CHAPTER VII SUMMARY, FINDINGS, CONCLUSION AND SUGGESTIONS

7.1 SUMMARY

Medical Negligence is a shortfall by medical professionals or hospitals during the course of patient treatment. Medical Negligence is unlike any other consumer legalities, as human life itself or quality of life is involved, consequently an ethical ingredient too is linked with the medico-legal proceedings. Clinical practice in modern allopathic medicine has evolved for more than hundred years from a fine art of patient examination, diagnosing and treating communicable diseases, maternal and surgical care to multiple arrays of syndromes with evidences based practice including molecular investigations and high tech scans. Various never perceived medications and operative technologies are accessible. Medical professionals are capable of transplanting organs and reconstruct the human body parts to give a new lease of life.

India one of the ancient civilization of the world and occupies 2.4 Percentage land area of the world supports approximately 17.5 Percentage of the present human population. India gained freedom on 15. August 1947 and many states constituted. India is a democratic country with people elects their representatives for State and National administration. India economy is the third largest in the world in terms of purchasing power. However, challenges to overcome mainly are Population explosion, Poverty, Unemployment and Rural urban divide. Overall, non-communicable diseases are the foremost causes of death in the country, constituting 42 Percentage of all deaths. Communicable, maternal, perinatal and nutritional conditions constitute 38 Percentage of deaths. Injuries and ill-defined causes constitute 10 Percentage of deaths each. However, preponderance of ill-defined causes are at older ages (70 or higher years) are likely to be from non-communicable diseases. Health is a matter of primary concern to every one of us. This is so, owing to the fact that healthy economy and well-being of any society, solely depends upon health and well-being of its people. Diverse Indian Laws and Regulations related to Health are in force in this century. The obtaining and conventional forms of ethical obligations and guideline have either proved to be inadequate or found to be wanting, in this evolving scenario. As a result of sustained global efforts and endeavors, the frontiers of medical law been reinvented.
and the premise and extent of Ethics have been revisited and rewritten. Indian culture, heritage and beliefs stand apart from the western world resulted in legislating certain laws and amendments for the benefit of the society.

After the Consumer Protection Act, 1986, came into effect, a number of patients have filed cases against doctors. This article presents a summary of legal decisions related to medical negligence: what constitutes negligence in civil and criminal law what is required to prove it. Public awareness of medical negligence in India is growing. Negligence is the breach of a legal duty to care. It means carelessness in a matter in which the law mandates carefulness. A breach of this duty gives a patient the right to initiate action against negligence.

Medical professionals implicitly affirm that they have the skill and knowledge to treat, with “implied undertaking”. However, Presently Medical profession evolved as a complex scientific technology and clinical skill, even the most renowned specialist could make an error in detecting or diagnosing the factual nature of a disease and also in healing. A doctor can be held liable for negligence only if one can prove that she/he is culpable of a failure that no doctor with ordinary skills in similar circumstance would have erred of if used reasonable care. An error of judgment can amount to negligence only by taking into consideration where requisite skills are missing in comparison with similar examples. Bolam case and Bolitho case are classical case of judgment for medical negligence worldwide where medical malpractice suit allowed and filed.

The court has applied the Bolam test to a wider range of medical issues, including diagnosis, treatment, information disclosure, counseling and ethics in medicine. Bolam case judgment promotes that the accused professionals to find an proficient professional who would testify to having done the same. Thus, Bolam test criticized for its trust on medical testimony and personal judgment of experts chosen by the culpable. Medical negligence many times dependent on expert medical opinion has an element of unexpected outcomes as per individual patients’ condition, unable to attain the total scientific reliability. Question of medical negligence is depends on assessing the therapeutic chances of recuperation. Even if a particular treatment carried with the patients chances involved an incidence of alleged injury known as probability of treatment outcome would be not to award any financial compensation, as there is no
right to such loss. The Bolitho ruling has subsequently challenged Bolam test. The effect of Bolitho is that the court has to reach towards the conclusion to pass the order and court will take an additional enquiring stand to test the medical evidence offered by complainant and opponent in the litigation. Sections 80 and 88 of the Indian Penal Code hold protection for the medical professionals accused of criminal liability in every incidence of patient death or damage.

India has many systems of Medical practices. They are allopathy, ayurvedha, siddha and homeopathy. Deployment of sufficient number of human resources with appropriate skills at different levels of health care delivery system is essential for effective health care services of a population. The Medical Council of India was established in 1934 under the Indian Medical Council Act, 1933 with the foremost purpose of establishing uniform standards of higher qualifications in medicine as well as recognition of medical qualifications in India and abroad. The number of medical colleges had increased steadily after Independence i.e.1947. As the the provisions of Indian Medical Council Act were not adequate to meet with the challenges posed by the speedy development and the progress of medical education in the country. The population coverage per doctor varies across States in India. The present rate of production and severe deficit in the specialists are major issues to achieve health goals in the country. 6,60,801 allopathic doctors registered with State Medical Councils (till December, 2005), 7,24,823 AYUSH practitioners (till January, 2006), registered with their respective councils and 78,096 dental surgeons, registered with Dental Council of India (till May, 2006)2. There is also shortage of dental surgeons in the country. The ratio between allopathic doctor and population was 1 for 1665 persons in India (60 doctors for 100, 000 population) while in Australia, Canada, the United Kingdom and the United States of America, it was 249.1, 209.5, 166.5 and 548.9 respectively.

Karnataka is a state in south India formed on 01.November.1956 formerly known as state of Mysore and renamed as Karnataka in 1973. The judiciary in the state consists of the Karnataka High Court in Bangalore, District and Session courts in each district and lower courts and judges at the taluk level. As per the 2001 census, Karnataka had a literacy rate of 67.04 Percentage, with 76.29 Percentage of males and 57.45 Percentage of females in the state being literate. The state has a birth rate of 2.2 Percentage, a death rate of 0.7 Percentage, and an infant mortality rate of 5.5
Percentage. Maternal mortality rate of 0.2 Percentage and the total fertility rate is 2.2 Percentage. The Sex Ratio in the State is 965 (as compared to 933 for the country). In the super-specialty health care, Karnataka's private sector services are comparable with international standards, as corporate hospitals have made inroads. Karnataka also runs conventional public health services having a better record of health care and childcare in India. In spite of these progress parts of the state is deficient even in primary health care. Yeshasvini Health Insurance Scheme introduced in rural Karnataka in 2003.

The solitary Act of its kind in India made it possible for ordinary consumers to approach legal system for speedy redressal of grievances at least cost. By defining the rights and compensation of the consumers in a market subjugated and controlled manufacturers and traders of goods and contributors of various nature of services. The Act made way for social justice and indirectly increases the quality of goods and services Consumer Protection Councils at the Centre as well as in each State and District established to promote consumer awareness. The National Commission constituted in the year 1988. It is headed by a sitting or retired Judge of the Supreme Court of India. The enactment of the CPA marks a turning point in consumer litigation in India.

One of the most significant and equally multifaceted as well complex services in the field of consumer grievances is that of medical malpractice. V.P. SHANTHA & ORS is a breaking the ice accumulated in Medical Negligence in India, revolutionized the Indian scenario by bringing patients complaints under the common platform of consumer forum. This judgment has set precedence regarding the deficiency of Medical Services to researchers in Medical Negligence, Medical Professionals and Advocates. This trial itself is the definition of consumer redressal viz-a-viz medical services, scope of the redressal and guidelines for decision making in medical negligence trials. The original judgment of this trial goes at length to explain medical services under ambits of Consumer Protection, Scope and span of deficiency of medical services and limitations.

The Karnataka Consumer Disputes Redressal-The Karnataka Consumer Disputes Redressal State Commission established in the year 1989. Four District Forums also established at four-division level of district headquarters i.e., Bangalore, Belgaum,
Gulbarga and Mysore in the year 1989-90. In the year, 1991-92 sixteen District Forums were established at the remaining districts of Karnataka at that time. Seven more District Forums established at the newly created districts of Karnataka during the year of 2003. As per Section 11 of the C.P. Act the District Forum shall have the jurisdiction to entertain complaints when the value of the goods or services or the compensation, if any, claimed does not exceed rupees twenty lakhs. As per Section 15 of the C.P. Act any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order. As per Section 17(1)(A)(i) of the C.P. Act complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore shall be filed at State Commission. A complaint may be entertained after the period specified in sub-section(1), if the complainant satisfies the District Forum, the State Commission or the National Commission as the case may be that he had sufficient cause for not filing the complaint within such period.

The Public Accounts Committee (PAC) UK discovered that medical negligence affects one in ten patients staying in hospitals with approximately a million patients suffered medical blunders made by doctors, nurses, and paramedical staff. Fatal accidents are in consideration is over 2,000. Medical negligence consist of a range of happenings misdiagnoses, surgical errors, wrong doses of medication and falls and there is substantial under-reporting of serious incidents and deaths. The NHS has no idea how many people die each year from patient safety incidents and such is a status of developed nation. Speaking for Indian context, academic and research endeavors revolving around ‘Medical Negligence Liability’ did succeed in generating sizeable quantum of literature. In addition to the influential impact of English Common Law Jurisprudence, the literature under review quite explicitly reflects analysis of judicial decisions rendered by various Courts and Consumer Forums, Research Articles, Text Books and Commentaries. By merely considering the adverse consequence i.e., death, disability, or loss of earnings or second/multiple surgeries, alone the patient or aggrieved attendees of patient’s family concludes that ‘medical negligence’ is the only cause for such adverse event and accordingly initiates procedure of filing a complaint before Consumer Forum/Commission. A detailed analysis and glimpse of literature review in context, quite clearly reveals that ‘Medical Negligence Liability’
not been researched from management perspective, which the present research endeavor attempts to undertake.

This research attempts to address the following concern -Rationality of clinical, ethical and legal elements in medical negligence, medical professionals fear regarding consumer redressal, deviation from VP Shanta supreme court orders, consumer court fairness, causative of medical negligence, three tier system consumer redressal, criminal negligence among medical professionals and western issues of euthanasia in our population.

Conceptual Framework for Analysis of the study is stretches and fold pattern. This pattern is seen in groups operation. Mathematical models based on a few variables can only provide limited interpretation to a researcher in complex organizations but prevents comprehensiveness in the study. Complex adaptive systems are self-organizing systems in which a new regulations or guidelines can emerge. Self-organizing system exhibits unexpected properties and is continually in a state of disequilibrium. This is a situation characterized by challenges, contentions, simultaneous teamwork, antagonism and the symbiosis of interdependence and independence. However, general models emerge in these situations can be helpful to describe changing multiple influencing factors. Hence stretch and fold pattern adopted for the study. Option is to explore the available medical negligence cases for Clinical, Ethical and legal ingredients and analyze them to find out contributory factors. Contributory factors outline the questionnaire for the primary study. A detailed survey and analysis of pertinent judicial decisions made from judgments given in consumer redressal.

As per the information access act, the original documents of case trials and judgments on the medical negligence belonging to consumer court of Bangalore, Karnataka collected for the empirical study. The core focus of this study revolves around the legal, ethical, clinical perspective of judicial decisions rendered in the discipline of Medical Negligence. 27 selected cases of Medical Negligence category trial and judgments of Consumer redressal system located in Bangalore District forums, Karnataka State Commission and National Commission downloaded from internet as per the right to access information act of India. Each one legal case on Criminal Negligence, Transplant License and Euthanasia data collected from Newspapers also
taken the period of 2000 – 2011. The annual quantitative data of Medical Negligence cases contested taken for District and state Commission collected from consumer court, Karnataka.

Based on the interpretation of the empirical analysis a questionnaire prepared to examine complexities of Medical Negligence. Responses of 30 medical specialists obtained in the light of present medico-legal milieu and various Medical related acts Methodical analysis. Responses of 30 clinicians belonging to three core medical branches Medicine (Physician), Surgery (Surgeon) and Obstetrics & Gynecology (Obstetrician) analyzed.

Empirical secondary study Analysis showed that contested cases diversity range from OPD treatment, lab reports, IPD care, ICU care, simple procedure, general surgery, highly skilled surgery, complicated delivery and transplantation. Degree of damage occurred range from reversible functions to loss of life. Medical Negligence range from patient safety issues to criminal negligence. Majority of the negligence proved cases belonging to surgery and various specialty of surgery. Improper record keeping, lacking or improper consent forms, short-comings in explaining the risks and the alternate treatment modalities, missing to inform varying patient’s condition, improper record keeping and patient monitoring lapses, delay in examining patient and deficient referral for medical complications at patient care observed. Manipulating records also observed. Not attending medical emergency, impending examination and delayed intervention observed in emergency care of the patient.

Legal, ethical and clinical elements found in all medical negligence cases in empirical secondary study. Clinical elements are ever changing with progress of medical sciences. Ethical elements change with the social milieu of the population. Law becomes essential to safeguard the civilized population. We can see the interfacing of these three important elements in our retrospective study of medical negligence. Trend in Medical Negligence cases are more on hospitals. The numbers of medico legal cases are tip of iceberg compared to the quantum of patients treated. Preventive aspects are to be practiced by the hospitals and medical professionals of the developing nations.

A relevant questionnaire prepared to understand the rationality of legal, ethical, clinical ingredients and to examine the features related to the complexities of Medical
Negligence among medical professionals at present times. Formatted a focused questionnaire based on various existing laws, medical ethics, clinical scenario came across in previous judgments.

Despite the technological advances simple patient safety errors such as patient falls, leaving materials inside abdomen are still some causes of negligence and in sharp contrast other medico legal proceedings reflect very complex situation warranting a detailed insight into the medical procedures and practices, so as with the western countries. Court judgments also accomplished to illustrate medical professionals are right and truthful; if so. However there are examples of medicos misusing technology, law and the culture such as female foeticide which nevertheless not damaging the consumer can be devastating to the society.

In response to the criminal prosecution that are sought against doctors, Supreme Court has clearly laid down the procedural formalities that are to be complied with before the police authorities arrest any doctor. This decision also has contributed richly to the obtaining knowledge source similarly; National Consumer Commission has also laid down detailed guidelines pertaining to quantification of the compensation that can be claimed by aggrieved patient. Supreme Court and National Commission have clearly asserted that Bolam Test is the pertinent test to decide about the negligence liability and district forums have followed the same.

Primary Data analysis found majority of specialist medical professionals are mature sufficient to understand the downsides of their profession. They are aware of several legal issues involved in the medical practice. An ethical proposition depends upon the situation they are faced with. Awareness makes line of work reaches refinement, prevention, improvements as well progression among medical professionals and the law leads medical professionals towards self realization. Legal, Ethical and Clinical Factors are rational ingredients of medical negligence. Clinical factors awareness among our study group is excellent. Legal factors awareness among our study group is excellent. Ob/Gynaec specialists are 100 Percentage aware of PNDT Act but surprisingly poor in knowing legal responsibility of sonologist and obstetrician. Physician awareness legal, ethical and clinical ingredient is excellent. Surgeon awareness legal, ethical and clinical ingredient is excellent. This study shows law and medical sciences are not always at cross roads but facilitate the civilized society to
face the truth and progress with honesty. Legal, Ethical and Clinical Factors found as rational ingredients of medical negligence with impact on medical practice.

This Study recommends that Clinical, Ethical and Legal ingredients of Medical Negligence must be part of M.B.B.S. Curriculum. Each clinical situation has either happier or grim consequences; medical professionals be trained in handling grievances in consideration with Indian perception. Competency/Proficiency of medical professionals upraised in line with advanced countries protocol for Proficiency. Patients safety is an important concern. National Patient safety forum has to be organized similar to western countries for awareness, training and to practice patient safety.

Each patient suffered a medical negligence is a eligible candidate for justice and compensation. Presently Consumer Court is the easiest platform to avail justice. Consumer court have played fair role to patients as well doctors. The initial needless fear which occurred in minds of medical professionals ever since V.P.Shanta Vs IMA need to be transformed. Deserving unaffordable aggrieved patients must be provided with free and effective legal service to present their case. Every effort must be made to dispose of the case within the stipulate time framework. National Commission must have circuit benches in all the four Metro-cities in India as India is a vast country and complainant face difficulty in attending National commission and because of number of consumer cases in general are increasing.

In an ending message of the study Legal, Ethical and Clinical Factors originate as rational ingredients of medical negligence with a profound impact on medical practice.
7.2 FINDINGS

I. Cases of malpractice are few compared to quantum of patients treated. Upsurge in criminal and diverse consumer cases against healthcare professionals are filed with multiple specialists as parties to the proceedings. Each medical negligence trial and judgment analyzed showed tridimensional impact of Legal, Ethical and Clinical Perspectives.

II. Bolum test; consistently found in Medical Negligence proceedings. Bangalore forum and Karnataka commission took Karnataka Medical Council expertise. Apex commission took All India Institute of Medical Science expertise in required medical negligence cases. Bolitho case also has role in the twenty-first century.

III. Consumer Courts have played fair role to patients as well as medical professionals. Appeals to higher consumer courts have reflected refined decisions in medical negligence judgments.

IV. Hospital Administration is construed as an inevitable party in most of the medico legal proceeding reveals vicarious responsibility. Simple patient safety errors such as patient falls are still causes of negligence and other medico legal proceedings reflect complex situation warranting a detailed insight into medical practices.

V. Legal, Ethical and Clinical Factors are rational ingredients of medical negligence. Clinical factors awareness among our study group is excellent. Legal factors awareness among our study group is excellent. Obstetrician sub specialists are 100 percentages aware of PNDT Act but surprisingly poor in knowing legal responsibility of sonologist and obstetrician. Physician sub specialists awareness legal, ethical and clinical ingredient is excellent. Surgeon sub specialists awareness legal, ethical and clinical ingredient is excellent.

VI. Many intricate Legal, Ethical and Clinical Factors as ingredients of medical negligence are significant in context on India.
7.3 CONCLUSIONS:

The following are the conclusions arrived at

I. Undoubtedly, the purpose and object with which the Consumer Protection Act, 1986 has been passed has substantially achieved in the ambit of patients rights and doctor’s/hospital’s accountability;

II. More particularly, the Supreme Court’s judgment rendered in Medical Council of India’s case has become a significant anchor in influencing and generating public awareness about patient rights and legal remedies;

III. However, by and large in majority of the cases the adjudicatory process of deciding about medical negligence or deficiency of services is influenced by either bias against medical professionals or in favor of patients;

IV. Supreme Court has rendered landmark judgments in the area of informed consent, need for eliciting prima facie evidence and the guidelines for criminal prosecution of doctors;

V. While considering the increasing number of fictitious petitions seeking legal remedy, the Supreme Court in a landmark judgment (Martin D’Souza) has held that whenever a complaint preferred by a patient, the Forum / Commission has to refer the complaint to a doctor of the concerned specialty or a panel of doctors for the purpose of deciding whether there is prima facie evidence against the doctor or the hospital. In case if the opinion indicates prima facie evidence, then the Forum / Commission is expected to issue notice to the doctor or the hospital concerned. However, the decision rendered in Martin D’Souza’s case, has been over ruled by a subsequent Supreme Court decision as a result, referral for prima facie evidence is not necessary. Consequently, the number of cases that are filed against doctors and hospitals has witnessed a marginal increase.

VI. Similarly, in Smt. Kohli’s case, while upholding the relevance of Bolam’s test in Indian context, the court has laid down very detailed guidelines pertaining to informed consent. This is something very significant as remarkable number of cases that are filed before consumer forum; informed consent has cropped up for adjudication.
VII. In response to the criminal prosecution that are sought against doctors, Supreme Court in Jacob Mathew’s case has clearly laid down the procedural formalities that are to be complied with before the police authorities arrest any doctor. This decision also has contributed richly to the obtaining knowledge source.

VIII. Similarly, National Consumer Commission has also laid down detailed guidelines pertaining to quantification of the compensation that can be claimed by aggrieved patient. Both Supreme Court and National Commission have clearly asserted that Bolam Test is the pertinent test to decide about the negligence liability.

7.4 RECOMMENDATIONS

Based on the findings the following recommendations given for further improvement-

There should be submission of valid evidences for patient’s complaint before instituting the proceedings as doctors as well patient’s time need utilized preciously. While reiterating the need for upholding patient’s rights and accountability of Healthcare providers, with a view to infuse objectivity there is a need for eliciting prima facie evidence vis-à-vis a patient’s complaint before instituting the proceedings. As far as practicable for adjudicating medical negligence liability cases, a qualified neutral medical professional must form part of the Bench.

Clinical, Ethical and Legal ingredients of Medical Negligence must be part of M.B.B.S. Curriculum. Each clinical situation has either happier or grim consequences; medical professionals be trained in handling grievances in consideration of Indian perception. Competency/Proficiency of medical professionals need upraise in line with advanced countries protocol for Proficiency.

Patients safety is an important concern. National Patient safety forum has to be organized similar to western countries for awareness, training and to practice patient safety.

Each patient suffered a medical negligence is a eligible candidate for justice and compensation. Presently Consumer Court is the easiest platform to avail justice. Consumer court have played fair role to patients as well doctors. The initial needless
fear which occurred in minds of medical professionals ever since V.P.Shanta Vs IMA need to be transformed. Deserving unaffordable aggrieved patients be provided with free and effective legal service to present their case. Every effort made to dispose of the case within the stipulate time framework. National Commission must have circuit benches in all the four Metro-cities in India, as India is a vast country and complainant face difficulty in attending National commission and because of number of consumer cases in general are increasing.

Attempts of compulsive, compromise or settlement of cases must be discouraged. However, an option be provided to both the parties to be decided on their own volition. The Burden of Proof principle strictly construed and followed in its letter and spirit in the light of Supreme Court’s precedence. In appropriate cases, interim pleas like those that mis-joinder and non-joinder be applied with a view of ensure the parties to the proceedings not subjected to injustice. While endorsing summary nature of proceedings before consumer forums, it is mandatory that in every medical negligence case, appropriate expert insight and evidence be obtained. While invoking Section 27 of Consumer Protection Act, 1986, an appropriate direction is issued against the complainant to pay the relevant amount.

7.5 SCOPE FOR FURTHER RESEARCH

This study makes efforts to focus judicial decisions and case law to infer various reasons for medical negligence in a particular geographic area of India. Underlying clinical and ethical factors either influencing or occurs because of medical negligence found in individual cases.

In this study, found multiple factors responsible for medical negligence, as medical science has comparatively become complex industry in the 21-st century. Based on inferences medical professionals studied for the same multiple factors influencing medical negligence and underpinned Clinical, Ethical and Legal factors.

Advocated to carry research as a further scope of the study are –

Identical research on each individual factor influencing the medical negligence to understand the depth and impact of individual causative factors for medical negligence can be undertaken.
Research is possible on patient perception of various factors responsible medical negligence. In addition, research on common person’s perception of reasons for medical negligence is useful in view to give further impact and changes for providing social justice, bring changes in medical education and changes in the purview of the Consumer Act, India.