



## MEDICAL NEGLIGENCE: CURRENT SCENARIO IN INDIA

### Forensic Medicine

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### ABSTRACT

Medical profession, one of the noblest professions, but not immune to negligence due to lack of reasonable degree of care and skill or willful negligence, which causes injury or death of the patient. There is no proper guideline in India to tackle the issues related to the medical negligence. So, interpretation of law by the different court and law enforcing agencies along with the circumstantial evidence related to negligence cases, sometimes becomes misleading and lead to wrong conviction and punishment. So, doctors are always afraid of its impact on them. Many landmark judgments have been passed by various courts and consumer forums in civil and criminal negligent cases, against doctors and health institutions, to award compensation in alleged negligence cases. Now a days, people are more aware of their rights and health, so cases of medical negligence have significantly gone up over the past few years. A basic knowledge of how medical negligence is adjudicated in the various judicial courts of India will help a doctor to practice his profession without undue worry about facing litigation for alleged medical negligence. The present article aims at discussing the various aspects of negligence, and current scenario in India and discussion with different landmark judgements of cases related to medical negligence.

### KEYWORDS

Medical negligence, consumer court, medical malpractice, Judgements, compensation, Supreme Court.

### INTRODUCTION

Medical profession is one of the noblest professions, but not immune to negligence. The term "medical negligence" is an omnibus one, which has come in vogue to refer to wrongful actions or omissions of professionals in the field of medicine, in pursuit of their profession, while dealing with patients. It is not a term defined or referred to anywhere in any of the enacted Indian laws.

According to Winfield, negligence is defined as the breach of a legal duty to take care of a person who is suffering from illness and results in damage, undesired by the defendant to the plaintiff. A breach of this duty gives a patient the right to initiate action against negligence.

"Negligence" as per Black's Law Dictionary<sup>1</sup>:

"Failure to exercise the standard of care that a reasonably prudent person would have exercised in similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or wilfully disregarding of others' rights, the doing of what a reasonable and prudent person would not do under the particular circumstances, or the failure to do what such a person would do under the circumstances. The term denotes culpable carelessness."

**Ordinary negligence** as per black's law dictionary<sup>1</sup>:

Lack of ordinary diligence; the Failure to use ordinary care.

**Criminal Negligence** as per black's law dictionary<sup>1</sup>:

"Gross negligence so extreme that it is punishable as a crime." Also termed as culpable negligence; gross negligence.

**Gross Negligence** as per black's law dictionary<sup>1</sup>:

- A lack of even slight diligence or care.
- Gross negligence is traditionally said to be the **omission of even such diligence as habitually careless and inattentive people do actually exercise in avoiding danger to their own person or property.**

- Failure to exercise even that care which a careless person would use.
- It is synonymous with reckless negligence; wanton negligence; wilful negligence; wilful and wanton negligence; wilful and wanton misconduct; hazardous negligence, magna negligence. See criminal negligence.

Legal components of negligence are duty, dereliction of duty, direct causation and damage.<sup>2</sup> But for professionals such as medical practitioners an additional perspective is added through a test known as the **Bolam test** which is the accepted test in India. In the case of **Bolam vs. Friern Hospital Management Committee**<sup>3</sup> the Queen's Bench Division of the British Court held: A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art. It says that standard of the ordinary skilled man exercising and professing to have that special skill," and not of "the highest expert skill." This is applicable to both "diagnosis" and "treatment. However, Supreme Court has now observed the need to reconsider the parameters set down in Bolam test that errors of judgment do not necessarily imply negligence.<sup>4</sup> But presently in India Bolam test is applicable as per the order of Hon'ble Supreme Court of India in case of Jacob Mathew vs State of Punjab and Anr. of 2005.

Criminal liability is usually fastened pursuant to the provisions of the Indian Penal Code, 1860 ("IPC"), which are general in nature and do not provide specifically for "medical negligence." For instance, Section 304A of IPC (which deals with the death of a person by any rash or negligent act and leads to imprisonment up to 2 years) is used to deal with both cases of accidents caused due to rash and negligent motor vehicle driving and also medical negligence leading to the death of a patient. **But medical negligence cases should be dealt with more lenient law because of more risky and more likelihood of adverse results inherent in medical field.** Similarly, other general provisions of IPC, such as Section 337 (causing hurt) and 338 (causing grievous hurt), are also often deployed in relation to medical negligence cases.

However, certain courts and law enforcement agencies in India, sometimes takes cognizance under 304 I.P.C also, but none of them sustained in the Supreme Court.

### Medical Professional and COPRA

COPRA, Consumer Protection Act, is an Act of parliament of India enacted in 1986 to protect the interests of consumers. The relationship between doctor and patient is to defend the significance of the consumers of different commodities available to them for which they pay but do not get the standard quality of service. E.g. patient pays for the treatment but does not get the correct treatment. Any sufferer consumer, State / Central govt. may lodge the complaint against the erring trader or suppliers, etc. for the deficient service which causes some harm to the consumer in the different redressal forum. E.g. District Forum, State Commission, National Commission.

### Medical Negligence Laws in India

As far as medical negligence laws in India are concerned, it is in the evolutionary stage and has not only been associated to the criminal liability of a medical practitioner but also been associated with the deficiency of services leading to civil consequences of damages under the civil laws as well as consumer laws. These laws are not as such defined under any statute but the same has been enclosed under the common laws like the Indian Penal Code, Consumer Protection Act, 1986 etc. Various judgments of the National Consumer Disputes Redressal Commission, Supreme Court of India have further defined the Medical Negligence Laws in India in their pronouncements.

Unlike in other developed countries, there are inadequate legislative guidelines in India to tackle the issues related to the medical negligence. The issues related to medical negligence are mainly dealt on the basis of basic criminal & civil law and reportable interpretations given by the apex court and different High courts. The text books of medical jurisprudence are mainly based on these orders and foreign literatures.

### Medical negligence laws in India under the Indian Penal Code

Indian Penal Code is the foundational criminal law considering various provisions for punishments under various categories of offences committed in India. Some sections related to the medical negligence laws in India from the IPC Section 52, Section 80, Section 81, Section 83, Section 90, Section 91, Section 92, Section 304-A, Section 337, Section 338.

### Degree of Negligence

No sensible professional would intentionally commit an act or omission which would result in loss or injury to the patient as the professional reputation of the person is at stake. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine to his patient. To draw a distinction between the blameworthy and the blameless, the notion of mens rea has to be elaborately understood.<sup>5</sup>

High degree of negligence is necessary to prove the charge of criminal negligence u/s304-A IPC. For fixing criminal liability on a doctor or surgeon, the standard of negligence required to be proved should be as high as can be described as "gross negligence". It is not merely a lack of necessary care, attention and skill.

The Supreme Court held that "Thus a doctor can't be held criminally responsible for patient's death unless his negligence or incompetence showed such disregard for life and safety of his patient as to amount to a crime against the State". Court further adds, "Thus, when a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man can't be termed as 'Criminal'. It can be termed 'Criminal' only when the medical man exhibits as 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. "Where a patient's death results merely from 'Error of judgment' or "an accident", no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but wouldn't suffice to hold him criminally liable.

### Role of Medical Expert's opinion

No case of criminal negligence should be registered without a medical opinion from Expert Committee of doctors and it should be given within a reasonable time. Indian Medical Association (IMA) Punjab

claimed "they had secured a directive from Director General of Police (DGP) Punjab that no case of criminal negligence can be registered against a doctor without a report from an Expert Committee. Similar situations exist in the case of State of Delhi where Lieutenant Governor issued directions to the Delhi police regarding how to arrest a doctor in medical negligence case, the Delhi High Court also decided to form guidelines for lower judiciary as well as the police to deal with such cases. Hon'ble Supreme Court endorsed the same view, as "criminal prosecution of doctors without adequate medical opinion would be great disservice to the community – as it would shake the very fabric of doctor-patient relationship with respect to mutual confidence and faith the doctors would be more worried about their own safety instead of giving best treatment to their patients".

### Applicability of section 304 & 304-A of IPC:

"The legal position is almost firmly established that where a patient dies due to the negligent medical treatment of the doctor, the doctor can be made liable in civil law for paying compensation and damages in 'Tort' and at the same time, if the degree of negligence is so gross and his act was reckless as to endanger the life of the patient, he would also be made criminally liable for offence under section 304-A of IPC". Although in no case the Hon'ble Supreme Court in India has justified the applicability of 304 IPC in medical negligence cases but incidences are reported in which cases are registered against the doctor u/s 304 IPC as doctors are murderer and even not granted bail.

Whether a doctor for negligence can be prosecuted under section 304 IPC or not? To answer this question we should do harmonious reading of section 299 IPC, 300 IPC, 304 IPC and 304 A IPC.

**299 I.P.C:** Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Distinction between culpable homicide and murder: "culpable homicide" is the genus and "murder" is its species and all "murders" are "culpable homicides", but all "culpable homicides" are not "murders"<sup>6</sup>

**300 I.P.C:** Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly) —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly) —If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

**304 I.P.C:** Punishment for culpable homicide not amounting to murder.

It has two parts: **304 I.P.C Part I, 304 I.P.C Part II**

**304 I.P.C Part I:** The first part applies where the accused causes bodily injury to the victim with *intention* to cause death; or with *intention* to cause such bodily injury as is likely to cause death.

**304 I.P.C Part II:** comes into play when death is caused by doing an act with *knowledge* that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

**304 I.P.C Part II:** Punishment for culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment for either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is done with the intention of causing death, or of the causing such bodily injury as is likely to cause death, or with the imprisonment of either description for

a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause bodily injury as is likely to cause death.

Before an accused is held guilty and punished under first part or second part of section 304, death must have been caused by the assailant under any of the circumstances mentioned in the five exceptions of section 300 I.P.C.<sup>6</sup> These are:

- i. Under grave and sudden provocation
- ii. In good faith of the right of private defence of person or property
- iii. For the advancement of public justice
- iv. Without premeditation
- v. When the person above the age of 18 years takes the risk of death with his own consent.

On perusal of these five exceptions it is very clear that section 304 I.P.C. covers those acts which are mainly by nature are acts commission with some degree of intention and/or knowledge.

**304A I.P.C:** Causing death by negligence – whoever causes the death of any person by doing any rash or negligent act not amount 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.

The section deals with homicidal death by rash or negligent act. It does not create a new offence. It is directed against the offences outside the range of Sections 299 and 300, IPC and covers those cases where death has been caused without '*intention*' or '*knowledge*'. The words "not amounting to culpable homicide" in the provision are significant and clearly convey that the section seeks to embrace those cases where there is neither intention to cause death, nor knowledge that the act done will in all probability result into death. It applies to acts which are *rash* or *negligent* and are directly the cause of death of another person.

There is thus distinction between Section 304 and Section 304A. Section 304A carves out cases where death is caused by doing a rash or negligent act which does not amount to culpable homicide not amounting to murder within the meaning of Section 299 or culpable homicide amounting to murder under Section 300 IPC. In other words, Section 304A excludes all the ingredients of Section 299 as also of Section 300. Where intention or knowledge is the 'motivating force' of the act complained of, Section 304A will have to make room for the graver and more serious charge of culpable homicide not amounting to murder or amounting to murder. The section has application to those cases where there is neither intention to cause death nor knowledge that the act in all probability will cause death.<sup>7</sup>

#### Brief Review of Apex Court Decision

Significant similarities observed in different judgements of Hon'ble apex court but different high courts and other civil courts have passed many contradictory judgments creating dilemma among the medical fraternity and different law enforcement agencies. All most all judgements of Hon'ble apex court are in the favour of dealing the medical negligence case as tort and only in case of extreme rashness and reckless should be tried under section 304 A I.P.C, and in no case under 304 I.P.C. But recently some high courts and trial courts in his judgements have transgressed the boundary of even section 304A IPC to the extent of application of section 304 I.P.C. Some rare example is also there where cases have been registered under section 302 I.P.C.

A historical judgment by Supreme Court is in case of Jacob Mathew vs. state of Punjab as follows-

(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do.

(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a 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 which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in Bolam's case [1957] W.L.R. 582, 586 holds good in its applicability in India.

(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word 'gross' has not been used in Section 304A of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in Section 304A of the IPC has to be read as qualified by the word 'grossly'.

(7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

(8) Res ipsa loquitur (i.e. things says itself) is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence.<sup>8</sup>

Martin F. D' Souza vs Mohd. Ishfaq case judgment given by supreme court in 2009 - whenever a complaint is received against a doctor or hospital by the Consumer For a (whether District, State or National) or by the Criminal Court then before 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, specialized 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 case (supra), otherwise the policemen will themselves have to face legal action.<sup>9</sup>

Dr. Kunal Saha vs Dr. Sukumar Mukherjee case became very popular because Supreme Court told NCDRC to calculate compensation

amount which was calculated by NCDRC of 1.72 crore rupees amount in 2011. NCDRC told in judgment for this case that calculation as per motor vehicle act should be for compensation in medical negligence cases also. Such huge amount of compensation, reminds medical professional that medical tourism also may increase compensation as one factor for calculation is current and possible future income of deceased.<sup>10</sup>

In Dr. Jayshree Ujwal State of Maharashtra & Anrs. case Supreme Court judgment given in 2017 – Error of judgment is not criminal negligence.<sup>11</sup>

Dr. S. K. Jhunjhunwala vs Mrs. Dhanwanti Kumar case Supreme Court judgments given in 2018 there has to be a direct nexus with these two factors to sue a doctor for his negligence. Suffering of ailment by the patient after surgery is one thing. It may be due myriad reasons known in medical jurisprudence. Whereas suffering of any such ailment as a result of improper performance of surgery that too with the degree of negligence on the part of Doctor is another thing. To prove the case of negligence of a doctor, the medical evidence of experts in field to prove the later is required. Simply proving the former is not sufficient.<sup>12</sup>

In Superintendent, Royapettah vs R. Lakshmi case National consumer dispute redressal commission given judgment in 2015- We disagree with the argument that, the patient was not a consumer as the OP is a government hospital. It was held by Hon'ble Supreme court in VP Shanta's Case I (1996) CLT 81 (SC) and Savita Garg's Case IV (2004) CPJ 40(SC) that government hospitals are also liable for medical negligence. Recently, Hon'ble Supreme Court in the case of V. Krishnakumar Vs. State of Tamil Nadu & Ors., Civil Appeal No. 8065 of 2009, decided on July 1, 2015 held the Govt. of Tamil Nadu is responsible for medical negligence caused in the government hospital. In others cases also NCDRC clarified that government hospital not giving free service to all patient so even if patient treated free, it will not be considered free service according to judgment of Supreme Court in V.P.SAMTHA VS IMA case. Central government rushed to Supreme Court with argue that government services are not under COPRA Act and Supreme Court stayed NCDRC order and matter is pending before apex court.<sup>13</sup>

### Interpretations of Hon'ble Apex courts who favors the applicability of even 304 A I.P.C. in medical negligence cases in extreme rashness.

The essential ingredient of **mens rea** cannot be excluded from consideration when the charge in a criminal court consists of criminal negligence. The moral culpability of recklessness is not located in a desire to cause harm. It resides in the proximity of the **reckless state of mind** to the state of mind present when there is an intention to cause harm. Optimising violations, may be motivated by **thrill-seeking**. Criminal liability is usually fastened pursuant to the provisions of the Indian Penal Code, 1860 ("IPC"), which are general in nature and do not provide specifically for "medical negligence. No sensible professional would intentionally commit an act or omission which would result in loss or injury to the patient as the professional reputation of the person is at stake. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine to his patient. Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do.

The essential components of negligence are three: 'duty', 'breach' and 'resulting damage. Negligence in the context of medical profession necessarily calls for a treatment with a difference. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. 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 which the accused followed. Where a profession embraces a range of views as to what is an acceptable standard of conduct, the competence of the defendant is to be judged by the lowest standard that would be regarded as acceptable.

A failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. The standard of care, while assessing the

practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

A professional may be held liable for negligence on one of the two findings: -

1. Either he was not possessed of the requisite skill which he professed to have possessed, or,
2. He did not exercise, with reasonable competence in the given case, the skill which he did possess.

The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices.

The word 'gross' has not been used in Section 304A of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in Section 304A of the IPC has to be read as qualified by the word 'grossly'. Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. Private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor.

In the judgment of case in F. D'Souza vs Mohd. Isfaq the Hon,ble Apex court has warned the police officials not to arrest or harass doctors unless the facts clearly come within the parameters laid down in Jacob Mathew's case (supra), otherwise the policemen will themselves have to face legal action. There is marked tendency to look for a human actor to blame for an untoward event, a tendency which is closely linked with the desire to punish. Things have gone wrong and, therefore somebody must be found to answer for it. It will be admitted that when an act is in itself innocent, to punish the person who does it because bad consequences, which no human wisdom could have foreseen, have followed from it, would be in the highest degree barbarous and absurd. The utmost he can do is to abstain from everything which is at all likely to cause death.

### CONCLUSION

Although the legislatures have not guided the judiciary clearly and in finer details encompassing all types of situations relating to medical negligence but Hon'ble Supreme court of India through it's various judgments has clarified many things to some extent. The guidelines given in Jacob Mathew case is should be considered as statutory guideline till Government of India frames guidelines. In general any act to be branded as offence only when it full fills two components one is Mens rea and Actus reus. Mens rea may be of two types one is the intention to do the offence and another very reckless state of mind. Section 304 I.P.C. requires first type of mens rea (intention to harm) and act of commission which comes under five exceptions of section 300 I.P.C. hence cannot be applicable in any type of medical negligence.

304 A I.P.C should be applicable only when negligence is so gross that **omission of even such diligence as habitually careless and inattentive** people do actually exercise in avoiding danger to their own **person or property** and reckless state of mind is of so high degree as to be considered as mens rea. **Thrill seeking behaviour** may be the classical example of such type of mens rea.

### REFERENCES:

1. Garner A. B. Black Law Dictionary. 10<sup>th</sup> ed. United States of America: Thomson Reuters; 2014. p. 1195-98.
2. Reddy KSN. The essentials of Forensic Medicine and Toxicology. 34<sup>th</sup>ed. New Delhi: Jaypee Brothers Medical Publishers (P) Ltd.; 2014. p. 34-35.
3. 1957 2 ALLER 118
4. Spring Meadows Hospital v. Harjot Ahluwalia (1998) 4 SCC 39
5. Bolam v. Friern Hospital Management Committee [1957] 1 W.L.R. 582.
6. Harndra Nath Mandal Vs State of Bihar, (1993) 1 crimes 984 (SC)
7. CRIMINAL APPEAL NO. 1625 OF 2008 ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO. 2023 OF 2007
8. **Jacob Mathew vs State Of Punjab & Anr** (2005) CASE NO.: Appeal (crl.) 144-145 of

- 2004- Supreme Court of India
9. **Martin F. D' Souza vs Mohd. Ishfaq** (2009) CIVIL APPEAL NO. 3541 OF 2002- Supreme Court of India
  10. **Kunal Saha vs Sukumar Mukherjee & Ors** (2011) CIVIL APPEAL NO. 3173 OF 2011
  11. **Dr. Jayshree Ujwallingolevs State Of Maharashtra & Anr** ( 2017) CRIMINAL APPEAL NO. 636 OF 2017- Supreme Court of India.
  12. **Dr. S.K. Jhunjhunwalavs Mrs. Dhanwanti Kumar** (2018) CIVIL APPEAL No.3971 OF 2011- Supreme Court of India
  13. **Superintendent, Royapettah ... vs R. Lakshmi** (2015) APPEAL NO. 210 OF 2015 - National Consumer Dispute Redressal Commission of India.