

ANALYZING THE LEGAL REGIME OF MEDICAL NEGLIGENCE AND MALPRACTICE IN
INDIA

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For any country, public health is of vital importance. Medical institutions are essential to meet the demands and requirements of citizens who require good health care. Medical professionals significantly contribute to raising the living and functioning of citizens. Tragically, medical malpractice has emerged as one of the leading causes of many people's long-term suffering or even death. It must be acknowledged that any medical professional's negligence could harm their patients. Each physician owes it to their patients to treat them with the highest care and dedication.¹ If he doesn't, the plaintiff may suffer losses, and the plaintiff is entitled to sue the doctor for the resulting harm.² The paper focuses on distilling the facts and rulings from the case "*Sandhya Srivastava v. Dr. Neelam Mishra*" and offers its interpretation of the case law by outlining the many categories of medical negligence and its history.³ While analyzing the legal precedent in the "*Sandhya Srivastava v. Dr. Neelam Mishra*," the paper also sheds light on contributory negligence.

I. INTRODUCTION

Negligence is any violation of a person's obligation to exercise care for others, resulting in harm being done to a third party due to the violation.⁴ In other terms, it might be described as when a person carelessly violates his duty to fulfill it righteously.⁵ Similarly, every medical professional must treat patients with the "*standard of care*" and must do so with extreme caution and effort.⁶ According to the ruling in *Jacob Mathew v. State of Punjab*, anyone beginning a professional practice must possess the necessary understanding of the field and exercise reasonable caution.⁷ Additionally, it was decided that anyone who engages in the practice of a profession without the necessary training or care can be held accountable.⁸ Medical negligence is defined as carelessness by a medical professional resulting in careless treatment that causes patient harm.⁹ A doctor must diligently treat a patient using professional

¹David Annoussamy, *Medical Profession and the Consumer Protection Act*, 41 JOURNAL OF THE INDIAN LAW INSTITUTE 460 (1999), <https://www.jstor.org/stable/43953343> (last visited Oct 11, 2022).

²Sanjeet Bagcchi, *Medical negligence and substandard drugs caused deaths in Indian sterilisation programme, report finds*, 351 BMJ: BRITISH MEDICAL JOURNAL (2015), <https://www.jstor.org/stable/26521746> (last visited Oct 11, 2022).

³George Thomas, *The Anuradha Saha Case and Medical Error in India*, 48 ECONOMIC AND POLITICAL WEEKLY 12 (2013), <https://www.jstor.org/stable/23528629> (last visited Oct 11, 2022).

⁴Rama Baru et al., *Inequities in Access to Health Services in India: Caste, Class and Region*, 45 ECONOMIC AND POLITICAL WEEKLY 49 (2010), <https://www.jstor.org/stable/25742094> (last visited Oct 11, 2022).

⁵N.K. Chakrabarti & Shreya Chatterjee, *Regulating Health Related Technologies and Medical Devices: With Special Reference to India*, 56 JOURNAL OF THE INDIAN LAW INSTITUTE 216 (2014), <https://www.jstor.org/stable/43953702> (last visited Oct 11, 2022).

⁶Neil van Dokkum, *The Evolution of Medical Malpractice Law in South Africa*, 41 JOURNAL OF AFRICAN LAW 175 (1997), <https://www.jstor.org/stable/745426> (last visited Oct 11, 2022).

⁷Bhattaram Visweswara Subrahmanyam, *Jacob Mathew v. State of Punjab, the judgment stipulates the guidelines to be followed before launching a prosecution against a doctor for negligence*, 4 J NEUROSCI RURAL PRACT 99 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3579074/> (last visited Oct 11, 2022).

⁸Aparna Chandra, *Suresh Gupta v. Government of NCT, Delhi, (2004) 6 S.C.C. 422*, 17 STUDENT BAR REVIEW 92 (2005), <https://www.jstor.org/stable/44290311> (last visited Oct 11, 2022).

⁹Harvey Teff, *The Standard of Care in Medical Negligence--Moving on from Bolam?*, 18 OXFORD JOURNAL OF LEGAL STUDIES 473 (1998), <https://www.jstor.org/stable/764674> (last visited Oct 11, 2022).

knowledge and competence.¹⁰ A doctor must provide the patient with a standard of care that includes appropriate treatment methods.¹¹ The standard must be appropriate for the patient's needs, i.e., the same kind of care that any regular professional would provide in a situation like this.¹² The Supreme Court ruled in "*Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole and Anr.*" that each doctor must adhere to the reasonable standards of care expected of their profession. The doctor may be held accountable for medical negligence in the event of such responsibilities.¹³

In negligence cases, the defendant is responsible for any breaches of the duty of care that ultimately harm the plaintiff.¹⁴ Each physician must determine the kind of care that should be provided to the patient and choose how to administer it.¹⁵ If a patient suffers harm due to the doctor's improper conduct while treating them, the patient has the legal right to sue the doctor for the resulting damages.¹⁶ In general, the patient has the burden of proof and must file a claim for the harm they have incurred in medical negligence cases. Law requires solid proof of the harm caused by the doctor to hold him accountable.¹⁷ It was decided in the case "*Calcutta Medical Research Institute v. Bimalesh Chatterjee*" that the plaintiff must establish the professional's negligence and lack of performance.¹⁸ In "*Sandhya Srivastava v. Dr. Neelam Mishra*," the plaintiff, a pregnant woman, was admitted to the hospital because she was experiencing labor pains. A girl was born to the plaintiff.¹⁹ The plaintiff party alleged that one of the hospital staff members' negligence caused harm to a newborn child.²⁰ The thermal rod heater caused a lot of harm to the baby, and subsequently, the mother also had to endure a great deal of suffering due to the accident.

II. SCOPE OF THE STUDY

While researching the subject, the researcher focuses on "*medical negligence*" and provides a detailed analysis of the legal case *Sandhya Srivastava v. Dr. Neelam Mishra*. The researcher attempts to clarify the circumstances and rulings in the case mentioned above while concurrently connecting the case law and the subject of "*medical negligence*."²¹ The case law will be carefully examined, and remarks will be

¹⁰Patralekha Chatterjee, *Whistleblowing in India: what protections can doctors who raise concerns expect?*, 350 *BMJ: BRITISH MEDICAL JOURNAL* (2015), <https://www.jstor.org/stable/26520109> (last visited Oct 11, 2022).

¹¹James Staples, *Culture and Carelessness: Constituting Disability in South India*, 26 *MEDICAL ANTHROPOLOGY QUARTERLY* 557 (2012), <https://www.jstor.org/stable/41811616> (last visited Oct 11, 2022).

¹²Marc Stauch, *Causation, Risk, and Loss of Chance in Medical Negligence*, 17 *OXFORD JOURNAL OF LEGAL STUDIES* 205 (1997), <https://www.jstor.org/stable/764589> (last visited Oct 11, 2022).

¹³Indian Kanon, *Laxman Balkrishna Joshi vs Trimbak Bapu Godbole And Anr* (1968), <https://indiankanon.org/doc/297399/> (last visited Oct 11, 2022).

¹⁴Page Keeton, *Medical Negligence—The Standard of Care*, *TEXAS TECH LAW REVIEW* (1979), <https://ttu-ir.tdl.org/handle/2346/85171> (last visited Oct 11, 2022).

¹⁵Mohaya Chaudhuri, *Families demand reform of India's medical negligence system*, 348 *BMJ: BRITISH MEDICAL JOURNAL* (2014), <https://www.jstor.org/stable/26513116> (last visited Oct 11, 2022).

¹⁶Yvonne Cripps, *Medical Negligence and Liability for Loss of Chance*, 45 *THE CAMBRIDGE LAW JOURNAL* 6 (1986), <https://www.jstor.org/stable/4506817> (last visited Oct 11, 2022).

¹⁷Karunakaran Mathiharan, *Supreme Court on Medical Negligence*, *ECONOMIC AND POLITICAL WEEKLY* 7 (2015), <https://www.epw.in/journal/2006/02/commentary/supreme-court-medical-negligence.html> (last visited Oct 11, 2022).

¹⁸Indian Kanon, *CALCUTTA MEDICAL RESEARCH INSTITUTE Vs. BIMALESH CHATTERJEE* (1998), <https://www.the-laws.com/Encyclopedia/Browse/Case?CaseId=998991504000&CaseId=998991504000> (last visited Oct 11, 2022).

¹⁹B.S. Venugopal, *Informed Consent to Medical Treatment*, 46 *JOURNAL OF THE INDIAN LAW INSTITUTE* 393 (2004), <https://www.jstor.org/stable/43951917> (last visited Oct 11, 2022).

²⁰Devika Sharma, *NCDRC | Newborn child in the care of hospital staff and her grandmother suffered from thermal burns. Will this amount to Contributory Negligence? Is the hospital vicariously liable? Read on*, *SCC BLOG* (2021), <https://www.sconline.com/blog/post/2021/03/09/contributory-negligence-2/> (last visited Oct 11, 2022).

²¹Roger Crisp, *Medical Negligence, Assault, Informed Consent, and Autonomy*, 17 *JOURNAL OF LAW AND SOCIETY* 77 (1990), <https://www.jstor.org/stable/1409956> (last visited Oct 11, 2022).

provided in line with that analysis.²² The current study discusses subjects such as different types of medical negligence, the criteria for proving medical negligence, the significance of the legal concept of “*Res Ipsa loquitur*,” and defenses offered by medical professionals in cases of medical negligence.²³ As the study paper only addresses medical negligence in Indian jurisdiction, which is crucial to developing a coherent knowledge of the subject, it also covers a variety of other case laws in Indian jurisdiction.²⁴

III. STUDY OBJECTIVES

1. To be thoroughly aware of medical negligence, its variations, and its background.
2. To recognize the requirements for a plaintiff to prove a doctor is at fault for medical malpractice.²⁵
3. To better grasp the subject by distilling the information from the *Sandhya Srivastava v. Dr. Neelam Mishra* case’s facts and rulings and to offer one’s own opinion and analysis of the case mentioned above the law by elaborating on contributory negligence.²⁶
4. To accept different legal precedents that aid in a clearer grasp of the subject.²⁷

IV. LITERATURE REVIEW

In an article titled “Medical Negligence - The Standard of Care,” the author discussed medical negligence and described the standard of care provided by medical practitioners.²⁸ The attention is also on the duty of care, its violation, and its consequences.²⁹ According to the author, to fulfill their obligation fairly, a person must be able to predict the outcomes of their direct irresponsible actions.³⁰ He describes negligence as a fault that puts others in an unjustified danger of suffering. In a journal paper titled “*The role of clinical guidelines in medical negligence litigation: a change from the Bolam standard?*”³¹ the author examines the grounds on which the plaintiff can hold the defendant accountable for the harm they have caused.³² According to him, a doctor cannot be held accountable for any activities they take as long as a responsible organization approves them.³³ It is the doctor’s responsibility to follow clinical recommendations. Even clinical recommendations inform readers of the effects of whatever harm a doctor may have caused. The author of “The Criminal Procedure of Medical Negligence” focuses solely on the law surrounding medical negligence in criminal cases.³⁴ The author

²²Gurjeet Singh, *Medical Negligence and the Widening Ambit of the Consumer Protection Act, 1986 — a Comment on Spring Meadows Hospital V. Harjol Ahluwalia*, 42 JOURNAL OF THE INDIAN LAW INSTITUTE 78 (2000), <https://www.jstor.org/stable/43951737> (last visited Oct 11, 2022).

²³Patricia Munch Danzon & Lee A. Lillard, *Settlement out of Court: The Disposition of Medical Malpractice Claims*, 12 THE JOURNAL OF LEGAL STUDIES 345 (1983), <https://www.jstor.org/stable/724249> (last visited Oct 11, 2022).

²⁴Patricia M. Danzon, *Liability for Medical Malpractice*, 5 THE JOURNAL OF ECONOMIC PERSPECTIVES 51 (1991), <https://www.jstor.org/stable/1942796> (last visited Oct 11, 2022).

²⁵Gee Imaan Semmalar, *Unpacking Solidarities of the Oppressed: Notes on Trans Struggles in India*, 42 WOMEN’S STUDIES QUARTERLY 286 (2014), <https://www.jstor.org/stable/24365012> (last visited Oct 11, 2022).

²⁶Kunal Saha & Devi Shetty, *Are large compensation payouts for negligence good for medicine in India?*, 349 BMJ: BRITISH MEDICAL JOURNAL (2014), <https://www.jstor.org/stable/26516982> (last visited Oct 11, 2022).

²⁷Gurjeet Singh, *Consumer Protection Act 1986 and Medical Profession in India: Conflicts and Controversies*, 37 JOURNAL OF THE INDIAN LAW INSTITUTE 324 (1995), <https://www.jstor.org/stable/43951604> (last visited Oct 11, 2022).

²⁸Keeton, *supra* note 14.

²⁹Oliver Quick, *Prosecuting “Gross” Medical Negligence: Manslaughter, Discretion, and the Crown Prosecution Service*, 33 JOURNAL OF LAW AND SOCIETY 421 (2006), <https://www.jstor.org/stable/3838857> (last visited Oct 11, 2022).

³⁰*Id.*

³¹John Keown, *Doctor Knows Best?: The Rise and Rise of “the Bolam Test,”* SINGAPORE JOURNAL OF LEGAL STUDIES 342 (1995), <https://www.jstor.org/stable/24866861> (last visited Oct 11, 2022).

³²Ash Samanta et al., *The role of clinical guidelines in medical negligence litigation: a shift from the Bolam standard?*, 14 MED LAW REV 321 (2006).

³³Abhijit Das, Ramakant Rai & Dinesh Singh, *Medical Negligence and Rights Violation*, 39 ECONOMIC AND POLITICAL WEEKLY 3876 (2004), <https://www.jstor.org/stable/4415464> (last visited Oct 11, 2022).

³⁴Dov Fox, *Reproductive Negligence*, 117 COLUMBIA LAW REVIEW 149 (2017), <https://www.jstor.org/stable/44072333> (last visited Oct 11, 2022).

also clarifies the defenses and denials of medical professionals' activities. Also covered is the process for holding a doctor accountable for medical malpractice.³⁵ One can learn more about birth-related injuries and receive guidance and expertise from the book "Medical Negligence and Childbirth."³⁶ The practice and procedure of medical negligence, as well as the significance of consent in medical instances, are also covered in the book.³⁷ The number of damages awarded to the plaintiff in medical negligence cases is also debated.³⁸

V. MEDICAL NEGLIGENCE HISTORY

A medical professional's obligation to be accountable can be traced back to the Hammurabi Code. This lengthy code dates back to prehistoric Mesopotamia.³⁹ According to the code, "one shall cut off his hands if the doctor has treated a gentleman with a bronze lancet and has caused the gentleman to die or has opened an eye abscess for a gentleman with a bronze lancet and has caused the gentleman to lose his eye."⁴⁰ The penalties for such violations changed as society advanced and countries developed into more civilized societies.⁴¹ The Hammurabi Code established the legal framework for medical malpractice and developed the idea of holding medical professionals accountable for the harm or loss they inadvertently inflict.⁴² It was thought that if a doctor could properly predict the harm that may result, they should attempt to worsen the problem's effects that were well acknowledged.⁴³ In the past, the Romans drafted laws on twelve tables that addressed concepts like *delicts* (wrongdoings that carry punishments), *iniuria* (personal injuries), and *damnum iniuria datum* (property injuries). Only intentional harm was done in *Inuria*.⁴⁴ Damages to the health, mind, and financial losses brought on by the injury may be compensated. Negligent behavior that results in financial loss may give rise to a claim for compensation for property damage.⁴⁵ For instance, if someone's slave needs medical attention due to someone else's careless behavior, they are entitled to pay. Not just enslaved people but also free folks must follow this.⁴⁶

The Roman legal system rose to prominence around 1200 AD and expanded throughout Europe. Numerous countries have adapted Roman law's injury and medical malpractice statutes into their current legal systems.⁴⁷ English law, heavily influenced by Roman law in the 19th century, also

³⁵Kenneth McK Norrie, *Medical Negligence: Who Sets the Standard?*, 11 JOURNAL OF MEDICAL ETHICS 135 (1985), <https://www.jstor.org/stable/27716387> (last visited Oct 11, 2022).

³⁶DOIREANN O'MAHONY, *MEDICAL NEGLIGENCE AND CHILDBIRTH* (2nd ed. 2021).

³⁷Meghan C. O'Connor, *The Physician-Patient Relationship and the Professional Standard of Care: Reevaluating Medical Negligence Principles to Achieve the Goals of Tort Reform*, 46 TORT TRIAL & INSURANCE PRACTICE LAW JOURNAL 109 (2010), <https://www.jstor.org/stable/41059475> (last visited Oct 11, 2022).

³⁸Jennifer Arlen, *Contracting Over Liability: Medical Malpractice and the Cost of Choice*, 158 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 957 (2010), <https://www.jstor.org/stable/20698352> (last visited Oct 11, 2022).

³⁹Stanley Yeo Meng Heong, *The Standard of Care in Medical Negligence Cases*, 25 MALAYA LAW REVIEW 30 (1983), <https://www.jstor.org/stable/24863889> (last visited Oct 11, 2022).

⁴⁰Philip Mirrer-Singer, *Medical Malpractice Overseas: The Legal Uncertainty Surrounding Medical Tourism*, 70 LAW AND CONTEMPORARY PROBLEMS 211 (2007), <https://www.jstor.org/stable/27592188> (last visited Oct 11, 2022).

⁴¹Michael Hor Yew Meng, *Medical Negligence: The Contours of Criminality and the Role of the Coroner*, SINGAPORE JOURNAL OF LEGAL STUDIES 86 (1997), <https://www.jstor.org/stable/24867211> (last visited Oct 11, 2022).

⁴²Brian Hurwitz, *How Does Evidence Based Guidance Influence Determinations Of Medical Negligence?*, 329 BMJ: BRITISH MEDICAL JOURNAL 1024 (2004), <https://www.jstor.org/stable/25458445> (last visited Oct 11, 2022).

⁴³Sunil Nandraj, *Private healthcare providers in India are above the law, leaving patients without protection*, 350 BMJ: BRITISH MEDICAL JOURNAL (2015), <https://www.jstor.org/stable/26520193> (last visited Oct 11, 2022).

⁴⁴Hurwitz, *supra* note 42.

⁴⁵Puteri Nemie Jahn Kassim, *Medical Negligence in Islamic Law*, 20 ARAB LAW QUARTERLY 400 (2006), <https://www.jstor.org/stable/27650564> (last visited Oct 11, 2022).

⁴⁶Anita Jain, Samiran Nundy & Kamran Abbasi, *Corruption: medicine's dirty open secret*, 348 BMJ: BRITISH MEDICAL JOURNAL (2014), <https://www.jstor.org/stable/26515374> (last visited Oct 11, 2022).

⁴⁷Meera Kay, *The unethical revenue targets that India's corporate hospitals set their doctors*, 351 BMJ: BRITISH MEDICAL JOURNAL (2015), <https://www.jstor.org/stable/26521704> (last visited Oct 11, 2022).

significantly impacted American law. During Charles V's reign, the opinions of medical professionals were considered in cases involving violent deaths.⁴⁸ Eventually, this resulted in the development of the standard of care.⁴⁹ A nation like the United States had extremely few instances of medical negligence. But these cases started to appear more frequently in the 1960s. To deal with and control such practices, numerous laws were evolved with consideration for public health and safety.⁵⁰

VI. TYPES OF MEDICAL NEGLIGENCE

The following situations constitute medical carelessness regularly:

- **Incorrect diagnosis** - After a patient is admitted to a hospital, clinic, or another medical facility for treatment, the doctor's diagnosis is the first thing they do.⁵¹ The doctor must use the necessary knowledge and skill to diagnose the patient with the utmost care and effort.⁵² Any doctor who administers care without discretion may be held accountable for any consequences that result from his incorrect diagnosis.⁵³
- **Delayed diagnosis** - It is generally accepted that if a patient visits a doctor, the doctor must diagnose the patient accurately and promptly. Delays in diagnosis could cause significant patient harm. Treatment delays can negatively impact the patient's chances of recovering.⁵⁴
- **Surgical error** - A surgical error made by a medical professional that has a significant negative impact on the patient.⁵⁵ A doctor must administer treatment while taking all necessary measures. Even a small error can result in a patient's death. Surgical errors include a doctor leaving a foreign object in a patient's body after treatment, doing surgery in the wrong location, injuring an internal organ, etc.⁵⁶
- **Unnecessary surgery** - After examining the patient's condition, a doctor must consult all available treatment options and select the best course of action based on the patient's needs.⁵⁷ Misdiagnosis can result from choosing unnecessary surgery treatment without considering other relevant procedures.⁵⁸
- **Anaesthesia administration mistakes** - a doctor must be extremely cautious while giving anaesthesia. Before utilizing the medication, the anesthesiologist must consider the patient's medical history and

⁴⁸Jeet Singh Mann, *Liability of the Legal Practitioners for Professional Negligence: A Critical Analysis*, 51 JOURNAL OF THE INDIAN LAW INSTITUTE 385 (2009), <https://www.jstor.org/stable/43953455> (last visited Oct 11, 2022).

⁴⁹Karunakaran Mathiharan, *Supreme Court on Medical Negligence*, 41 ECONOMIC AND POLITICAL WEEKLY 111 (2006), <https://www.jstor.org/stable/4417666> (last visited Oct 11, 2022).

⁵⁰Meghan C. O'Connor, *The Physician-Patient Relationship and the Professional Standard of Care: Reevaluating Medical Negligence Principles to Achieve the Goals of Tort Reform*, 46 TORT TRIAL & INSURANCE PRACTICE LAW JOURNAL 109 (2010), <https://www.jstor.org/stable/41059475> (last visited Oct 11, 2022).

⁵¹Ronen Avraham, *An Empirical Study of the Impact of Tort Reforms on Medical Malpractice Settlement Payments*, 36 THE JOURNAL OF LEGAL STUDIES S183 (2007), <https://www.jstor.org/stable/10.1086/527332> (last visited Oct 11, 2022).

⁵²Patricia M. Danzon, *The Frequency and Severity of Medical Malpractice Claims: New Evidence*, 49 LAW AND CONTEMPORARY PROBLEMS 57 (1986), <https://www.jstor.org/stable/1191415> (last visited Oct 11, 2022).

⁵³Robert H. Brook, Rudolf L. Brutoco & Kathleen N. Williams, *The Relationship between Medical Malpractice and Quality of Care*, 1975 DUKE LAW JOURNAL 1197 (1976), <https://www.jstor.org/stable/1372063> (last visited Oct 11, 2022).

⁵⁴Patricia M. Danzon, *Liability for Medical Malpractice*, 5 THE JOURNAL OF ECONOMIC PERSPECTIVES 51 (1991), <https://www.jstor.org/stable/1942796> (last visited Oct 11, 2022).

⁵⁵Casey L. Dwyer, *An Empirical Examination of the Equal Protection Challenge to Contingency Fee Restrictions in Medical Malpractice Reform Statutes*, 56 DUKE LAW JOURNAL 611 (2006), <https://www.jstor.org/stable/40040554> (last visited Oct 11, 2022).

⁵⁶Albert A. Ehrenzweig, *Compulsory "Hospital-Accident" Insurance: A Needed First Step toward the Displacement of Liability for "Medical Malpractice,"* 31 THE UNIVERSITY OF CHICAGO LAW REVIEW 279 (1964), <https://www.jstor.org/stable/1598534> (last visited Oct 11, 2022).

⁵⁷Richard A. Epstein, *Medical Malpractice, Imperfect Information, and the Contractual Foundation for Medical Services*, 49 LAW AND CONTEMPORARY PROBLEMS 201 (1986), <https://www.jstor.org/stable/1191422> (last visited Oct 11, 2022).

⁵⁸Michael D. Frakes, *The Surprising Relevance of Medical Malpractice Law*, 82 THE UNIVERSITY OF CHICAGO LAW REVIEW 317 (2015), <https://www.jstor.org/stable/43234698> (last visited Oct 11, 2022).

other considerations.⁵⁹ This misconduct, which can occur before or during treatment, may negatively affect the patient.⁶⁰

• **Malpractice during childbirth and labor** - After giving birth, it's important to take good care of the mother and the child.⁶¹ It can have detrimental effects on the mother and the unborn child, if necessary, precautions are not taken.⁶² Misdiagnosis of newborns, post-induced labor difficulties, improper birth management, and other situations fall under this malpractice category.⁶³

Long-term negligence is a flimsy approach to engaging in medical malpractice over an extended period. This category includes failing to monitor the patient throughout and after therapy carefully. In medical negligence cases, the plaintiff is responsible for holding all medical professionals accountable for their actions. Simply proving medical malpractice does not change anything. Any doctor cannot be held liable for malpractice unless the plaintiff can demonstrate it with sufficient proof or material already in the public domain.⁶⁴ The plaintiff must demonstrate negligence beyond a reasonable doubt and show that the doctor failed to use reasonable care and provided subpar care.⁶⁵ As a result, the plaintiff experienced consequences caused directly by the failure. The plaintiff must show that the doctor owed her a duty of care to establish medical negligence.⁶⁶ The doctor's negligence directly caused the plaintiff's loss of bodily, mental health, or financial resources.⁶⁷ According to custom, the burden of proof is with the party that has incurred harm or loss to establish the defendant's guilt.⁶⁸ The burden of proof is shifted from the plaintiff to the defendant under the legal doctrine "Res Ipsa loquitur," or "things speak for themselves." In this case, the defendant must establish his innocence by offering sufficient proof that his acts did not cause the plaintiff's injuries.

VII. THE REQUIREMENTS FOR ANY PLAINTIFF TO IDENTIFY A MEDICAL PRACTITIONER AS RESPONSIBLE FOR MEDICAL NEGLIGENCE.

A. *Responsibility to the Plaintiff*

Any medical professional owes the plaintiff a duty of care. He must carry out his duties with the greatest care and reasonably. It is said that obligation and negligence are related to one another. Doctors can take cases, examine, diagnose, and treat patients as they see fit without worrying about getting paid. He must ensure that he exclusively applies his expertise and experience to treat patients honestly.⁶⁹ In the case of *Laxman Balkrishna Joshi v. Dr. Trimbak Babu Godbole*, the doctor neglected to follow basic safety procedures when administering anesthesia to the patient, which ultimately resulted in the patient's death

⁵⁹Jonathan J. Frankel, *Medical Malpractice Law and Health Care Cost Containment: Lessons for Reformers from the Clash of Cultures*, 103 THE YALE LAW JOURNAL 1297 (1994), <https://www.jstor.org/stable/797120> (last visited Oct 11, 2022).

⁶⁰Charles P. Hall, *Medical Malpractice Problem*, 443 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 82 (1979), <https://www.jstor.org/stable/1042238> (last visited Oct 11, 2022).

⁶¹Timothy Marjoribanks et al., *Physicians' Discourses on Malpractice and the Meaning of Medical Malpractice*, 37 JOURNAL OF HEALTH AND SOCIAL BEHAVIOR 163 (1996), <https://www.jstor.org/stable/2137271> (last visited Oct 11, 2022).

⁶²Sylvia A. Law, *A Consumer Perspective on Medical Malpractice*, 49 LAW AND CONTEMPORARY PROBLEMS 305 (1986), <https://www.jstor.org/stable/1191430> (last visited Oct 11, 2022).

⁶³Daniel P. Kessler, *Evaluating the Medical Malpractice System and Options for Reform*, 25 THE JOURNAL OF ECONOMIC PERSPECTIVES 93 (2011), <https://www.jstor.org/stable/23049455> (last visited Oct 11, 2022).

⁶⁴Thomas B. Metzloff, *Researching Litigation: The Medical Malpractice Example*, 51 LAW AND CONTEMPORARY PROBLEMS 199 (1988), <https://www.jstor.org/stable/1191890> (last visited Oct 11, 2022).

⁶⁵Kenneth C. Chessick & Matthew D. Robinson, *Medical Negligence Litigation is Not the Problem*, NORTHERN ILLINOIS UNIVERSITY LAW REVIEW (2006), <https://commons.lib.niu.edu/handle/10843/21732> (last visited Oct 11, 2022).

⁶⁶David Mechanic, *Some Social Aspects of the Medical Malpractice Dilemma*, 1975 DUKE LAW JOURNAL 1179 (1976), <https://www.jstor.org/stable/1372062> (last visited Oct 11, 2022).

⁶⁷Michael Hor Yew Meng, *Medical Negligence: The Contours of Criminality and the Role of the Coroner*, SINGAPORE JOURNAL OF LEGAL STUDIES 86 (1997), <https://www.jstor.org/stable/24867211> (last visited Oct 11, 2022).

⁶⁸Philip Mirrer-Singer, *Medical Malpractice Overseas: The Legal Uncertainty Surrounding Medical Tourism*, 70 LAW AND CONTEMPORARY PROBLEMS 211 (2007), <https://www.jstor.org/stable/27592188> (last visited Oct 11, 2022).

⁶⁹Susan S. Septimus, *The Concept of Continuous Tort as Applied to Medical Malpractice: Sleeping Beauty for Plaintiff, Slumbering Beast for Defendant*, 22 TORT & INSURANCE LAW JOURNAL 71 (1986), <https://www.jstor.org/stable/25761739> (last visited Oct 11, 2022).

from a fat embolism.⁷⁰ The doctor was held accountable for this behavior and required to make restitution.⁷¹ It was decided that anyone qualified to provide medical advice and possesses professional medical expertise is assumed to have the necessary skill and knowledge for the job. He must carry out his duties conscientiously regardless of who asks him for medical advice.⁷²

B. Failure To Perform Your Obligation

A reasonable standard of care is anticipated from the doctor when treating the patient, just as a wise doctor would.⁷³ A doctor should be able to anticipate negative outcomes directly resulting from his actions. Depending on the scope of her responsibilities, medical professionals provide varying levels of care.⁷⁴ A pediatrician, for instance, provides care distinct from that of a general practitioner. The plaintiff must demonstrate that the doctor violated his duty of care and prove that the doctor owed him a duty of care.⁷⁵ The plaintiff must experience harm due to the doctor's poor behavior.⁷⁶ The case of *Blyth v. Birmingham Waterworks Co.* explained the breach of duty. It was stated that a doctor would be in breach of duty if they failed to follow their obligations or took any other actions that were contrary to them.⁷⁷ According to another definition, negligence is "a breach of obligation caused by neglect to do something that a reasonable man, influenced by those considerations which typically govern the conduct of human affairs, would do, or by doing something prudent and reasonable man would not do."⁷⁸

C. Consequential Harm Came from Duty Breach.

The plaintiff's losses must directly result from the doctor's duty violation. The harm must be "Causa causes," or a direct and immediate cause of the harm or damage. A person's body, property, financial loss, mental health, or reputation could all be harmed. The plaintiff may seek compensation from the defendant if any of the abovementioned damages are demonstrated. In *Jacob Mathew v. the State of Punjab*, a cancer patient died due to respiratory difficulties brought on by the lack of a loaded oxygen cylinder. The hospital was held accountable for carelessness under civil liability even though he passed away as the cylinder replacement was done.⁷⁹ In *Joseph v. Dr. George Moonjely*, the surgeon who failed to take adequate care when giving local anesthesia was ordered to pay the plaintiff, a 24-year-old girl, damages in the number of Rs. 1,60,000.⁸⁰ In *Postgraduate Institute of Medical Education and Research v. Jaspal Singh*, a patient who had 50% burns died in the hospital despite taking sufficient precautions owing to transfusion of the wrong blood type. But because there is a direct link between transfusing different blood and the occurrence of death, the defendant was held accountable.⁸¹

⁷⁰INDIAN KANOON, *supra* note 13.

⁷¹Glen O. Robinson, *The Medical Malpractice Crisis of the 1970's: A Retrospective*, 49 LAW AND CONTEMPORARY PROBLEMS 5 (1986), <https://www.jstor.org/stable/1191413> (last visited Oct 11, 2022).

⁷²M. S. Pandit & Shobha Pandit, *Medical negligence: Coverage of the profession, duties, ethics, case law, and enlightened defense - A legal perspective*, 25 INDIAN J UROL 372 (2009).

⁷³Reed Neil Olsen, *The Reform of Medical Malpractice Law: Historical Perspectives*, 55 THE AMERICAN JOURNAL OF ECONOMICS AND SOCIOLOGY 257 (1996), <https://www.jstor.org/stable/3487129> (last visited Oct 11, 2022).

⁷⁴Abigail R. Moncrieff, *Federalization Snowballs: The Need for National Action in Medical Malpractice Reform*, 109 COLUMBIA LAW REVIEW 844 (2009), <https://www.jstor.org/stable/40380392> (last visited Oct 11, 2022).

⁷⁵Jeffery Mullis, *Medical Malpractice, Social Structure, and Social Control*, 10 SOCIOLOGICAL FORUM 135 (1995), <https://www.jstor.org/stable/684761> (last visited Oct 11, 2022).

⁷⁶Neil Vidmar & Jeffrey Rice, *Assessments of Noneconomic Damage Awards in Medical Negligence: A Comparison of Jurors With Legal Professionals*, 78 IOWA LAW REVIEW 883 (1992), https://scholarship.law.duke.edu/faculty_scholarship/516.

⁷⁷Donal Nolan, *Varying the Standard of Care in Negligence*, 72 THE CAMBRIDGE LAW JOURNAL 651 (2013), <https://www.jstor.org/stable/24694081> (last visited Oct 11, 2022).

⁷⁸Leonard J. Nelson, Michael A. Morrissey & Meredith L. Kilgore, *Damages Caps in Medical Malpractice Cases*, 85 THE MILBANK QUARTERLY 259 (2007), <https://www.jstor.org/stable/25098157> (last visited Oct 11, 2022).

⁷⁹Subrahmanyam, *supra* note 7.

⁸⁰Indian Kanoon, *Joseph Alias Pappachan And Ors. vs Dr. George Moonjely And Anr.* (1994), <https://indiankanoon.org/doc/650680/> (last visited Oct 11, 2022).

⁸¹Indian Kanoon, *P.G.Inst.Of Medical Education & ... vs Jaspal Singh & Ors* (2009), <https://indiankanoon.org/doc/824047/> (last visited Oct 11, 2022).

VIII. THE CASE OF “SANDHYA SRIVASTAVA V. DR. NEELAM MISHRA” ANALYSIS

Sandhya Srivastava, the wife of Mohit Srivastava, was given care during her pregnancy at the Shivani clinic in Kanpur under the direction of Dr. Neelam Mishra. On December 22, 2005, at about 4 p.m., she began experiencing labor pains and went to see Dr. Neelam Mishra. She received treatment at Kanpur Medical Center (KMC). The patient's delivery was carried out that day, and at 10.29 p.m., she delivered a healthy baby girl weighing 4.2 kg. Dr. Neelam Mishra hurriedly went to the hospital at 12.49 a.m. and entered the delivery room. Dr. Chandrayee Luthra, another pediatrician, was also contacted. When the pediatrician arrived at the hospital and went to the delivery room, she informed Dr. Neelam Mishra that the baby had a temperature, and that's why the doctors had been called to take care of them.

Both doctors wrapped the infant in cloth so that just the face and hands could be seen before they both exited the delivery room with it. In Hindi, Dr. Neelam Mishra told Mohit Srivastava that the infant was suffering from a cold and required ICU treatment. She will recover the following morning. The pediatrician refused to show the infant even after being asked to do so by the patient. The infant's bandaged lower legs were finally removed after much coaxing. She revealed that the infant was hurt by the nearby rod heater when she asked a pediatrician about it. No service member was near the baby when this incident occurred since the entire staff left to attend to another medical issue. The mother's skin was used to graft the baby's legs during the two months they received treatment at KMC. The two were released on February 20, 2006.

Following an examination of the child's condition at Ursula Horsman Memorial Hospital (UHM), Kanpur, where the plaintiff party later took the child, it was discovered that the child had suffered thermal burns from a rod heater, ultimately resulting in the loss of three and two toes on the left and right legs, respectively. The young patient underwent numerous procedures, including plastic surgery. Even parents experienced great mental suffering and spent money on the baby's care. According to the Consumer Protection Act of 1986, the plaintiff party filed a claim for damages of Rs. 1,02,33,000 (plus 24% interest yearly) for the loss they had incurred. The nurse allegedly left the delivery room for a different birth at 11:07 p.m. after the baby's grandmother entered the room, according to the defendants. The grandmother knew there was a warm air blower in the space. They also stated that when the nurse turned around, the hot blower was directed at the child, and the grandmother wasn't in the labor room. Blisters were seen on the baby's lower torso by the personnel. At 1.45 a.m., after being informed, the doctors entered the room and looked at the blisters. The defendants contend that the grandmother bears sole responsibility since she abandoned the child while knowing that no one else was in the room with the child at the time and that there was an air blower.

As a result of their failure to fulfill their duties in this circumstance, the medical professionals breached their duty. The judges acknowledged that the child's damage was caused by dry heat from a hot air blower after reviewing the facts and arguments in the case. But the grandmother was watching over the child. The bench rejected the plaintiff's claim that a rod heater was placed close to the infant. The judge added that the hospital staff is also accountable since anyone who knew there was a rod heater present should have known how dangerous it could be if it were pointed toward a newborn. The commission holds the grandmother and the hospital staff accountable for the unfortunate circumstance. The Indian Penal Code, the 1860s, section 338, was the basis for the nurse's charges. The Consumer Redressal Commission ordered the defendants to pay the plaintiff Rs. 25,000 in compensation for the mental anguish and physical abuse they had to endure in the case of *Jagdish Prasad Singh v. Dr. A.K. Chatterjee*. Costs associated with litigation are also considered. The accused, in this instance, did not exercise caution while concluding the findings.⁸²

⁸²Indian Kanoon, Jagdish Prasad Singh vs Dr.A.K.Chatterjee (2008), <https://indiankanoon.org/doc/23607173/> (last visited Oct 11, 2022).

According to the “*Spring Meadows Hospital v. Harjol Ahluwalia*” case, the victim’s parents have the right to file a lawsuit to receive compensation for their loss and mental anguish due to medical malpractice. Additionally, they demanded reimbursement for the ongoing care and attention they must provide for the infant.⁸³ The baby’s caregiver, the grandmother, was also held accountable for contributing to the nurse’s medical negligence. Despite being aware of their responsibility to care for the infant, the hospital staff didn’t reasonably fulfill their responsibilities, thereby violating that duty.⁸⁴ And it was this breach that caused the complainant’s harm. The plaintiff party now has a lifetime obligation to care for the child and endure the emotional anguish that stems from it. They have also suffered financial losses as a result.

Contributory negligence is one of the defenses available to hospital workers that could stop the complainants from receiving damages. The plaintiff is believed to be ineligible for damages if she was negligent and contributed to the accident’s primary cause. The plaintiff is unaware of his obligation to exercise caution to avoid the consequences of the defendant’s conduct. The grandma is also accountable for contributing to the accident. Both parties declined to fulfill their obligations to the infant. Without the assistance of medical personnel, the grandmother might have cared for the infant properly without causing this accident. When the hot blower was directed at the baby, it was discovered that the grandma wasn’t there. It is implied that the grandma was the one who directed the hot blower at the infant. Restitution in integrum, or restoration to the original state, holds KMC Hospital vicariously accountable for the nurse’s actions. The pediatrician and Dr. Neelam Mishra were not found to be at fault because they carried out their duties correctly and delivered a healthy child without incident. However, KMC Hospital was indirectly responsible for the plaintiff’s injury and was ordered to pay the plaintiff Rs. 20 lakhs.

IX. SUMMARY AND SUGGESTIONS

Medical malpractice happens when an injured patient receives care from an untrained medical professional. The plaintiff suffered harm due to the doctor’s negligence and breach of his duty of care to uphold professional standards. He must take the utmost care and diligence when treating patients. If he doesn’t, the plaintiff may suffer losses, and the plaintiff is entitled to sue the doctor for the resulting harm. Law requires solid proof of the harm caused by the doctor to hold him accountable. Even the idea of medical negligence originated in Roman law and has since spread worldwide to reach its current status. Several laws have been formed to deal with and control such practices, considering the public’s health and safety. Res Ipsa loquitur shifts the burden of proof to the defendant, who must establish his innocence by offering sufficient proof that his conduct did not cause the plaintiff harm. Doctors must exercise caution when performing their duties so that no one is harmed. They must understand that when they lack the experience to treat patients, they must seek more guidance and support. They must work to protect the general populace and make sure that their carelessness doesn’t affect anyone else.

⁸³Indian Kanoon, M/S. Spring Meadows Hospital & Anr vs Harjol Ahluwalia Through, K.S. (1998), <https://indiankanoon.org/doc/1715546/> (last visited Oct 11, 2022).

⁸⁴G. L. W. Bonney, *Database on clinical negligence*, 309 BMJ 196 (1994), <https://www.bmj.com/content/309/6948/196.1> (last visited Oct 11, 2022).