

Last Date for Registration: April 9th, 2022



INNOVATIVE NATIONAL MOOT COURT COMPETITION

29th APRIL-1st MAY 2022

Organised By

INNOVATIVE INSTITUTE OF LAW

Affiliated to C.C.S University, Meerut & Approved by Bar Council of India, New Delhi
Plot No.-6, Knowledge Park-2, Greater Noida-201308. (Near Knowledge Park-2 Metro Station)

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



INNOVATIVE

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INNOVATIVE NATIONAL MOOT COURT COMPETITION

29th APRIL-1st MAY 2022

Chief Guest
Inaugural Function



Hon'ble Justice
SMT. MRIDULA MISHRA
(Vice Chancellor of CNLU &
Former Judge Patna High Court)

Chief Guest
Valedictory Function



Hon'ble Justice
SH. HARISH CHANDRA MISHRA
(Lokayukta of Delhi &
Former Chief Justice
of Jharkhand High Court)

Guest of Honour
Valedictory Function



Hon'ble Justice
SMT. ANJANA MISHRA
(Former Judge
Patna High Court)



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Plot No.-6, Knowledge Park-2, Greater Noida-201308 | Mob. 9289554476, 9289554475
E-mail: mcc@innovativeinstituteoflaw.com | Website: www.innovativeinstituteoflaw.com

About Innovative Group of Colleges

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

From Chairman's Desk



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

About Innovative Institute of Law

The Innovative Institute of Law, conducts courses of law like LL.B. and B.A.LL.B. But its campus spread in about 6 acres of land accommodates a green serene ground, lawn tennis court, cricket pitches of superior standards trained by Ranji Trophy players. Besides this, our institution also runs the Study Centre of IGNOU that carries various diploma and PG diplomas on the subject of law viz., Human Rights, Cyber Law, Patent Practice, Para-legal Services, and so on.

General Details of the Moot Competition 2022

- Date of Competition: April 29th, 30th & 1st May 2022
- Mode of conducting Competition: Offline

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**

About the National Moot Court Competition 2022

Innovative National Moot-Court Competition, 2022 is the edition of the Moot - Court Competition organized by Innovative Institute of Law, Innovative Group of Colleges, Greater Noida, U.P.

The event aims to construct a productive platform where young legal minds come together and showcase their skills which are far more valuable than winning or being eliminated in an event.

Registration and Selection of Teams

- Teams shall register themselves through the link provided at the end of this post.
- All the teams shall be required to make a payment of INR 1500/- via Paytm
- Mere registration does not give any right to participate in the competition, registration is initially provisional.

Queries Regarding Moot Problem

Any queries regarding the moot problem should be communicated to e-mail mcc@innovativeinstituteoflaw.com

Team Composition

A team shall consist of two Mooters and one Researcher in the team .

Rules And Regulations

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.

Important Dates

- Release of problem: April 20th, 2022
- Last date for registration: April 15th, 2022
- Submission of memorial: April 27th, 2022

Contact Information

For any queries/clarifications:

Email: mcc@innovativeinstituteoflaw.com

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Rahul Singh Faculty Co- Convener : 9289554476, 9289554475

Simran Singh Student Convener : 9319314629

Arundhati Thakur Student Co- Convener : 9891778222



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INNOVATIVE INSTITUTE OF LAW

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

Dated: 01-04-2022

NOTICE

Dear Students,

We are delighted to announce the National Moot Court Competition to be held at our college's **Moot Court Hall on 29th -30, April & 1st May 2022.**

We invite all interested students to form teams of **3 members** and register for the competition by **9 April 2022**. The registration fee includes participation in the competition, access to all competition materials, and participation certificates for all team members.

Principal

PRINCIPAL

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

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION 2021-2022

MOOT PROBLEM

Nalini, a 28 year old Software Engineer was working with one BPO Company Pune. She used to travel to her workplace and back by her company transport or Public Transport or by an Auto Rickshaw. On the evening of 07/10/2019 i.e. the day of the incident as she was working till late she missed the company transport and therefore near Reliance Mall on Nagar road she accepted the offer of lift by Sachin Mishra – Accused no. 1 in the cab driven by himself and in which the other two accused viz. Vikram Jadhav Accused no. 2 (Security Guard) and Aniket Salwi Accused no. 3 were already sitting and present in the cab. They promised to take her to her house in Katraj whereupon she placed total trust on these strangers. However, the brutes took advantage of the fact of her being the only woman in the cab, they abducted her to satisfy their insatiable lust. She was stripped naked and kept in that condition for hours committing gang rape on her repeatedly.

They picked up Nalini from Reliance Mall and subsequently drove her to Hadapsar by Magarpatta and from there onwards to Manjari Phata and then to Abalwadi. There onwards accused took her to Shankar Parvati Mangal Karyalaya on Nagar Road where they raped her. In mean time T. Ramlinga (Approver) joined them and he too raped Nalini. Then they drove to Dargah at Chandan Nagar where the four and further to Vadu Fata by Markal Road where they raped her again. Thereafter they drove her to Zarevedi Fata where the accused Sachin Mishra, Vikram Jadhav, aniket Salwi brutally killed her by first strangulating her by dupatta and then by crushing her face and head with heavy stones to camouflage her identity in order to destroy the evidence. However, Nalini's parents successfully followed up with the investigation team and upon registration of the crime on 08/10/2019 and with assistance of further investigation all accused person were arrested on 14/10/2019.

The Trial took place against all these accused in the Trial Court, Pune. Trio accused in this case were held guilty for the Gang Rape and murder and all the three accused were sentenced to death U/S 376 (A), 397, 302, 404, 120(B) of IPC for this horrific crime vide order dated 20/07/2021. But T. Ramalinga (Approver) was sentenced to 7 years imprisonment. All the three accused filed an appeal in the Bombay High Court against the decision of the Trial Court Pune to set aside the conviction and sentence.

Issues are as follows –

1. Whether the appeal against conviction is maintainable?
2. Whether the accused conspired to commit the said crimes and in pursuance of this conspiracy they carried out the criminal acts as charged by the prosecution?
3. Whether the prosecution has proved beyond reasonable doubt the common intention of the accused by bringing on record that the said acts were committed by several persons in furtherance of their common intention.


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REPORT

Objective

The objective of the 1st National Moot Court Competition organized by the Innovative Institute of Law was to provide a platform for law students from various universities across India to showcase their advocacy skills, legal knowledge, and ability to apply legal principles in a simulated courtroom setting. Through this competition, students were given an opportunity to enhance their understanding of legal practice, gain practical experience, and interact with legal professionals.

About the competition:

The 1st National Moot Court Competition, held from April 29 to May 1, was a resounding success, attracting participation from 27 teams representing universities from across India. Out of these, 21 teams were selected to compete in the event. The competition commenced with an inaugural ceremony on April 29, graced by Chief Guest Justice Mridula Mishra, former Judge of Patna High Court and Present Vice Chancellor of CNLU, Patna. Justice Mishra emphasized the importance of moot court competitions in honing students' advocacy skills and commended the dedication of participants.

The preliminary round saw rigorous competition among the 21 participating teams, with each team presenting their arguments before panels of judges. Based on their performance, the top 8 teams advanced to the quarter-final round, where they engaged in further simulated courtroom proceedings across 4 courtrooms. The quarter-final round showcased the teams' ability to construct persuasive legal arguments and respond effectively to judicial queries.

Following the quarter-final round, the best-performing 4 teams proceeded to the semi-finals and eventually to the final round, held on May 1. The final round, adjudicated by Sh. Harish Chandra



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Mishra (Lokayukta of Delhi & former acting Chief Justice of Jharkhand High Court) and Judge Anjana Mishra (Armed Force Tribunal, Delhi

and Former Judge, Patna High Court), witnessed intense legal advocacy as the remaining teams presented their cases before the esteemed panel of judges.

In the end, Bharatiya Vidyapeeth from Paschim Vihar, Delhi, won the competition because they showed excellent skills in arguing and understanding the law. They received certificates, a trophy, and a cash prize of Rs21,000. The runner-up team, Vivekananda Global Studies, also demonstrated commendable performance throughout the competition.

Outcome:

- Through their participation in the moot court, students gained practical knowledge about courtroom procedures, including how to conduct themselves during hearings, respond to judicial queries, and adhere to legal protocols, thus preparing them for future legal proceedings.
- The moot court provided students with a platform to apply theoretical legal concepts to real-life scenarios, helping them develop a deeper understanding of legal practice beyond textbooks.
- Participating students gained valuable experience in presenting legal arguments persuasively and articulately, thus improving their advocacy skills significantly.



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National Moot Court Competition



Felicitation of our Esteemed Judges

Plot No. - 6, Knowledge Park - 2, Greater Noida, U. P. - 201308. (Near Knowledge Park - 2 Metro Station)
Ph: 0120-2328555 | Website - www.innovativeinstituteoflaw.com | E-mail: innovativelaw2005@gmail.com



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National Moot Court Competition

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NATIONAL MOOT COURT COMPETITION TEAM REGISTRATERED

Janhit College of Law, Greater Noida:

- 1st Speaker: Riya Sharma
- 2nd Speaker: Amit Patel
- 3rd Researcher: Neha Joshi

Greater Noida Institute of Technology (GNIOT), Greater Noida:

- 1st Speaker: Kunal Verma
- 2nd Speaker: Sneha Gupta
- 3rd Researcher: Deepak Mishra

LLOYD Group of Institutions, Greater Noida:

- 1st Speaker: Pooja Verma
- 2nd Speaker: Sahil Agarwal
- 3rd Researcher: Aditi Bansal

KCC Institute of Technology and Management, Greater Noida:

- 1st Speaker: Varun Singh
- 2nd Speaker: Anjali Kapoor
- 3rd Researcher: Priyanka Saini

GN Group of Institutes, Greater Noida:

- 1st Speaker: Nikhil Joshi
- 2nd Speaker: Kritika Verma
- 3rd Researcher: Manish Kumar

IILM University, Greater Noida:

- 1st Speaker: Aakash Mehta
- 2nd Speaker: Tara Sharma
- 3rd Researcher: Rohan Yadav

IIMT Group of Colleges, Greater Noida:

- 1st Speaker: Akshay Gupta
- 2nd Speaker: Sonam Bhatia
- 3rd Researcher: Neeraj Kumar

HIMT Group of Institutions, Greater Noida:

- 1st Speaker: Samir Khan
- 2nd Speaker: Anaya Singh
- 3rd Researcher: Pratik Sharma

Vishveshwarya Group of Institutions, Greater Noida:

- 1st Speaker: Aman Yadav
- 2nd Speaker: Rhea Mehta
- 3rd Researcher: Vikram Singh

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Greater Noida-201308

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM




COLLEGE/UNIVERSITY NAME: Janhit College of Law, Greater Noida

Position	Details
1st Speaker	Name: Riya Sharma
2nd Speaker	Name: Amit Patel
3rd Researcher	Name: Neha Joshi

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

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM




COLLEGE/UNIVERSITY NAME: Greater Noida Institute of Technology (GNIOT), Greater Noida

Position	Details
1st Speaker	Name: Kunal Verma
2nd Speaker	Name: Sneha Gupta
3rd Researcher	Name: Deepak Mishra

Team Declaration:

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Signatures of Team Members:

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

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM




COLLEGE/UNIVERSITY NAME: LLOYD Group of Institutions, Greater Noida

Position	Details
1st Speaker	Name: Pooja Verma
2nd Speaker	Name: Sahil Agarwal
3rd Researcher	Name: Aditi Bansal

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

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM




COLLEGE/UNIVERSITY NAME: KCC Institute of Technology and Management, Greater Noida

Position	Details
1st Speaker	Name: Varun Singh
2nd Speaker	Name: Anjali Kapoor
3rd Researcher	Name: Priyanka Saini

Team Declaration:

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Signatures of Team Members:

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

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

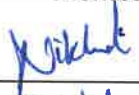

COLLEGE/UNIVERSITY NAME: GN Group of Institutes, Greater Noida

Position	Details
1st Speaker	Name: Nikhil Joshi
2nd Speaker	Name: Kritika Verma
3rd Researcher	Name: Manish Kumar

Team Declaration:

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Signatures of Team Members:

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

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM



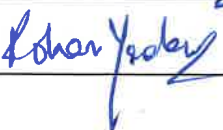
COLLEGE/UNIVERSITY NAME: IILM University, Greater Noida

Position	Details
1st Speaker	Name: Aakash Mehta
2nd Speaker	Name: Tara Sharma
3rd Researcher	Name: Rohan Yadav

Team Declaration:

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Signatures of Team Members:

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

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NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM




COLLEGE/UNIVERSITY NAME: IIMT Group of Colleges, Greater Noida

Position	Details
1st Speaker	Name: Akshay Gupta
2nd Speaker	Name: Sonam Bhatia
3rd Researcher	Name: Neeraj Kumar

Team Declaration:

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Signatures of Team Members:

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

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM


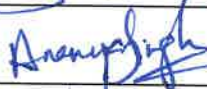

COLLEGE/UNIVERSITY NAME: HIMT Group of Institutions, Greater Noida

Position	Details
1st Speaker	Name: Samir Khan
2nd Speaker	Name: Anaya Singh
3rd Researcher	Name: Pratik Sharma

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

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM




COLLEGE/UNIVERSITY NAME: Vishveshwarya Group of Institutions, Greater Noida

Position	Details
1st Speaker	Name: Aman Yadav
2nd Speaker	Name: Rhea Mehta
3rd Researcher	Name: Vikram Singh

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 Moot Court Competition

The Preliminary Round of the Intra Moot Court Competition is set to begin, showcasing the talents and skills of our participating teams. This year, we introduced an exciting twist: the selection of petitioners and respondents was conducted through a lucky draw, ensuring a fair and randomized matchup.

Random Selection Process

Each team was assigned a number, and the matchups were determined by drawing lots. This method not only adds an element of surprise but also challenges teams to adapt their arguments and strategies on the spot, fostering a dynamic and competitive environment.

Petitioner	Respondent
NMC 1	NMC 5
NMC 2	NMC 6
NMC 3	NMC 7
NMC 4	NMC 8
NMC 9	NMC 12
NMC 10	NMC 11

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

JUDGE NAME - *Dr. Neeraj Yadav*

TEAM CODES- *NMC-10 / NMC 11*

Marking Matrix for Preliminary Rounds

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	<i>19</i>	<i>11</i>	
Argumentation and Reasoning	30	<i>28</i>	<i>12</i>	
Oral Advocacy Skills	20	<i>18</i>	<i>10</i>	
Response to Questions	20	<i>19</i>	<i>13</i>	
Written Submissions	10	<i>08</i>	<i>04</i>	
Total	100	<i>92</i>	<i>50</i>	



SIGNATURE

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

JUDGE NAME - *prof. Aditi Sharma.*

TEAM CODES- *NMC 9/NMC 12.*

Marking Matrix for Preliminary Rounds

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	10	19	
Argumentation and Reasoning	30	11	28	
Oral Advocacy Skills	20	12	19	
Response to Questions	20	14	18	
Written Submissions	10	02	09	
Total	100	49	93	



SIGNATURE

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

JUDGE NAME - Dr. Harsh Mehta

TEAM CODES - NMCA/NMC8

Marking Matrix for Preliminary Rounds

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	10	11	
Argumentation and Reasoning	30	11	10	
Oral Advocacy Skills	20	12	11	
Response to Questions	20	13	12	
Written Submissions	10	04	03	
Total	100	50	47	



SIGNATURE

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

JUDGE NAME - Prof. Rupal Patel

TEAM CODES- NMC3/ NMC7.

Marking Matrix for Preliminary Rounds

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	10	19	
Argumentation and Reasoning	30	11	25	
Oral Advocacy Skills	20	09	20	
Response to Questions	20	11	19	
Written Submissions	10	03	04	
Total	100	44	87	



SIGNATURE

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

JUDGE NAME - *Dr. Bhavna Sethi*

TEAM CODES- *NMC2/NMC6*

Marking Matrix for Preliminary Rounds

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	10	09	
Argumentation and Reasoning	30	11	12	
Oral Advocacy Skills	20	12	11	
Response to Questions	20	10	11	
Written Submissions	10	04	03	
Total	100	47	46	

Bhavna

SIGNATURE

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

JUDGE NAME - Prof. Sumit Bhatia

TEAM CODES - NMCI/NMC 5

Marking Matrix for Preliminary Rounds

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	19	10	
Argumentation and Reasoning	30	25	06	
Oral Advocacy Skills	20	19	12	
Response to Questions	20	18	17	
Written Submissions	10	06	04	
Total	100	87	49	



SIGNATURE



Preliminary Round



Preliminary Round

Innovative Institute of Law Moot Court Competition

The Semifinal Round is here, showcasing the top teams that excelled in the Preliminary Round. As before, the selection of petitioners and respondents was conducted via a lucky draw, maintaining fairness and unpredictability in the competition.

Random Selection Process

The semifinalists were chosen based on their performance in the preliminary matchups. The lucky draw for this round will determine the roles of petitioner and respondent, ensuring that all teams face a fresh challenge as they move closer to the finals.

Petitioner	Respondent
NMC 1	NMC 9
NMC 11	NMC 7

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

JUDGE NAME - Prof. Mohit Singh.

TEAM CODES- NMC 1 / NMC 2

Marking Matrix for Semifinal Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	20	20	
Argumentation and Reasoning	30	19	18	
Oral Advocacy Skills	20	18	19	
Response to Questions	20	17	18	
Written Submissions	10	06	09	
Total	100	80	84	



SIGNATURE

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

JUDGE NAME - *Dr Tanya Kapoor*

TEAM CODES- *NMC II/NMC*

Marking Matrix for Semifinal Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	12	11	
Argumentation and Reasoning	30	11	12	
Oral Advocacy Skills	20	10	15	
Response to Questions	20	10	12	
Written Submissions	10	04	03	
Total	100	47	53	



SIGNATURE



Semi- Final Round



Semi- Final Round

Innovative Institute of Law Moot Court Competition

The Final Round of the Intra Moot Court Competition is upon us, featuring the champions from the semifinal matchups. In keeping with our tradition of fairness, the roles of petitioners and respondents were determined by a lucky draw, ensuring an exciting and unpredictable finale.

Random Selection Process

The finalists were selected based on their outstanding performances in the semifinals. The lucky draw for this round guarantees that both teams will face unique challenges, encouraging creative legal reasoning and robust advocacy.

We congratulate all teams for their remarkable journey through this competition. As we enter the final round, we invite everyone to witness the culmination of hard work, strategy, and legal brilliance. May the best team win!

Petitioner	Respondent
NMC 1	NMC 9

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

JUDGE NAME - *Dr. Tanvi sharma*

TEAM CODES- *NMC 1 / NMC 9*

Marking Matrix for final Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	18	19	
Argumentation and Reasoning	30	25	20	
Oral Advocacy Skills	20	16	14	
Response to Questions	20	18	17	
Written Submissions	10	06	04	
Total	100	83	74	



SIGNATURE

48
50

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INTRA MOOT COURT COMPETITION RESEARCHER TEST

TEAM CODE -

1. "Statutory law" is created by:
 - A) Judicial decisions
 - B) Legislative bodies
 - C) Executive orders
 - D) Administrative agencies
2. "Stare decisis" means:
 - A) The law is always changing
 - B) Courts should follow precedents
 - C) Justice is blind
 - D) The rule of law is absolute
3. The First Amendment protects:
 - A) Right to bear arms
 - B) Freedom of speech, religion, press, assembly, and petition
 - C) Right to a fair trial
 - D) Protection against unreasonable searches
4. The "necessary and proper clause" allows Congress to:
 - A) Create laws beyond its enumerated powers
 - B) Declare war
 - C) Regulate interstate commerce
 - D) Override state laws
5. "Felony" is defined as:
 - A) A minor crime punishable by fines
 - B) A serious crime usually punishable by imprisonment for more than one year
 - C) A crime involving property damage
 - D) A type of misdemeanor
6. The "Miranda warning" includes:
 - A) The right to remain silent and the right to an attorney
 - B) The right to a jury trial
 - C) The right to bail
 - D) The right to a speedy trial
7. An "unconscionable contract" is:
 - A) A fair agreement
 - B) An agreement that is extremely unjust or overwhelmingly one-sided
 - C) A verbal agreement
 - D) A contract that is written in simple language
8. "Capacity to contract" refers to:
 - A) The ability to negotiate
 - B) The legal ability to enter into a binding agreement
 - C) The financial stability of the parties
 - D) The time frame for performance

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INTRA MOOT COURT COMPETITION RESEARCHER TEST

9. "Negligence" is characterized by:
- A) Intentional harm
 - B) Failure to exercise reasonable care leading to harm
 - C) Strict liability without fault
 - D) Breach of contract
10. "Product liability" holds manufacturers accountable for:
- A) Financial losses
 - B) Defective products that cause harm
 - C) Advertising claims
 - D) Delivery delays
11. "Real property" refers to:
- A) Tangible personal property
 - B) Land and anything permanently attached to it
 - C) Intellectual property
 - D) Business assets
12. "Mortgage" is:
- A) A rental agreement
 - B) A loan secured by real property
 - C) A lease-to-own contract
 - D) A type of insurance
13. "Alimony" is:
- A) Child support
 - B) Financial support paid to an ex-spouse after divorce
 - C) A division of property
 - D) A type of prenuptial agreement
14. "Annulment" refers to:
- A) A divorce process
 - B) A legal declaration that a marriage was never valid
 - C) Separation without legal action
 - D) Modification of custody arrangements
15. "Rulemaking" is the process by which:
- A) Laws are passed by Congress
 - B) Agencies create regulations to enforce statutes
 - C) Courts interpret statutes
 - D) Citizens vote on laws
16. "Administrative hearings" are:
- A) Formal court trials
 - B) Proceedings to resolve disputes involving governmental agencies
 - C) Informal discussions
 - D) Arbitration sessions

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INTRA MOOT COURT COMPETITION RESEARCHER TEST

17. A "treaty" is:
- A) A domestic law
 - B) A formal agreement between sovereign states
 - C) A non-binding resolution
 - D) A court ruling
18. "Sovereignty" refers to:
- A) The power of a state to govern itself
 - B) The power of international organizations
 - C) The authority of the UN
 - D) National security
19. "Copyright infringement" occurs when:
- A) A trademark is used without permission
 - B) Copyrighted material is used without permission
 - C) A patent is filed incorrectly
 - D) A trade secret is disclosed
20. "Patent" protection is granted for:
- A) Inventions and processes
 - B) Artistic works
 - C) Brand names
 - D) Trade secrets
21. "Discrimination" in the workplace is prohibited by:
- A) The Equal Pay Act
 - B) The Americans with Disabilities Act
 - C) The Fair Labor Standards Act
 - D) All of the above
22. "Whistleblower protection" laws are designed to:
- A) Punish employees for reporting misconduct
 - B) Protect employees who report illegal activities or violations of laws
 - C) Encourage corporate secrecy
 - D) Limit employee rights
23. The Clean Water Act primarily regulates:
- A) Air emissions
 - B) Water pollution
 - C) Hazardous waste
 - D) Land use
24. "Environmental impact statements" (EIS) are required for:
- A) All business operations
 - B) Projects that may significantly affect the environment
 - C) Small-scale construction
 - D) Personal property transactions

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INTRA MOOT COURT COMPETITION RESEARCHER TEST

25. "Partnership" is defined as:
- A) A single-person business
 - B) A business owned by two or more individuals who share profits and losses
 - C) A corporation with shareholders
 - D) A non-profit organization
26. "Franchise" refers to:
- A) A joint venture
 - B) A legal relationship between a franchisor and franchisee to operate a business
 - C) A type of corporation
 - D) A partnership agreement
27. "Hearsay" is generally:
- A) Admissible evidence
 - B) Inadmissible evidence
 - C) Only admissible in civil cases
 - D) Always admissible with exceptions
28. "Chain of custody" refers to:
- A) The process of collecting evidence
 - B) The documentation of evidence handling from collection to presentation in court
 - C) The procedures for witness testimony
 - D) The preservation of physical evidence
29. "Confidentiality" in the attorney-client relationship means:
- A) Information can be shared with anyone
 - B) All communications between attorney and client must remain private
 - C) Only public information can be discussed
 - D) Confidentiality only applies in criminal cases
30. "Conflict of interest" for attorneys arises when:
- A) They represent clients with opposing interests
 - B) They work with multiple clients
 - C) They switch law firms
 - D) They discuss cases with colleagues
31. "Arbitration" is:
- A) A court proceeding
 - B) A binding resolution process conducted by an impartial third party
 - C) An informal negotiation
 - D) A type of mediation
32. "Settlement" refers to:
- A) The final court ruling
 - B) An agreement reached between parties to resolve a dispute
 - C) The trial outcome
 - D) The negotiation process

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INTRA MOOT COURT COMPETITION

RESEARCHER TEST

33. "Data breach" is:
- A) A legal term for data storage
 - B) Unauthorized access to confidential data
 - C) A type of malware
 - D) A phishing scam
34. The Children's Online Privacy Protection Act (COPPA) aims to:
- A) Protect data from being sold
 - B) Regulate online advertising
 - C) Protect the privacy of children under 13 online
 - D) Provide free internet access
35. The Fair Credit Reporting Act (FCRA) regulates:
- A) Loan approvals
 - B) Credit reporting practices
 - C) Interest rates
 - D) Bank fees
36. "Truth in Advertising" laws require that:
- A) All advertisements are approved by the government
 - B) Advertisements must not be misleading or false
 - C) Advertisements must include all product details
 - D) All advertising costs are disclosed
37. "Chapter 13 bankruptcy" involves:
- A) Liquidation of assets
 - B) A repayment plan for individuals with regular income
 - C) A form of corporate bankruptcy
 - D) Total debt discharge
38. "Secured creditor" is:
- A) A creditor with no collateral
 - B) A creditor with a legal claim to specific assets
 - C) An unsecured lender
 - D) A creditor who is not involved in bankruptcy
39. "Initial Public Offering" (IPO) is:
- A) The first sale of a company's stock to the public
 - B) A type of merger
 - C) A secondary stock sale
 - D) A corporate bond issue
40. The "Securities Act of 1933" regulates:
- A) Stock market operations
 - B) The sale of securities to protect investors
 - C) Corporate mergers
 - D) International trade

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INTRA MOOT COURT COMPETITION

RESEARCHER TEST

41. "Green card" provides:
- A) Temporary work authorization
 - B) Permanent residency status in the U.S.
 - C) Citizenship
 - D) Travel authorization
42. "Visa waiver program" allows:
- A) Citizens of certain countries to travel to the U.S. without a visa for short stays
 - B) Unlimited travel without any documentation
 - C) Work in the U.S. without a permit
 - D) Permanent residency without application
43. "Genocide" is defined as:
- A) A war crime
 - B) The deliberate killing of a large group of people based on nationality, ethnicity, or religion
 - C) Political oppression
 - D) Economic sanctions
44. "Asylum" is granted to:
- A) Tourists seeking temporary shelter
 - B) Individuals fleeing persecution in their home country
 - C) Immigrants with job offers
 - D) Students studying abroad
45. "Visitation rights" refer to:
- A) The legal right of a non-custodial parent to visit their child
 - B) The right to live with a child
 - C) The right to adopt
 - D) The right to make medical decisions
46. "Common law marriage" is:
- A) A marriage recognized only in specific states based on cohabitation
 - B) A formal marriage ceremony
 - C) A type of religious marriage
 - D) A legal partnership
47. "Gross income" is defined as:
- A) Total income before deductions
 - B) Net income after taxes
 - C) Taxable income only
 - D) Salary only
48. "Deductions" in tax law refer to:
- A) Taxes owed
 - B) Expenses that reduce taxable income
 - C) Tax credits
 - D) Fines and penalties

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INTRA MOOT COURT COMPETITION

RESEARCHER TEST

49. "Double jeopardy" means:

- A) Being tried twice for the same offense
- B) A hung jury
- C) The right to an appeal
- D) A pretrial hearing

50. "Bail" is:

- A) A type of sentence
- B) A sum of money used to release a defendant from custody before trial
- C) A plea deal
- D) A form of punishment

TEAM CODE – IMC-08

INNOVATIVE INSTITUTE OF LAW MOOT COURT COMPETITION 2021-22

IN THE MATTER OF

SACHIN MISHRA AND OTHERS ----- APPELLANT

THE STATE OF MAHARASHTRA ----- RESPONDENT

BEFORE THE HONOURABLE HIGH COURT OF BOMBAY

WRITTEN SUBMISSION ON BEHALF OF THE APPELLANT

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

C. DATABASE REFERRED

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

D. STATUTES REFERRED

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

STATEMENT OF JURISDICTION

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

Article 136. Special leave to appeal by the Supreme Court

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

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

STATEMENT OF FACTS

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

STATEMENT OF ISSUES

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

SUMMARY OF ARGUMENTS

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

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

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

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

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

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

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

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

ARGUMENTS ADVANCED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Difference between civil and criminal negligence -

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

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

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

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

INGREDIENTS OF NEGLIGENCE

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

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

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

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

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

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

c) Damage

Duty to take care

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

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

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

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

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

Non observance of guidelines amounts to gross negligence

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

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

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

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

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

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

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

Negligence endangering Human life.

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

(Section 336 of the IPC)¹¹ - Act endangering life or personal safety of others.— “Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CODE OF MEDICAL ETHICS REGULATIONS, 2002

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

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

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

Bolam test

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

According to WHO records on patient safety globally²³,

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

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

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

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

Patient Safety the global concern

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

World Patient Safety Day

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

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

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

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

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

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

When an incident of medical negligence takes place, it not only violates the constitutional rights recognized by the states, not only breaches the 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 Meadow Hospital v. Harjot Ahluwalia²⁷- The National Commission held that a nurse of Spring Meadows Hospital gave a wrong injection to a child . While reading the prescription, she made a mistake and injected ‘Lariago’ instead of ‘ Chloramphenicol’ intravenously. The child collapsed instantly and went into Cardiac arrest. The national Commission held the Hospital responsible for the acts and negligence attributed to the employees and liable for the consequence.

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

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

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

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

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

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

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

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

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

Need of the hour is fetal rights.

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

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

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

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

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

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

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

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

Fundamental Rights granted to foetus by different Countries.

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

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER

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

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

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

VERIFICATION

TO WHOMSOEVER IT MAY CONCERN

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

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

TEAM CODE - NMC08 R

INNOVATIVE INSTITUTE OF LAW MOOT COURT COMPETITION 2021-22

IN THE MATTER OF

SACHIN MISHRA AND OTHERS----- APPELLANT

THE STATE OF MAHARASHTRA----- RESPONDENT

BEFORE THE HONARABLE HIGH COURT OF BOMBAY

WRITTEN SUBMISSION ON BEHALF OF THE RESPONDENTS

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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.aionline.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).

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

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

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

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

Civil and Criminal Negligence

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE BOLAM TEST

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

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

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

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

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

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

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

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

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

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

PRAYER

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

1. The appeal of the appellant be dismissed.

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

VERIFICATION

TO WHOMSOEVER IT MAY CONCERN

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

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