PREFACE

Practice of medicine is rendering great service to the society, providing care and cure. Doctors who are an integral part of this profession are the true torch bearers, contributing to it through their efficiency and skill. It is, therefore a noble profession. Traditionally, the family doctor was considered to be a friend, philosopher and guide for the sick. The relationship between the patient and the doctor was considered as very sacred; it was based on mutual trust and faith, and it was not mercenary. Increased commercialisation of the profession has brought an element of dehumanization in medical practice. Health care has now been reduced to a business which in turn determines the patient-doctor relationship.

Today it has almost diminished its fiduciary character. ‘Services’ of medical establishments are purchasable commodities and the ‘business’ mind has given an impetus to more and more malpractices and instance of negligence. It is not surprising that most of the nursing homes are not even owned by doctors, but by businessmen and promoters. There are so many stringent legislations which can check malpractice but the procedures are long and of general apathy, and the other wings of government have also not done much to control the menaces in the system, thus turning the healthy and blossoming society into an adulterated, spurious, defective and poisonous one.

At present, the medical profession has become commercialised. Practitioners are adopting deceitful methods to attract innocent patients and thereby procuring monetary benefits. For example, doctor may ask patients to undergo various tests (which may be unnecessary) in a particular laboratory, because he may be getting commission or other benefits from a particular laboratory. Some doctors may have a tie up with a medical shop and therefore may insist that patients purchase his medicine from that particular chemist. In fact half the medicine that he prescribes may not even be of any use to the patient. On a larger scale doctors may also have a collaboration with pharmaceutical companies and prescribe their medicines without being convinced about their effectiveness. Thus the medical profession which is a noble profession is deteriorating to the level of an ordinary ‘business’. This is mainly due to the money-mindedness of the doctor who have failed to abide by their Hippocratic oath.
India is a developing nation with seventy percentage of the Indian population living below the poverty line. With increasing cost of medical care and commercialisation of medical practices and of course the unethical practices of those who are in this profession, quality medical care has become inaccessible to large sections of the Indian society. Further this trend has increased the medical negligence cases in the country. In fact the consumer complaints have been accelerating rapidly over the past few years (15-20%). Inspite of the Consumer Protection Act,1986 which was enacted for the protection of consumers against the negligent acts of the doctors, there does not seem to be an abatement in such cases. Hence this thesis seeks to make an exhaustive study for scrutinising and analysing the reasons for such a grave situation, finding out the root causes, and also the cure for such maladies. Medical negligence is a curse to this profession and its eradication can alone bring this noble profession to its former glory.

For the purpose of study, this thesis has been divided into 9 chapters. The 1st chapter is an introductory chapter. In this chapter, an attempt is made to define and analyze the need for an effective law for controlling medical negligence cases. It provides a breakthrough to the entire thesis. It discusses the root causes of the problem and its impact.

The second chapter discusses the historical evolution of medical negligence law in India and under the common law concept. It also narrates the constitutional perspective of right to quality medical care and its evolution under medical law. Further the chapter makes an exhaustive analysis of the various international conventions and instruments adopted by the international community to establish and mould the right to health care.

The third chapter provides information relating to various common law liabilities under medical negligence. The main liabilities like Penal, tortious, contractual and corporate liabilities are discussed to provide a better understanding of medical negligence jurisprudence.
The fourth chapter discusses medical liability in the light of medical ethics. This chapter focuses on various problems relating to confidentiality, disclosure of information and medical ethics. It concludes by discussing the enforcement mechanism adopted by the various countries like England, America and India.

The next chapter discusses the consumer liability in medical negligence cases. Here the discussions are focused on consumer liability in UK and America. This chapter also provides a comprehensive picture of Indian Consumer Protection Act with reference to “deficiency of services”.

Sixth chapter deals with enforcement mechanism under consumer law. It makes a comparative study of enforcement mechanisms available in England and America. The consumer courts in India have also been discussed, emphasizing on their merits and demerits and also making suggestions for changes that can be incorporated into the system.

The seventh chapter is exclusively dedicated to the development of law through judicial decisions. The chapter focuses on the development of law in England, America and India through case study. The eight chapter deals with evolution of medical jurisprudence through existing laws and judicial decisions. The existing laws and judicial decisions have contributed substantially to the evolution of medical jurisprudence in India. The eight chapter makes a study of how this has happened and also discusses the outcomes. Ninth chapter is the concluding chapter which contains the suggestions to overcome the existing problem in the field of medical profession and make it worthy of its name.

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