA SINGH
 - Enrollment No.: 22402803
- **3rd Researcher**
 - Name: SHUBHAM KUMAR
 - Enrollment No.: 22402804

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. Anurag (1st Speaker)
2. Ankita (2nd Speaker)
3. Shubham (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION REGISTRATION FORM

TEAM CODE: IMC-14

Participants Information:

- **1st Speaker**
 - Name: TANU BANSAL
 - Enrollment No.: 22402805
- **2nd Speaker**
 - Name: PARTH GUPTA
 - Enrollment No.: 22402806
- **3rd Researcher**
 - Name: AAKASH NAGAR
 - Enrollment No.: 22402807

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. Tanu (1st Speaker)
2. Parth (2nd Speaker)
3. Aakash (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION

REGISTRATION FORM

TEAM CODE: IMC-15

Participants Information:

- **1st Speaker**
 - Name: SHRIYA YADAV
 - Enrollment No.: 22402808
- **2nd Speaker**
 - Name: SAMRAT JHA
 - Enrollment No.: 22402809
- **3rd Researcher**
 - Name: JITENDRA MEHTA
 - Enrollment No.: 22402810

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. Shriya (1st Speaker)
2. Samrat (2nd Speaker)
3. Jitendra (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION REGISTRATION FORM

TEAM CODE: IMC-16




Participants Information:

- **1st Speaker**
 - Name: RIDDHI GUPTA
 - Enrollment No.: 22402811
- **2nd Speaker**
 - Name: ANIKET TRIPATHI
 - Enrollment No.: 22402812
- **3rd Researcher**
 - Name: KUSHAL NAGAR
 - Enrollment No.: 22402813

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.  _____ (1st Speaker)
2.  _____ (2nd Speaker)
3.  _____ (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION REGISTRATION FORM

TEAM CODE: IMC-17



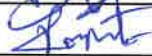
Participants Information:

- **1st Speaker**
 - Name: AYUSH GARG
 - Enrollment No.: 22402814
- **2nd Speaker**
 - Name: DIYA KHAN
 - Enrollment No.: 22402815
- **3rd Researcher**
 - Name: RONIT SHARMA
 - Enrollment No.: 22402816

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.  (1st Speaker)
2.  (2nd Speaker)
3.  (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION REGISTRATION FORM

TEAM CODE: IMC-18

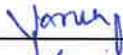


Participants Information:

- **1st Speaker**
 - Name: VARUN MEHRA
 - Enrollment No.: 22402817
- **2nd Speaker**
 - Name: KOMAL AGARWAL
 - Enrollment No.: 22402818
- **3rd Researcher**
 - Name: AMIT RAWAT
 - Enrollment No.: 22402819

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.  _____ (1st Speaker)
2.  _____ (2nd Speaker)
3.  _____ (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW INTRA MOOT COURT COMPETITION

The Innovative Institute of Law is proud to host its annual Intra Moot Court Competition, providing an invaluable opportunity for students to develop their advocacy skills, legal reasoning, and public speaking abilities. This competition is designed to simulate real-world legal proceedings, allowing participants to engage in rigorous debate and critical analysis of legal issues. The primary objective of the preliminary round is to assess the participants' abilities to present their arguments clearly and persuasively while adhering to the procedural rules of a moot court. This round will lay the foundation for the subsequent rounds, where the best-performing teams will advance.

Random Pairing Matrix

Matrix

Petitioner	Respondent
IMC 1	IMC 3
IMC 2	IMC 4
IMC 5	IMC 7
IMC 6	IMC 8
IMC 9	IMC 10
IMC 11	IMC 13
IMC 12	IMC 14
IMC 15	IMC 17
IMC 16	IMC 18

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

JUDGE NAME - Prof. Shreya Banerjee.

TEAM CODES- IMC1 And IMC3

Marking Matrix for Preliminary Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	19	12	
Argumentation and Reasoning	30	14	13	
Oral Advocacy Skills	20	12	14	
Response to Questions	20	16	15	
Written Submissions	10	04	06	
Total	100	65	60	


SIGNATURE

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

JUDGE NAME - *Dr. Ravi Gupta*

TEAM CODES- *IMC-2 And IMC 4*

Marking Matrix for Preliminary Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	19	16	
Argumentation and Reasoning	30	13	12	
Oral Advocacy Skills	20	14	10	
Response to Questions	20	04	03	
Written Submissions	10	02	10	
Total	100	52	51	

Dr. Ravi Gupta
SIGNATURE

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

JUDGE NAME - Prof. Priyanka Sethi

TEAM CODES- IMC-5 And IMC 7

Marking Matrix for Preliminary Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	13	14	
Argumentation and Reasoning	30	16	16	
Oral Advocacy Skills	20	14	17	
Response to Questions	20	07	05	
Written Submissions	10	03	02	
Total	100	53	54	

SIGNATURE

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

JUDGE NAME - *Dr. Sanjay Joshi*

TEAM CODES- *IME-6 And IME-8*

Marking Matrix for Preliminary Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	18	19	
Argumentation and Reasoning	30	16	14	
Oral Advocacy Skills	20	17	12	
Response to Questions	20	05	04	
Written Submissions	10	09	10	
Total	100	65	59	

Dr. Sanjay Joshi

SIGNATURE

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

JUDGE NAME - Prof. Akash Thakur

TEAM CODES- IMC-9 And IMC-10

Marking Matrix for Preliminary Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	19	17	
Argumentation and Reasoning	30	18	16	
Oral Advocacy Skills	20	20	19	
Response to Questions	20	04	03	
Written Submissions	10	04	10	
Total	100	65	65	


SIGNATURE

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

JUDGE NAME - *Dr. Rani Kapoor*

TEAM CODES - *IMC 11 And 13*

Marking Matrix for Preliminary Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	16	17	
Argumentation and Reasoning	30	12	16	
Oral Advocacy Skills	20	13	12	
Response to Questions	20	01	03	
Written Submissions	10	10	09	
Total	100	52	57	

Dr. Rani Kapoor

SIGNATURE

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

JUDGE NAME - Prof. Rahul Joshi

TEAM CODES- IMC 12 And 14.

Marking Matrix for Preliminary Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	14	13	
Argumentation and Reasoning	30	12	12	
Oral Advocacy Skills	20	15	14	
Response to Questions	20	03	02	
Written Submissions	10	09	10	
Total	100	53	51	


SIGNATURE

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

JUDGE NAME - *Dr. Simran Khanna*

TEAM CODES- *IMC-15 Amd 17*

Marking Matrix for Preliminary Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	<i>16</i>	<i>19</i>	
Argumentation and Reasoning	30	<i>17</i>	<i>12</i>	
Oral Advocacy Skills	20	<i>16</i>	<i>14</i>	
Response to Questions	20	<i>06</i>	<i>02</i>	
Written Submissions	10	<i>04</i>	<i>03</i>	
Total	100	<i>59</i>	<i>50</i>	


SIGNATURE

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

JUDGE NAME - Prof. Vaman Bansal

TEAM CODES- IMC-18 Amd 16.

Marking Matrix for Preliminary Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	19	19	
Argumentation and Reasoning	30	18	12	
Oral Advocacy Skills	20	16	15	
Response to Questions	20	13	14	
Written Submissions	10	04	02	
Total	100	70	62	



SIGNATURE



Preliminary round



Preliminary round

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

The Innovative Institute of Law is pleased to announce the semi-final round of the Intra Moot Court Competition. Following a highly competitive preliminary round, the selected teams will advance to this critical stage, where they will demonstrate their advocacy skills and legal acumen.

Semi-Final Round Matrix

Matchup	Petitioner	Respondent
1	IMC 18	IMC 14
2	IMC 12	IMC 5
3	IMC 3	IMC 9

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

JUDGE NAME - *Dr. Pallavi Saxena*

TEAM CODES- *IMC-18 And IMC14*

Marking Matrix for Semifinal Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	<i>19</i>	<i>16</i>	
Argumentation and Reasoning	30	<i>20</i>	<i>17</i>	
Oral Advocacy Skills	20	<i>18</i>	<i>15</i>	
Response to Questions	20	<i>12</i>	<i>12</i>	
Written Submissions	10	<i>09</i>	<i>02</i>	
Total	100	<i>78</i>	<i>62</i>	

Pallavi
SIGNATURE

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

JUDGE NAME - Prof. Neelam Yadav

TEAM CODES- IMC 12 And IMC 5

Marking Matrix for Semifinal Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	20	14	
Argumentation and Reasoning	30	19	12	
Oral Advocacy Skills	20	18	16	
Response to Questions	20	20	12	
Written Submissions	10	09	04	
Total	100	86	58	



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

JUDGE NAME - Dr. Gaurav Deshmukh

TEAM CODES- IMC-3 And IMC-9

Marking Matrix for Semifinal Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	12	11	
Argumentation and Reasoning	30	13	14	
Oral Advocacy Skills	20	16	12	
Response to Questions	20	10	09	
Written Submissions	10	04	03	
Total	100	55	49	



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Semi-Final Round



Semi-Final Round

INNOVATIVE INSTITUTE OF LAW INTRA MOOT COURT COMPETITION

The Innovative Institute of Law is thrilled to announce the final round of the Intra Moot Court Competition. This prestigious event highlights the culmination of hard work, dedication, and legal prowess demonstrated by our talented participants throughout the competition. After an intense semi-final round, we are proud to present the teams that have advanced to the finals.

Selection of Teams for the Final Round

Following rigorous evaluations by our esteemed panel of judges, the following teams have qualified for the final round based on their exceptional performances and exemplary advocacy skills; These teams have distinguished themselves through their comprehensive understanding of legal principles, compelling argumentation, and effective courtroom presence. Their journey through the preliminary and semi-final rounds has showcased their ability to engage with complex legal issues and respond adeptly to challenging questions.

	Petitioner	Respondent
1	IMC 12	IMC 18

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

JUDGE NAME - *Dr. Rishabh Menon*

TEAM CODES- *IMC-12 And IMC 18*

Marking Matrix for final Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	<i>20</i>	<i>16</i>	
Argumentation and Reasoning	30	<i>19</i>	<i>17</i>	
Oral Advocacy Skills	20	<i>17</i>	<i>16</i>	
Response to Questions	20	<i>10</i>	<i>08</i>	
Written Submissions	10	<i>10</i>	<i>06</i>	
Total	100	<i>76</i>	<i>63</i>	


SIGNATURE

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INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION

RESEARCHER TEST

TEAM CODE -

1. "Equity" in legal terms refers to:
 - A) Fairness and justice applied in legal proceedings
 - B) A type of property ownership
 - C) A financial investment
 - D) Statutory law
2. The "burden of proof" typically lies with:
 - A) The defendant in a civil case
 - B) The plaintiff in a civil case
 - C) The judge
 - D) The jury
3. The "Supremacy Clause" establishes:
 - A) The power of state laws over federal laws
 - B) The Constitution as the highest law of the land
 - C) The division of powers among branches of government
 - D) The right to a fair trial
4. Which of the following amendments abolished slavery?
 - A) Twelfth Amendment
 - B) Thirteenth Amendment
 - C) Fourteenth Amendment
 - D) Fifteenth Amendment
5. "Manslaughter" is generally defined as:
 - A) Intentional killing with premeditation
 - B) Unintentional killing due to reckless behavior
 - C) Killing in self-defense
 - D) Killing a police officer
6. A "search warrant" is required to:
 - A) Arrest someone
 - B) Conduct a search of private property
 - C) Interrogate a suspect
 - D) Issue a subpoena
7. A "written contract" is generally preferred because:
 - A) It is easier to enforce in court
 - B) It requires no signatures
 - C) It does not need to be dated
 - D) It is always legally binding
8. A "non-disclosure agreement" (NDA) is used to:
 - A) Transfer ownership of property
 - B) Keep sensitive information confidential
 - C) Grant permission to use someone's likeness
 - D) Settle a dispute

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION

RESEARCHER TEST

9. "Vicarious liability" means:

- B) Liability is shared among multiple parties
- A) One party is liable for the actions of another
 - C) Liability is limited to financial damages
 - D) Only intentional acts are considered

10. Which of the following is NOT a type of tort?

- A) Intentional tort
- B) Negligence
- C) Strict liability
- D) Criminal tort

11. "Zoning laws" are designed to:

- B) Regulate land use and development
- A) Control property taxes
- C) Protect historical landmarks
- D) Determine property values

12. A "leasehold estate" refers to:

- B) Rental agreement for a specific duration
- A) Ownership of property
- C) Government-owned land
- D) Property that is willed to someone

13. "Joint custody" means:

- B) Both parents share legal and physical custody of a child
- A) Only one parent has legal rights
- C) A child lives primarily with one parent
- D) Custody is granted to a grandparent

14. In a divorce, "equitable distribution" refers to:

- A) Equal division of all assets
- B) Fair division based on circumstances
 - C) Property division based on who earned it
 - D) Only dividing debts

15. "Judicial review" allows courts to:

- B) Review the legality of administrative actions
- A) Create new laws
- C) Enforce regulations
- D) Overrule Congress

16. The Administrative Procedure Act (APA) governs:

- B) The processes of federal agencies
- A) Judicial proceedings
- C) Criminal law procedures
- D) State laws only

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION

RESEARCHER TEST

17. "Customary international law" is formed by:
- A) Treaties signed by nations
 - B) Practices that are accepted as legally binding
 - C) Legislative acts of individual countries
 - D) Judicial decisions
18. The International Criminal Court (ICC) primarily deals with:
- A) Trade disputes
 - B) Human rights violations and war crimes
 - C) Environmental issues
 - D) Commercial disputes
19. "Trademark" protection is intended to:
- A) Protect inventions
 - B) Protect brand names and logos
 - C) Protect artistic works
 - D) Protect trade secrets
20. The duration of copyright protection is typically:
- A) 10 years
 - B) Life of the author plus 70 years
 - C) Indefinite
 - D) 20 years from publication
21. The Family and Medical Leave Act (FMLA) provides employees with:
- A) Paid leave for any reason
 - B) Unpaid leave for certain family and medical reasons
 - C) Job security in all cases
 - D) Unlimited leave
22. The Age Discrimination in Employment Act (ADEA) protects individuals:
- A) Over 40 years of age
 - B) Under 18 years of age
 - C) Between 30 and 50 years of age
 - D) All age groups
23. The Endangered Species Act (ESA) aims to:
- A) Regulate air quality
 - B) Protect species at risk of extinction
 - C) Manage land use
 - D) Control pollution
24. The Clean Water Act regulates:
- A) Air pollution
 - B) Discharge of pollutants into U.S. waters
 - C) Waste management
 - D) Chemical safety

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION

RESEARCHER TEST

25. A "limited liability company" (LLC) combines characteristics of:

- A) Sole proprietorships and corporations
- B) Partnerships and corporations
- C) Non-profits and partnerships
- D) Sole proprietorships and non-profits

26. "Corporate governance" refers to:

- A) The process of managing employee relations
- B) The system of rules and practices governing a corporation
- C) The financial management of a business
- D) Tax compliance strategies

27. The term "admissible evidence" refers to:

- A) Evidence that can be used in court
- B) Evidence that is irrelevant
- C) Evidence obtained illegally
- D) Hearsay evidence

28. "Expert testimony" is typically used to:

- A) Provide opinion based on specialized knowledge
- B) Prove the character of a defendant
- C) Present factual evidence only
- D) Testify about witness credibility

29. A "conflict of interest" occurs when:

- A) An attorney represents multiple clients in the same matter
- B) An attorney works with law enforcement
- C) An attorney fails to disclose fees
- D) An attorney provides legal advice

30. The term "pro bono" refers to:

- A) Paid legal services
- B) Legal services provided for free
- C) Services offered to government entities
- D) Specialized legal services

31. "Facilitative mediation" focuses on:

- A) Imposing a solution
- B) Helping parties communicate and negotiate
- C) Legal representation of one party
- D) Formal arbitration

32. In "collaborative law," the focus is on:

- A) Winning at all costs
- B) Cooperative problem-solving among parties
- C) Litigation
- D) Confidentiality

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION

RESEARCHER TEST

33. "Cookies" in the context of internet law refer to:
- A) Computer programs that collect data
 - B) Text files stored on a user's computer to track activity ✓
 - C) Malware
 - D) Phishing techniques
34. The General Data Protection Regulation (GDPR) is a law in:
- A) The United States
 - B) The European Union ✓
 - C) Canada
 - D) Australia
35. The Fair Debt Collection Practices Act (FDCPA) regulates:
- A) Credit reporting
 - B) Debt collection practices ✓
 - C) Bankruptcy filings
 - D) Lending rates
36. "Bait and switch" is a type of:
- A) Legitimate advertising
 - B) Deceptive marketing practice ✓
 - C) Product placement
 - D) Consumer education
37. "Secured debt" is:
- A) Debt without collateral
 - B) Debt backed by collateral ✓
 - C) Debt discharged in bankruptcy
 - D) Unsecured loans
38. A "creditor" is:
- A) A person or entity to whom money is owed ✓
 - B) A borrower
 - C) A third-party mediator
 - D) A financial advisor
39. "Market manipulation" refers to:
- A) Legitimate trading practices
 - B) Artificially inflating or deflating stock prices ✓
 - C) Buying low and selling high
 - D) Insider trading
40. The Securities and Exchange Commission (SEC) regulates:
- A) International trade
 - B) Securities markets and protects investors ✓
 - C) Consumer products
 - D) Environmental regulations

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION

RESEARCHER TEST

41. "Naturalization" is the process of:
- A) Granting temporary visas
 - B) Becoming a citizen of a country
 - C) Deportation
 - D) Granting asylum
42. A "visa" is:
- A) Permanent residency status
 - B) Permission to enter a foreign country for a specific purpose
 - C) A type of work permit
 - D) Citizenship application
43. "Discrimination" is defined as:
- A) Treating everyone the same
 - B) Unequal treatment based on certain characteristics
 - C) Promoting equal rights
 - D) Ensuring access to public services
44. The Convention on the Rights of the Child (CRC) aims to:
- A) Protect children's economic rights
 - B) Ensure children's rights to education, health, and protection from abuse
 - C) Promote children's rights to work
 - D) Regulate child labor
45. "Child custody" decisions are typically made based on:
- A) Parental income
 - B) The child's best interests
 - C) Each parent's job status
 - D) Family history
46. A "divorce decree" is:
- A) A legal separation agreement
 - B) The final judgment in a divorce case
 - C) A request for mediation
 - D) A temporary custody order
47. "Capital gains" are:
- A) Income earned from employment
 - B) Profits from the sale of an asset
 - C) Tax deductions
 - D) Business revenue
48. The "IRS" stands for:
- A) International Revenue Service
 - B) Internal Revenue Service
 - C) Internal Revenue System
 - D) Investment Revenue Service

INNOVATIVE INSTITUTE OF LAW

INTRA MOOT COURT COMPETITION

RESEARCHER TEST

49. A "subpoena" is:

- A) A request for a lawyer
- B) A court order requiring a witness to testify
- C) An arrest warrant
- D) A plea agreement

50. "Plea bargaining" is:

- A) A method of jury selection
- B) Negotiation between the defendant and prosecutor to resolve a case
- C) The process of going to trial
- D) An appeal of a conviction

INNOVATIVE INSTITUTE OF LAW MOOT COURT COMPETITION 2021-22

IN THE MATTER OF

STATE OF PALLAKA-----APPELLANT

MICHAEL ..----- RESPONDENT

BEFORE THE HONOURABLE SUPREME COURT OF AMPHISSA

WRITTEN SUBMISSION ON BEHALF OF THE APPELLANT

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2.	The Consumer Protection Act, 2019
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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 multifold.

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 Bapu 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 Bapu 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 tortious 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 Meadown 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 Meadown 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.

INNOVATIVE INSTITUTE OF LAW MOOT COURT COMPETITION 2021-22

IN THE MATTER OF

STATE OF PALLAKA ----- APPELLANT

MICHAEL ----- RESPONDENT

BEFORE THE HONORABLE SUPREME COURT OF AMPHISSA

WRITTEN SUBMISSION ON BEHALF OF THE RESPONDENTS

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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.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 APPELLANT HAS APPROACHED THIS HONARABLE SUPREME COURT OF INDIYANA UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIYANA.¹

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. Indiyana is a country having the largest population in the world. Uppar Parihar is the most populated state of the Indiyana. The Ministry of health and family welfare demanded the ICMR to study the Ratio of doctors, vis-a via patients undergoing treatment for mental illness in the Uppar Parihar. In the report, it was found that, there is high disparity in the doctors and patients ratio and increased impact of the over dose or negligent use of antidepressant drug on other medication.

2. On 9 Dec 2018 Ministry of Health and family welfare with other officials framed guidelines for doctors that They should give prescription after a complete and through diagnosis of the patient and it was also directed that, it will be duty of the doctors to examine a patient medical history and ongoing medication before giving a prescription and doctor will give minimum consultation time to each patient. These guidelines were also published in a popular newspaper of the Indiyana.

3. After reading the news items, Partho Pradhan, husband of Sudha Pradhan contacted to Sudha's Dr. Radha Ramana (gynecologist) about her nine weeks pregnancy and undergoing Treatment for anxiety and insomnia, then he advised that antidepressant drugs would not Cause any bad effect on foetus. On 15 Dec, she had anxiety attack. Her husband contacted To Dr.Zee (Sudha' psychiatrist) who was on a tour for 20 days, he advised that she should Continue the prescribed dosage. and instead of referring her to another Dr. he suggested to continue medication for another 15 days.

4. On, Dec 22, she became unconscious because of Abdominal pain and dizziness but her dosage of antidepressant was increased by dr. Zee. On, Jan 9, Dr. RadhaRamana called her for ultrasound, ultrasound report was done, But it was not verified by a certified Dr. which was known to Dr. RadhaRamana But it was ignored by him. On January 11 hospital authorities declared the foetus dead.

5. Partho Pradhan filed a Fir against both the doctors and hospital authorities. Uppar Parihar district court granted bail to both the doctors Uppar Parihar HC. Upheld the bail granted by district court Special leave petition was filed under article 136 in the SC of the Indiyana.

STATEMENT OF ISSUES

I. Whether prescription without diagnosis and hence resulting in the death of the foetus in the womb of the patient is a criminal or civil negligence on the part of the doctors;

II. Whether the case raises issues of ethical and professional negligence as a specialist failed to perform his/her duty with due care and diligence;

III. Whether inaccuracy in diagnosing amounts to negligence coupled with intention;

IV. Whether negligence in performing professional duties violates the fundamental and human rights.

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).

³ Dr. 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 Committee*¹⁰**

(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).

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

¹⁶*Kusum 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

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

¹⁸T. 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 Rights*²⁵ - "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.