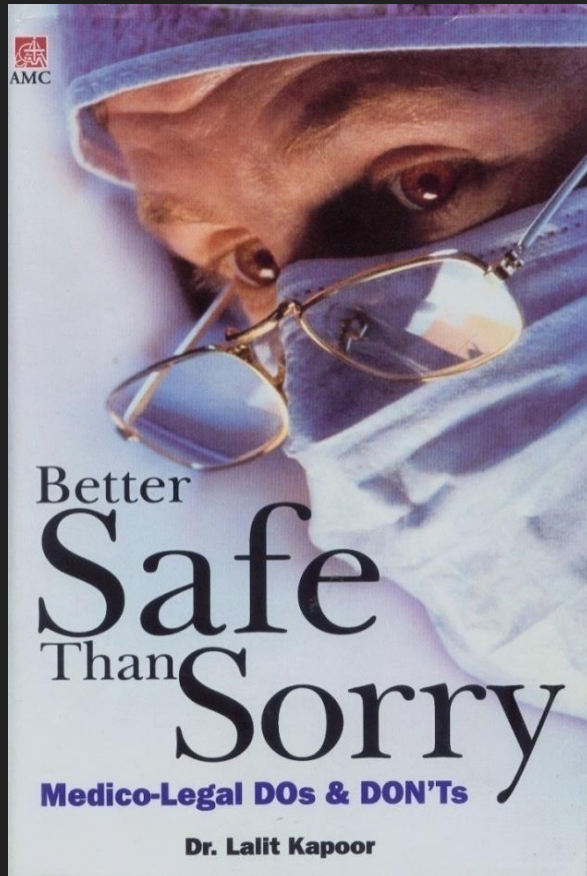


# DR. LALIT KAPOOR

- General & Gastro-intestinal Surgeon
- Founder member -- Association Of Medical Consultants (AMC), Mumbai: Association of over 12000 Medical consultants. Largest body of it's kind. est. 1972.
- President , Federation of Associations of Medical Consultants (FAMC)
- Founded the first medico-legal cell in the country over 40 years ago.
- Delivered many Orations and recipient of many Life Time achievement awards.
- Crafted a unique professional indemnity scheme for doctors.
- Invited recently by National Judicial Academy to address high court judges pan-India



# DR. LALIT KAPOOR



## Author of Book **BETTER SAFE THAN SORRY – Medico - Legal Dos & Don'ts**

*Released on 2nd Oct 2006 by  
Mr. Narayan Murthy, Infosys  
Chairman*

*Foreword by Justice S Radhakrishnan*



# **FUNDAMENTALS OF MEDICAL FORENSIC LAW AND MEDICAL NEGLIGENCE**

**DR. LALIT KAPOOR**



# EVOLUTION OF FORENSIC SCIENCE



## Definition of *Forensic Science*

The application of scientific principles and techniques to matters of criminal justice relating to the collection, examination, and analysis of physical evidence .

A few forensic applications: Ballistics, Fingerprints, Document examinations , Voice analysis, Psychology, Narco analysis, DNA profiling , Forensic engineering, Cyber forensics, etc. which also have got much of application with forensic sciences



# HISTORY AND DEVELOPMENT OF FORENSIC SCIENCE

- History of Forensic science dates back to the 17th century with Archimedes, who detected fraudulence of a fake golden crown through the principle of density and buoyancy. During the 19th and 20th century it became more popular with a scientific approach.
- In ancient India ,scientific methods in one way or the other seem to have been followed in the investigation of crime. Its detailed reference is found in Kautilya's **Arthashastra**, which was written about 2300 years ago.





# CORONER'S COURT



- In British India , THE CORONERS ACT was passed in 1871.
- It said : Within the local limits of the ordinary original civil jurisdiction of each of the High Courts of Judicature at Fort William and Bombay there shall be a Coroner. Such Coroners shall be called respectively the Coroner of Calcutta and the Coroner of Bombay.
- Their primary function was to investigate any sudden, unexplained, violent or unnatural death
- Every such inquiry or inquest was deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code (45 of 1860 ).
- Coroners Act 1871 was restricted to Kolkata and Mumbai . There was Jury system , but it was repealed in late 1990s being considered an obsolete law.



# DEVELOPMENTS IN MODERN INDIA

- First FSL (Forensic Science Laboratory ) was set up in 1952 at Calcutta and so were Central Forensic Science Laboratory and Central fingerprint bureau established in Calcutta in 1955 and 1957.



# JURY TRIALS



In 1958, the Law Commission of India recommended the abolition of jury trials in its fourteenth report. *Comm. K.M.Nanavati Vs State of Maharashtra* was the last case of Jury trials in India, which were gradually abolished during the 1960's, culminating in the 1973 Criminal Procedure Code, which remains in effect into the 21st century.

Coroner's Court

Parsi Matrimonial Court





# ATTEMPTS TO RESTORE CORONER'S COURTS.

- In 2012 the Delhi HC recommended to the Law Commission a legislation like Coroners Act 1988 in UK.
- It was proposed that every district, state and UT there shall be a coroner with 24 hrs. availability.
- The Law commission proposed new coroners act in June 2008.



# FUTURE OF FORENSICS IS EXCITING

- The evolution of forensics is continuing at a rapid pace with incredible advances in digital forensics.
- India is now catching up with the world and this can only be good news for the dispensation of justice – whether criminal or Civil .
- It is heartening to know that FORENSIC UNIVERSITIES to be started in all states by 2025.



# BOOST TO MEDICAL FORENSICS: NATIONAL FORENSIC SCIENCE UNIVERSITY (NFSU) AT GANDHINAGAR 29/8/22

THE TIMES OF INDIA, MUMBAI  
MONDAY, AUGUST 29, 2022

AUGUST 29, 2022

TIMES

## Forensic report to be must for crimes with 6+ yrs jail: Shah

### 'Soon, Mobile Labs Likely In All Districts'

TIMES NEWS NETWORK

**Gandhinagar:** Union home minister Amit Shah said Sunday that the government could soon provide portable forensic labs to all districts across the country to improve the conviction rate for crimes and standardise the investigation process.

He also said that a forensic report would be made legally compulsory for any offence carrying more than six years of imprisonment. "It will require a large number of forensic science experts," the Union minister said at the first convocation at National Forensic Sciences University's (NFSU) campus in Gandhinagar, assuring the graduates of good placements.

The move is part of the government's push for reforms in the criminal justice system, said Shah. He said the Union government has been consulting experts for the past two-and-a-half years for major changes in British-era laws that are outdated for a modern, independent India. "Under Prime Minister Narendra Modi's leadership, the central government is going to make changes in the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC) and the Evidence Act. Nobody saw these laws from an Indian perspective after independence," said the home minister, who was chief guest at the convocation.

A total of 1,132 students from the 2020 and 2021 batches received degrees at the convocation, the first after Gujarat Forensic Sciences University (GFSU) got the status of institute of national importance in 2020 and became NFSU. Among the graduates were 9 students from 21 countries primarily from Africa.

Shah remembered his association with the university since its inception and said that then CM Modi had envisioned a system to improve conviction rates. "After strengthening forensic science laboratories (FSLs), we realised that it would require experts. Thus, the world's first forensic science university took shape," he said.

It's no longer the age of "third degree", he said. "The emphasis should be on scientific evidence collection and investigation."

Shah said his vision is to establish NFSU campuses in all the states by 2025. "As India marches towards becoming a \$5 trillion economy, it will face challenges such as narcotics, fake currency notes and cyber attacks. To tackle these challenges, we need a strong forensic science discipline," he said.



Union home minister Amit Shah at the 1st convocation ceremony of National Forensic Science University (NFSU) in Gandhinagar, where he said his vision is to establish similar campuses in all states by 2025



# OBJECTIVE OF THE INITIATIVE

- Forensic report mandatory for crimes with punishment above 6 years.
- Portable forensic labs to be provided in all districts.
- Standardization of investigation process and improvement in conviction rate will happen .
- Effort to repeal out -dated British-era laws by making changes in IPC, CrPC and Evidence Act.
- “It is no longer an era of 3<sup>rd</sup> degree –instead scientific investigation should be the basis”





# NEGLIGENCE / MALPRACTICE

**Are the 2 Words Synonymous ?**





# DIFFERENCE BETWEEN NEGLIGENCE AND MALPRACTICE

- The terms negligence and malpractice are frequently used interchangeably. However, there is a difference in the two terms.
- **Negligence** is a general term that denotes conduct lacking in due care viz . carelessness and a deviation from the standard of care that a reasonable person would use in a particular set of circumstances. Anyone, including non-professional persons, can be liable for negligence.
- **Malpractice** a more specific term that looks at a standard of care as well as the professional status of the care-giver. To be liable for malpractice, the person committing the wrong must be a professional.



# POTENTIAL LIABILITIES OF HEALTH-CARE PROFESSIONALS

- Civil liability – civil courts , consumer forums
  - Criminal liability – Police /Criminal Prosecution
  - Professional misconduct – MMC / MCI
- } can be simultaneous
- **Also accessible :**  
Human Rights Commission/Women's Commission/Children's court /  
PCPNDT Act/ POCSO /HOTA/ Lok Adalats (public utility services)
  - **Non-judicial Sequelae**  
Media (including Social media)/ Social workers / Political goons –  
physical violence.



# BASIC CONCEPT OF COMPENSATION

- Principle of *restitution in integrum* under which a person who suffered damage due to wrong committed to him , ought to be restored to the position in which he would have been had the wrong not been committed



# PROFESSIONAL DISCIPLINARY BODIES

- 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.<sup>7</sup> Medical Council of India (MCI) and the appropriate State Medical Councils are empowered to take disciplinary action whereby the name of the practitioner could be removed forever or be suspended.



# SOME IPC SECTIONS WHICH ARE APPLIED TO HEALTH-CARE PROFESSIONALS

- Section 304 A – causing death due to rash and negligent act
- Section 304 Part II -- culpable homicide not amounting to murder
- Section 312,313,314,315,316- offences relating to miscarriage
- Section 340 –Wrongful confinement
- Section 354 –Outraging modesty of a woman
- Section 320 ,324, 326- causing grievous hurt
- Section 176 Failure to inform Police when essential





# SOME IPC SECTIONS WHICH ARE INVOKED TO MITIGATE ALLEGATIONS OF MEDICAL NEGLIGENCE

- Section 87- Act not intended and not known to be likely to cause death or grievous hurt, done with consent.
- Section 88- Act not intended to cause death, done with consent in good faith for person 's benefit
- Section 92- Act done in good faith for benefit of a person without consent



# PRE-CPA

- Legal remedies to aggrieved patients were based on the law of torts and Section 1-A of the Fatal Accidents Act, 1855.
- But to avail it, an aggrieved patient or his relatives had to wait for years and pursue a convoluted route of the civil courts.
- For instance, in Achutrao Haribabu Khodwa vs State of Maharashtra<sup>4</sup> which took the convoluted route of civil courts, the final award of Rs 36,000 with costs by the Supreme Court was obtained 33 years after the death of the patient.



**MEDICAL NEGLIGENCE CAN LEAD TO  
CRIMINAL AND/ OR CIVIL LIABILITY**



# LIABILITY UNDER LAW OF TORTS –CIVIL WRONG

## Components of Medical Negligence

# Existence of legal duty.

# Breach of legal duty.

# Damage caused by the breach.



# VICARIOUS LIABILITY



- As a general rule, a man is liable only for his actions but there are certain circumstances in which a person is liable for the wrongs committed by others. This is called "**vicarious liability**", that is, liability incurred for another.

## ***Respondeat superior***

- This maxim translates to "let the master answer" and means that the superior must be responsible or let the principal be liable. In such cases not only he who obeys but also he who commands become equally liable.
- This rule has its origin, in the legal presumption that all acts done by the servant in and about his master's business, are done by his master's express or implied authority and are, in truth, the act of the master.





# MEDICAL NEGLIGENCE CRITERIA

- That there exists a normal and usual practice.
- That this practice was not followed
- That the course adopted is in fact , such , that no professional person of ordinary skill would have taken .
- There is proof of the alleged negligence being the proximate cause of the purported damages .



# TYPES OF NEGLIGENCE

In *Poonam Verma v. Ashwin Patel & Ors.* (1996) 4 SCC 332 where the question of medical negligence was considered in the context of treatment of a patient, it was observed as under:-

*Negligence has many manifestations - it may be*

**Active Negligence**

**Collateral Negligence**

**Comparative Negligence**

**Concurrent Negligence**

**Continued Negligence**

**Criminal Negligence**

**Gross Negligence**

**Hazardous Negligence**

**Passive Negligence**

**Negligence per se**

**Willful/Reckless Negligence**



# SIMPLE NEGLIGENCE VS GROSS NEGLIGENCE: JACOB MATHEW JUDGMENT

- “Mere inadvertence , lack of adequate care or attention or skill does not hold a doctor to be criminally liable. The standard of negligence has to be so high as to be described as “gross negligence” or “recklessness”. It should be so grave as to show disregard for the life and safety of the patient as to amount to a crime against the State”
- “A clear distinction exists between ‘simple lack of care’ incurring civil liability and ‘very high degree of negligence’ (gross) which is required in criminal cases”



# ESSENCE OF JACOB MATHEW JUDGMENT

- A doctor cannot be arrested simply because a criminal charge is levied against him.
- The IO will first have to obtain a credible independent and competent opinion from a doctor qualified in the same branch of medicine as the defendant preferably from a Govt hospital



# JUDGMENTS DEFINING CRIMINALITY OF MEDICAL NEGLIGENCE AND RECOMMENDED ACTION.

## **DR. SURESH GUPTA VS. GOVT. OF N.C.T. OF DELHI & ANR ON 4 AUGUST, 2004**

Author: Dharmadhikari  
Bench: Y. K. Sabharwal,  
D. M. Dharmadhikari

## **JACOB MATHEW Vs. STATE OF PUNJAB AND ANOTHER on 5 August 2005**

Justice R. C. Lahoti  
Chief Justice ,  
Justice G. P. Mathur, Justice  
P.K. Balasubramanyam

## **MARTIN D'SOUZA Vs. MOHD. ISHFAQ**

Justice Markandey Katju  
and Justice R. M. Lodha  
February 17 , 2009

## **V. KISHAN RAO Vs. NIKHIL SUPER SPECIALITY HOSPITAL AND ANR**

Justice V. S. Singhvi and Just  
A. K. Ganguly March 8 , 2010

## **LALITA KUMARI VS. GOVT OF U.P.& ORS ON 12 NOVEMBER, 2013**

Author: P.Sathasivam  
Bench: P Sathasivam, B.S. Chauhan,  
Ranjana Prakash Desai,  
Ranjan Gogoi, S.A. Bobde





# REALITY-CHECK

- Pan India the directions laid down in these judgments are being violated .
- In a recent case of maternal mortality , a highly experienced and competent gynecologist committed suicide , being terrorized by the slapping of Sec 302 on her for the death of the patient ,without any expert medical opinion , in clear violation of directions of the highest court in the land.



# JACOB MATHEW: SIMPLE AND GROSS NEGLIGENCE

- Sec 304 A : no mention / definition of gross negligence
- Expert committees to declare gross or simple negligence.



# BOLAM TEST

Bolam v. Friern Hospital Management Committee (1957)

This is based on the principle that a doctor is not negligent if he does not breach the standard of care, which is supported by a responsible body of similar professionals.



# BOLAM'S RULE IN INDIA

In India Bolam's test has been accepted as a general rule Some examples:

- Achutrao Haribhau Khodwa vs. State of Maharashtra,
- Poonam Verma v. Ashwin Patel and Ors.,
- Laxman Balkrishna Joshi vs. Trimbak Bapu Godbole And Anr on 2 May, 1968
- State of Haryana and Ors. v. Smt. Santra
- Dr. Suresh Gupta Vs. Government of NCT of Delhi



# BOLITHO

The Bolitho Test, which resulted from the 1996 court case of **Bolitho v City and Hackney HA**, is an amendment to the **Bolam**

*"A doctor will be liable for negligence in respect of diagnosis and treatment in spite of a body of professional opinion approving his conduct where it has not been established to the court's satisfaction that such opinion relied on is reasonable or responsible. If it can be demonstrated that the professional opinion is not capable of withstanding the logical analysis, the court would be entitled to hold that the body of opinion is not reasonable or responsible".*





# BOLAM VS BOLITHO

- In 1957, The Bolam Test had stipulated that no doctor can be found guilty of negligence if they are deemed to have acted **“in accordance with a responsible body of medical opinion.”** The Bolitho Test (1996) helped to clarify what was meant by “a responsible body,” defining it as one whose opinion had a **“logical basis.”**
- Combined together, the Bolam Test and the Bolitho Test make up the twin pillars of all assessments of medical negligence. They state that a doctor is not negligent if he or she acts in accordance with a responsible body of medical opinion, *provided that the Court finds such an opinion to be logical.*



# BOLITHO TEST IN INDIA



The Bolitho test has been mentioned in the Indian Supreme Court in the *Samira Kohli v Prabha Manchanda* judgment, where the court clearly pointed out that "A beginning has been made in *Bolitho v City and Hackney* and *Pearce v United Bristol Healthcare*. We have however, consciously preferred the 'real consent' concept evolved in *Bolam*."

# TYPES OF PATIENT CONSENTS

**Implied or  
Tacit  
consent**

**Expressed  
consent  
Oral / written**

**Valid  
consent**

**Informed  
consent**

**Real  
consent**

**Advance  
consent or  
directive**

**Surrogate  
consent**

**Proxy  
consent**

**Joint  
consent**

**Denied or  
Opt-out  
consent**



# INFORMED CONSENT

*Every human being of adult years and sound mind has a right to determine what shall be done with his own body: and a surgeon who performs an operation without his patient's consent commits an assault for which he is liable in damages.*



# ABSENCE OF INFORMED CONSENT – NEGLIGENCE PER SE

- Informed consent has assumed great importance.
- Paternalistic pattern has been replaced with Patient autonomy .
- Patient operated without consent can attract charge of assault and battery
- Absence of informed consent –negligence per se under law of Torts.



# Samira Kohli Vs Prabha Manchanda & ANR on 16/01/2008

## Landmark judgment on informed consent

- Made distinction between 'informed consent' and 'real consent'

This means that the Doctor should disclose (a) nature and procedure of the treatment and its purpose, benefits and effect; (b) alternatives if any available; (c) an outline of the substantial risks; and (d) adverse consequences of refusing treatment. But there is no need to explain remote or theoretical risks involved (1-2 %), which may frighten or confuse a patient and result in refusal of consent for the necessary treatment. (More than 10 %)

- Informed consent is more stringently followed in USA( and lately in UK by the Canterbury judgment .

In India ,the time is not ripe for this, as per the above judgment .

Spence v. Canterbury,1972

*Montgomery v Lanarkshire Health Board* [4]. 2015



# INTERPLAY BETWEEN LAWS AND ETHICS IS VITAL – KEY PRINCIPLES

- **Autonomy** : Self-determination /freedom to act independently  
(informed consent, confidentiality)
- **Beneficence /Non malfeasance** : Principles of acting in patient's best  
interest and avoiding harm
- **Justice** :Principle that deals with fairness, equity and equality  
Distributive—societal  
Comparative—individual



# TO CONCLUDE

Laws protect the welfare of society, resolve conflicts and are constantly evolving





**THANK YOU**

