

Elective Proposal

Name of the course: Medical Negligence in India: Law and Practice

Course Aim/Learning Outcomes:

The course seeks to:

1. Make students aware of the basic facets of medical ethics, and the doctor-patient relationship.
2. Introduce the students to the rights of patients, and which violations most commonly lead to causes of action in medical negligence litigation.
3. Examine, in detail, medical negligence as a wrong in tort law, criminal law, consumer protection law, and as a violation of the disciplinary rules laid down by the Medical Council of India.
4. Encourage students to engage critically with court judgments and examine them for the strength of their reasoning rather than the outcomes.
5. This course primarily seeks to equip students with a theoretical and practical understanding of medical law. Keeping in mind the recent changes in health law, students are expected to develop strong pieces of research on the various topics in this area of the law.

Pedagogical Approach:

- Combine lectures on regulations and statutory frameworks with interactive discussions. Use the case-study method and encourage students to situate judgments within broader realities of law, ethics, and liability.
- Structure assessments (midterm essay, annotated bibliography, research paper, and presentations) to progressively build research skills, and critical thinking. The assessment design aims at evaluating students not only on doctrinal study, but also on their ability to critically interrogate law, policy, and practice. It is important to note that this area of law is relatively uncharted. Therefore, the course will be heavily research oriented, and will have a significant written component, in terms of assessment.

Lecture Design:

Week 1: Health, Ethics, and the Law: Where do They Converge?

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.

Week 2-3: A Practical Approach to Medical Ethics: Approaching Consent and Confidentiality

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.

Week 3-4: From Bolam to Bolitho: Medical Negligence as a Tort

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?

Week 5-6: Medical Negligence as a Deficiency in Service

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.

Week 6-7: Medical Negligence as a Crime

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.

Week 8-9: Defences and Vicarious Liability of Hospitals

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.

Week 10: Regulation of Medical Practitioners: Role of the MCI

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.

Week 11: AI in Healthcare: Implications for Medical Negligence Claims and Liability

This Unit will explore the intersection of artificial intelligence (AI) technologies and the law of medical negligence in India. It will 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.

Week 12: Reproductive Rights

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.

Week 13: Laws on Mental Health and Euthanasia

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. It will scrutinize the laws on euthanasia, from Aruna Shanbaug to the Common Cause judgement and its current relevance.

Week 14: Revision