

Last Date for Registration: Oct. 01st, 2022



INNOVATIVE NATIONAL MOOT COURT COMPETITION

28th-29th OCTOBER 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-201 308. (Near Knowledge Park-2 Metro Station)

Contact Information

For any queries/clarifications:
Email: mcc@innovativeinstituteoflaw.com
Anand Singh
Faculty Convener : 9651499636
Manish Sinha
Faculty Co- Convener : 9289554476
Priya Nagar
Faculty Co- Convener : 9289554475

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



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INNOVATIVE NATIONAL MOOT COURT COMPETITION

28th-29th OCTOBER 2022

Chief Guest
Inaugural Function



ADV. JYOTI
Advocate at Delhi High Court

Chief Guest
Valedictory Function



ADV. ANURAG PANDEY
Advocate at Delhi 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: October 28th - 29th 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: October 20th, 2022
- Last date for registration: October 01st, 2022
- Submission of memorial: October 25th, 2022

Contact Information

For any queries/clarifications:

Email: mcc@innovativeinstituteoflaw.com

Anand Singh Faculty Convener : 9651499636

Manish Sinha Faculty Co- Convener : 9289554476

Priya Nagar Faculty Co- Convener : 9289554475



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INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION

2022-23

MOOT PROBLEM

Drishti Foundation vs. Union of Indiva

Shivrashtra is a state in the Union of Indiva. The population of the state on the basis of religious faith comprises 40% Hindus, 25% Muslims, 15% Christians and the remaining 20% belong to various smaller groups like Parsis, Tribal and Non-tribals and Non-believers. The state is predominately a hilly area with four holy rivers flowing through it and the people are very religious by nature. A large number of population being illiterate, carries out primitive occupations. Religious practices, superstitions and rituals, take much of their time and money which has greatly affected the development of the State.

The state is known all over the world for its religious centers. The various religious institutions in the state are imparting only religious education putting the secular education into oblivion which has reduced drastically the people's employment avenues. As the state is a pilgrimage center, the religious leaders, Gurus and Prophets of various religions in the state are vying with one another because of huge donations offered by the pilgrims.

Accordingly, mass prayers, retreats, yagnas, penance services etc. are conducted very frequently. The religious leaders, so called God men in order to continue their hold, have created a kind of fear in the mind of their followers by way of fundamentalist practices and attitudes, which further created divisions in the society and often within the families too.

The youths of the State, who were boiling with anger and frustration looking at the economic progress of other states, often revolted against those oppressive and suppressive religious practices that prevailed in their states. There were many protests by many groups headed by moderates, intellectuals and non-believers on various occasions in different parts of the State.

Dr. Virendra Panhalkar, the 70 years old social activist, who was shot dead on 20th August, 2020 in one city of the State of Shivrashtra, had waged a long and lonely battle for an Anti-Supersition Law.

Within a week after the vicious assassination of Dr. Panhalkar, the Governor of Shivrashtra signed the '**Black Magic Prohibition**' Ordinance. It came in to force from 26th August, 2020 all over the State of Shivrashtra.

The ordinance is aimed at banning superstitious practices, inhuman rituals and black magic that have been the used to exploit people in the name of religious beliefs.

This law is against fraudulent and exploitative practices, such practices have no place in an enlightened society. In the entire text there is not a single word about God or Religion.

The essential purpose of this law is to bring social awakening and awareness in the society and to create a healthy and safe social environment with a view to protect the common people in the society against the evil and sinister practices thriving on ignorance.

The draft Bill clearly specifies 12 such practices.

These includes, claiming to perform surgery with just fingers or to change the sex of the foetus in the womb, sexual exploitation under the guise of claims of supernatural powers, branding women as witches and causing them physical harm, human sacrifices and other Aghori practices.

Inspite of coming into force of the above legislation the superstitious activities are no rise. The people of State of Shivrashtra are being exploited by the self-declared God like **Babaram Maharaj**, who has amassed huge wealth by exploiting the religious sentiments of the people. Under the garb of religious practices he started to exploit illiterate and poor women & children and employed youths. He uses their energies by providing them training to play with rifles and arms for his own protection and to prevent Govt. authorities to take any action against him. He poses himself as god or Supernatural power to attract women and he sexually abused many women's too. The ban his activities the govt. of Shivrashtra tried to enter in to his Ashram but could not succeed.

In the backdrop of above facts and circumstances, **Drishti Foundation** which is NGO working against the exploitation of the religious feelings of the people by such so called Godman Babaram, has filed a **PIL** before the Supreme Court under Article 32 of Constitution of Indiva challenging the activities of exploitation being carried out by the so called Baba's in their Matths and Ashrams and has prayed therein that all these Matths and Ashrams which are carrying out the activities of


exploiting the religious feeling of the people should be closed and all the assets acquired by these Baba's be confiscated and added to the national wealth of Indiva.

Looking in to the facts and circumstances the Hon'ble Supreme court of Indiva, has placed the present PIL for final disposal at the stage of admission and has framed following issues:-

Issues:-

- 1) Whether the **PIL** is maintainable before the Supreme Court of Indiva for hearing and admission?
- 2) Whether the activities exploiting the religious sentiments of the people amount to infringement of Fundamental Rights of the people of Indiva?
- 3) Whether the alleged activities are contrary to the secular structure of Union of Indiva as enshrined in the Preamble of the Constitution of Indiva?
- 4) Whether the ban on such Matths / Ashrams would violate the fundamental rights of the people to follow the religious faith of their choice?
- 5) Whether amendment in the present laws is necessary to deal sternly with such Baba's?

Note: - The laws and Constitution of Indiva is the same as to the laws and Constitution of India.


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

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATERED

GD Goenka University, Greater Noida:

- 1st Speaker: Arjun Mehta
- 2nd Speaker: Priya Singh
- 3rd Researcher: Rohan Sharma

Indraprastha Law College, Greater Noida:

- 1st Speaker: Neha Bansal
- 2nd Speaker: Aakash Verma
- 3rd Researcher: Sneha Joshi

Galgotias University, Greater Noida:

- 1st Speaker: Karan Patel
- 2nd Speaker: Meera Gupta
- 3rd Researcher: Vikrant Yadav

JIMS Engineering Management Technical Campus, Greater Noida:

- 1st Speaker: Anjali Sethi
- 2nd Speaker: Rahul Kumar
- 3rd Researcher: Tanvi Sharma

NIMT Group of Institutions (NIMTGI), Greater Noida:

- 1st Speaker: Sumit Verma
- 2nd Speaker: Komal Jain
- 3rd Researcher: Deepak Mishra

Lloyd Law College, Greater Noida:

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

Harlal School of Law, Greater Noida:

- 1st Speaker: Ananya Roy
- 2nd Speaker: Ritesh Joshi
- 3rd Researcher: Kavita Singh

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

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION
TEAM REGISTRATERED

KCC Institute of Technology and Management, Greater Noida:

- 1st Speaker: Devendra Rathi
- 2nd Speaker: Shweta Yadav
- 3rd Researcher: Riya Kapoor

GN Group of Institutes, Greater Noida:

- 1st Speaker: Ashish Tiwari
- 2nd Speaker: Nidhi Sharma
- 3rd Researcher: Aman Gupta

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

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

Name of Institution: - GD Goenka University, Greater Noida

TEAM CODE -

Participants Information:

• **1st Speaker**

o Name: Arjun Mehta

• **2nd Speaker**

o Name: Priya Singh




• **3rd Researcher**

o Name: Rohan 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.  _____ (Arjun Mehta)
2.  _____ (Priya Singh)
3.  _____ (Rohan Sharma)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

Name of Institution: - Indraprastha Law College, Greater Noida

TEAM CODE -

Participants Information:

• **1st Speaker**

o Name: Neha Bansal

• **2nd Speaker**

o Name: Aakash Verma

• **3rd Researcher**

o Name: Sneha 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.  _____ (Neha Bansal)

2.  _____ (Aakash Verma)

3.  _____ (Sneha Joshi)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

Name of Institution: - Galgotias University, Greater Noida

TEAM CODE -

Participants Information:

- **1st Speaker**

o Name: Karan Patel

- **2nd Speaker**

o Name: Meera Gupta

- **3rd Researcher**

o Name: Vikrant Yadav

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.  (Karan Patel)

2.  (Meera Gupta)

3.  (Vikrant Yadav)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

Name of Institution: - JIMS Engineering Management Technical Campus, Greater Noida

TEAM CODE -

Participants Information:

• **1st Speaker**

o Name: Anjali Sethi

• **2nd Speaker**

o Name: Rahul Kumar

• **3rd Researcher**

o Name: Tanvi 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. Anjali (Anjali Sethi)
2. Rahul (Rahul Kumar)
3. Tanvi (Tanvi Sharma)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

Name of Institution: - NIMT Group of Institutions (NIMTGI), Greater Noida

TEAM CODE -

Participants Information:

• **1st Speaker**

o Name: Sumit Verma

• **2nd Speaker**

o Name: Komal Jain

• **3rd Researcher**

o Name: Deepak Mishra

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.  _____ (Sumit Verma)

2.  _____ (Komal Jain)

3.  _____ (Deepak Mishra)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

Name of Institution: - Lloyd Law College, Greater Noida

TEAM CODE -

Participants Information:

• **1st Speaker**

o Name: Pooja Verma

• **2nd Speaker**

o Name: Sahil Agarwal

• **3rd Researcher**

o 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.  _____ (Pooja Verma)

2.  _____ (Sahil Agarwal)

3.  _____ (Aditi Bansal)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

Name of Institution: - Harlal School of Law, Greater Noida

TEAM CODE -

Participants Information:

• **1st Speaker**

o Name: Ananya Roy

• **2nd Speaker**

o Name: Ritesh Joshi


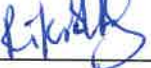

• **3rd Researcher**

o Name: Kavita 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.  _____ (Ananya Roy)
2.  _____ (Ritesh Joshi)
3.  _____ (Kavita Singh)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

Name of Institution: - Janhit College of Law, Greater Noida

TEAM CODE -

Participants Information:

• **1st Speaker**

o Name: Riya Sharma

• **2nd Speaker**

o Name: Amit Patel



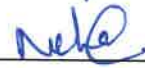
• **3rd Researcher**

o 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.  _____ (Riya Sharma)
2.  _____ (Amit Patel)
3.  _____ (Neha Joshi)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

Name of Institution: - Greater Noida Institute of Technology (GNIOT), Greater Noida

TEAM CODE -

Participants Information:

• **1st Speaker**

o Name: Kunal Verma

• **2nd Speaker**

o Name: Sneha Gupta

• **3rd Researcher**

o Name: Deepak Mishra

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.  (Kunal Verma)

2.  (Sneha Gupta)

3.  (Deepak Mishra)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

Name of Institution: - KCC Institute of Technology and Management, Greater Noida

TEAM CODE -

Participants Information:

- **1st Speaker**

o Name: Devendra Rathi

- **2nd Speaker**

o Name: Shweta Yadav




- **3rd Researcher**

o Name: Riya Kapoor

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.  (Devendra Rathi)
2.  (Shweta Yadav)
3.  (Riya Kapoor)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

Name of Institution: - GN Group of Institutes, Greater Noida

TEAM CODE -

Participants Information:

• **1st Speaker**

o Name: Ashish Tiwari

• **2nd Speaker**

o Name: Nidhi Sharma

• **3rd Researcher**

o Name: Aman Gupta

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.  (Ashish Tiwari)

2.  (Nidhi Sharma)

3.  (Aman Gupta)

INNOVATIVE INSTITUTE OF LAW
NATIONAL MOOT COURT COMPETITION

Introduction

The Preliminary Round of the Intra Moot Court Competition marks the beginning of an exhilarating journey for our talented participants. With 9 teams competing, this round sets the stage for rigorous legal argumentation and spirited advocacy.

Structure

In this round, teams will face off in a series of one-on-one matchups, where each team will take on the roles of petitioner and respondent. The random selection process through a lucky draw ensures that every team faces unique challenges, fostering adaptability and creativity in legal reasoning.

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

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

JUDGE NAME - Prof. Pooya Rami

TEAM CODES- NMC-9/NMC 2

Marking Matrix for Preliminary Rounds

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	19	13	
Argumentation and Reasoning	30	25	15	
Oral Advocacy Skills	20	18	12	
Response to Questions	20	19	11	
Written Submissions	10	09	02	
Total	100	90	53	

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

JUDGE NAME - Dr. Moham Tawehi

TEAM CODES- NMC-7/NMC 4.

Marking Matrix for Preliminary Rounds

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	16	19	
Argumentation and Reasoning	30	12	25	
Oral Advocacy Skills	20	11	15	
Response to Questions	20	10	14	
Written Submissions	10	06	08	
Total	100	55	78	



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

JUDGE NAME - Dr. Arjun Kapoor

TEAM CODES- NMC2/NMC-6

Marking Matrix for Preliminary Rounds

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	19	12	
Argumentation and Reasoning	30	25	11	
Oral Advocacy Skills	20	18	10	
Response to Questions	20	19	13	
Written Submissions	10	09	02	
Total	100	90	48	


SIGNATURE

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

JUDGE NAME - Prof. Payal Aggarwal

TEAM CODES - NMC 3 / NM 8

Marking Matrix for Preliminary Rounds

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	10	11	
Argumentation and Reasoning	30	12	13	
Oral Advocacy Skills	20	13	14	
Response to Questions	20	14	15	
Written Submissions	10	06	02	
Total	100	55	55	


SIGNATURE

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

JUDGE NAME - Dr. Rajesh Kumar,

TEAM CODES- NMC-1 / NMC 5.

Marking Matrix for Preliminary Rounds

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	11	12	
Argumentation and Reasoning	30	12	13	
Oral Advocacy Skills	20	13	14	
Response to Questions	20	10	10	
Written Submissions	10	02	05.	
Total	100	48	54	



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INNOVATIVE INSTITUTE OF LAW NATIONAL MOOT COURT COMPETITION

The Semifinal Round is a pivotal moment in the Intra Moot Court Competition, featuring the top teams who excelled in the Preliminary Round. This round promises to showcase the highest caliber of legal argumentation and advocacy skills.

Structure

Each semifinal matchup is determined by a lucky draw, ensuring fairness and unpredictability as teams prepare to advocate their positions. The format remains consistent, with teams presenting as petitioners and respondents in head-to-head matchups.

Petitioner	Respondent
NMC 2	NMC 7
NMC 9	NMC 4

Judging Criteria

Judges will assess the semifinalists based on:

- Strength and clarity of legal arguments
- Engagement and responsiveness to judicial questions
- Persuasiveness and delivery style
- Overall effectiveness in advocating their position

Congratulations to the semifinalists for making it this far! We look forward to witnessing compelling arguments and exceptional advocacy as you vie for a spot in the final round.

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

JUDGE NAME - Prof. Ritesh Kumar

TEAM CODES- NMC 2 / NMC 4

Marking Matrix for Semifinal Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	17	19	
Argumentation and Reasoning	30	12	25	
Oral Advocacy Skills	20	11	19	
Response to Questions	20	10	18	
Written Submissions	10	04	09	
Total	100	54	90	


SIGNATURE

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

JUDGE NAME - Prof. Anirudh Reddy.

TEAM CODES- NMC 2 / NMC-7

Marking Matrix for Semifinal Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	19	15	
Argumentation and Reasoning	30	25	16	
Oral Advocacy Skills	20	18	12	
Response to Questions	20	19	11	
Written Submissions	10	09	02	
Total	100	90	56	



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INNOVATIVE INSTITUTE OF LAW NATIONAL MOOT COURT COMPETITION

Introduction

The Final Round of the Intra Moot Court Competition is the culmination of a challenging and rigorous journey for our outstanding participants. This round is not just a test of knowledge but a celebration of advocacy, legal reasoning, and the skills developed throughout this competition.

Structure

In this decisive round, the finalists will compete head-to-head, having earned their spots through exceptional performances in previous rounds. The roles of petitioner and respondent will again be determined by a lucky draw, ensuring that both teams face new challenges and opportunities for creative legal argumentation.

We applaud all teams for their dedication and hard work throughout the competition. The final round promises to be an exciting showcase of talent and legal prowess. We invite everyone to witness the culmination of this competition and support the finalists as they battle for the championship title!

Petitioner	Respondent
NMC 2	NMC 9

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

JUDGE NAME - *Dr. Shreya Patil*

TEAM CODES- *NMC-2/NMC9*

Marking Matrix for final Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	19	10	
Argumentation and Reasoning	30	18	11	
Oral Advocacy Skills	20	20	12	
Response to Questions	20	19	10	
Written Submissions	10	09	07	
Total	100	85	50	



SIGNATURE

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INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION

RESEARCHER TEST

TEAM CODE -

1. What is the term for a law that is no longer in effect?
 - A) Statute
 - B) Repealed ✓
 - C) Enacted
 - D) Nullified
2. Which of the following is a characteristic of common law?
 - A) Based on statutes
 - B) Developed through court decisions ✓
 - C) Codified in a single document
 - D) Exclusively statutory
3. The principle of separation of powers divides government into how many branches?
 - A) Two
 - B) Three ✓
 - C) Four
 - D) Five
4. What is judicial review?
 - A) The process of reviewing legal documents
 - B) The power of courts to invalidate laws that conflict with the Constitution ✓
 - C) The process of appealing a court decision
 - D) The review of executive orders by the legislature
5. What is the primary purpose of criminal law?
 - A) To regulate personal conduct
 - B) To punish wrongful acts
 - C) To deter crime
 - D) All of the above ✓
6. The insanity defense is based on the premise that:
 - A) All criminals are insane
 - B) A person cannot be held criminally responsible if they lack the capacity to understand their actions ✓
 - C) Mental illness is a valid excuse for any crime
 - D) Insanity must be proven beyond a reasonable doubt
7. An enforceable contract requires:
 - A) A written agreement
 - B) Mutual assent ✓
 - C) Notarization
 - D) A lawyer's involvement
8. A unilateral contract is one in which:
 - A) Only one party makes a promise ✓
 - B) Both parties make promises
 - C) The contract is not enforceable
 - D) It involves a purchase agreement

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION

RESEARCHER TEST

9. What is the main focus of tort law?
- A) Criminal behavior
 - B) Protection of property rights
 - C) Compensation for injuries
 - D) Enforcement of contracts
10. In a negligence case, the plaintiff must prove:
- A) Intent
 - B) Breach of duty
 - C) Criminal intent
 - D) Malice
11. A lease agreement is primarily concerned with:
- A) Sale of property
 - B) Rental of property
 - C) Zoning issues
 - D) Property taxes
12. What is a mortgage?
- A) A rental agreement
 - B) A loan secured by real property
 - C) A property deed
 - D) A type of insurance
13. In family law, what is "child support"?
- A) Money paid to a child directly
 - B) Financial assistance for a child's needs from a non-custodial parent
 - C) Payments made for daycare services
 - D) Educational grants for children
14. A prenuptial agreement is:
- A) A marriage contract
 - B) A contract that outlines property division in case of divorce
 - C) A form of alimony
 - D) A marriage license
15. Which agency is responsible for regulating the stock market?
- A) Federal Reserve
 - B) Securities and Exchange Commission (SEC)
 - C) Federal Trade Commission (FTC)
 - D) Consumer Financial Protection Bureau (CFPB)
16. Rule-making by administrative agencies typically involves:
- A) Legislative procedures
 - B) Judicial review
 - C) Public comment periods
 - D) Both A and C

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NATIONAL MOOT COURT COMPETITION

RESEARCHER TEST

17. What is "sovereignty" in international law?
- A) The right of a state to govern itself
 - B) The power of international organizations
 - C) The authority of treaties
 - D) The jurisdiction of courts
18. Which of the following is an example of a bilateral treaty?
- A) United Nations Charter
 - B) Paris Agreement
 - C) Treaty of Peace between two nations
 - D) NATO Agreement
19. Which type of intellectual property protects inventions?
- A) Copyright
 - B) Trademark
 - C) Patent
 - D) Trade secret
20. The Lanham Act governs:
- A) Copyright law
 - B) Patent law
 - C) Trademark law
 - D) Trade secret law
21. The Equal Employment Opportunity Commission (EEOC) enforces:
- A) Wage and hour laws
 - B) Anti-discrimination laws
 - C) Occupational safety regulations
 - D) Workers' compensation claims
22. Which act requires employers to provide a safe workplace?
- A) Fair Labor Standards Act
 - B) Occupational Safety and Health Act
 - C) Americans with Disabilities Act
 - D) Family and Medical Leave Act
23. The Clean Water Act aims to:
- A) Protect wetlands
 - B) Regulate water pollution
 - C) Ensure safe drinking water
 - D) All of the above
24. Which agency enforces federal environmental laws in the U.S.?
- A) Department of Energy
 - B) Environmental Protection Agency (EPA)
 - C) Department of Agriculture
 - D) National Oceanic and Atmospheric Administration (NOAA)

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NATIONAL MOOT COURT COMPETITION

RESEARCHER TEST

25. Which type of business organization limits the liability of its owners?
- A) Sole proprietorship
 - B) General partnership
 - C) Limited liability company (LLC)
 - D) Cooperative
26. What is a fiduciary duty?
- A) A legal obligation to act in another party's best interest
 - B) A contractual obligation
 - C) A duty to pay taxes
 - D) A requirement for financial reporting
27. What is the best definition of "relevance" in legal evidence?
- A) Information that can be easily verified
 - B) Information that has a tendency to make a fact more or less probable
 - C) Information that is widely accepted
 - D) Information that is public knowledge
28. Which of the following is a type of admissible evidence?
- A) Hearsay
 - B) Opinion evidence
 - C) Expert testimony
 - D) Speculative evidence
29. Which of the following represents a violation of attorney-client privilege?
- A) Discussing a case with a partner at the law firm
 - B) Sharing confidential information without consent
 - C) Talking to the client about their case
 - D) Keeping client records secure
30. The term "pro bono" refers to:
- A) Paid legal work
 - B) Legal work performed for free
 - C) Legal work for government clients
 - D) Legal work for corporations
31. In arbitration, the decision made by the arbitrator is:
- A) Binding
 - B) Non-binding
 - C) Advisory
 - D) Optional
32. What is the primary advantage of mediation over litigation?
- A) It is always binding
 - B) It is typically less expensive and faster
 - C) It guarantees a resolution
 - D) It involves a judge

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NATIONAL MOOT COURT COMPETITION

RESEARCHER TEST

33. What does the Computer Fraud and Abuse Act (CFAA) prohibit?
- A) Unauthorized access to computer systems
 - B) Copying software
 - C) Sending unsolicited emails
 - D) All of the above
34. Which of the following is a component of data protection laws?
- A) Consent for data collection
 - B) Right to access personal data
 - C) Right to data portability
 - D) All of the above
35. The Truth in Lending Act requires lenders to:
- A) Disclose all fees and terms clearly
 - B) Provide free credit reports
 - C) Charge a maximum interest rate
 - D) Offer loans to all applicants
36. Which agency is primarily responsible for consumer protection in the U.S.?
- A) Federal Trade Commission (FTC)
 - B) Securities and Exchange Commission (SEC)
 - C) Federal Reserve
 - D) Consumer Financial Protection Bureau (CFPB)
37. Which chapter of bankruptcy allows for reorganization of a business?
- A) Chapter 7
 - B) Chapter 11
 - C) Chapter 12
 - D) Chapter 13
38. What is a "discharge" in bankruptcy?
- A) The cancellation of a debt
 - B) The obligation to repay debts
 - C) The sale of assets
 - D) The filing of bankruptcy
39. The Sarbanes-Oxley Act was enacted to:
- A) Regulate tax policies
 - B) Protect investors from fraudulent accounting practices
 - C) Lower interest rates
 - D) Increase corporate profits
40. Which of the following is considered a "security"?
- A) Stocks
 - B) Bonds
 - C) Options
 - D) All of the above

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NATIONAL MOOT COURT COMPETITION

RESEARCHER TEST

41. What is a "green card"?
- A) A document allowing temporary work
 - B) A permanent residency card
 - C) A travel visa
 - D) An employment authorization document
42. Asylum status is granted to individuals who:
- A) Seek employment in the U.S.
 - B) Fear persecution in their home country
 - C) Are visiting the U.S. temporarily
 - D) Have family in the U.S.
43. The International Criminal Court (ICC) prosecutes individuals for:
- A) Civil disputes
 - B) International crimes such as genocide and war crimes
 - C) Property crimes
 - D) Family law violations
44. Which of the following is a major international human rights treaty?
- A) Treaty of Paris
 - B) International Covenant on Civil and Political Rights
 - C) North Atlantic Treaty
 - D) Treaty of Rome
45. What is joint custody?
- A) One parent has sole legal and physical custody
 - B) Both parents share legal and/or physical custody of a child
 - C) A temporary custody arrangement
 - D) Custody granted to grandparents
46. The term "emancipation" in family law refers to:
- A) The legal process of freeing a minor from parental control
 - B) The termination of parental rights
 - C) A divorce proceeding
 - D) A custody modification
47. Which form do individual taxpayers typically file to report their income?
- A) W-2
 - B) 1099
 - C) 1040
 - D) K-1
48. Tax evasion is defined as:
- A) Legally reducing tax liability
 - B) Failing to pay taxes owed
 - C) Filing tax returns late
 - D) Misreporting income

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION

RESEARCHER TEST

49. The term "double jeopardy" refers to:

- A) Being tried twice for the same crime
- B) The right to a second trial
- C) Sentencing for multiple offenses
- D) None of the above



50. What is a plea bargain?

- A) A formal trial
- B) An agreement in which a defendant pleads guilty to a lesser charge
- C) A request for a new trial
- D) A motion to dismiss charges



INNOVATIVE INSTITUTE OF LAW MOOT COURT COMPETITION 2022-23

IN THE MATTER OF

DRISHTI FOUNDATION ----- APPELLANT

UNION OF INDIA ----- RESPONDENT

BEFORE THE HONOURABLE SUPREME COURT OF INDIA

WRITTEN SUBMISSION ON BEHALF OF THE APPELLANT

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

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1.	www.aironline.in
2.	www.scconline.com
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5.	health.harvard.edu
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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 HUMBL Y SUBMIT THIS PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF REPUBLIC OF INDIA BEFORE THIS HON'BLE HIGH COURT OF STATE OF MARATHA.

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

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

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

STATEMENT OF FACTS

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

STATEMENT OF ISSUES

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

SUMMARY OF ARGUMENTS

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

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

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

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

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

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

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

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

ARGUMENTS ADVANCED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Difference between civil and criminal negligence -

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

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

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

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

INGREDIENTS OF NEGLIGENCE

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

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

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

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

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

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

c) Damage

Duty to take care

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

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

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

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

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

Non observance of guidelines amounts to gross negligence

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

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

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

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

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

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

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

Negligence endangering Human life.

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

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

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

Dr. Laxman Balkrishna Joshi v. Dr. Trimbak 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 Loquitur 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 loquitur' being applied in cases of medical negligence was upheld in *V. Kishan-Rao v. Nikhil Super*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

According to WHO records on patient safety globally²³,

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

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

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

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

Patient Safety the global concern

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

World Patient Safety Day

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

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

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

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

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

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

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

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

Cases which show direct violation of right to life:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Need of the hour is fetal rights.

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

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

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

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

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

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

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

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

Fundamental Rights granted to foetus by different Countries.

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

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER

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

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

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

VERIFICATION

TO WHOMSOEVER IT MAY CONCERN

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

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

TEAM CODE - NMC08 R

INNOVATIVE INSTITUTE OF LAW MOOT COURT COMPETITION 2022-23

IN THE MATTER OF

DRISHTI FOUNDATION----- APPELLANT

UNION OF INDIA-----RESPONDENT

BEFORE THE HONORABLE SUPREME COURT OF INDIA

WRITTEN SUBMISSION ON BEHALF OF THE RESPONDENTS

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

STATEMENT OF JURISDICTION

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

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

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

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

STATEMENT OF FACTS

1. Indiyana is a country having the largest population in the world. Uppar Parihar is the most populated state of the Indiyana. The Ministry of health and family welfare demanded the ICMR to study the Ratio of doctors, vis-a via patients undergoing treatment for mental illness in the Uppar Parihar. In the report, it was found that, there is high disparity in the doctors and patients ratio and increased impact of the over dose or negligent use of antidepressant drug on other medication.
2. On 9 Dec 2018 Ministry of Health and family welfare with other officials framed guidelines for doctors that They should give prescription after a complete and through diagnosis of the patient and it was also directed that, it will be duty of the doctors to examine a patient medical history and ongoing medication before giving a prescription and doctor will give minimum consultation time to each patient. These guidelines were also published in a popular newspaper of the Indiyana.
3. After reading the news items, Partho Pradhan, husband of Sudha Pradhan contacted to Sudha's Dr. Radha Ramana (gynecologist) about her nine weeks pregnancy and undergoing Treatment for anxiety and insomnia, then he advised that antidepressant drugs would not Cause any bad effect on foetus. On 15 Dec, she had anxiety attack. Her husband contacted To Dr.Zee (Sudha' psychiatrist) who was on a tour for 20 days, he advised that she should Continue the prescribed dosage. and instead of referring her to another Dr. he suggested to continue medication for another 15 days.
4. On, Dec 22, she became unconscious because of Abdominal pain and dizziness but her dosage of antidepressant was increased by dr. Zee. On, Jan 9, Dr. RadhaRamana called her for ultrasound, ultrasound report was done, But it was not verified by a certified Dr. which was known to Dr. RadhaRamana But it was ignored by him. On January 11 hospital authorities declared the foetus dead.
5. Partho Pradhan filed a Fir against both the doctors and hospital authorities. Uppar Parihar district court granted bail to both the doctors Uppar Parihar HC. Upheld the bail granted by district court Special leave petition was filed under article 136 in the SC of the Indiyana.

STATEMENT OF ISSUES

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

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

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

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

SUMMARY OF ARGUMENTS

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

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

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

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

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

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

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

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

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

ARGUMENTS ADVANCED

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

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

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

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

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

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

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

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

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

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

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

Civil and Criminal Negligence

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE BOLAM TEST

***Bolam v. Friern Hospital Management Committee*¹⁰**

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

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

Application of Bolam Test in other cases -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No fundamental rights to foetus -

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

Universal Declaration of Human 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.