



INNOVATIVE INSTITUTE OF LAW



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मान-विज्ञान विभूयते

Presents



INNOVATIVE NATIONAL MOOT COURT COMPETITION

Last Date for
Registration:
Nov.18th, 2023

30th November to 02nd December - 2023

Contact Information

For any queries/clarifications:

Email: mcc@innovativegroupofcolleges.com

Ms. Preeti : Asst. Professor

Faculty Coordinator: 9812764918, 9868026180

Mr. Anand Singh : Asst. Professor

Faculty Coordinator: 9651499636

Ms. Deepika : Asst. Professor

Faculty Co- Coordinator: 9289554475, 9289554476.

Student Body

Yashvender : Student Convenor : 8700614275

Khushboo : Executive Head

AWARDS AND PRIZES

- * Winner: 31,000/- + Trophy + Certificate of Merit
- * Runner Up: 15,000/- + Trophy + Certificate of Merit
- * Best-Speaker: 5000/- + Memento + Certificate of Merit
- * Best Memorial: 5000/- + Memento + Certificate
- * Best Researcher: 5000/- + Memento + Certificate of Merit
- * Certificate : All other participants shall receive participation certificate + Memento

Knowledge Partner :

Media Partner :



Affiliated to C.C.S. University, Meerut & Approved by Bar Council of India, New Delhi
6, Knowledge Park-2, Greater Noida-201310. (Near Knowledge Park-2 Metro Station)



INNOVATIVE INSTITUTE OF LAW

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



About Innovative Institute of Law

The Innovative Institute of Law offers LL.B. , B.A.LL.B., B.Com. LLB programs in law. However, its campus, which spans around 6 acres of land, includes a tranquil green space, a lawn tennis court, and exceptional cricket fields where Ranji Trophy participants prepare. In addition, our institution operates the IGNOU Study Center, which offers a number of diplomas in the field of law, including those in human rights, cyber law, patent practice, paralegal services, and so forth. We Believe that if you are a seeker, you have a craving for knowledge. Knowledge when filtered with logic and practicality becomes “wisdom”. We believe in the age-old, traditions, true to India and its DNA practice of the “Guru Shishya Parampara” We have vision to create a conducive environment for the Faculty so that they can bequeath knowledge in a simple and easily understandable way. Innovative Institute of Law aims to ensure a bright and result-oriented future for all our students, by inviting luminaries and credible corporates.



ABOUT 2nd NATIONAL MOOT COURT COMPETITION 2023

We at the Faculty of Law, Innovative Institute of Law are committed to a show of cooperative and collective resilience. Hence, after the successful completion of the 1st edition, we have planned to organize the 2nd National Moot Court Competition to provide an environment where aspiring lawyers can enhance their legal proficiencies and mooted skills with a unique concept and with the aim to inspire, promote and inculcate drafting & writing techniques, orating skills, and high focus on research acumen.

The competition strives to give a platform to the budding lawyers of our country to imbibe analytical skills in real-time situations. The aim is to engage with students and allow them to have first-hand experience of the complexities of the law.



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TIMELINE OF COMPETITION

Commencement of Registration

Last date of Registration	18th Nov, 2023
Last date for seeking Clarifications (if any)	20th Nov, 2023
Last date for submission of memorials	23rd Nov, 2023
Inaugural Ceremony & Orientation	30th Nov, 2023
Draw of Lots and Researcher's Test	30th Nov, 2023
Preliminary Rounds	30th Nov, 2023
Quarterfinal Rounds	01 Dec, 2023
Semi-final Rounds	01 Dec, 2023
Final Round	02 Dec, 2023
Valedictory Ceremony and Prize Distribution	02 Dec, 2023

PROCEDURE FOR REGISTRATION

- 1) The procedure for registration for the competition is as follows:
 - (a) Registration- Interested teams are required to register themselves to participate in the Competition by filling a registration form on this link – <https://forms.gle/Lq7y4JbXDDDXFDDdxB7>
 - (b) The teams are also required to mention the E-Mail ID of either the respective committee or the head/dean of the Institution in the Registration Form
- 2) Deadline for the online Registration –November 18th, 2023 (Till 11:59 P.M. IST).
- 3) Registration Fee - INR 3100/- (Per Team). The discipline and transparency with which this competition is conducted have contributed in its previous successful chapters leading to increased participation from year to year since its inception.
- 4) The confirmation of Registration will be notified to the teams by the Organizers, after the completion and verification of the Registration formalities.
- 5) The teams will be provided with a Team Code and in any stage of the Competition, a team must be identified only by the allotted team code.
- 6) All team members must refrain from disclosing the identity of their Institution at any time and in any manner during their participation in the Competition. Non – compliance with this rule shall lead to severe penalty or disqualification as determined by the Administrators.

PAYMENT DETAILS:

The procedure for the payment of the Registration Fee shall be as follows: All the teams shall be required to make a payment of INR 3,100/-

1) Paytm/PhonePe/ Google Pay



Name : **INNOVATIVE INSTITUTE OF LAW**
Bank : **AXIS BANK LTD.**
IFSC Code : **UTIB0000624**
A/c No. **918020111591127**

*The last date for completion of all the registration formalities is on or before November 18th, 2023 (till 11:59 P.M. IST).

DATE AND VENUE OF THE COMPETITION:

The Faculty of Law, Innovative Institute of Law, , 2nd National Moot Court Competition, 2023 will be held from the 30th November, 2023 to 2nd December -2023 at the campus of the Innovative Institute Of Law, Plot No.-6, Knowledge Park-2, Greater Noida-201308. (Near Knowledge Park-2 Metro Station) “Physically”.

RULES AND REGULATIONS

The Organizing Committee of the **2nd National Moot Court Competition, 2023** will have exclusive authority to interpret the rules in the interest of just and fair competition. The definitions placed below by the Organizing Committee shall be final and the decision of the Organizing Committee regarding the applicability of these rules will be final. These rules may be called the rules for the 2nd National Moot Court Competition, 2023.

LANGUAGE

English shall be the official language for the conduct of the Competition.

DRESS CODE

Participants shall be appropriately attired throughout the conduct of the Competition (Inauguration, Oral Rounds, Valedictory & Prize Distribution) in the manner provided :- The Dress Code shall strictly be: For Gentlemen- Western Formals (White formal shirt with black formal trousers and a black blazer with a tie) and For Ladies- Western Formals (White formal shirt with black formal trousers/skirt and a black blazer) or Indian Formals (White kurta, black salwar and black dupatta along with the black blazer). [Presence of Robes and collar bands in the attire detailed above are strictly prohibited].

TEAM ELIGIBILITY

Participation is strictly restricted to Bonafide undergraduate law students pursuing the three years or five years LL.B. degree program from the Institution/University recognized by Bar Council of India. Only ONE team can register from a law school or college of a recognized university/institution as a participant in the Competition. During the process of registration, teams are required to submit a No Objection Certificate (“NOC”) issued by the Head/Dean/Faculty coordinator of the Institution/Moot Court Committee, authorizing the team to participate on behalf of the institution as provided in the Registration Form (link is given below). <https://forms.gle/Lq7y4JbXDDXFDdxB7>

DEFINITIONS

- 1) **‘Bench’** refers to the members duly invited by the institute, to adjudge any of the rounds, collectively.
- 2) **‘Clarifications’** means any questions, queries, or doubts sent by the registered teams to the organizers, within the given deadline.
- 3) **‘Competition’** means the National Moot Court Competition, 2023.
- 4) **‘Speaker’** refers to a participant who presents oral arguments in any given round.
- 5) **‘Penalty’** refers to the deductions imposed on the memorandum scores of a participating institution.
- 6) **‘Participating Team’** means the team which has registered itself for the competition as per the rules for registration.
- 7) **‘Participating Institution’** shall be presumed to be the institution of the participating teams.
- 8) **‘Moot Problem’** means a set of facts published by the institution for moot court competition.
- 9) **‘Rebuttals’** refer to those arguments /questions that the Complainant may raise at the end of the main pleadings of all the Orators.
- 10) **‘Sur-rebuttal’** refers to the defense presented by the Respondent to the rebuttals.
- 11) **‘Organiser’** means Innovative Institute of Law.

- 12) **‘Organising Committee’** means the Moot Court Committee Innovative Institute of Law.
- 13) **‘Court Room’** shall refer to the courtrooms where the oral rounds will take place
- 14) **‘Scouting’** means a person observing the Oral Rounds of a team other than the team such person is associated with.
- 15) **‘Team Code’** refers to the code allocated to a participating institution by the organizing committee after completion of the Registration.

CLARIFICATIONS

- 1) Clarifications to the Moot Proposition shall be sought by sending an E-Mail to: mcc@innovativegroupofcolleges.com on or before November 20th, 2023. The subject of the clarification E-Mail must be “Clarification(s) – 2nd NMCC, 2023” . [Note: Clarifications sent after the deadline shall not be entertained.]
- 2) A team may seek a maximum of five clarifications only. The Clarifications shall be released by the Administrators on November 19th, 2023. Clarifications will be sent to the respective teams on their E-Mail ID's. [Note: The request for clarification shall only be made on the factual matrix of the Moot Proposition and no request whatsoever shall be entertained towards seeking clarification on the legal facets of the Moot Proposition. The clarification so issued shall be deemed to be final and absolute unless otherwise decided and communicated by the Administrators to the participating teams.]

TEAM COMPOSITION:

- 1) Each team may comprise a minimum of two (2) and not more than three (3) members. The team composition may be of two (2) speakers only or of two (2) speakers and one (1) researcher. It is henceforth clarified, that if a participating team would be comprising of 2 members, then one of them shall also be appearing as a Researcher in the Researcher's Test
- 2) Once registered, a team will not be permitted to vary the composition of the team members in any manner. Changes, if any, may only be made with the express permission of the Administrators (at their discretion), if due reason is shown for the same.
- 3) Any changes with respect to the contact details shall be notified to the Administrators with immediate effect. This obligation to inform shall continue throughout the course of the Competition.
- 4) Certificates for participating team members will be prepared from the team list submitted. The certificates of participation will reflect the names of the team members exactly as they have been submitted. It is, therefore, incumbent on teams to ensure that names are spelt and presented correctly in the Registration Form.

MEMORIAL AND MARKING EVALUATION:

Strict adherence regarding the rules:

- 1) The Teams are expected to strictly adhere to the Rules regarding submission of Memorial(s). Non-adherence to the same will attract penalties as provided under the Rules.
- 2) Memorials to be submitted from both sides: i. Each team must prepare Memorials for both the sides to the dispute i.e., the Petitioner(s) and the Respondent(s) as the case may be. The rules regarding the Memorial are stated as under:
- 3) General Conditions for Memorial: i. The Memorial shall not contain any form of identification of the participating institution apart from the Team Code. If any such identification or mark, symbol, etc. which has the effect of identifying the team is found on the Memorial, the same shall result in instant disqualification of the participating team.

Specific Guidelines for Memorial:

- 1) The Memorial has to be submitted both in soft and hard copy formats.
- 2) Each Team shall submit the soft copy of the Memorial, in “pdf and doc” format on or before November 23rd, 2023 not later than 11:59 pm [IST] through the Google Form which will be sent to each team.
- 3) Each Team shall carry six (6) hard copies of the Memorials so sent by them in terms of above, at the time of their physical registration for the competition on November 30th, 2023.
- 4) The name of the Memorial should be according to the Team Code and the side (Petitioner and Respondent) for which the Written Submission is prepared. The Team Code must be ascribed on the top right corner of the cover page and must be succeeded by the side for which the Memorial is prepared.
- 5) A penalty of 1 (One) mark shall be levied in case the Memorial is submitted in any other format or as multiple files by the Team at the time of submission of the soft copies of the memorials.
- 6) The team submitting their 'Memorial' after the last date of the submission shall stand “disqualified” from the competition.

Guidelines for Formatting:

- 1) Memorial Structure: The Memorial must contain the following contents in the order as stated below:
 - a) Cover Page – The Cover Page must be BLUE for the Petitioner and RED for the Respondent. A penalty of 1 (One) mark per side shall be levied in case the team uses the wrong cover page in their Memorial. The Cover Page of the Memorial must contain the following information: The 'team code' in the top right corner.
 - The 'name' and 'year' of the Competition.
 - The name of the case (Case Title).
 - The 'side' for which the Memorial has been prepared.
 - Name of the 'forum' adjudicating the dispute.

- b) Table of Contents
- c) List of Abbreviations
- d) Index of Authorities: The Index of Authorities must list all the authorities cited in the Memorial.
- e) Statement of Jurisdiction;
- f) Statement of Facts: The Statement of Facts must contain a concise statement of the relevant facts to the dispute. As far as may be, the Statement of Facts should be limited to the stipulated facts and legitimate inferences which can be drawn from those facts. Argumentative facts are prohibited. Statement of Facts shall not exceed 2 pages. [Note: Non-compliance will result in a penalty of 1 mark for each exceeded page.]
- g) Issues Raised
- h) Summary of Arguments: The summary of arguments should contain a summary of the substance of the arguments, and should not merely be the production of the various headings and sub-headings of arguments. The Summary of Arguments shall not exceed 2 pages. [Note: Non-compliance will result in a penalty of 1 mark for each exceeded page.]
- i) Pleadings/Arguments Advanced: All legal arguments must be limited to the Pleadings/Arguments Advanced section of the Memorial. The Pleadings/Arguments Advanced must not exceed 20 pages. [Note: Non-compliance will result in a penalty of 2 marks for each exceeded page.]
- j) Prayer: The Prayer shall not exceed 1 page.
- 2) Team Code: The team code must be ascribed to the top right corner of the cover page. The code must be succeeded by the side for which the Memorial is prepared. The teams must use "P" for Petitioner and "R" for Respondent. For instance, in the case of Team Code being TC-100, the team must write "TC-100P" in case of Memorial for 'Petitioner' and "TC-100R" in case of Memorial for 'Respondent'.
- 3) Margin: The Memorial must maintain an equal margin of 1 inch on all sides.
- 4) Basic compliance for Memorial: The Memorial (including the preliminary pages and excluding the cover page) shall adhere to the following mandatory specifications: Paper size: A4, Font type: Times New Roman, Font size: 12, Line spacing: 1.5, Body of text: Justified. [Note: Non-compliance will result in a penalty of 02 marks for each side of the written submission.]

Specific Guidelines for Memorial:

- 5) Footnotes: The footnotes must be in font type: Times New Roman, Font size: 10, Line spacing: 1.0, Paragraph spacing: 0, no additional space between 2 footnotes and body of text and Justified with a Uniform Style of Citation (Bluebook, 20th Edition) to be strictly followed throughout the Memorial. [Note: Non-compliance will result in a penalty of 1 (One) mark per page.]
- 6) Header and Footer: The font used for the header/footer, if any, shall be Times New Roman, size 10 with single spacing.

MARKING CRITERIA FOR THE MEMORIAL(S) SUBMITTED BY THE TEAMS:

Memorial from each side shall carry a total of 100 marks. The written submissions shall be marked on the parameters which are laid down as under:

Sr. Nos.	MARKING CRITERIA	MARKS ALLOTTED
1.	Evidence of Original Thought	20
2.	Knowledge of Law and Facts	20
3.	Proper and Articulate Analysis	20
4.	Structure, Language and Grammar	15
5.	Extent and Use of Research	15
6.	Correct Format and Citation	10
	Total	100

COMPENDIUM:

- i. All relevant case laws and statutory material and other evidence based on which the participants are going to present and substantiate their arguments may be submitted before the Bench during the Oral Rounds of arguments in the form of a 'Compendium' on or before 30th November, 2023
- ii. Participants shall ensure that anonymity is not violated while passing on any material to the Bench. If any mark, name, seal, symbol or logo of their institution/college/university is present, participants must ensure that the same is rendered unrecognizable.

EXCHANGE OF MEMORIALS:

- i. The exchange of Memorial for the Preliminary Round shall take place on 30th November, 2023 before 12 Noon. The memorial exchange for the advanced round of competition(s) shall take place at least 1 (One) hour prior to the conduct of the advanced rounds Quarter- Finals, Semi Finals and Finals).
- ii. Teams are prohibited from making any remarks on the opponent's Memorial, thus, exchanged. Teams are also prohibited from making any copies of the opponent's Memorial, electronically or otherwise.

RESEARCHER'S TEST:

- I. The Researcher's Test for the Competition shall be conducted on 30th November, 2023 at the Campus of the Innovative Institute of law.
- ii. Only the 'Researcher' is supposed to give the test. In case there are only two members in a team, one member shall be required to appear in the test.
- iii. It is mandatory for each participating team to give the Researcher's Test.

- iv. The test shall be conducted by way of marking and writing response to the questions from the question paper which shall be handed over to the participant (Researcher) onto the OMR Sheets and the Answer Papers which shall be handed over to the Participant.
- v. The question paper shall comprise of 50 questions of 2 (Two) marks each (carrying +2 for every correct response and -0.25 for every incorrect response)

ORAL SUBMISSIONS AND MARKING EVALUATION

General Guidelines for Oral Submissions:

- i. Teams are not permitted to raise issues in the Oral Rounds that have not been submitted in their written submissions.
- ii. The use of mobile phones, laptops, or any other electronic gadgets for research or reference purposes is strictly prohibited during the Oral Rounds.
- iii. Participants may use their bare acts, print outs and commentaries provided that anonymity is not violated during the Rounds.
- iv. The decision of the Judges as to the marks allotted to each team shall be final and binding.

STRUCTURE OF ROUNDS:

- I. The Competition shall be conducted over a period of 3 (Three) days i.e., from 30th Nov to 2 Dec-2023
The Competition shall consist of the following rounds:
 - a. Preliminary Rounds;
 - b. Advanced Rounds:
 - Quarter-finals
 - Semi-finals
 - Final

PRELIMINARY ROUNDS:

- i. Each team shall argue once from both sides, i.e., Petitioner and Respondent, order of which shall be decided by way of draw of lots to be conducted by the Administrators.
- ii. No two teams shall face each other more than once in the Preliminary Rounds nor will they argue before the same panel of judges.
- iii. Draw of Lots: The fixtures/match-up of teams in Preliminary Rounds shall be determined on the basis of the draw of lots.
- iv. Each side shall get a maximum time of 30 minutes to present their arguments of which no Speaker shall be permitted to address the Bench for more than 18 minutes. The time limit is inclusive of the time for Rebuttal or Sur-rebuttal respectively. The maximum time for Rebuttal is 2 minutes and the maximum time for Surrebuttal is 1 minute. Each speaker is required to speak for a minimum of 12 minutes exclusive of the time taken for Rebuttals and Sur-rebuttals.

SCORING IN THE PRELIMINARY ROUNDS:

- i. The qualification or disqualification of the Teams for the Advanced Rounds shall be determined on the basis of the wins only in each Preliminary Round.
- ii. The win or loss of a Team shall be determined on the basis of aggregate score. The Team with a higher aggregate score shall win the round.
- iii. The aggregate score of a Team shall be computed as the total of - Oral Score of Speaker-1, Oral Score of Speaker-2 and half the score of the Memorial.
Only those Teams shall qualify to the Advanced Rounds who win both the preliminary rounds. In case of shortage of such teams to even out the competition in the advanced rounds, the top teams as determined by their cumulative scores for both the rounds shall be taken into consideration by the Administrators irrespective of the fact that whether such a team had won/lost any round whatsoever.

- i. In the event of a tie, the following methods shall be used to determine the rank of the Team:
 - a. The aggregate score of the Team in their Oral Round One shall be considered, the Team with a higher score will be allotted a higher rank;
 - b. If the tie subsists, the Team with the higher speaker score will be allotted the higher rank;
 - c. If the tie still subsists, the Team with the highest individual speaker score out of speakers of tied Teams will be allotted the higher rank;
 - d. If the tie still subsists, the Team with the higher Memorial score will be allotted a higher rank;
 - e. If the tie still subsists, then the rank shall be determined by a toss of a coin.
- i. The Best Mooter Award for each round will be awarded on the basis of the scores awarded to the Speakers in each such Round, meaning thereby that there will be the Best Mooter award for each round of the Competition.

ADVANCED ROUNDS:

- i. Every Team shall argue once in each of the Advanced Rounds.
- ii. The side to be argued shall be determined on the basis of Power match ups after the declaration of results of Preliminary Rounds.
- iii. The qualification of Teams to subsequent rounds shall be on a knock-out basis for each of the Advanced Rounds. In the event of a tie, the Team with higher Memorial marks will be given a higher rank.

QUARTER-FINALS :

- i. The Quarter-final round shall be a knock out round consisting of 8 Teams in total. The Teams shall be required to plead only once, either from the side of the Petitioner or the Respondent.
- ii. Each side in quarter finals shall get a maximum of 45 minutes to present their arguments of which no Speaker shall be permitted to address the Court for more than 25 minutes. The time limit is inclusive of the time for Rebuttal or Sur-rebuttal respectively. The maximum time for Rebuttal is 4 minutes and the maximum time for Sur-rebuttal is 2 minutes. Each speaker is required to speak for a minimum of 18 minutes exclusive of the time taken for Rebuttals and Sur-rebuttals.
- iii. The winners of the Quarter-final round shall advance to the Semi-final round.

SEMI-FINALS :

- i. The top four Teams from the Quarter Final Round shall qualify for the Semi-final round. It shall be a knock out round. The side of pleadings and the opponent shall be determined on the basis of draw of lots.
- ii. Each side shall get a maximum time of 50 minutes to present their arguments of which no Speaker shall be permitted to address the Court for more than 30 minutes. The time limit is inclusive of the time for Rebuttal or Sur-rebuttal respectively. The maximum time for Rebuttal is 5 minutes and the maximum time for Sur-rebuttal is 3 minutes. Each speaker is required to speak for a minimum of 22 minutes exclusive of the time taken for Rebuttals and Sur-rebuttals.
- iii. The winner of each courtroom fixture i.e., 2 Teams from the semi-final round shall proceed to the final round.

FINAL ROUND:

- i. The top two Teams from the Semi-Final Round shall qualify for the final round. It shall be a knock out round, where the side for pleading shall be determined on the basis of draw of lots.
- ii. The maximum time for arguments shall be the same as in the Semi-finals.
- iii. The Winner of the Final Round shall be declared the winner of the Competition.

TEAM AWARDS

Winner: 31,000/- + Trophy + Certificate of Merit

Runner Up: 15,000/- + Trophy + Certificate of Merit

Best Speaker: 5000/- + Memento + Certificate of Merit

Best Memorial: 5000/- + Certificate of Merit + Memento

Best researcher: 5000/- + Memento + Certificate of Merit

Certificate All other participants shall receive participation certificate + Memento

SCOUTING

- i. Scouting is strictly prohibited.
- ii. Any participant/ member of the organizing committee may submit a complaint regarding Scouting to the Organizers.
- iii. Teams found scouting shall be disqualified immediately.

Marking Criteria For Oral Submissions/Arguments:

Oral Submissions/Arguments from each side shall carry a total of 100 marks. The following will be the marking criteria for the oral arguments/pleadings for the Speakers:

Sr. Nos.	MARKING CRITERIA	MARKS ALLOTTED
1.	Appreciation and application of facts	10
2.	Application of legal principles	10
3.	Use of Authorities and Precedents	10
4.	Presentation skills	10
5.	Clarity of thoughts and structure of arguments	10
6.	Poise and demeanor	10
7.	Strategy	10
8.	Knowledge of laws	10
9.	Response to Forum questions	20
	Total	100

INNOVATIVE INSTITUTE OF LAW
NATIONAL MOOT COURT COMPETITION
2023-2024


MOOT PROBLEM

Background: Aarav, a 45-year-old software engineer from Delhi, was known for his vibrant personality and active lifestyle. He was a loving husband to Priya and a doting father to his two children, Ananya (16) and Rohan (12). Aarav's life took a tragic turn five years ago when he was involved in a severe car accident while returning from a family vacation in Manali. The accident left him with multiple injuries, including severe brain trauma, leading to a diagnosis of Persistent Vegetative State (PVS). Since the accident, Aarav has been in a state of complete unresponsiveness, with no signs of cognitive function. He is kept alive through artificial life support, including a ventilator and feeding tube. Despite numerous consultations with leading neurologists and specialists, the prognosis remains grim, with no hope of recovery. Priya Sharma, Aarav's wife, has been the primary caregiver, balancing her responsibilities at home and work while ensuring Aarav receives the best possible care. The emotional and financial burden on the family has been immense. Ananya and Rohan, who were once cheerful and outgoing, have been deeply affected by their father's condition. The family has exhausted their savings on medical expenses, and the continuous hospital visits have taken a toll on their mental health. Before the accident, Aarav had expressed his views on life support and end-of-life care during a casual conversation with Priya. He had mentioned that he would not want to be kept alive artificially if he were ever in a condition with no hope of recovery. Priya, recalling this conversation, feels that continuing life support is against Aarav's wishes and dignity. The medical team attending to Aarav has confirmed that his condition is irreversible. Dr. Mehta, the chief neurologist, has stated that Aarav's brain has suffered extensive damage, and there is no possibility of regaining consciousness. The prolonged use of life support, according to Dr. Mehta, is only prolonging Aarav's suffering and is not in

his best interest. Faced with this heart-wrenching situation, Priya decides to approach the court for permission to withdraw life support, invoking the right to die with dignity under Article 21 of the Constitution of India. The hospital, however, refuses to comply without a clear legal directive, fearing potential legal repercussions and ethical concerns. Priya, along with her children, files a petition in the Supreme Court, seeking permission for passive euthanasia. The petition argues that the right to life under Article 21 includes the right to die with dignity, as recognized in the landmark judgment of Common Cause v. Union of India. The family presents medical evidence and Aarav's previously expressed wishes to support their case. The case garners significant media attention and sparks a nationwide debate on the ethical and legal aspects of passive euthanasia. While some support the family's decision, emphasizing the importance of dignity and autonomy, others raise concerns about the potential for misuse and the sanctity of life.

Issues for Consideration:

1. Whether the right to die with dignity is an integral part of the right to life under Article 21 of the Constitution of India.
2. Whether the withdrawal of life support in cases of PVS constitutes passive euthanasia and if it is legally permissible.
3. What safeguards and procedures should be in place to prevent misuse of passive euthanasia?
4. Whether the existing legal framework adequately addresses the ethical and legal complexities of passive euthanasia.


PRINCIPAL
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Greater Noida-201308



INNOVATIVE INSTITUTE OF LAW

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

Dated: 01-11-2023

NOTICE

Dear Students,

We are delighted to announce the National Moot Court Competition to be held at our college's **Moot Court Hall on 30th November- 02nd December 2023.**

We invite all interested students to form teams of **3 members** and register for the competition by **15th November 2023**. The registration fee includes participation in the competition, access to all competition materials, and participation certificates for all team members.

Further details regarding the competition schedule, rules, and registration process will be provided in the official announcement, which will be circulated shortly.

We look forward to your enthusiastic participation in the National Moot Court Competition.

Principal

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

Copy to...

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

Plot No. - 6, Knowledge Park - 2, Greater Noida, U. P. - 201308. (Near Knowledge Park - 2 Metro Station)

Ph: 0120-2328555 | Website - www.innovativeinstituteoflaw.com | E-mail: innovativelaw2005@gmail.com



EVENT REPORT: NATIONAL MOOT COURT COMPETITION

Date: December 20, 2023

Event: National Moot Court Competition

Date of Event: November 30 - December 2, 2023

Venue: Moot Court Hall, Innovative Institute of Law

1. Overview:

The National Moot Court Competition, hosted by Innovative institute of Law was a significant event that took place from November 30 to December 2, 2023. The competition was held in the college's Moot Court Hall and brought together law students from across the country to showcase their advocacy skills and legal knowledge.

2. Registration Details:

- **Registration Deadline:** November 15, 2023
- **Team Composition:** Teams were required to consist of 3 members each.
- **Registration Fee:** The fee included participation in the competition, access to all relevant materials, and participation certificates for all team members.

Distinguished Guests:

The proceedings were honored by the presence of esteemed judges:

- **Hon'ble Justice Sh. L. Narishma Reddy**
- **Hon'ble Justice Sh. Bipin Chandra Kandpal**
- **Hon'ble Justice Sh. R. B. Sharma**

Their participation added a significant level of prestige and provided invaluable insights into the legal profession.

3. Event Announcement:

The event was officially announced through a notice issued by the Principal of Innovative Institute of Law. The notice invited all interested students to form teams and register for the competition by the specified deadline. It also indicated that detailed information regarding the competition schedule, rules, and the registration process would be provided in a subsequent official announcement.



4. Key Points from the Notice:

- **Invitation for Participation:** Students were encouraged to form teams and register.
- **Registration Fee Coverage:** Participation, access to materials, and certificates were included.
- **Further Information:** Detailed rules and schedules were to be provided later.

Highlights and Outcomes:

- **Winning Team:** The team from TRC Law College, Kanpur, was awarded first place for their exceptional performance.
- **Runners-Up:** The team from JIIMS Department of Law, Greater Noida achieved the second position

6. Conclusion:

The National Moot Court Competition was anticipated to be a platform for students to develop and demonstrate their legal advocacy skills. The event aimed to enhance practical learning experiences and foster a competitive spirit among law students.

7. Follow-Up:

The official announcement with further details was expected to be circulated shortly after the initial notice to ensure all participants were well-informed and prepared for the competition.

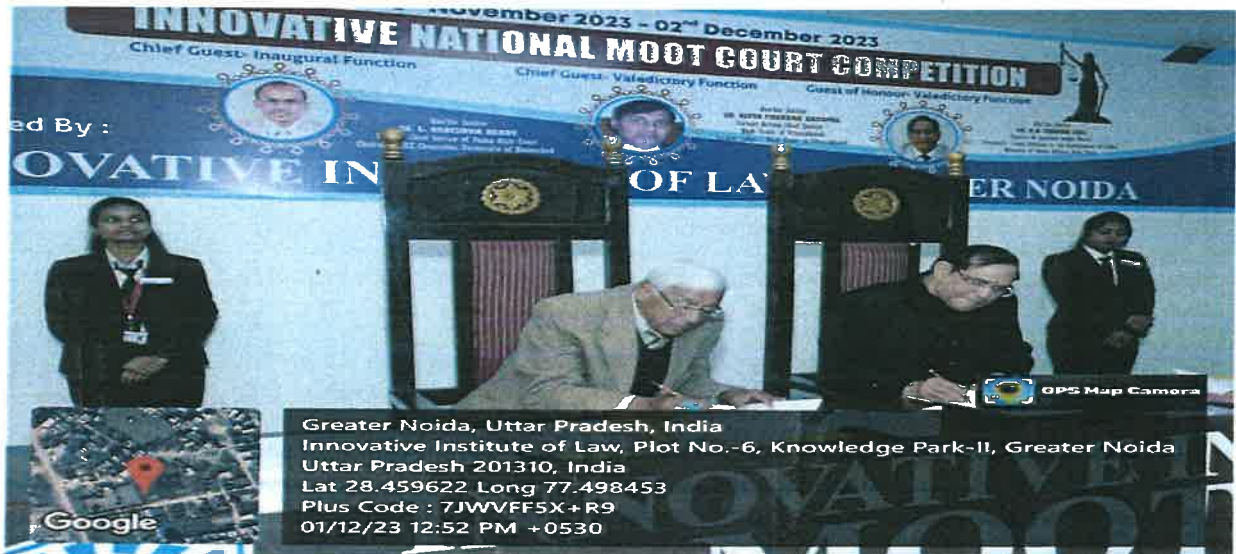


INNOVATIVE INSTITUTE OF LAW

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



National Moot Court



National Moot Court

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



INNOVATIVE INSTITUTE OF LAW

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

30th November 2023 - 02nd December

INNOVATIVE NATIONAL MOOT COURT COLLOQUIUM

Chief Guest - Inauguration Chief Guest - Valedictory Function Guest of Honor

Organised By
INNOVATIVE INSTITUTE OF LAW,

Hon'ble Justice
SH. BIPIN CHANDRA RANI
Former Acting Chief Justice
High Court of Uttarakhand
Former Judge - High Court of Uttarakhand

Hon'ble Justice
SH. E. MARUDHANA REDDY
Former Chief Justice of Patna High Court
Former CEC, Chancellor, University of Hyderabad.

Greater Noida, Uttar Pradesh, India
Innovative Institute of Law, Plot No.-6, Knowledge Park-II, Greater Noida
Uttar Pradesh 201310, India
Lat 28.459622 Long 77.498453
Plus Code : 7JWVFF5X+R9
02/12/23 02:48 PM +0530

Google GPS Map Camera

National Moot Court

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATERED

Indraprastha Law College:

- 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

Lucknow University:

- 1st Speaker: Ayush Saxena
- 2nd Speaker: Priyanka Singh
- 3rd Researcher: Rohan Verma

Bennett University, Greater Noida:

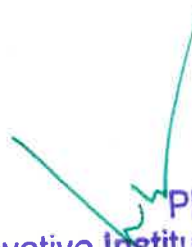
- 1st Speaker: Aarav Sharma
- 2nd Speaker: Tanya Mehta
- 3rd Researcher: Rishabh Singh

Gautam Buddha University, Greater Noida:

- 1st Speaker: Aditi Verma
- 2nd Speaker: Sameer Gupta
- 3rd Researcher: Neelam Joshi

Ishan Institute of Law, Greater Noida:

- 1st Speaker: Meenal Kaur
- 2nd Speaker: Vikram Singh
- 3rd Researcher: Kritika Bansal


PRINCIPAL
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: - Indraprastha Law College

Position	Name
1st Speaker	Neha Bansal
2nd Speaker	Aakash Verma
3rd Researcher	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 (1st Speaker)
2. Aakash (2nd Speaker)
3. Sneha (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM


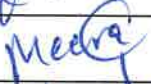

Name of Institution: - Galgotias University, Greater Noida

Position	Name
1st Speaker	Karan Patel
2nd Speaker	Meera Gupta
3rd Researcher	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.  _____ (1st Speaker)
2.  _____ (2nd Speaker)
3.  _____ (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

Name of Institution: - JIMS Engineering Management Technical Campus

Position	Name
1st Speaker	Anjali Sethi
2nd Speaker	Rahul Kumar
3rd Researcher	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 (1st Speaker)
2. Rahul (2nd Speaker)
3. Tanvi (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM




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

Position	Name
1st Speaker	Sumit Verma
2nd Speaker	Komal Jain
3rd Researcher	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.  (1st Speaker)
2.  (2nd Speaker)
3.  (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

Name of Institution: - Lloyd Law College, Greater Noida

Position	Name
1st Speaker	Pooja Verma
2nd Speaker	Sahil Agarwal
3rd Researcher	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 (1st Speaker)
2. Sahil (2nd Speaker)
3. Aditi (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

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

Position	Name
1st Speaker	Ananya Roy
2nd Speaker	Ritesh Joshi
3rd Researcher	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 (1st Speaker)
2. Ritesh Joshi (2nd Speaker)
3. Kavita Singh (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

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

Position	Name
1st Speaker	Riya Sharma
2nd Speaker	Amit Patel
3rd Researcher	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 (1st Speaker)
2. Amit (2nd Speaker)
3. Neha (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

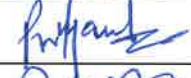

Lucknow University

Position	Name
1st Speaker	Ayush Saxena
2nd Speaker	Priyanka Singh
3rd Researcher	Rohan Verma

Team Declaration:

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

Signatures of Team Members:

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

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM


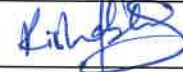
Name of Institution: - Bennett University, Greater Noida

Position	Name
1st Speaker	Aarav Sharma
2nd Speaker	Tanya Mehta
3rd Researcher	Rishabh Singh

Team Declaration:

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

Signatures of Team Members:

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

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

Name of Institution: - Gautam Buddha University, Greater Noida

Position	Name
1st Speaker	Aditi Verma
2nd Speaker	Sameer Gupta
3rd Researcher	Neelam 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. Aditi Verma (1st Speaker)
2. Sameer Gupta (2nd Speaker)
3. Neelam Joshi (3rd Researcher)

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION TEAM REGISTRATION FORM

Name of Institution: - Ishan Institute of Law, Greater Noida

Position	Name
1st Speaker	Meenal Kaur
2nd Speaker	Vikram Singh
3rd Researcher	Kritika 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. Meenal Kaur (1st Speaker)
2. Vikram Singh (2nd Speaker)
3. Kritika Bansal (3rd Researcher)

45
50

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION

RESEARCHER TEST

TEAM CODE -

1. What is the primary purpose of law?
 - A) To punish offenders
 - B) To maintain order
 - C) To generate revenue
 - D) To control behavior

2. Which of the following is NOT a source of law?
 - A) Statutes
 - B) Case law
 - C) Custom
 - D) Opinion polls

3. The Constitution of the United States was adopted in which year?
 - A) 1776
 - B) 1787
 - C) 1791
 - D) 1865

4. Which amendment guarantees the right to free speech?
 - A) First Amendment
 - B) Second Amendment
 - C) Fourth Amendment
 - D) Fifth Amendment

5. What is the standard of proof in a criminal trial?
 - A) Preponderance of evidence
 - B) Clear and convincing evidence
 - C) Beyond a reasonable doubt
 - D) Probable cause

6. A felony is generally defined as a crime that is punishable by:
 - A) Less than one year of imprisonment
 - B) More than one year of imprisonment
 - C) A fine only
 - D) Community service

7. What is a contract?
 - A) A verbal agreement
 - B) An enforceable agreement between two or more parties
 - C) A legal obligation
 - D) A promise that can be broken

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION

RESEARCHER TEST

8. Which of the following is NOT a necessary element for a valid contract?
- A) Offer
 - B) Acceptance
 - C) Consideration
 - D) Witnesses
9. Which type of tort involves harm caused by a failure to act?
- A) Intentional tort
 - B) Negligence
 - C) Strict liability
 - D) Defamation
10. What is the primary remedy for tortious injury?
- A) Punitive damages
 - B) Compensatory damages
 - C) Incarceration
 - D) Restitution
11. Which of the following is a type of real property?
- A) Stocks
 - B) Land
 - C) Patents
 - D) Copyrights
12. What is the legal term for the right to use another's land for a specific purpose?
- A) Easement
 - B) Lease
 - C) License
 - D) Zoning
13. What is required for a divorce to be granted in most jurisdictions?
- A) Mutual consent
 - B) Proof of fault
 - C) A waiting period
 - D) All of the above
14. Which of the following is NOT typically considered a factor in child custody decisions?
- A) The child's preference
 - B) Each parent's income
 - C) The parent's living situation
 - D) The relationship of the child with each parent

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION

RESEARCHER TEST

15. What does the Administrative Procedure Act govern?

- A) Criminal prosecutions
- B) Civil rights violations
- C) The procedures of federal agencies
- D) ~~Contract disputes~~

X

16. Which of the following can be a ground for judicial review of administrative actions?

- A) Lack of jurisdiction
- B) Arbitrary decision-making
- C) Violation of statutory authority
- D) All of the above

✓

17. What is the primary purpose of the United Nations?

- A) To promote trade
- B) To maintain international peace and security
- C) To establish international laws
- D) To provide humanitarian aid

✓

18. Which treaty is known for the prohibition of chemical weapons?

- A) Geneva Conventions
- B) Treaty of Versailles
- C) Chemical Weapons Convention
- D) Nuclear Non-Proliferation Treaty

✓

19. What is the duration of copyright protection for works created after 1978?

- A) 50 years
- B) 70 years after the author's death
- C) 100 years
- D) Indefinitely

✓

20. Which of the following is protected by trademark law?

- A) Inventions
- B) Brand names
- C) Literary works
- D) Scientific discoveries

✓

21. The Fair Labor Standards Act (FLSA) establishes:

- A) Minimum wage and overtime pay
- B) Workplace safety standards
- C) Anti-discrimination laws
- D) Employee benefits

✓

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION

RESEARCHER TEST

22. Which of the following is a protected characteristic under Title VII of the Civil Rights Act?
- A) Gender
 - B) Age
 - C) Disability
 - D) All of the above
23. What is the primary federal law regulating air pollution in the U.S.?
- A) Clean Water Act
 - B) National Environmental Policy Act
 - C) Clean Air Act
 - D) Resource Conservation and Recovery Act
24. The National Environmental Policy Act (NEPA) requires:
- A) Permits for all construction
 - B) Environmental assessments for federal projects
 - C) Emission controls on factories
 - D) Waste disposal regulations
25. What is the primary purpose of corporate governance?
- A) To enhance shareholder value
 - B) To comply with tax laws
 - C) To promote employee benefits
 - D) To increase product sales
26. What is the term for a business entity that is legally separate from its owners?
- A) Partnership
 - B) Corporation
 - C) Sole proprietorship
 - D) Joint venture
27. The hearsay rule generally prohibits:
- A) Testimony based on personal knowledge
 - B) Out-of-court statements offered for the truth of the matter asserted
 - C) Expert witness opinions
 - D) Document submissions
28. What is the standard for admitting evidence in court?
- A) Relevance and reliability
 - B) Credibility and clarity
 - C) Volume and variety
 - D) None of the above
29. An attorney's duty of confidentiality means:
- A) They can never reveal client information
 - B) They can disclose information if ordered by a court
 - C) They must inform authorities of illegal activities
 - D) They can discuss case details with friends

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION

RESEARCHER TEST

30. Which of the following is considered a conflict of interest for an attorney?
- A) Representing two clients with opposing interests
 - B) Having a close personal relationship with a client
 - C) Accepting gifts from a client
 - D) All of the above
31. What is mediation?
- A) A binding legal process
 - B) A non-binding negotiation facilitated by a third party
 - C) A formal court procedure
 - D) An arbitration process
32. Arbitration is typically:
- A) Voluntary and non-binding
 - B) Involuntary and binding
 - C) Mandatory and non-binding
 - D) Binding and usually confidential
33. What is the primary federal law governing online privacy?
- A) Children's Online Privacy Protection Act (COPPA)
 - B) Electronic Communications Privacy Act (ECPA)
 - C) Computer Fraud and Abuse Act (CFAA)
 - D) Digital Millennium Copyright Act (DMCA)
34. Which of the following is NOT a cybercrime?
- A) Phishing
 - B) Identity theft
 - C) Trespassing
 - D) Hacking
35. The Fair Credit Reporting Act (FCRA) is designed to:
- A) Protect consumers' rights in credit transactions
 - B) Regulate advertising practices
 - C) Ensure fair treatment in employment
 - D) Prevent fraud in real estate
36. Which of the following is a deceptive trade practice?
- A) False advertising
 - B) Bait and switch
 - C) Misleading pricing
 - D) All of the above
37. What is the primary purpose of bankruptcy law?
- A) To punish debtors
 - B) To provide relief to individuals or businesses that cannot pay their debts
 - C) To facilitate asset recovery
 - D) To regulate lending practices

INNOVATIVE INSTITUTE OF LAW

NATIONAL MOOT COURT COMPETITION

RESEARCHER TEST

38. Which chapter of the Bankruptcy Code is typically used by individuals?
- A) Chapter 7
 - B) Chapter 11
 - C) Chapter 12
 - D) Chapter 13
39. What is the primary regulatory body for securities in the U.S.?
- A) Federal Trade Commission (FTC)
 - B) Securities and Exchange Commission (SEC)
 - C) Commodity Futures Trading Commission (CFTC)
 - D) Financial Industry Regulatory Authority (FINRA)
40. Insider trading is best defined as:
- A) Trading stocks based on public information
 - B) Trading stocks based on non-public, material information
 - C) Trading stocks on foreign exchanges
 - D) None of the above
41. The Immigration and Nationality Act governs:
- A) U.S. citizenship
 - B) Immigration procedures
 - C) Deportation laws
 - D) All of the above
42. What is a visa?
- A) A permanent residency permit
 - B) A document allowing a foreign national to enter the U.S.
 - C) A work permit
 - D) An entry fee
43. The Universal Declaration of Human Rights was adopted by:
- A) The United Nations
 - B) The European Union
 - C) The World Health Organization
 - D) The International Criminal Court
44. Which of the following is NOT a recognized human right?
- A) Right to life
 - B) Right to education
 - C) Right to free healthcare
 - D) Right to freedom of expression
45. Which of the following is a legal basis for annulment?
- A) Infidelity
 - B) Lack of capacity
 - C) Irreconcilable differences
 - D) Separation

INNOVATIVE INSTITUTE OF LAW
NATIONAL MOOT COURT COMPETITION
RESEARCHER TEST

46. What is the primary purpose of alimony?
- A) To penalize the higher-earning spouse
 - B) To provide financial support to a lower-earning spouse after divorce
 - C) To equalize property division
 - D) To ensure child support
47. The Internal Revenue Service (IRS) is responsible for:
- A) Enforcing tax laws
 - B) Collecting taxes
 - C) Administering tax returns
 - D) All of the above
48. Which of the following is a tax deduction?
- A) Charitable contributions
 - B) Income
 - C) Gifts
 - D) Inheritance
49. The Miranda warning is required when:
- A) A suspect is arrested
 - B) A suspect is interrogated while in custody
 - C) A suspect is formally charged
 - D) A suspect is released
50. What is the primary purpose of the exclusionary rule?
- A) To exclude witnesses
 - B) To deter police misconduct
 - C) To ensure fair trials
 - D) To eliminate hearsay evidence

INNOVATIVE INSTITUTE OF LAW NATIONAL MOOT COURT

Preliminary Round

The Preliminary Round of the Intra Moot Court Competition is about to commence, featuring 11 enthusiastic teams eager to demonstrate their legal skills and advocacy abilities. This round serves as the foundation for the competition, providing an opportunity for participants to showcase their hard work and preparation.

In this round, teams will compete in head-to-head matchups, with each team taking turns as either the petitioner or respondent. The pairings were decided through a randomized selection process to ensure fairness and unpredictability in the competition.

We extend our best wishes to all participants as they embark on this competitive journey. Your commitment to legal excellence is commendable, and we look forward to seeing your talents shine in the courtroom!

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

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

JUDGE NAME - *Dr. Neha choudhary*
TEAM CODES- *NMC-11 / NMC 4*

Marking Matrix for Preliminary Rounds

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	10	11	
Argumentation and Reasoning	30	11	10	
Oral Advocacy Skills	20	12	13	
Response to Questions	20	13	12	
Written Submissions	10	05	04	
Total	100			

Neha Choudhary
SIGNATURE

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

JUDGE NAME - Prof. Vikram Bansal
TEAM CODES- NMC-9 / NMC-10

Marking Matrix for Preliminary Rounds

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	10	11	
Argumentation and Reasoning	30	11	10	
Oral Advocacy Skills	20	12	13	
Response to Questions	20	13	12	
Written Submissions	10	06	03	
Total	100			


SIGNATURE

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

JUDGE NAME - Dr. Kavya Khanna,

TEAM CODES- NME-2 / NME 8

Marking Matrix for Preliminary Rounds

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	12	11	
Argumentation and Reasoning	30	11	12	
Oral Advocacy Skills	20	13	14	
Response to Questions	20	14	13	
Written Submissions	10	06	03	
Total	100			



SIGNATURE

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

JUDGE NAME - Prof. Anwar Reddy

TEAM CODES- NMC-3 / NMC-6

Marking Matrix for Preliminary Rounds

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	12	19	
Argumentation and Reasoning	30	13	28	
Oral Advocacy Skills	20	14	19	
Response to Questions	20	15	18	
Written Submissions	10	02	09	
Total	100			



SIGNATURE

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

JUDGE NAME - *Dr. Rima Mehta.*

TEAM CODES- *NMC-5 / NMC 4.*

Marking Matrix for Preliminary Rounds

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	10	11	
Argumentation and Reasoning	30	11	10	
Oral Advocacy Skills	20	09	11	
Response to Questions	20	12	11	
Written Submissions	10	02	03	
Total	100			



SIGNATURE

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

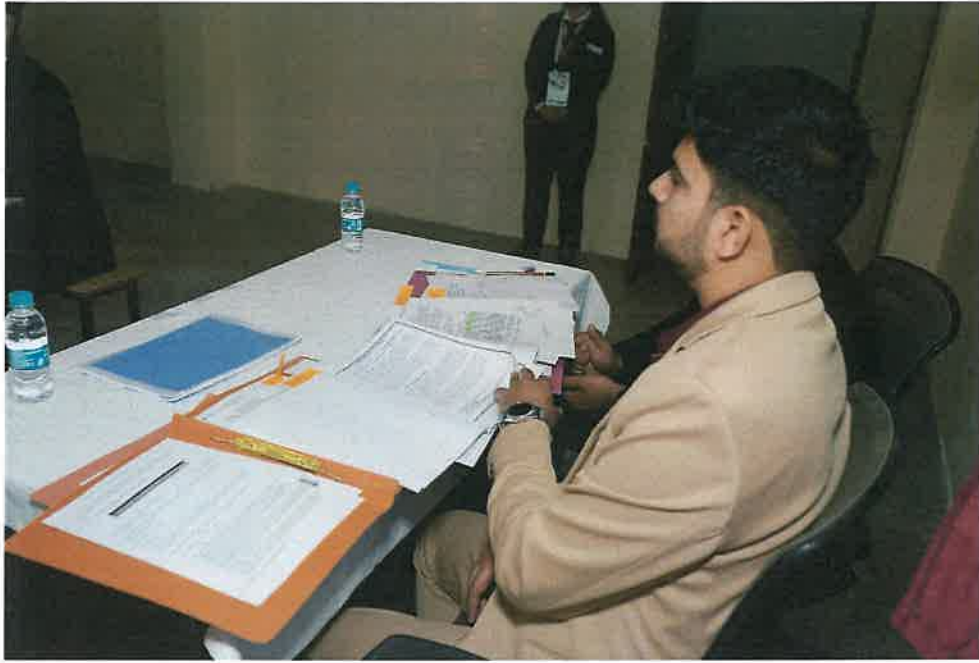
JUDGE NAME - Prof. Kiran Joshi
TEAM CODES - NMC 1 / NMC 7

Marking Matrix for Preliminary Rounds

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



SIGNATURE



Preliminary round



Preliminary round



Preliminary round
National Moot Court



Preliminary round
National Moot Court

INNOVATIVE INSTITUTE OF LAW NATIONAL MOOT COURT

The Semifinal Round of the Intra Moot Court Competition showcases the top teams that emerged victorious from the Preliminary Round. This stage is critical, as it will determine which teams advance to the final showdown. The atmosphere is charged with anticipation as the most skilled advocates prepare to face off.

Each matchup in the semifinals will be determined by a random draw, allowing for an unpredictable and dynamic competitive environment. Teams will present their arguments as petitioners and respondents, engaging with judges through rigorous questioning.

Judging Criteria

Judges will assess the finalists on:

- Depth of legal analysis and clarity of reasoning
- Effectiveness in addressing questions and counterarguments
- Overall presentation skills, including poise and confidence
- Creativity and originality in legal arguments

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 brilliance. We invite everyone to attend and support the finalists as they compete for the title of champion!

Petitioner	Respondent
NMC 11	NMC 7
NMC 3	NMC 6

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

JUDGE NAME - Prof. Ajay Singh
TEAM CODES - NME-3 / NME-6

Marking Matrix for Semifinal Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	14	19	
Argumentation and Reasoning	30	15	25	
Oral Advocacy Skills	20	16	19	
Response to Questions	20	14	18	
Written Submissions	10	02	09	
Total	100			


SIGNATURE

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

JUDGE NAME - *Dr. Akansha Pandey.*
TEAM CODES- *NMC II / NMCT*

Marking Matrix for Semifinal Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	19	12	
Argumentation and Reasoning	30	25	18	
Oral Advocacy Skills	20	19	13	
Response to Questions	20	18	14	
Written Submissions	10	09	06	
Total	100			

Akshay Pandey
SIGNATURE



Semi-Final Round
National Moot Court



Semi- Final Round
National Moot Court



Semi- Final Round

National Moot Court



INNOVATIVE INSTITUTE OF LAW NATIONAL MOOT COURT

The Final Round of the Intra Moot Court Competition is the culmination of a rigorous and intense journey for our outstanding participants. This round represents the pinnacle of legal advocacy, where the best of the best will compete for the championship title.

In this decisive round, the finalists will face each other in a head-to-head matchup, with roles as petitioners and respondents determined by a random draw. This format ensures a fresh and challenging experience for both teams as they navigate complex legal issues in front of the judging panel.

Judges will assess the finalists on:

- Depth of legal analysis and clarity of reasoning
- Effectiveness in addressing questions and counterarguments
- Overall presentation skills, including poise and confidence
- Creativity and originality in legal arguments

Petitioner	Respondent
NMC 11	NMC 6

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

JUDGE NAME - Prof. Siddharth Menta

TEAM CODES- NMC 11 / NMC 6

Marking Matrix for final Round

Criteria	Points Available	Petitioner Score	Respondent Score	Comments
Legal Knowledge and Research	20	19	18	
Argumentation and Reasoning	30	25	17	
Oral Advocacy Skills	20	19	12	
Response to Questions	20	18	10	
Written Submissions	10	09	02.	
Total	100			


SIGNATURE

TEAM CODE – IMC-01

INNOVATIVE INSTITUTE OF LAW MOOT COURT COMPETITION 2023-24

IN THE MATTER OF

PRIYA SHARMA AND OTHERS ----- APPELLANT

STATE 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

C. DATABASE REFERRED

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

D. STATUTES REFERRED

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

STATEMENT OF JURISDICTION

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

Article 136. Special leave to appeal by the Supreme Court

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

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

STATEMENT OF FACTS

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

STATEMENT OF ISSUES

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

SUMMARY OF ARGUMENTS

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

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

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

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

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

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

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

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

ARGUMENTS ADVANCED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Difference between civil and criminal negligence -

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

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

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

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

INGREDIENTS OF NEGLIGENCE

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

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

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

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

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

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

c) Damage

Duty to take care

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

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

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

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

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

Non observance of guidelines amounts to gross negligence

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

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

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

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

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

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

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

Negligence endangering Human life.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CODE OF MEDICAL ETHICS REGULATIONS, 2002

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

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

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

Bolam test

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

MC Nair, J laid down the standard test that has been used to establish whether duty has been breached. He wrote in his judgment *“The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill: It is a well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art. In the case of a medical man, negligence means failure to act in accordance with the standards of reasonably competent medical men at the time. There may be one or more perfectly proper standards, and if he conforms 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 tortious and contractual liabilities but also in the very first instance, violates the Human rights. A lot of people die just because of lack of professionalism and care when between death and life there remains the noble profession of medical science.

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

Cases which show direct violation of right to life:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Need of the hour is fetal rights.

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

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

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

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

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

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

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

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

Fundamental Rights granted to foetus by different Countries.

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

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER

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

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

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

VERIFICATION

TO WHOMSOEVER IT MAY CONCERN

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

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

TEAM CODE - NMC01 R

INNOVATIVE INSTITUTE OF LAW MOOT COURT COMPETITION 2023-24

IN THE MATTER OF

PRIYA SHARMA AND OTHERS----- APPELLANT

STATE OF INDIA -----RESPONDENT

BEFORE THE HONARABLE SUPREME COURT OF INDIA

WRITTEN SUBMISSION ON BEHALF OF THE RESPONDENTS

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4.	Harvard Women's Health Watch
5.	Indian Journal of Clinical Practice
6.	Medical News Today
7.	JSTOR
8.	Manupatra

C. DATABASE REFERRED

1.	www.aironline.in
2.	www.sconline.com
3.	indiankanoon.org
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D. STATUTES REFERRED

1.	The Indian Penal Code, 1860
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5.	The United Nations Convention on the Rights of Child, 1989

STATEMENT OF JURISDICTION

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

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

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

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

STATEMENT OF FACTS

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

STATEMENT OF ISSUES

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

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

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

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

SUMMARY OF ARGUMENTS

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

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

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

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

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

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

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

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

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

ARGUMENTS ADVANCED

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

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

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

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

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

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

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

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

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

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

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

Civil and Criminal Negligence

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE BOLAM TEST

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

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

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

Application of Bolam Test in other cases -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To give an example, earlier when a patient who had a symptom of having a heart attack would come to a doctor, the doctor would immediately inject him with Morphia 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 Morphia 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) Morphia 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.