

COURSE TITLE***Responsible Faculty Instructor:*****Raabia Abuzer Shams** [91768]

Assistant Professor

Credits: 4Credits Type:Cross-registration:Pre-requisites: None.**COURSE DESCRIPTION (COURSE VISION):**

With the rapid growth in medical malpractice litigation in India, judicial forums and lawyers alike have struggled to strike a balance between respecting the autonomy of a doctor to make judgments, and the rights of a patient to be dealt with fairly. This course is a detailed exploration into the laws related to the omnibus concept of medical negligence. It will delve into the relatively dated legal routes available for cases of medical negligence, such as tort law and criminal law, as well as the more 'contemporary' avenues for this wrong, such as the consumer protection laws. It will also cover defences available to medical practitioners in such cases. The course is descriptive and will cover all the basic theories involved in this highly nuanced area of the law. At the same time, it will also inspect some of the thorny areas of the laws and practices of medical negligence in India.

TEACHING METHODOLOGY:

The core content of this course is varied, and covers a wide assortment of fields, laws, and principles. Thus, a learning-centred approach shall be employed throughout this course, whereby the students' inputs and active participation will play a crucial role in developing their knowledge-base and skills. A blend of instructional strategies will be used throughout this course including traditional direct instruction, step-by-step worked examples, interactive learning, and case-based learning. The pedagogy of this course is aimed at ensuring that the students fully understand and can critically engage with the topics being covered

INTENDED LEARNING OUTCOMES:

Course Intended Learning Outcomes	Weightage in %	Teaching and Learning Activities	Assessment Tasks/ Activities
Critical engagement with core concepts and principles	60%	Classroom discussions, interactive learning	Mid-term and End-term exams
Case-analysis	20%	Case-by-case worked examples	In-class reviews/quiz/case critique

Research	30%	Critical analysis of issues	Research papers
----------	-----	-----------------------------	-----------------

READING LIST (upto 10 select readings):

1. **Core textbook:** *Law of Medical Negligence and Compensation*. by R K Bag. Edition: 3rd Edition, 2021. (Eastern Law House) [ISBN: 9788171770649].
2. S.K. Pandya, 2014. *The Medical Council of India: need for a total overhaul*. Indian J Med Ethics, 11, pp.68-70.
3. S.G. Honavar, 2019. *National Medical Commission Bill, 2019–Good intent but unmet expectations*. Indian journal of ophthalmology, 67(8), p.1259.
4. N.K. Kumar, *MEDICAL NEGLIGENCE & MALPRACTICES IN INDIA: PERSPECTIVE OF TORTIOUS LAW*, 3 Journal of Law of Torts and Consumer Protection Law, 24-38.
5. Trudo Lemmens, *Informed Consent*, in Routledge Handbook of Medical Law and Ethics, 27-51 (Yann Joly and Bartha Maria Knoppers eds.2015).
6. Mark A. Rothstein, *Privacy and Confidentiality*, in Routledge Handbook of Medical Law and Ethics, 52-63 (Yann Joly and Bartha Maria Knoppers eds.2015).

WEEKLY READING PLAN (WEEKLY OUTLINE):

A weekly plan is provided below:

MODULES	WEEK(S)
<p>MODULE 1: Health, Ethics, and the Law: Where do They Converge?</p> <p>After sharing some preliminary thoughts on the course and its orientation, this Unit will discern whether or not the ‘right to health’ exists in India, by examining precedents and constitutional provisions. It will cover a brief introduction of the doctor-patient relationship, and responsibilities of medical practitioners as well as their patients. It will also give a brief primer on the core principles of medical ethics and how they translate into practice.</p>	1
<p>MODULE 2: A Practical Approach to Medical Ethics: Approaching Consent and Confidentiality</p> <p>This Unit will engage with two of the most common causes of action in medical negligence - informed consent and patient confidentiality. It will cover the meaning and scope of informed consent, and the concept of ‘substitute consent’ and the situations where it may be invoked. It will also cover the meaning and scope of confidentiality and healthcare data privacy. The lectures will be largely case law-based</p>	2-3
<p>MODULE 3: From Bolam to Bolitho: Medical Negligence as a Tort</p>	3-4

<p>This Unit will examine medical negligence in tort law. After quickly recapping the essentials of negligence, it will delve into the questions raised in the context of medical negligence, including but not limited to: when do medical professionals owe a duty of care? What is the ambit of such a professional duty? What is the standard of reasonable care? Can patients be charged with contributory negligence? What is the standard of care for emergency treatment?</p>	
<p>MODULE 4: Medical Negligence as a Deficiency in Service</p> <p>The topics covered in this Unit shall include the ambit of consumer protection laws, and to what extent medical negligence falls under the scope of a deficiency in service and/or an unfair trade practice. It will examine the process of filing and proving a claim for medical negligence under the 2019 Act.</p>	5-6
<p>MODULE 5: Medical Negligence as a Crime</p> <p>This Unit will look into medical negligence as a crime under Sections 124 of the BNS. It will also cover the recently framed National Medical Commission Guidelines for prosecution of doctors in cases of criminal negligence.</p>	6-7
<p>MODULE 6: Defences and Vicarious Liability of Hospitals</p> <p>This Unit will analyze the defences available to medical practitioners charged with medical negligence claims, limitations on such action, as well as assessment of damages. It will also investigate the principles regulating vicarious liability of hospitals and the State. It will examine the principles used in determination of compensation.</p>	8-9
<p>MODULE 7: Regulation of Medical Practitioners: Role of the MCI</p> <p>This Unit will scrutinise an alternative consequence of medical negligence cases, i.e. disciplinary action by the Medical Council of India and the State Medical Boards. It will the ways in which professional misconduct by medical practitioners is governed by the Indian Medical Council (IMC) (Professional Conduct, Etiquette, and Ethics) Regulations, 2002, made under IMC Act, 1956. It will examine the regulation of private healthcare facilities under the Clinical Establishments Act, 2010, and the issues pertaining to such regulation.</p>	10
<p>MODULE 8: AI in Healthcare: Implications for Medical Negligence Claims and Liability</p> <p>This Unit will explore the intersection of artificial intelligence (AI) technologies and the law of medical negligence in India. It will</p>	11

<p>examine how the increasing reliance on AI in diagnostic tools, treatment recommendations, robotic surgery, and health data management challenges traditional principles of tortious liability, particularly the standard of care, causation, and responsibility in case of harm. The module will also briefly contextualize global legal debates and responses in the Indian medico-legal and regulatory landscape.</p>	
<p>MODULE 9: Reproductive Rights</p> <p>This Unit will briefly examine the laws pertaining to reproductive rights in India, particularly medical termination of pregnancy (i.e., abortion), and the laws on surrogacy. It will trace the key developments in these areas, through a study of prior legislation and case laws.</p>	12
<p>MODULE 10: Laws on Mental Health</p> <p>This Unit will briefly deal with the development and implementation of the laws pertaining to mental health. It will trace the key developments in these areas, through a study of prior legislation and case laws and analyze the legal and ethical implications of the current legal framework.</p>	13
<p>MODULE 11: Laws on Assisted Death</p> <p>This Unit will scrutinize the laws on euthanasia, from Aruna Shanbaug to the Common Cause judgement and its current relevance.</p>	14
REVISION WEEK	Week 15