



# Medical Negligence- Error Of Science Or Behind Bars For Crime

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## ARTICLE INFO

## ABSTRACT

Negligence in the medical field brings not only the doctors and hospitals under the legal scrutiny, but also pose some serious and career affecting repercussions for the medical professionals and patients have to bear the brunt in either case. With the advancement of science and technology, the chances of making errors have also increased. But is the advancement of technology to blame other causes have their impact? Allow thy author to take you through the process of understanding the root causes of this ever increasing problem, in light of the legislations and provisions, thy author seeks your benign attention to some unprecedented situations, whilst leaving you to drw conclusions from the case studies and data analysis, this paper is a humble attempt to put forth some useful suggestions for the benign consideration of all. Allow the author to take you through this study without much delay and negligence.

**Keywords:** science and law, interdisciplinary study, medical negligence, case study, medico-legal scenarios, IMA, consumer dispute forum.

## ACKNOWLEDGEMENT

First and foremost i would like to thank the guide, Dr Hadley and Dr Jasgurpreet for their untiring efforts and dedication in guiding us through the dark roads and shady but luring paths of research. I am solely responsible for any errors and mistakes in this research and also find it pertinent to state that the views expressed are not intended to offend any person or community

## INTRODUCTION:

Although the cases of medical negligence is not a new topic, but we find renewed Supreme Court guidelines, with almost every case. The scope of medical negligence is covered by sec 304-A IPC, however it is pertinent

to mention, that the said section does not specifically relate to “medical” field<sup>1</sup>. The aggrieved also has the right to report the case to The IMA under the Indian Medical Council Act 1956<sup>2</sup>.provisions of compensation are also made under the Consumer Protection Act, 1986<sup>3</sup>.besides these the aggrieved or his legal heirs also have remedy under tort of negligence<sup>4</sup>.Medical negligence , has nowhere been termed under “crime” as such<sup>5</sup>.it is humbly submitted that it more important to raise questions related to this act of “medical negligence” than merely dealing with provisions and laws governing its redressal<sup>6</sup> :

- What causes medical negligence? Inefficiency of the doctor and staff, overload of work, incompetency or lack of proper medicines and technology and knowledge of their usage
- Do the compensatory provisions and even penal punishment suffice the ends of justice, where irreparable harm or even death has been caused?
- Is weighing of the punishments of the MBBS/MD doctors, on equal scale with those of dentists and psychologists and the like?
- Are the provisions of online consultation through mobile apps and prescriptions at the click of button justified in scale of medical ethics?
- Shouldn't there be redressal for cases where paid online reviews and ratings, mislead the poor patient?
- Are the ayurvedic “doctors” and so called nadi shastra experts<sup>7</sup> covered under the above said provisions? Or are just the maxim “caveat emptor” ends the debate?
- Are the doctors, selling their own brand medicines justified on medical ethics ground?
- Are the provisions of medical negligence applicable in case of veterinary doctors?

These and many more questions, jumble the head. Unprecedented situations, uncomplained cases and are ample in the medical field. It is humbly suggested that vehemently advised by the author, to at least file a PIL in case you come across instances of the above mentioned sort<sup>8</sup> .

Before proceeding with the factual data allow thy humble author to take you on a tour to some hypothetical medical situation.

### **HYPOTHETICAL SITUATIONS:**

Situation 1- patient x undergoes a surgery in nation A though he is a citizen and resident of nation B. after few months, he starts encountering problems and complications. the technology of foreign nation being not available in his native country, he has to visit nation A again. At this time due to delay in processing file or renewing visa process or other legit reason<sup>9</sup>, he is unable to get treatment in time and ultimately dies. Who is liable?

Situation 2- patient A has multiple diseases and the medicines, each of contraindicate each other. There being no suitable combination available, he is advised to take them alternatively or stop one or two of them, and as a result the patient ultimately dies. Who is liable?

Situation 3- patient A buys prescribed medicines from a chemist. The medicines are expired and dates changed by the company manufacturing them. The chemist being oblivious of the fact, sells them. the doctor on seeing the condition worsening adds more pills in the prescription which further complicate the matters. Patient and doctor are never able to know the truth of situation and patient keeps taking them as prescribed and ultimately dies. Who is to be blamed? more importantly who would?

Situation 4- a person X takes his ill dog to a veterinary doctor , who diagnoses the animal and aptly cures the dog but leads to rashes on the owner owing to regular contact with the medicine. Person x visits a doctor and gets prescribed a medicine for himself which has mild effect on rashes and skin problem but causes other physical symptoms. The doctor is unable to conduct an allergy test as the cause of rashes is known and results of the lab might be varied until the allergy is cured. Having no recourse, the patient continues the medicines prescribed or stops them. Both leading to worsening of his condition. Who is liable?

Situation 5- a person X gets his yearly health checkup done regularly to ensure instant cure to any health problem. He has no previous history of any major or long term ailment. The doctor analyses his reports and casually prescribes some multivitamins, detecting no ailment in the report. The person takes the multivitamins as prescribed and suffers loose motions, which the doctor terms as casual/ minor side effect of the medicine. However the patient being already weak owing to multiple loose motions, is prescribed an antibiotic which immediately causes him to faint. Consequently he is rushed to hospital, but Before the symptoms are detected and first aid given the patient dies of cardiac arrest. As no case of negligence seemed apparent, no complaint is filed and no autopsy is done to ascertain the actual cause of death. Who is liable?

It is humbly submitted that such instances could be numerous but before we frame opinions , thy author requests you to take a tour through a pilot survey

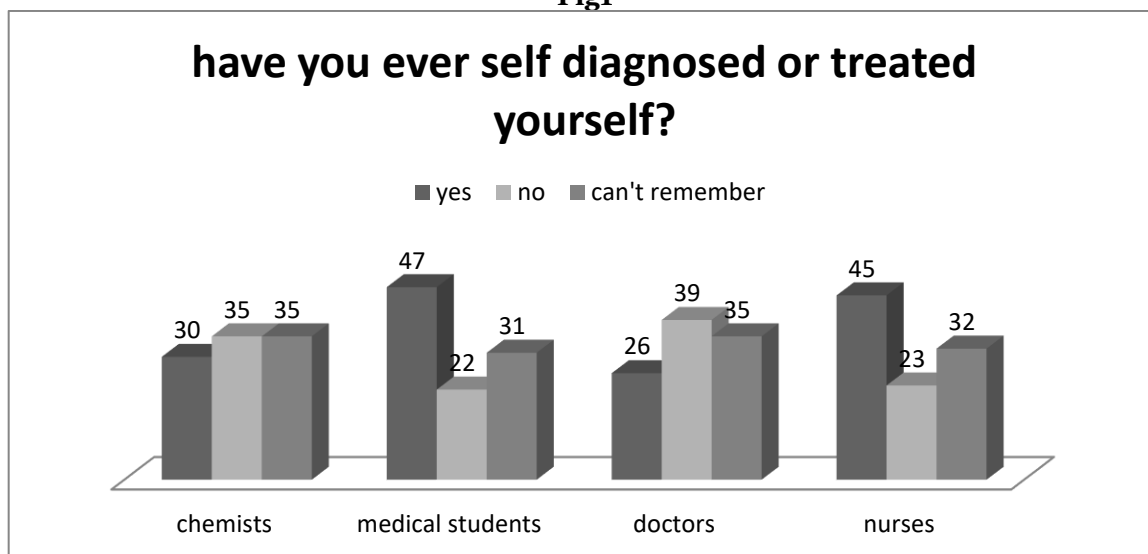
### PILOT SURVEY –

For the purposes of this survey 100 chemists, medical students of government colleges (final year) of tricity and PGI doctors<sup>10</sup> and nurses were taken through random sampling by 5 field workers and administered a questionnaire. Thy author assures you that utmost secrecy and confidentiality clauses have been adhered to. (also copy of the sample questionnaire is attached at the end for thy condieration). The shortcomings of the survey are evident:

- Non inclusion of category of patients
- Not including a comparison with private institute subjects (which shall hopefully be covered in my next paper)
- Also geographical limitations owing to paucity of time and finances are pleaded. Thy author humbly apologises for the same and requests thy attention to the data and statistics derived

### DATA AND STATISTICS DERIVED:

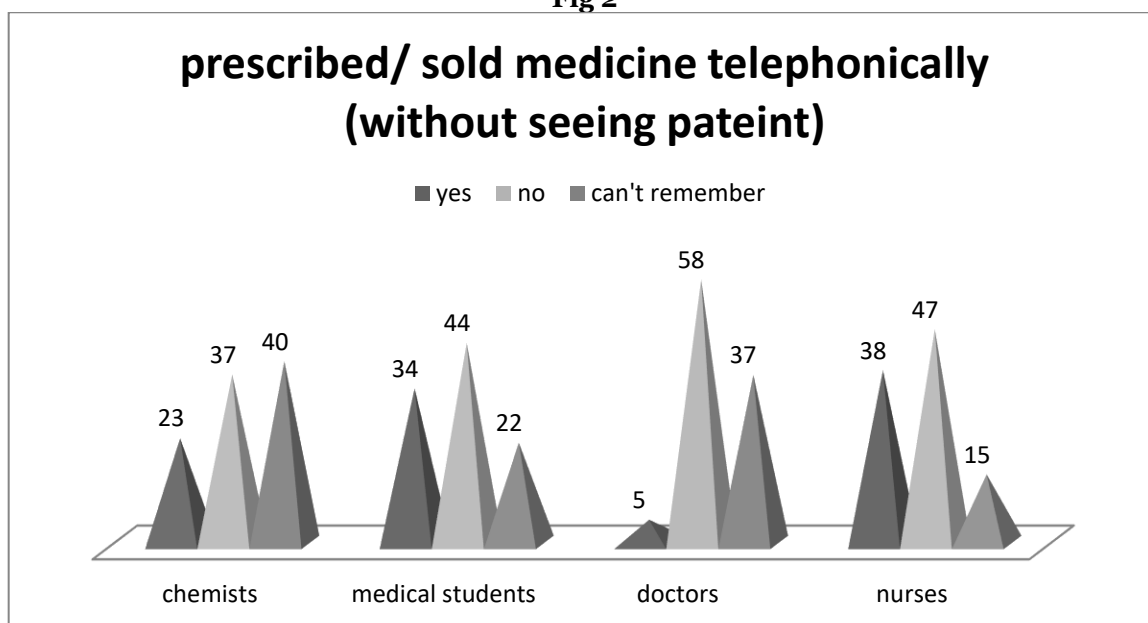
**Fig1**



### Medical professionals' self diagnoses statistics

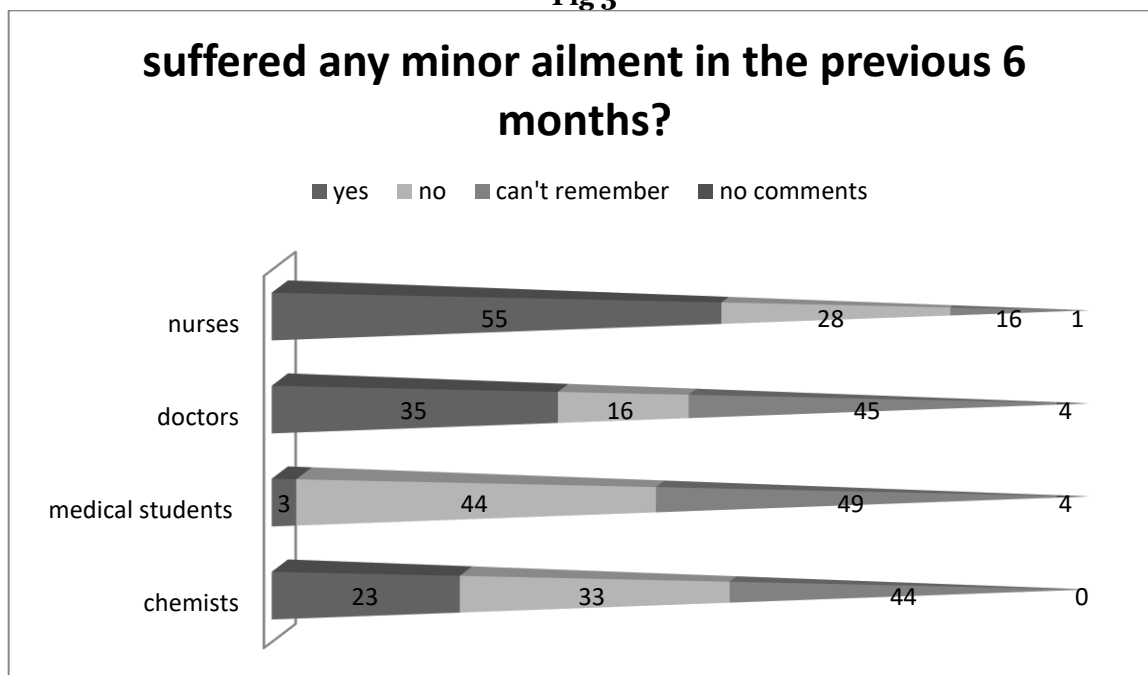
It is worthy to mention here that direct observation method has also been applied here and most of the subjects, who apparently “can’t remember” didn’t want to answer the question objectively<sup>11</sup>

**Fig 2**



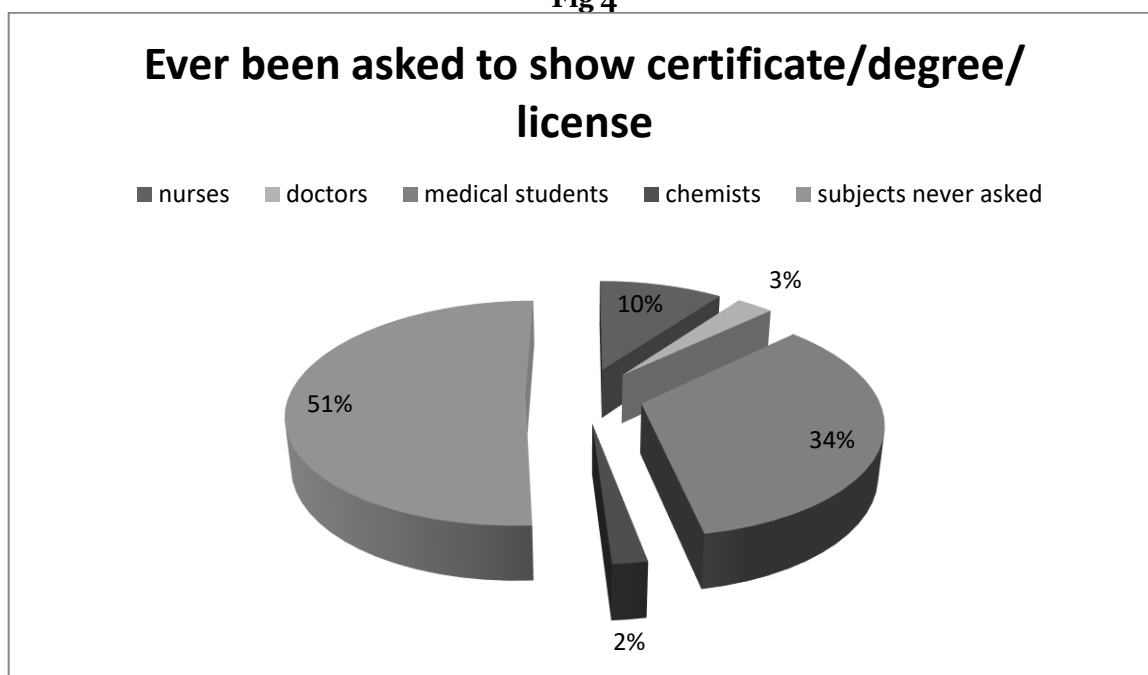
### Telephonic medical prescription data

Fig 3



### Medical history of the medical professionals

Fig 4



### Medical professionals Probed and verified

It is humbly submitted that before rushing to draw conclusion from a pilot survey, allow thy author to present a few brief case studies

- 1) Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]
- 2) Which may even lead to cancellation of registration of the doctor
- 3) Which encompasses a 3 tier structure with district forum dealing with cases of compensation upto 5lakh, state comission with jurisdiction for cases between 5lakh to 20 lakhs and national commission dealing with cases above Rs 20lakh compensation
- 4) Negligence is a civil tort which occurs when a person breaches his duty of care which he owed to another due to which that other person suffers some hard or undergoes some legal injury.

- 5) As crime includes mens rea, which is absent in cases of negligence
- 6) Prior to consumer protection act, compensation was dealt under civil laws
- 7) Who claim to detect disease by checking the pulse of patient
- 8) PILs are filed in public spirit and personal injury/ damage to the person filing is not required
- 9) Not accountable to any negligence of patient
- 10) Owing to the prevalent covid scenario thy author could not include the 4<sup>th</sup> category patients and humbly apologises for the same
- 11) As reported by field workers

### **BRIEF CASE STUDIES:**

#### **CASE STUDY 1**

##### **Shri Uttam Sarkar vs The Management Of Tura Christian ... on 7 February, 2014**

In the present case before state consumer commission, patient being a pregnant woman, was admitted by the hospital owing to some complications in the fetus. Subsequently owing to negligence of doctors, patient lost life. Held that the hospital is liable and exemplary damages, compensation for mental agony, compensation under heading of deprivation and loss of companionship of wife also awarded, along with treatment cost to heirs

#### **CASE STUDY 2**

##### **Bombay Hospital And Medical ... vs Asha Jaiswal . on 30 November, 2021**

In the present appeal from the national consumer disputes commission, the legal heirs (respondents) of the deceased patient were awarded exemplary costs along with interest @9% from the time of decision of the national commission. In the present case post surgery complications arose but the doctor delayed in coming and examining the patient who died in the meanwhile.

#### **CASE STUDY 3**

##### **Arun Kumar Manglik vs Chirayu Health And Medicare ... on 9 January, 2019**

In the present case, patient who was suffering from multiple problems, died due to negligence of the doctor. In appeal against medical board findings were reversed on grounds that patient suffered multiple diseases and bleeding prior to operation. Hon'ble Supreme court elaborated on the meaning of "duty to care" and explicitly explained the concept of "negligence". Further it allowed the appeal along with costs and interest from the date of decision of commission.

It is humbly submitted that as judiciary is actively playing its part the least we can do through this research paper is put forth some suggestions for the consideration of masses and government alike, hoping they cross the eyes of vigilant.

### **THE CRITICAL TAKE:**

Though science and technology have amply advanced yet the hazards posed by their minute error in medical cases are simply difficult to ignore. Not just the errors of technology, but other factors including greed for money, human tendency of taking cases lightly by some, are also to be blamed. Moreover inefficient training, lack of knowledge in dealing with the advanced artificial intelligence apparatus, are also to be put in the witness box. In law they say, "fight each case, as if you have been the victim yourself", but does the ideology of taking cases dispassionately just to ensure calm dealings or is there more to it that evades the eyes? ON A LIGHTER NOTE, SOME MAXIMS CAN ONLY BE UNDERSTOOD BY THOSE, WHO DEAL IN THE RESPECTIVE FIELD.

### **PUTTING FORTH SUGGESTIONS:**

The white coats of the doctors, emphasizing their noble profession are stained with multiple blames. Thy author here forth makes some humble suggestions for your benign consideration:

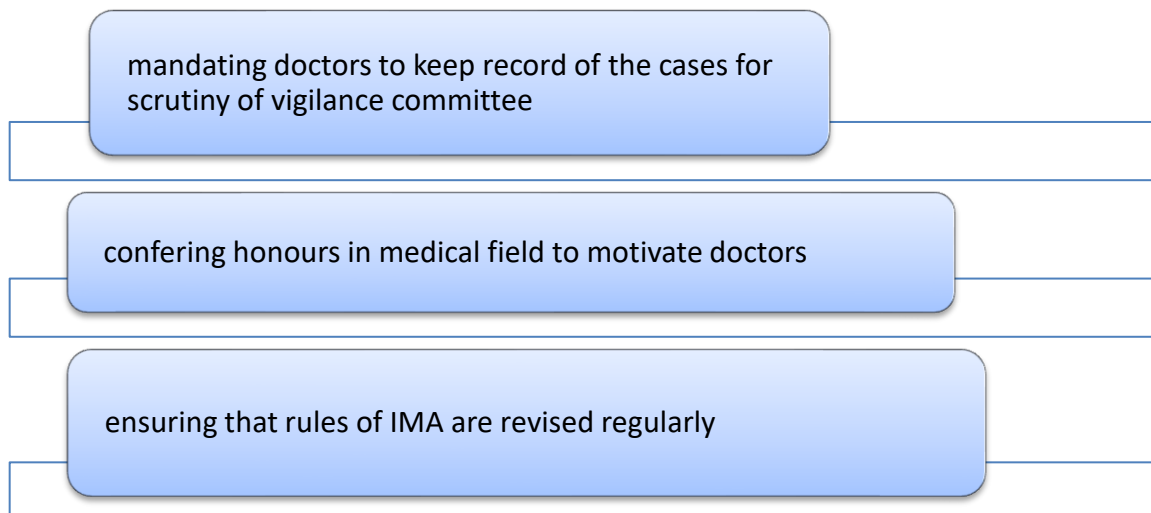
- Making it mandatory for doctors to hang /display their certificate/ license of practice at a conspicuous place in the clinic
- Setting up a vigilance committee to constantly keep checks on the medicine manufacturing units and providing for stringent actions in cases of default
- Issuing governmental ID cards to nurses and chemists post submission of copy of their certificates and degrees to a special agency/ministry for this purpose
- Ensuring a hospital is set up near every highway and secluded areas.
- Mandating medical students to and nurses to undergo compulsory training before trying their hands on patients and also mandating them to wear trainee badges during the training period
- Adding separate offenses in IPC in light of the situations mentioned in the introductory section
- Ensuring multilateral treaties for exchange of knowledge and training programmes amongst nations.

- Ensuring autopsy in each case of death due to alleged medical negligence by government certified departments and compulsorily keeping records of such autopsies for each private and government hospital.

#### **PUTTING FORTH PLAN OF ACTION:**

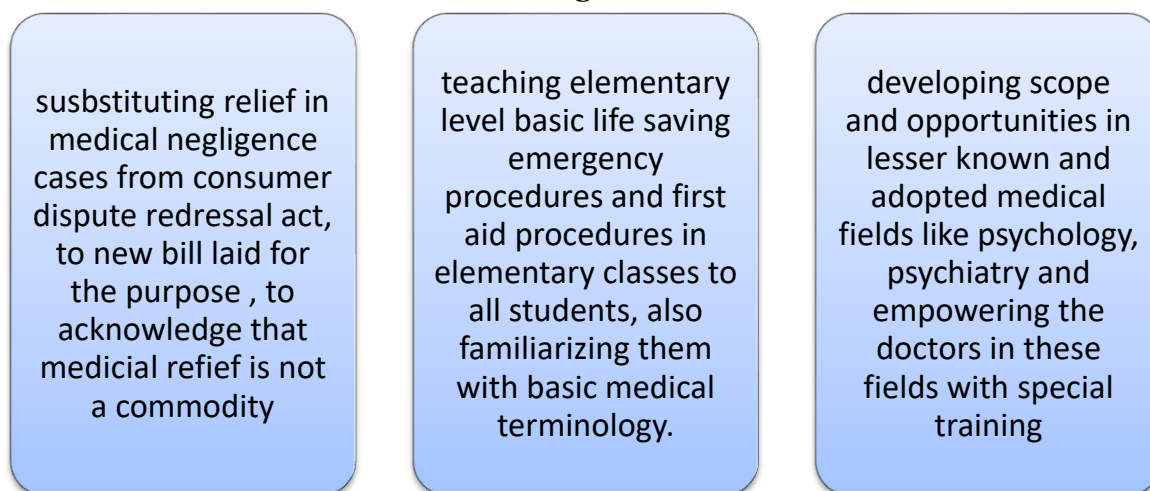
Mere willingness on part of those concerned, does not bring change, revolutions are brought through mindful execution of thorough plans

**Fig 5**



**Proposed POA1**

**Fig 6**



**Proposed POA 2**

#### **DRAWING HUMBLE REVIEW OF THE PAPERS MENTIONED IN REFERENCES:**

Thy author with utmost humility submits that most of the research papers overviewed by my sober self, have encompassed and elaborated the legal provisions in cases of medical negligence in a thorough manner. Also there seems no dearth in discussion over the cases and decisions, of hon'ble Supreme court and consumer forums. but the elements of preparation for unprecedented situations and no where jotted down. Also the suggestions have only been given in a few papers, and no luxury of getting secondary data for studies could be availed by thy author.

#### **DRAWING HUMBLE CONCLUSIONS:**

Medical negligence is disability or incapability of apt action at the right time by the medical professions. The element of mens rea in cases of delay by the doctors or adoption of techniques, is a scale difficult to measure. Howsoever the judicial trend has been in favor of compensating the patient and holding the medical authorities liable, which definitely deserves applaud, but the the consistent spike in cases demand, that a different approach be taken, more emphasis be laid to the causes of such "habitual negligence". As they say,

“prevention is better than cure”, in legal realm, deterrence and stringency of measures is better than compensatory reliefs. with these words thy author hereby concludes the paper.

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