CHAPTER IV- MEDICAL NEGLIGENCE

4.1 Medical negligence; Statement of the problem

Of late, Indian society is experiencing growing awareness about patient’s rights. This trend is clearly discernible from the recent spurt in litigation concerning medical professional or establishment liability. By and large these litigate claims are preferred claiming redressal for the suffering caused due to medical negligence, vitiated consent, breach of confidentiality arising out of doctor-patient relationship. The controversial Supreme Court is ruling as to the application of Consumer Protection Act, 1986 (COPRA) to the medical profession apparently gave fillip to such development. This patient-centered initiative of rights protection is required to be appreciated in the economic context of rapid decline of State spending and massive private investment in the sphere of health care system, and the Indian Supreme Court’s painstaking efforts to Constitutionalist ‘right to health’ as a fundamental right. The obtaining indicators point towards further entrenchment of such pursuit for protection of patient’s rights in the days to come.

As of now, the adjudicating process with regard to medical professional liability, be it in a consumer forum or a regular civil or criminal court, considers common law principles relation to negligence, vitiated consent and breach of confidentiality. In the process, the adjudication forums caught between competing and conflicting interpretations of English and American legal principles. In view of the fact these issues depend of identified standards of care, application of foreign principles seemingly devoid of social and cultural relevance would undoubtedly lead to arbitrary decisions. As a consequence, either the patient’s or professional’s interests would be in jeopardy. Ultimately, in the large dimension, the pursuit of protecting patient’s rights would receive a serious setback. However, it is equally essential to note that the protection of patient’s right shall not be at the cost of professional integrity and autonomy. There is definitely a need for striking such delicate balance; otherwise, the consequences would be inexplicable.

- Principle of Res ipsa loquitor This Principle means “the thing speaks for itself”. When an accident is caused would simply leads to a implication, accident could not have been caused without negligence; the law raises a question of negligence on the
part of the defendant and the petitioner need only prove the event of the accident. The defendant on his part can evade his liability by disproving negligence. It is essential that the defendant had some control over the happening that caused the accident.

- **Principle of Ubi jus ibi remedium** This principle of law sets out a basic ideology i.e. “where there is a right there is a remedy”, every right of a person has a related remedy which can be rewarded for enforcing the justice in cases of breach.

In the context of obtaining processes, there is a deserving need for two-pronged approach. On one hand, the desirable direction points towards identification of minimum reasonable standards in the light of social, economical and cultural context, which would facilitate the adjudicators to decide issues of professional liability on an objective basis. On the other hand, such identification enable the medical professionals to internalize such standards in their day-to-day discharge of professional duties, which would hopefully prevent to a large extent the scenario of protection of patient’s right in a litigative atmosphere. In the longer run, the present adversarial placement of doctor and the patient would undergo transformation to the advantage of both patient and the medical doctors and at large society.

**DEFINITION OF CONCEPTS:**

**Professional negligence or medical negligence** may be defined as want of reasonable degree of care or skill or willful negligence on the part of the medical practitioner in the treatment of a patient with whom a relationship of professional attendant is established, so as to lead to bodily injury or to loss of life.

**Consumerism** is now firmly established in the medical practice and the notion that blame may be attributed and compensated has a high priority.

A **Consumer** is any person who hires or avails of any services for a consideration, and includes any beneficiary of such service other than the person who hires or avails of the service, when such services are availed of with the approval of the first mentioned person.
Service means service of any description which is made available to the potential users, but does not include rendering of any service free of charge or under a contract of personal service.

Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance, which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

As matters stand, there is no comprehensive study available concentrating on overall legal, ethical and regulatory of aspects of medical negligence liability in India.

Hence, proposed this attempt of relevant study in this Ph.D programme.

4.2 Research questions:

This research attempts to address the following concern:

- Rationality of Clinical, Ethical and Legal elements in Medical Negligence.
- Medical professionals fear happened in 1996 regarding addressing medical negligence under consumer redressal is realistic and the changes in their mind set since then.
- Deviation from VP Shanta Supreme Court orders in various consumer courts.
- Consumer court fairness to health providers as well consumers (patients).
- Causative Factors in consumer court cases with proven medical negligence.
- Occurrence of Criminal negligence among medical professionals.
- Western issues of euthanasia occurrence in our population.
- Effects of three tier system consumer redressal in medical negligence cases.

4.3 Objectives of the Study

i. To access and analyze cases of Medical negligence cases filed before District consumer forums, Bangalore District and Karnataka state consumer disputes Redressal commission Bangalore for the period of 2000 – 2010 and find the trend of cases contested.

ii. To evaluate the original verdicts rendered in cases of medical negligence to analyze the scope of legal, ethical and clinical ingredients related to medical negligence.
iii. To analyze said judicial trials in context of the ubiquitous legal principles of medical negligence.

iv. To analyze how legal, ethical and clinical ingredients affect the medical negligence liability.

v. To compare related Indian and English common Law jurisdictions in the regard of trial of the cases.

4.4 Hypotheses

The following hypotheses (H0) are formed to verify at the end of the research:

1) Consumer Redressal System fairness to Health Provider and Consumer (Patient) in India.

2) Rational Elements in Medical Practices and viz-a-viz relevance to Medical Negligence.

3) Effects of Consumer Redressal System to sufferings of the patients due to Medical Negligence.

4) Conformity and deviation from supreme court guidelines in VP Shanta case for medical negligence.

5) Relevance of other judicial /redressal system in bringing justice such as IPC, IMC and effect on license.

6) Western issues ex. Euthanasia occurrence in India.

4.5 Conceptual Framework for Analysis of the study:

In synthesizing data interplay between the parts and the whole and between the micro and macro details are studied. Diverse ways in which background conditions, actions, and consequences affect each other has to be considered. Diverse perceptions and standpoints of those involved in a process as well the multiple and varied patterns of connections affect the complex processes.

Complexity Patterns: All relationships cannot be established in underlying complex interacting situations. Researchers in many disciplines have to study the “complex adaptive systems” in complex patterns. A complex adaptive system consists of a large and diverse number of driving forces interrelates in adaptive and assorted ways. In a closely knotted network of several interacting causes (e.g., subgroups), each causative factor is responding to other and the situation as a whole. 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.

The model used for analysis of complex system is Stretch and fold pattern:

The name of this model comes from kneading dough. Stretching the available data builds tension and shows the differences and diversity. Folding the data consolidates new links. Folding reveals common standards and releases the tension of the stretch. (See Eoyang, 2007) and important in groups operations process. Groups explore new ideas for a period of time and consolidate and stabilize before pursuing a newer ideas, technology or changes.

Medical practice is a complex practice of intellectuals with privileged qualification and experience after many years of hard work. They have to achieve difficult task of qualifying education and hands on experience. 21st century witnessed many newer technology and newer horizons by which patient care attained a size of industry. Every lesser or superior task in medical practice has Clinical, Ethical and legal ingredients. A prospective follow up study may give where the entire medical practitioner went wrong and did an injustice to patient. However such a study is impractical because each action need to be observed, recorded round the clock, requires many years study with limited end results. It is difficult to explore the tip of the iceberg. The foundation of medical negligence is a broader clinical ingredient; above it is ethical ingredient and legal ingredient. When all these ingredients are fulfilled noticed practice is a ideal medical practice otherwise is irrational medical practice. Irrational practice is an occurrence need to be studied and all such practices may not knock the door of legal system. However impact can be still observed in a social milieu.
After understanding the limitation of the prospective study, improved 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. Responses from practicing professionals will be used for rationality and awareness of causative factors.
4.6 Methodology

RESEARCH DESIGN:
Methodology and Sampling

It is proposed to adopt a combination of theoretical and empirical processes for the purpose of this research. Theoretical approach primarily aims at collection and collation of relevant principles covering legal, ethical and clinical perspective. A detailed survey and analysis of pertinent judicial decisions will be made. Comparative inputs from related jurisdictions like U.K., will be taken into consideration as they belong to common law tradition. Similarly, for the purpose of focused coverage, in the clinical perspective, while examining ‘medical negligence’, select specialties like OB & Gyn., Surgical, Ortho, Cardiac and Anesthesiology will be identified. Bangalore City will be the universe for the research study. Follow-up analysis will be made in the light of relevant statistical tools and methods. Thereafter, structured recommendations will be attempted so as to bring about desirable changes in appropriate legal and ethical frameworks.

DATA COLLECTION:

Figure 4.F.3 Data collection Process
SAMPLE SIZE:

The sample size has been chosen as follows:

- **Analysis of Court Cases: Belonging** to Karnataka state-at Bangalore district, state and national level and **30 cases their judgments Analysis**.

- **Secondary Statistical Data**: Statistical data of cases filed in Bangalore District forum, and State commission, Karnataka- **Year 2000-2010 Trend**.

- **Primary Data**: Responses of 30 clinicians belonging to three core medical branches Medicine (Physician), Surgery (Surgeon) and Gynecology & Obstetrics (Obstetrician) collected

### 4.7 Secondary Data

1. 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.

2. The annual quantitative data of Medical Negligence cases contested taken for District and state Commission collected from consumer court, Karnataka.

### 4.8 Primary Data

1. Based on the interpretation of the empirical analysis 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.

2. **Primary Study Questionnaire**: Formatted a focused questionnaire based on various existing laws, Medical ethics, Previous Judgments. **Responses of 30**
medical specialists Obtained; in the light of present medico-legal milieu and various Medical related acts Methodical analysis

3. Responses of 30 clinicians belonging to three core medical branches Medicine (Physician), Surgery (Surgeon) and Gynecology & Obstetrics (Obstetrician) collected and analyzed.

4.9 Chapter Scheme

Chapter one: This chapter deals with introduction and importance of medical science in wellbeing of human race, Demography of India and Karnataka, Health Indicators, Causes of death in India and historical background of medical negligence.

Chapter Two: This Chapter Deals With Indian Health Care System, Indian Medical Council, Consumer Law 1986, India, Consumer Law & Medical Negligence: IMA Vs V.P. Shanta, Consumer Redressal System, Karnataka and Comparative Clinical Negligence of UK and Karnataka

Chapter three- The aim of this chapter is to examine and present a comprehensive analysis of existing literature on the research topic. It deals with the relevant concepts and previous work relating to medical negligence.

Chapter four- This chapter deals with Statement of the Problem, Research questions, Objectives of the Study, Hypotheses, Conceptual Framework for Analysis of the study and Methodology conceded for the research.

Chapter five- This chapter deals with Results and Analysis of Data Empirical Study with Secondary data, trend of medical Negligence cases, Karnataka and the Primary Study along with Analysis of Primary Study Results.

Chapter six – In this chapter a special review on tridimensional perspective of Ethical, Clinical, Legal ingredients in Medical Practice primed.

Chapter seven- This chapter deals with Summary, Findings, Conclusions, Recommendations and Scope for further research.