



medical negligence

Consumer Protection

Medical negligence



Civil and criminal liability and the respective limit of standards of care

General exceptions contained in Ss 88, 92 and 93 IPC

Practitioner of one system of medicine prescribing medicine in another form



Bolam principle: Facts of the case and emergence of 'standards test'

(i) there is usual and normal practice; (ii) the defendant did not adopt it and (iii) the course adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary care

error of judgment is not necessarily negligence



Courts as being defensive to medical practitioners; e-g: sterilisation cases; cataract cases



Want of consent as establishing negligence



Canterbury principle: Informed consent and effect of decision taken on such consent

Areas that require strict application of professional negligence

Insensitive to poverty stricken patient

situation that exposes a patient to greater economic loss

failure to insure against medical negligence and exposing the claimant risk of inability to recover damages

false assurances

administration of contaminated medicine

situations where medical negligence need not be inferred



DIAGNOSTIC ERRORS WHERE
DIFFERENT DIAGNOSIS IS POSSIBLE



WHERE COMPLAINANT RELIES ON
AN ALLEGED PROMISE OF
ABSOLUTE CURE



DOCTOR WHO IS AN INTERMEDIARY
BETWEEN PATIENT AND DEFECTIVE
PRODUCT

Leading decisions on deficiency of service



IMA v Shanta (1995)6 SCC 651-
settling the contours of law of
deficiency of service



*Spring Meadows Hospital and
another v Ahluwalia* (1998)4 SCC 39 -
Introducing concept of compensation
to secondary victim



Marghesh K.Parikh v Dr Mayur Mehta
(2011)1SCC 31 - Failure to provide
details of treatment



*Dr. JJ Merchant v Shrinath
Chaturvedi* (2002)6 SCC 635-
Complicated questions of fact and
law

Some more recent decisions



A hospital that has no ICU but merely surgical facility must be taken as professionally incompetent (*Bijoy Sinh Roy v Biswanath Das* (2018) 13 SCC 224).



Where consent is taken during surgery for conventional method of removing gall bladder was done, when the previously decided method was through laproscopy. Not deficient in service (*Jhunjunwala v Dhanwanti Kaur* (2019) 2 SCC 282)



No proper monitoring of ailment after admission. Person diagnosed with dengue fever at 7.30 am died by evening, with no proper assessment about the line of treatment when blood samples were not taken in time (*Arunkumar Manglik v Chirayu Health & Medical care* (2019) 7 SCC 401).

Mediation as a tool

understanding
the concept of
mediation

the stage when
the technique is
ideally
attempted

parties to
mediation

when mediation
fails

when mediation
succeeds