

# **MEDICAL NEGLIGENCE**



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When a healthcare professional such as doctor, nurse, hospital deviates from the accepted "standard of care" when treating a patient, this mistake or fails to act as they should, and this causes harm to the patient.

Mistakes in the medical matters can result into **minor injuries, serious injuries or sometimes resulting into the death of a person.**



- ▶ Medical Negligence with Examples
- ▶ Types
- ▶ Punishment If we not follow the medical ethics in practice (BNS sections)
- ▶ How to prevent negligence in practice
- ▶ Defense against negligence
- ▶ Real Cases of Medical Negligence
- ▶ Filing the case of Negligence

# MEDICAL NEGLIGENCE

- ▶ Medical negligence and malpractice are not same.
- ▶ Medical malpractice includes other forms of irregular medical practices including unethical acts i.e. the medical practice, which is not fair or is a wrong practice.

## Definition

- ▶ Medical negligence is defined as *want of reasonable degree of care and skill or willful negligence on the part of Medical Practitioner while treating a patient resulting in bodily injury, ill health or death.*

There are two important components and for negligence either one condition has to be proved i.e.

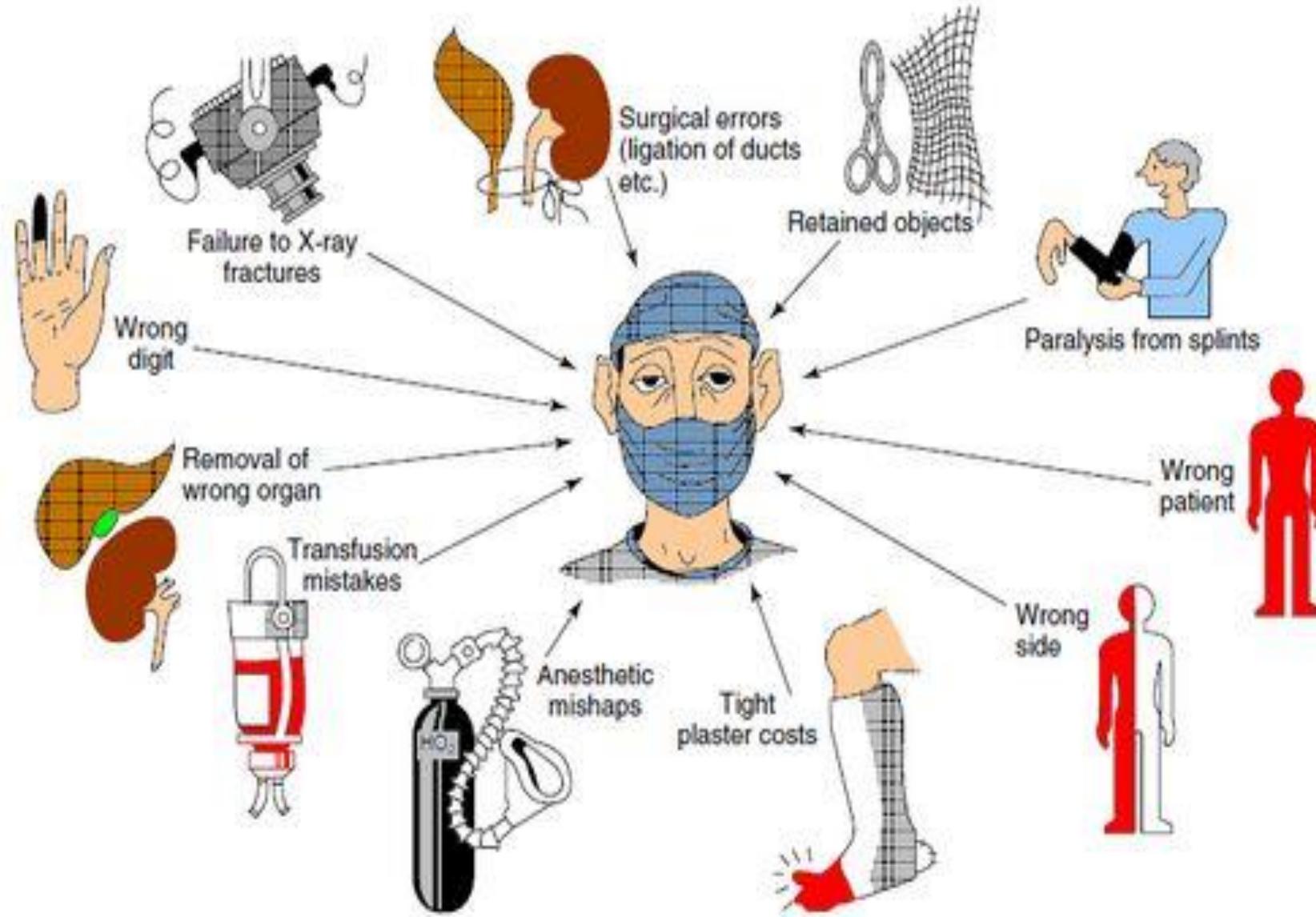
- ▶ **Firstly – either there is lack of reasonable degree of care and skill applied by doctor while treating a patient.** The patient has been injured, has suffered, or has died due to the non-application of a reasonable degree of care and skill.
- ▶ **Secondly – willful negligence on part of doctor while treating a patient**

**Reasonable degree of care and skill** is not defined but it is assumed that the doctor should possess such skill and knowledge as possessed by ordinary competent men practicing medicine at that time under similar circumstances and conditions. Thus a doctor may not be the best in the community of doctors but he should possess average degree of knowledge and his expertise should be at least average in his peer group. Let us take an example – a doctor having MBBS degree is expected to treat patient within his competence and the MBBS graduate is not expected to do coronary by-pass surgery or renal transplantation procedure.

- ▶ willful negligence means doctor has exhibited carelessness towards the patients and failed to take care of them as the circumstances demand. The act is said to have been performed without due diligence.
- ▶ The classical judicial definition of negligence as defined by **Justice Baron Alderson** in 1856 is “**negligence is omission to do something which a reasonable man could do or doing something which a prudent and a reasonable man would not do**”. Thus, in simple words, negligence can be put as
  - ▶ **Failure to do something** (omitting to do) which an ordinary man is supposed to do i.e. act of omission or
  - ▶ **Doing something** (committing something) which an ordinary man is not supposed to do i.e. act of commission

## **ELEMENTS OF NEGLIGENCE:**

- ▶ Duty: failure to exercise reasonable care by the doctor
- ▶ Dereliction: failure on the part of doctor to maintain applicable standard of care and skill
- ▶ Direct causation: failure to exercise a duty of care must lead to damage
- ▶ Damage: which a reasonable physician can anticipate



- ▶ Misdiagnosis
- ▶ Delay diagnosis
- ▶ Incorrect treatment or medication
- ▶ Surgical errors
- ▶ Anesthesia errors
- ▶ Prescription errors
- ▶ Hospital infection(black fungus infection-during covid )
- ▶ Failure to obtain informed consent
- ▶ Inadequate follow-up care

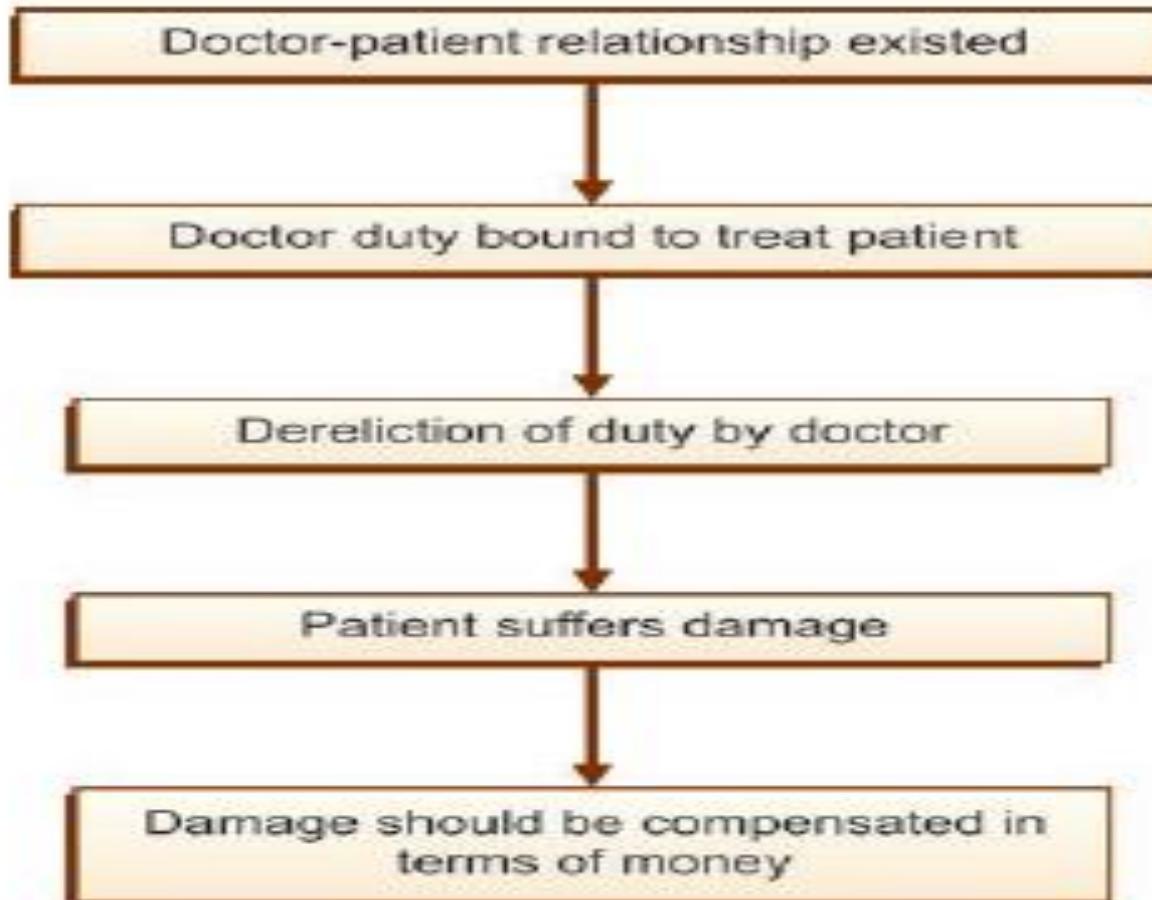
## CLASSIFICATION

- ▶ Negligence is a legal concept, not a medical concept.(negligence specifically refers to a **failure to meet a standard of care that results in harm**, which is evaluated within the framework of the **legal system**)
- ▶ Negligence is actionable and an action for negligence may be brought against doctor in a civil or criminal court. Thus, negligence can be classified as
  - Civil Negligence
  - Criminal Negligence.

- ▶ Civil negligence on the other hand is an act where a person omits to take ordinary care.
- ▶ Criminal negligence is an act beyond mere mistake ,It is recklessly acting without reasonable caution and putting another person at risk of injury or death.

# Civil Negligence

- ▶ Negligence is a tort i.e. **civil wrong**
- ▶ In civil negligence a patient brings charges of negligence against doctor for **monetary compensation for the damages suffered by him**.
- ▶ For civil negligence cases, a patient has to approach **civil court** or **consumer redressal forum** (Consumer court).
- ▶ To be valid, the suit for negligence must be filed in a civil court within **three years from the date of alleged negligence**. If the court has taken decision on a particular case, the same case cannot be reopened in any other court (**res judicata**).
- ▶ If negligence is proven, the patient can be awarded compensation for damages like medical expenses, pain, and suffering. Under civil liability, compensation is the maximum relief provided to the patient concerned.
- ▶ **The burden of proving negligence lies on the plaintiff(i.e. patient).**



**FIG. 2.2:** Flowchart showing civil negligence

## Criminal Negligence

- ▶ Here the **patient or relatives of patient brings allegation of criminal negligence against a doctor**. In criminal negligence ,the doctor is prosecuted by the police and charged in a criminal court.
- ▶ **Criminal negligence is gross negligent acts that had caused death or severe harm to the patient.** The doctor showed a gross carelessness or gross neglect for the life and safety of the patient.
- ▶ Criminal negligence is a serious than civil negligence. The negligence amounts to a **criminal offense and goes beyond a mere matter of compensation.**
- ▶ The doctor is liable to be punished under the Indian Penal Code (IPC) like **Section 304-A, 304, 336, 337, 338 etc.**

- ▶ Criminal negligence is something **more than mere omission or neglect of duty**. Thus, in criminal negligence, there is **rashness on part of doctor**.
- ▶ In criminal negligence, the prosecution has to prove all the facts to establish negligence and gross negligence by doctor and have to show that doctor has disregard for the life and safety of the patient.

## **Examples of Civil Negligence**

- ▶ A doctor who operates on the wrong body part due to misreading a patient's chart could be guilty of medical negligence, which is a type of civil negligence
- ▶ A doctor who misreads the chart and operates a different body part of a patient.
- ▶ Failure to Obtain Informed Consent -A doctor performs a procedure without adequately informing the patient of the risks involved. If the patient suffers harm as a result, they may claim negligence for the lack of informed consent

## **Examples of Criminal Negligence**

- ▶ Operation on wrong limb
- ▶ Removal of wrong organ
- ▶ Wrong blood transfusion
- ▶ Leaving instruments in abdomen
- ▶ Performing criminal abortion

<b>CIVIL NEGLIGENCE</b>	<b>CRIMINAL NEGLIGENCE</b>
No specific violation of law	Clear violation of law
Simple absence of skill and care	Gross absence of skill and care
Consent-good defence	Consent-Not a defence
Civil court trial	Criminal court trial
Strong evidence is sufficient	Guilt should be proven
Pay damages	2 years or more years of imprisonment
Complainant-sufferer	Complainant-public prosecutor(state)
Burden of proof-patient	Doctor has to prove innocence

## **Serious Professional Misconduct (Unethical)**

- ▶ Also called **infamous conduct**
- ▶ Any conduct which might be regarded as **disgraceful** or **dishonorable** which is Judge by professional man of good repute and competence.
- ▶ It involves an abuse of professional position
- ▶ Issuing a false certificate to patent or other people( **PUNISHABLE  
UNDER 198-A IPC SECTION** )

## **Examples of some Infamous Conduct**

- ▶ Refusing to treat emergency cases
- ▶ Abuse of dangerous drugs act/scheduled drug act
- ▶ Owning a chemist shop/surgicals
- ▶ Adopting unfair means
- ▶ Secret remedies
- ▶ Patient snatching
- ▶ Association with unqualified people-violation of PNDT act(Pre-Natal Diagnostic Techniques)

## Difference between PROFESSIONAL NEGLIGENCE and INFAMOUS CONDUCT

FEATURES	PROFESSIONAL NEGLIGENCE	INFAMOUS CONDUCT
Nature of offense	Absence of care and skill or willful negligence	Violation of code of medical ethics prescribe by MCI
Duty of care	Should be present	Need not be present
Damages to patient	Should be present	Need not be present
Trail by	Courts-civil or criminal or consumer redressal forum	State medical council
Punishment	Fine or pay damages or imprisonment	Warning or erasure of name from register
Appeal	To higher court	To MCI/Central government

- ▶ Civil negligence occurs when a person **fails to exercise ordinary care**,
- ▶ The burden of **proof of negligence lies with the patient**. But one exception is there in which burden of proof lies with doctor- **Res Ipsa Loquitur**

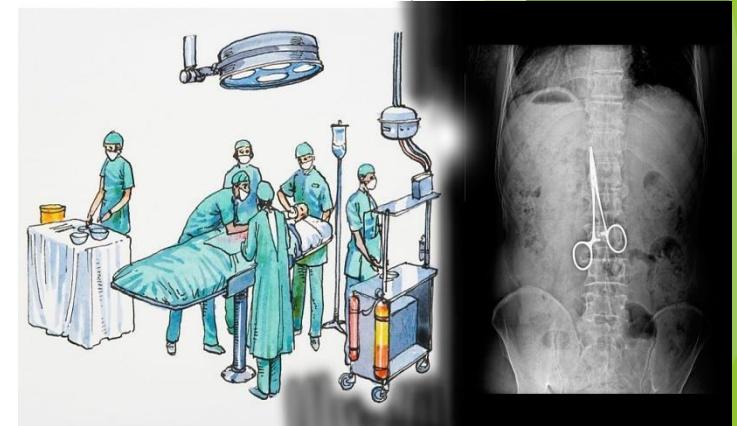
## **DOCTRINE OF RES IPSA LOQUITUR**

- ▶ The **thing or fact speaks for itself**. This doctrine applied to both civil and criminal negligence

Following conditions must be satisfied for application of this doctrine

- ▶ In absence of negligence, injury would not have occurred naturally, Doctor have exclusive control over injury producing instrument/treatment.

- ▶ Leaving foreign objects like scissors, sponges or any such objects in the body of the patients will be considered as an act done due to negligence thus causing an injury to the patient.
- ▶ Leaving a foreign object inside the patient after surgery or other invasive procedure
- ▶ Operating on the wrong patient
- ▶ Operating on the wrong part of the patient
- ▶ Failure to remove swabs during operation
- ▶ Loss of use of hand due to prolonged splinting



## Provisions:

- ▶ Sections of the Indian Penal Code (IPC) related to negligence have been replaced by sections of the Bharatiya Nyaya Sanhita (BNS), with some updates in penalties and scope.

### BNS Section 106: Causing Death by Negligence

- ▶ **Provision-**This section penalizes anyone who causes the death of another person by a rash or negligent act not amounting to culpable homicide.
- ▶ **Punishment-**Imprisonment for up to **five years**, or a **fine**, or both.
- ▶ **(The maximum imprisonment term has been increased from two years under IPC to five years in the BNS, reflecting a stricter stance on negligence resulting in death)**

## **BNS Section 125: Acts that endanger human life or personal safety due to rash or negligent behaviour**

- ▶ **Provision**-This section penalizes individuals who, through rash or negligent acts, endanger human life or the personal safety of others.
- ▶ **Punishments**
  - **General Endangerment**: Imprisonment of up to **three months**, a fine up to **₹2,500**, or both.
  - **If Hurt is caused**: Imprisonment of up to **six months**, a fine up to **₹5,000**, or both.
  - **If Grievous hurt is caused**: Imprisonment of up to **three years**, a fine up to **₹10,000**, or both.

## Defenses:

- **Error of Judgment:** If a medical professional makes a reasonable and honest error in judgment while treating a patient, it may not be considered negligence.
- **Emergency Situations:** If a medical professional acted in good faith to save a patient's life in an emergency situation, they may not be considered negligent.
- **Contributory Negligence:** If the patient contributed to their injury or death through their own negligence, the medical professional may not be held entirely responsible.
- **Section-80, IPC** of the Indian Penal Code states that nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

- **Standard of Care:** The doctor must show that they acted in accordance with the medical community's accepted practices. Expert testimony often supports this defense by confirming that the doctor's actions were consistent with what a reasonable physician would have done under similar circumstances.
- **Informed Consent:** If the patient was informed of the risks associated with a procedure or treatment and consented to it, the doctor can argue that the patient was aware of the potential outcomes, including complications.

## Preventive measurement against negligence

- ▶ Employ qualified staff and associate with good partners
- ▶ Update your knowledge-Adherence to Standard of Care
- ▶ Effective Communication-Take valid consent- keep documentation of Communication
- ▶ Ensure reasonable skill and care
- ▶ Guard against therapeutic hazards
- ▶ Comprehensive Documentation-Keep accurate medical Records and complete records
- ▶ Risk Management Protocols
- ▶ Timely Patient Follow-ups
- ▶ Team Collaboration-Ensure that all team members understand their roles and responsibilities, reducing the risk of tasks being missed or incorrectly performed
- ▶ **Patient Safety Culture-Continuous Quality Improvement:** Regularly review and update practices to improve safety and effectiveness.
- ▶ Legal and Ethical Training

## REAL CASES OF MEDICAL NEGLIGENCE

### KUNAL SAHA CASE (2013):

#### Background:

Dr. Kunal Saha-a US-based doctor's wife Anuradha Saha, died in 1998 due to alleged **medical negligence** at Advanced Medicare Research Institute (AMRI) Hospital in Kolkata. She was misdiagnosed and treated with incorrect medications for a severe skin condition, *Stevens-Johnson Syndrome*, leading to her death. Dr. Kunal Saha filed a case against the doctors, claiming gross negligence in treatment.

#### Outcome:

After years of legal battles, the **Supreme Court of India** ruled in 2013, holding the doctors responsible for her death. The court awarded Dr. Saha a record ₹6 crore in compensation (over ₹11 crore with interest), marking it as the highest compensation in a medical negligence case in India at the time.

## **The Sanjay Gandhi Postgraduate Institute (SGPGI) Case (2012):**

- ▶ **Background:** In 2012, a young man named Sanjay Singh underwent surgery at the Sanjay Gandhi Postgraduate Institute of Medical Sciences (SGPGI) in Lucknow. During the surgery, the doctors mistakenly removed a healthy kidney instead of the damaged one.
- ▶ **Outcome:** The family filed a case of medical negligence, and the court ruled in favor of the complainants. The doctors were held responsible for the Failed surgery, highlighting errors in diagnosis and surgical procedures.

## **The Shivani Yadav Case (2007):**

- ▶ **Background:** Shivani Yadav, a young woman, was undergoing treatment for a knee injury at a leading hospital in Delhi. The doctors mistakenly diagnosed her condition as a simple fracture when she had an underlying severe condition that required more extensive intervention. As a result, the condition worsened, and Shivani suffered permanent disabilities.
- ▶ **Outcome:** After filing a complaint against the hospital, the case went to court, where the hospital was found guilty of misdiagnosis and negligence in providing the appropriate treatment.

## **The Death of Lakshmi Dubey (2011):**

- ▶ **Background:** Lakshmi Dubey, a 23-year-old woman, was treated for a simple gallbladder surgery at a private hospital in Delhi. During the procedure, complications arose, but the doctors continued without proper assessment, leading to her death.
- ▶ **Outcome:** The family filed a case of medical negligence, and the Delhi High Court awarded them compensation. This case brought to light the lack of informed consent, with the hospital being found negligent in monitoring the patient's condition post-surgery.

## **The Case of Dr. P. N. Verma (2012):**

- ▶ **Background:** In 2012, Dr. P. N. Verma, a homeopathic doctor in Uttar Pradesh, was accused of negligence after a patient died due to complications arising from his treatment. The patient, suffering from a chronic condition, was reportedly given homeopathic remedies that did not address the severity of the underlying illness.
- ▶ **Outcome:** The patient's family filed a case alleging negligence. The case was taken up in a local court, where it was argued that Dr. Verma had failed to properly diagnose and treat the patient, leading to the death. While details on the verdict remain scarce, this case raised concerns about the standards of practice among homeopathic practitioners.

## **The Case of Dr. K. L. Sharma (2018):**

- ▶ **Background:** Dr. K. L. Sharma, a homeopathic doctor in Haryana, was accused of negligence after his treatment of a child suffering from a fever led to serious complications. The child was initially treated with homeopathic remedies but was not improving. The parents delayed seeking allopathic treatment, and the child eventually succumbed to the fever.
- ▶ **Outcome:** The family filed a case against Dr. Sharma for failing to recognize the seriousness of the condition and for not advising timely allopathic treatment. The court found the doctor guilty of negligence, emphasizing the need for homeopaths to properly assess the condition of their patients and refer them to specialists when necessary.

# **Filing a Medical Negligence Complaint**

## **1. Identify Appropriate Forum:**

- ▶ **Consumer Court (Consumer Protection Act, 2019)**-If you want compensation for the harm caused by medical negligence, you can file a complaint in a consumer court. Healthcare services are considered as “*services*” under this Act. Complaints can be filed according to the claim amount.
- ▶ **Civil Court**- For cases involving compensation claims that don't fall under the consumer law, one can file a suit in a civil court. Civil courts handle more complex and higher compensation claims, such as those involving significant financial damages, long-term suffering, or when the negligence isn't directly related to a service under consumer law.
- ▶ **Criminal Court**-If the negligence is severe and has led to serious injury or death, you can file a criminal complaint under Section 106 ( deals with causing death by negligence)of Bharatiya Nyaya Sanhita.

## **2. Gather Evidence:**

- ▶ **Medical Records**- Collect all medical records, prescriptions, test reports and bills. These documents are essential to prove that there was negligence.
- ▶ **Expert Opinion**-In medical negligence, expert opinions from other doctors are often required to prove that the treatment provided was below standard.

### 3. Filing the Complaint:

#### For Consumer Court:

- ▶ **Jurisdiction**-File the complaint in the district, state or national consumer court, depending on the value of the claim:
  - ▶ 1. District Forum-For claims up to ₹ 1 crore.
  - ▶ 2. State Commission- For claims between ₹1 crore and ₹10 crores.
  - ▶ 3. National Commission-For claims above ₹10 crores.

#### For Civil Court:

- ▶ **Suit for Damages**-You can file a suit for damages in a civil court, explaining the negligence and the harm caused. Civil courts handle larger and more complex compensation claims.
- ▶ **Burden of Proof**-The patient (plaintiff) must prove that the doctor or hospital (defendant) failed to provide the standard of care, leading to harm. Civil suits often require detailed evidence and expert opinions.

#### For Criminal Court:

- ▶ **File a FIR** -Go to the police station and file a FIRST INFORMATION REPORT(FIR) under relevant sections of the Bharatiya Nyaya Sanhita such as Section 106.
- ▶ **Court Proceedings**-The criminal court will conduct a trial, and if negligence is proven, the doctor or hospital may face penalties like imprisonment or fines.

## **4. Court Processes:**

- ▶ **Notice to the Opposite Party**-After filing the complaint, the court will send a notice to the doctor or hospital to respond to the allegations.
- ▶ **Hearing**-Attend the court hearings where both parties present their arguments. You may need to bring medical experts to support your case.
- ▶ **Decision**-The court will give a judgment. In consumer or civil cases, it could be compensation. In criminal cases, it could be punishment for the negligent party.

**5. Appeal (if needed)** - If you are not satisfied with the decision, you can appeal to a higher court. For example, you can appeal from the District Forum to the State Commission or from State Commission to National Commission under the Consumer Protection Act, 2019

