# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Contents</th>
<th>Page no.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certificate of Supervisor</td>
<td>i</td>
</tr>
<tr>
<td>Acknowledgement</td>
<td>ii – iv</td>
</tr>
<tr>
<td>Declaration of Originality</td>
<td>V</td>
</tr>
<tr>
<td>Plagiarism Report</td>
<td>vi – xiii</td>
</tr>
<tr>
<td>List of Abbreviations</td>
<td>xiv – xvi</td>
</tr>
<tr>
<td>List of Cases</td>
<td>xvii – xxi</td>
</tr>
<tr>
<td>Table of Contents</td>
<td>xxii – xxxi</td>
</tr>
<tr>
<td>Abstract</td>
<td>xxxii - xxxiv</td>
</tr>
</tbody>
</table>

## Chapter 1

**Introduction**

(1-37)

1.1 Definitions of the Negligence

1.1.1 Negligence as a State of Mind

1.1.2 Negligence as a Careless Conduct

1.1.3 Negligence as the Breach of Duty to take care

1.2 Essential Constituents of Negligence

1.2.1 Professional Negligence

1.2.2 Actionable Medical Negligence

1.2.3 The duty to Exercise Skill and Care

1.2.4 Breach of that Duty to Take Care

1.2.5 Consequential Damages

1.3 Statement of Problem                       | 13       |

1.4 Scope of Research                          | 14       |

1.5 Hypothesis                                 | 15       |

1.6 Objective of Thesis                        | 15       |
Chapter 2

Historical Evolution of Medical System and Medical Negligence (38 – 60)

Introduction

2.1 Evolution of Medical System around the World

2.2 History of Medical Treatment

2.3 Evolution of Laws governing Medical Negligence in India

2.3.1 In Ancient India

2.3.1.1 Manusmriti

2.3.1.2 Kautilya Artasastra

2.3.1.3 Yajnavalikasmriti

2.3.1.4 Naradasmriti

2.3.1.5 Brihaspatsmriti
2.3.2 In Medieval India 47
2.3.3 British Regime 48
2.3.4 The Indian Medical Degrees Act, 1916 49
2.3.5 Post – Independence 49

2.4 Committees for the Medical Services 50
2.4.1 Health Survey and Development Committee, 1946 (Bhore Committee) 50
2.4.2 Mudaliar Committee, 1961 51
2.4.3 Concept of Model Public Health 52

2.5 Other Committees and Legislation 53
2.5.1 Indian Council of Medical Research /Indian Council of Social Science Research Committee, 1981 53
2.5.2 Committee on Subordinate Legislation: Thirteenth report 54
2.5.3 Renewal of the Registration and Continuous Medical Education 54
2.5.4 Transparency of Fee charged 55
2.5.5 Advertising Medical Services Provided by Doctors 56
2.5.6 Doctor’s Social Commitment 57
2.5.7 Medical Records 57

2.6 Conclusion 58

Chapter 3

Medical Law and Medical Ethics (61 – 92)

3.1 Code of Ethics: 63

3.2 Medical Ethics in Ancient India 64
3.3 Ethics in Medical Profession in India 65

3.4 Ethical Code and Principles 67
   3.4.1 Principle of non-Maleficence 67
   3.4.2 Principle of Beneficence 68
   3.4.3 Principle of Autonomy 68
   3.4.4 Principle of Justice 68

3.5 Theories of Medical Ethics 68
   3.5.1 Moral Relativism 68
   3.5.2 Right-Based Theories And Duty – Based Theories 70
   3.5.3 Deontological Theory 70
   3.5.4 Utilitarianism Theory 71
   3.5.5 Virtue Ethics 73

3.6 Modern Medical Ethics 73

3.7 Declaration of Geneva, 1948 75

3.8 The International Code of Medical Ethics 76
   3.8.1 Doctor’s Duty to the Sick 76
   3.8.2 Doctor’s Duty to Another Doctor 76
   3.8.3 Duties of Doctors in General: 76
   3.8.4 Professional Misconduct (Infamous Conduct) 77
     3.8.4.1 Dichotomy or Fee Splitting 77
     3.8.4.2 Adultery of Improper Conduct with Patient 77
     3.8.4.3 Association with Unqualified or Unregistered Assistants 78
3.8.4.4 Medical Students, Technician and Dispensers 78
3.8.4.5 Advertising 78
3.8.5 Duties of Physician to the Public and Paramedical Professionals 78
  3.8.5.1 Physicians as Citizens 78
  3.8.5.2 Public and Community Health 79
  3.8.5.3 Pharmacists / Nurses 79
3.9 Legislations that Regulates Medical Profession in India 79
  3.9.1 Indian Medical Council Act, 1956 80
  3.9.2 The Indian Medical Degrees Act, 1916 82
  3.9.3 The Indian Medicine Central Council Act, 1970 83
  3.9.4 Medical Council of Indian Regulations, 2000 86
  3.9.5 Indian Medical Council (Professional Conduct Etiquette and Ethics) Regulations, 2002 87
    3.9.5.1 Duties and responsibilities of the Physician in general 88
    3.9.5.2 Maintaining good Medical Practice 89
    3.9.5.3 Duties of Physicians to their Patients 89
    3.9.5.4 Duties of Physician in Consultation 90
    3.9.5.5 Misconduct 90
    3.9.5.6 Punishment and Disciplinary Action 91
3.10 Conclusion : 92

Chapter 4

Legislative Provisions Regarding Medical Negligence in India (93 – 122)

4.1 Constitutional Law of India 95
<table>
<thead>
<tr>
<th>Section</th>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1.1</td>
<td>Fundamental Rights</td>
<td>96</td>
</tr>
<tr>
<td>4.1.2</td>
<td>Article 14: Equality before Law</td>
<td>96</td>
</tr>
<tr>
<td>4.1.3</td>
<td>Article 21: Right to Life and Personal Liberty</td>
<td>96</td>
</tr>
<tr>
<td>4.1.4</td>
<td>Directive Principles of State Policy and Health</td>
<td>98</td>
</tr>
<tr>
<td>4.1.5</td>
<td>Constitutional Remedies</td>
<td>9</td>
</tr>
<tr>
<td>4.2</td>
<td>The Indian Penal Code, 1860</td>
<td>100</td>
</tr>
<tr>
<td>4.3</td>
<td>The Contract Act, 1872</td>
<td>105</td>
</tr>
<tr>
<td>4.3.1</td>
<td>Problem areas in Medical Negligence Cases</td>
<td>106</td>
</tr>
<tr>
<td>4.3.2</td>
<td>Reasonable Care and Skill</td>
<td>106</td>
</tr>
<tr>
<td>4.3.3</td>
<td>Damages and Award of Compensation</td>
<td>107</td>
</tr>
<tr>
<td>4.3.4</td>
<td>Purpose of Damages</td>
<td>107</td>
</tr>
<tr>
<td>4.3.5</td>
<td>Types of Damages</td>
<td>107</td>
</tr>
<tr>
<td>4.3.6</td>
<td>Remedies for Breach of Confidence: Injunction</td>
<td>108</td>
</tr>
<tr>
<td>4.4</td>
<td>Medical Negligence: Rights and Responsibilities as a patient.</td>
<td>109</td>
</tr>
<tr>
<td>4.5</td>
<td>Principles adopted by the Apex Court relating to Medical Negligence</td>
<td>110</td>
</tr>
<tr>
<td>4.6</td>
<td>The Law of Torts</td>
<td>111</td>
</tr>
<tr>
<td>4.6.1</td>
<td>Common Law Principles</td>
<td>112</td>
</tr>
<tr>
<td>4.6.2</td>
<td>Substantive Principles of Law of Torts</td>
<td>112</td>
</tr>
<tr>
<td>4.6.2.1</td>
<td>Duty of Care</td>
<td>112</td>
</tr>
<tr>
<td>4.6.2.2</td>
<td>The standard required for duty to take care</td>
<td>113</td>
</tr>
<tr>
<td>4.6.2.3</td>
<td>Liability of doctor for negligence in failing to exercise proper care and diagnosis</td>
<td>114</td>
</tr>
<tr>
<td>4.6.3</td>
<td>Institutional Responsibility</td>
<td>115</td>
</tr>
</tbody>
</table>
4.6.3.1 Primary Liability 115
4.6.3.2 Vicarious Liability 115

4.7 Consumer Protection Act, 1986 116
4.7.1 Medical Service: 116
4.7.1 Patient as Consumer 117
4.7.3 Medical Negligence under Consumer Protection Act, 1986 119
4.7.4 Contract of Service versus Contract for Service 119
4.7.5 Remedies under the Consumer Protection Act, 1986 120
4.7.6 Procedures for filing Complaints regarding Medical Negligence in India 121

4.8 Conclusion 122

Chapter 5

Comparison of the Indian Medical Negligence Laws with the Laws of England and America (123 – 156)

5.1 Medical Negligence Cases: Approach of Indian Courts 126

5.2 Liability in Medical Negligence Cases in England, U.S.A. and India 127
5.2.1 Liability of Hospitals in England: 127
5.2.2 Liability of Hospitals in U.S.A. 128
5.2.3 Liability of Hospitals in India 129

5.3 The Law of Medical Negligence in England and India 130
5.3.1 English Law 133
5.3.2 National Health Service 134
5.3.2.1 Clinical Claims or the Clinical Negligence Scheme 136
5.3.2.2 NHS Indemnity : Arrangements for Clinical Negligence Claims in the NHS 137
5.3.2.2.1 Clinical Negligence 137
5.3.2.2.2 Main Principles 137
5.3.2.2.3 Who is not Covered 138
5.3.2.2.4 Circumstances Covered 138
5.3.2.2.5 Expenses Met 138

5.3.3. Tortuous Liability 138
5.3.4 Medical Negligence Cost NHS Billions 139
5.3.5 Indian Health Care System 140

5.4 The Law of Medical Negligence in America and India 142
5.4.1 Medical Malpractice Law in the United States 144
5.4.2 The Court System in the United States 147
5.4.3 The Legal System of the United States 149

5.5 Medical Negligence in other Countries 150
5.6 Comparative Overview of Medical Negligence Laws of India with America and England 153

5.7 Conclusion 155

Chapter 6

Judicial Redressing Towards Medical Negligence (157 – 208)

6.1 Indian Medical Association and Medical Negligence Cases 159

6.2 Remedies Provided by National Consumer Disputes Redressal Commission and The Supreme Court of India in Medical Negligence Cases
   6.2.1 Indian Medical Association v. V. P. Shantha And Others 162
6.2.2 Jacob Mathew v. State of Punjab and Another 169
6.2.3 State of Punjab v. Shiv Ram and Others 177
6.2.4 Martin F. D'Souza v. Mohd. Ishfaq 182
6.2.5 Dr. C. P. Sreekumar M. S. (Ortho) v. S. Ramanujam 188
6.2.6 V. Kishan Rao v. Nikhil Super Specialty Hospital and Others 191
6.2.7 Kusum Sharma and Others v. Batra Hospital And Medical Research Center and Others 194
6.2.8 Dr. Balram Prasad v. Dr. Kunal Saha and Others 196
6.2.9 V. Krishankumar v. State of Tamilnadu and Others 198

6.3 Current Cases Of Medical Negligence In India: The Botched Camps-Chhattisgarh 201
6.3 Award given by the Supreme Court 203

6.3.1 Compensation 204
6.3.1.1 Calculation of Compensation: The Multiplier method 204
6.3.1.2 Compensation on Humanitarian Grounds 205

6.4.4 Supreme Court’s Appreciation in Medical Negligence Cases 206
6.4.4.1 Davies and another v. Powell 207
Duffryn Valley Associated collieries
6.4.4.2 Nizam Institute of Medical Sciences 207
v. Prasanth S. Dhanaka & Ors
6.4.4.3 R. P. Sharma v. State of Rajasthan 209
6.4.4.4 Sarla Verma & Ors v. Delhi Transport Corp. & Anr 209

6.4 Conclusion 210
Chapter 7

Conclusion and suggestions (211 – 224)

7.1 Conclusion 213

7.2 Analyzing The Research Objectives 217

7.3 Suggestions: 217

7.3.1 To make a New Legislation 217

7.3.2 Need to Establish Medical Negligence Tribunal System 218

7.3.3 To Adopt ‘No-Fault’ Compensation Programme 219

7.3.4 Fixing the Cost of Treatment within Affordable Limit 220

7.3.5 Patient-Centered Approach 220

7.3.6 To Improve Quality of Service 221

7.3.7 Moral Education of Health Care Provider 222

7.3.8 To Provide Adequate Compensation in Cases of Gross Medical Negligence 223

7.3.9 Establishment of in House Committee for Redressal of Complaint of Medical Negligence. 223

7.4 Scope of Future Research 224

List of Appendices xxxv

Bibliography xxxvi – xlii