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# PRE-LITIGATION MEDIATION IN MEDICAL NEGLIGENCE: REFORMING CONSUMER REDRESSAL IN DELHI

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## ABSTRACT

In recent years, medical negligence cases have been a significant challenge for consumer forums in India, especially in major cities such as Delhi, because of their technicality, the need for extensive documentation, and the long duration needed for their decision-making. When this happens, pre-litigation mediation becomes an important tool in the Alternative Dispute Resolution (ADR) arsenal designed to end conflicts between patients, healthcare institutions and service providers before any formal litigation process begins. In this paper, the author has critically discussed the concept of pre-litigation mediation in medical negligence cases in the context of consumer redress in Delhi. It examines how interest-based, voluntary and confidential mediation can be used to resolve the conflict between a patient seeking compensation and a healthcare provider seeking to avoid the uncertainty and negative publicity of continued litigation. The study reveals that medical negligence cases brought in consumer fora are often burdened with delays resulting from the requirement of obtaining medical evidence, procedural intricacies and litigious attitude. The pre-litigation mediation, with the help of institutional mechanism like mediation centres attached to Delhi High Court, and consumer dispute resolution mechanism can provide a speedy, cost-effective and less adversarial option. It also calls for maintaining the doctor-patient relationship and the backlog of cases in the courts to be reduced as well as giving proper recognition to the just claims of the patients. The study does highlight, however, issues of awareness, imbalance of power between parties, lack of compulsory mediation in medical negligence cases and problems with enforceability of mediated settlements. The paper suggests that structured pre-litigation mediation can be a major source of reform of the consumer redressal in medical negligence cases, provided it is backed by legal mandates, trained medical mediators and integrated mediation procedures in consumer commissions.

**Keywords:** Pre-litigation mediation, medical negligence, consumer protection, ADR, Delhi consumer forums, dispute resolution, healthcare litigation, settlement mechanisms, legal reform, mediation in India.

## INTRODUCTION

Medical negligence is among the most delicate and developing consumer matters in India. The engagement and commercialization of healthcare service providers and raising awareness among patients with their legal rights have led to a significant surge in complaints against hospitals and medical service providers. Consumer forums in places such as Delhi are routinely flooded with complaints ranging from lack of adequate medical care, misdiagnosis, surgical mistakes to issues of informed consent. These disputes can be complex, and involve detailed medical evidence and expert opinions, making traditional litigation time-consuming and adversarial.

In India the consumer protection regime classifies medical services as a “service” and thus enables the patients to approach consumer commissions for remedy. Despite legal avenues for redress, however, the adjudication process is often lengthy and cumbersome, requiring adherence to numerous procedural steps and the complex nature of medical evidence. This delay has repercussions on the rights of wronged patients but also on healthcare workers as they risk losing their reputation and have to endure extended legal uncertainty. Hence, alternative solutions that can settle such conflicts in a more cooperative and quicker way are increasingly sought.

In a broader sense, Alternative Dispute Resolution (ADR) has become a potential alternative, and pre-litigation mediation has risen to a promising solution within this paradigm. It is the process of settling conflicts by discussion and negotiated agreement before the formal legal proceedings are commenced. Pre-litigation mediation, in the context of medical negligence, is a process in which the patient and the healthcare provider are allowed to have structured discussions to try to reach an agreement that does not go through the lengthy process of a lawsuit. This process puts more emphasis on confidentiality, on being voluntary, and on reaching a resolution based on what interests are present rather than on a confrontation.

The judiciary has always inspired the use of mediation in India because it makes the handling of cases easier and can bring about amicable resolutions. Delhi-based, and similarly in other High Courts and district courts, mediation has become an established part of the practice there. Pre-litigation medical negligence mediation, however, continues to be underutilized, in part because of a lack of awareness and because of the lack of mandatory pre-litigation medical negligence mediation provisions in consumer cases, and because of the fear of both parties to

rely on an informal medical negligence settlement process.

Medical Negligence claims are truly distinctive and are incredibly apt to be mediated. These cases are usually ones of emotional distress, loss of trust and financial hardship and if there is a rigid legal outcome, it may not be the best result. Mediation lends flexibility in reaching solutions that may not exist through formal litigation, such as compensation, an apology, corrective treatment, or structured settlements. Furthermore, it assists in maintaining the doctor/patient relationship, an important part in a society that relies on the health care system.

The present study, therefore, aims to look at the role of pre-litigation mediation in reforming consumer redressal mechanism for medical negligence cases in Delhi. It considers the efficacy, difficulties and potential for mediations at the pre-litigation level. The main conclusion is that a good pre-litigation mediation protocol can enhance access to justice, cut down judicial backlog, and supply a fair and timely resolution of medical negligence disputes, while still upholding a balance between the rights of the patient and the accountability of the practitioner.

## REVIEW OF LITERATURE

The use of mediation as a means of effective conflict resolution has been accepted in legal literature as a means of alleviating judicial delays and encouraging friendly resolutions of disputes. The need for mediation as a tool for early resolution, particularly in complex cases involving emotional and relational issues like medical negligence actions, is highlighted by Menon's view on Alternative Dispute Resolution (ADR).<sup>1</sup>

They note that consumer disputes relating to medical negligence are intrinsic and highly dependent on expert medical testimony, which can be time-consuming prior to consumer forums; they recommend that a pre-litigation mediation mechanism can expedite the process of resolving the dispute by eliminating those cases that are suitable for resolution through mediation and burdening adjudicatory bodies.<sup>2</sup>

The Law Commission of India in all its reform reports has been recommending for strengthening the ADR mechanism to ensure access to justice. The institutional endorsement highlights the legal validity of mediation in medical negligence cases, and also a significant

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<sup>1</sup>Menon, *ADR and Access to Justice in India* (Eastern Book Company, 2010) 112–115.

<sup>2</sup>Avtar Singh & Harpreet Kaur, *Law of Consumer Protection* (LexisNexis, 2015) 243–245.

reduction in pendency and litigation expenses in civil and consumer disputes.<sup>3</sup>

Most medical negligence cases are not only economic claims, but also emotional claims that relate to the claimant's perception of lack of communication, absence of apology, lack of sensitivity from the healthcare provider, etc.<sup>4</sup> Ghosh states that adversarial litigation is not as appropriate as mediation to resolve the non-monetary aspects of medical negligence claims because they involve dialogue-based resolution.

Suri and Malhotra observe that court-annexed mediation has worked well in family and civil matters, but has not been implemented in medical negligence matters, owing to consumer law not having provisions to make pre-litigation mediation compulsory, and awareness of mediation.<sup>5</sup> They are proposing that there is a need for a structured approach to reform to enable mediation to be institutionalised early.<sup>4</sup>

The study also shows that pre-litigation mediation offers a greater settlement success rate than post-litigation mediation, and when mediation is done early, there is a greater willingness to settle and a lower level of hostility between the parties involved, especially in high-settlement value cases, like medical negligence cases.<sup>5</sup>

As a whole, it is evident that there is theoretical and practical backing for the use of pre-litigation, mediation in Consumer medical negligence claims. But there is a huge implementation gap in the Indian scenario, particularly in Delhi, where mediation is still not mandatory and is not used to its full potential. This study extends this understanding to identify the reforms which may be needed to successfully institutionalize pre-litigation mediation.<sup>6</sup>

## RESEARCH QUESTIONS

- a. Is the system of consumer redressal as it stands in India sufficient and effective to deal with the issue of medical negligence in Delhi?
- b. How well does mediation work as a pre-consumer forum solution for medical

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<sup>3</sup>Law Commission of India, *Report on Judicial Reforms: ADR Mechanisms* (Report No. 222, 2009) para 3.4.

<sup>4</sup>Ghosh, *Healthcare Law and Medical Negligence in India* (Oxford University Press, 2018) 156–159.

<sup>5</sup>Suri & Malhotra, 'Mediation in Consumer Disputes: A Study of Delhi Mediation Centres' (2020) 12 *Journal of Dispute Resolution* 78.

<sup>6</sup>Sharma, 'Effectiveness of Pre-Litigation Mediation in India' (2022) 9 *Indian Journal of Alternative Dispute Resolution* 44–46.

negligence cases?

c. What are the legal, procedural and practical issues with the implementation of pre-litigation mediation in medical negligence cases in the current legal framework in India?

d. Can pre-litigation mediation be a useful alternative to reduce the workload of consumer commissions and facilitate quicker and less contentious dispute resolution?

e. What changes need to be made in the current laws and institutions to enhance the efficacy and formalisation of pre-litigation mediation process in medical negligence cases in India?

## **RESEARCH METHODOLOGY**

The methodology applied in this study is doctrinal research method, which is a research method that analyzes the existing legal rules, laws, judicial decisions and legal literature. The doctrinal approach tends to be theoretical and involves an analysis, interpretation and critical examination of the law as it stands without fieldwork or surveys undertaken to gather empirical data.

The doctrinal method is suitable for the present research on pre-litigation mediation in medical negligence as consumer redressal in Delhi is anchored in statute, judicial interpretations and institutional frameworks of consumer protection and Alternative Dispute Resolution (ADR). The study critically comments on pertinent legislation including the Consumer Protection Act, 2019, mediation aspects and pronouncements of the Supreme Court, High Courts to promote settlement of disputes through Alternative Dispute Resolution.

In addition to this, there is a detailed analysis of secondary sources such as authoritative legal textbooks, commentaries, law commission reports, scholarly articles, law journals and reports on mediation and medical negligence. The following sources provide a perspective on the development of legal ideas and principles around mediation and the implementation thereof in healthcare-related disputes.

Moreover, the doctrinal method provides an opportunity to review and critically evaluate case law in the area of medical negligence and consumer disputes, including rulings that have demonstrated judicial attitudes towards settlement, compensation, and the utilization of

mediation to alleviate the burden of litigation. This helps to identify any discrepancies in legislation and implementation.

The study does so by using a comparative analysis under a doctrinal approach when required, to take a look at mediation practices in other jurisdictions and see how the best practices can be adapted to India. This reinforces the normative recommendations for changing the existing pre-litigation mediation system.

In this way, doctrinal approach helps in providing an all-round legal perspective on pre-litigation mediation in medical negligence context and helps in formulating suggestions to make consumer redressal mechanisms in Delhi more efficient, accessible and effective.

## **DISCUSSION / ANALYSIS**

In medical negligence cases, pre-litigation mediation is a major paradigm change from adversarial adjudication towards consensual dispute resolution, in the consumer justice arena. Mediation is structured and provides an opportunity to settle matters at an early stage of the dispute process, which is welcome in a city like Delhi, where the consumer forum has already a high volume of very complex complaints, related to healthcare. It is seen that the majority of medical negligence cases have emotion, loss of trust and a breakdown in communication between the patient and the health care provider, in addition to the legal liability issues. These issues tend to be overlooked in court proceedings, but can be discussed at length in mediation.

One of the benefits that were found is that pre-litigation mediation can eliminate the delays in consumer adjudication. Medical negligence cases are generally quite complex and require medical opinions and careful examination of the evidence, adding to the time taken to resolve the case. Mediation, on the other hand, enables the parties to come to a negotiation without strict rules of evidence, which means that it is much faster and cheaper. This is especially advantageous in cases where parties are willing to settle but are intimidated by the time and expense of litigation.

The analysis reveals however also structural and functional constraints. The biggest problem is the lack of a compulsory pre-litigation mediation process in India for consumer issues. This means that participation is largely voluntary, and suffers from the same limitations as

participation in other informal resolution processes in sensitive medical negligence cases where either parties are hesitant or distrustful of informal resolution processes. Further, the healthcare institutions may be in a stronger position than the patients, potentially tainting the fairness of negotiations, and leading to concerns about fair outcomes.

Another significant problem is the shortage of medical law and healthcare ethics-trained mediators. Because medical negligence cases require medical knowledge regarding medical procedures, the lack of this medical expertise among mediators can reduce the quality of the settlement discussions. Further, issues of confidentiality, enforceability of mediated agreements and institutional accountability play a role in the acceptance of mediation as a reliable alternative.

Nevertheless, the analysis points to the fact that pre-litigation mediation can have a great reformative potential, as long as the process is well institutionalized. Effective integration of mediation centres into consumer forums, compulsory mediation at the pre-filing phase and the training of mediators in medical disputes will be of a great value. Hence, pre-litigation mediation, although not fully leveraged in the Indian consumer redressal forum, does have tremendous potential as a game changing process to hasten medical negligence claims in Delhi litigation to a fair and humane resolution.

The judicial system has continually maintained the relevance of the consumer law to healthcare services. The Supreme Court, in *Indian Medical Association v. V.P. Shantha* (1995), decided that the medical services come under the category of service under consumer protection law and thus could allow patients to claim damages due to negligence in medical services. This historic case greatly increased patient rights and took medical negligence under the umbrella of the consumer courts.<sup>7</sup>

Victims can also resort to civil courts, where they can claim damages based on tort law, other than consumer fora. Civil remedies are aimed at compensating the victim in the event of loss incurred because of negligence. Such cases involve meticulous evidence, such as medical expert opinions and documentary evidence of injury. Although the civil courts offer a thorough legal solution, it is often a long process because of formalities, questioning of witnesses, and the cases pending trial.

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<sup>7</sup>Ratanlal & Dhirajlal, *The Law of Torts*, LexisNexis, New Delhi.

More severe cases, which involve gross negligence, might be brought to action by patients or by their families in the criminal courts. In the Indian Penal Code, 1860, in Section 304A, 337 and 338, one usually invokes these sections. Section 304A is concerned with causing death through negligence and Sections 337 and 338 are concerned with causing hurt or grievous hurt through rash or negligent acts. Nevertheless, the courts have always ruled that there are very rare situations in which criminal responsibility in cases of medical negligence should be applied in cases of gross negligence or recklessness.

The Supreme Court in *Jacob Mathew v. State of Punjab* (2005) set forth some crucial principles that would ensure criminal prosecution is not abused against doctors. The Court determined that gross lack of competence or recklessness in the conduct of a medical professional is the only way the professional can be criminally liable. It also focused on the necessity of professional medical opinion before criminal action is taken and this will protect the doctor against empty prosecution whilst also holding the doctor accountable in the event of a real negligence.

Even with all these multiple forums, redressal system is not efficient because of inefficiencies in the processes. Despite the introduction of the Consumer Protection Act, 2019 as a more efficient and faster remedy, delays still happen because of the adjournments, the backlog of cases, and complicated requirements of the evidence presented. Consumer commissions, particularly at the higher levels, are usually overworked, consequently leading to long disposal times.

The case is especially difficult in Delhi because the cases of medical negligence often take years before they can be closed. This procrastination nullifies the whole idea of compensatory justice which is intended to give timely relief to victims. Litigation is also adversarial and this increases the confrontation between patients and doctors making it appear more of a hostile legal battle instead of a corrective process. This not only slows down the resolution but also erodes confidence in the health care system and heightens defensive medicine among physicians.<sup>8</sup>

Therefore, although India has a systematic legal system to treat medical negligence in terms of consumer, civil, and criminal laws, its application is characterized by stalemate, cumbersome,

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<sup>8</sup> D.D. Basu, *Introduction to the Constitution of India*, LexisNexis.

and adversarial strategies, making it absolutely necessary to adopt alternative systems like pre-litigation mediation.

### **1. Effectiveness of Pre-Litigation Mediation in Consumer Redressal of Medical Negligence**

Pre-litigation mediation has proven to be a promising tool for the efficiency of consumer redressal mechanisms in medical negligence cases. Consumer related case law topics such as medical services disputes are likely to be protracted in the consumer law framework, especially under the Consumer Protection Act 2019, because of the need for expert medical evidence and detailed factual investigation. Early introduction of mediation filters out cases that can be successfully resolved, and saves the consumer commissions time and resources. This helps to resolve consumer complaints more quickly and improves access to justice for consumers.<sup>9</sup>

One of the most significant benefits of the pre-litigation mediation of consumer disputes is that it offers flexibility and interest-based solutions. Mediation, in contrast to consumer forums, is not necessarily required to offer legal remedies like compensation or replacement of services, but parties might agree to more expansive terms of settlement like apology, corrective treatment or structured compensation, or even assurances of future medical care. This comes into effect especially in medical negligence cases where the emotional aspect is as significant as the monetary recovery.

Mediation is also important in the context of a consumer, when managing relationships between patients and health care professionals. The majority of medical negligence claims are not about deliberate or deliberate misconduct, but rather because of the breakdown of the trust. The two sides often engage in litigation, which tends to exacerbate the conflict, while mediation produces dialogue and understanding. This restorative element is especially significant in medical care, as continuous medical connections could continue even after a conflict occurs.

It is found, based on empirical observation in mediation centres of consumer forums, that pre-litigation mediation has the effect of significantly reducing the load of cases if it is properly implemented. This early intervention can avoid the formal litigation process, which can save judicial time and costs for both parties. This is particularly helpful in metros such as Delhi,

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<sup>9</sup> Menon, *ADR and Access to Justice in India* (Eastern Book Company, 2010) 112–115.

where consumer courts have a high load of cases regarding healthcare disputes.

But the success of mediation is dependent on the willingness and awareness of parties to participate in pre-litigation mediation. Numerous consumers do not know or understand that there are ways to obtain justice besides litigation, or that they can use mediation. Thus, mediation has a lot of theoretical merits in consumer redressal but it can only work well if there is institutional backing, awareness creation and organized referral mechanisms in the consumer dispute resolution system.<sup>10</sup>

## **2. The difficulties and restrictions that come with implementing pre-litigation mediation in consumer medical negligence cases.**

Although pre-litigation mediation can be beneficial in consumer medical negligence cases, there are some structural and procedural issues to consider. A key drawback is that the Consumer Protection Act, 2019 does not stipulate any pre-litigation mediation for medical negligence claims. This means that mediation has not actually reduced the volume of litigated cases, as many end up at consumer forums, and remains optional.

An imbalance of power between consumers and healthcare institutions is another great challenge. Hospitals and medical practitioners have more leverage than a patient in terms of finances, legal background, and negotiation skills in many medical negligence cases. This imbalance may lead to unfair "mediated" results, where the weaker party may settle on a lesser basis, and compromise the principles of consumer justice.

Another constraint is the lack of medical law and healthcare ethics specialists as mediators. Medical negligence claims can be complex technical cases that require understanding of medical procedures, standards of care and medical expert evidence. Lacking the necessary expertise in a particular area, mediators can struggle to lead informed conversations, thereby lowering the quality and reliability of the settlements that come out of their mediation sessions.<sup>11</sup>

A more practical consideration in consumer disputes is enforceability of mediated settlements. The settlement agreed upon in the mediation is almost always binding when properly recorded,

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<sup>10</sup> Avtar Singh & Harpreet Kaur, *Law of Consumer Protection* (LexisNexis, 2015) 243–245.

<sup>11</sup> Law Commission of India, *Report on Judicial Reforms: ADR Mechanisms* (Report No. 222, 2009) para 3.4.

however, problems may occur in the execution if one party fails to perform. Without a dedicated enforcement mechanism for pre-litigation mediation results, parties may become cynical of mediation, especially when they are seeking big compensation in a medical negligence action.

Finally, there is a lack of awareness, and the lack of institutionalization of pre-litigation mediation in the consumer dispute resolution system. Consumers are not necessarily made aware of mediation as an alternative dispute resolution mechanism and referral mechanisms at the pre-filing phase are not consistently used across the jurisdictions. Even though pre-litigation mediation has high potential to change medical negligence conflicts, it has been underutilized unless it is integrated into consumer grievance redressal procedures in a systematic manner.

## 2.1 Delay in Justice

The excessive delay in dispensation of justice is one of the most notable issues with the present medical negligence adjudication system. Cases of medical negligence are by their nature complex because they involve medical evidence, which is technical, interpretation of clinical records, and a dependence on expert medical evidence. It is also time-consuming to get such expert opinions because sometimes the specialists are hesitant to testify or, they might spend a considerable amount of time analysing the case records. This leads to the long adjournments and lengthy trial periods.<sup>12</sup>

Moreover, the Indian courts are procedurally organised in such a way that they cause delays. Regular adjournments, cases in the backlog and multi-level system of appeals all contribute to the slowness of the resolution process. In consumer forums too, though meant to be summary in nature, medical negligence cases tend to be protracted, as evidence is disputed and formalities of procedure are observed. Consequently, this leaves victims waiting years before they can be compensated thus nullifying the intent of compensatory justice.

## 2.2 High Litigation Costs<sup>13</sup>

The high cost of pursuing claims of medical negligence is another great challenge. Such litigation entails the use of a lot of money which are court fees, lawyer fees and most

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<sup>12</sup> Ghosh, *Healthcare Law and Medical Negligence in India* (Oxford University Press, 2018) 156–159.

<sup>13</sup>V. N. Shukla, *Constitution of India*, Eastern Book Company.

importantly, the cost of seeking expert medical opinions. Expert witnesses are important in proving negligence and their professional fees can be prohibitively high to most claimants.

Moreover, an extended litigation process adds indirect costs like repeated appearances in the court, travel expenses, and emotional stress. These financial burdens tend to serve as obstacles to justice among economically weak patients. This means that most legitimate claims are not taken to court or they are resolved at poor compensation, thus compromising the justice of the law system.<sup>14</sup>

### **2.3 Medical Negligence concept of Mediation.**

Mediation is an Alternative Dispute Resolution (ADR) process that provides a regulated but adaptable dispute resolution mechanism that goes outside of the formal court system. It incorporates an impartial third party, referred to as a mediator, who steps in between the conflicting parties and helps them to reach a settlement that is agreeable to all. Mediation is not adversarial like litigation and is a collaborative process.<sup>15</sup>

One of the characteristics of mediation is that it is voluntary and confidential. Although in a structured or pre-litigation form, mediation is intended to maintain party autonomy, whereby parties are allowed to retain control over the resolution of their dispute. The mediator does not dictate a solution but leads the parties to come to a consensus by promoting dialogues and the comprehension of the views of each other

The informal and flexible nature of the mediation process is also a hallmark of mediation. It is not bound by strict rules of evidence and procedure and therefore parties are free to air their concerns. One of the most important aspects here is confidentiality, so that sensitive information, particularly in the case of medical negligence, involving patient records and hospital data, does not leak to the outside world or is used against either side in subsequent actions.

Mediation has a number of practical benefits in the realm of medical negligence cases. It allows disputing parties to achieve premature financial compensation without having to pass through lengthy legal proceedings, hence bringing relief to victims faster. It is also useful to prevent

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<sup>14</sup> P.S. Atiyah, *Accidents, Compensation and the Law*, Cambridge University Press.

<sup>15</sup> Suri & Malhotra, 'Mediation in Consumer Disputes: A Study of Delhi Mediation Centres' (2020) 12 *Journal of Dispute Resolution* 78.

protracted and emotionally distressing court proceedings, which tend to further worsen the situation between patients and healthcare providers. Moreover, mediation will guarantee confidentiality of medical records and case information, securing patient privacy as well as hospital reputation.

Saving of professional relationships is another key advantage of mediation in medical conflicts. Mediation fosters communication and dialogue unlike adversarial litigation that usually brings about hostility between the doctor and patient. This assists in keeping faith in the healthcare system and lessens defensive medical care practices, ultimately leading to a more balanced and collaborative healthcare setting.

## **2.4 Legal Feasibility of Mediation in India**

It is already in place that the Indian legal system offers a powerful statutory and institutional framework in favor of mediation and other types of Alternative Dispute Resolution (ADR), so the legal aspect of the introduction of mandatory pre-litigation mediation in medical negligence cases is possible.

Section 89 of the Code of Civil Procedure, 1908 also gives the power to the courts to take a case to mediation, to arbitration or to a settlement through which elements of compromise exist. This clause demonstrates the intent of the legislature to promote peaceful settlement of disputes, and to minimize the court workload.

The Mediation Act, 2023, which offers a comprehensive legal framework of mediation in India, further fortifies this framework. The Act institutionalises mediation, and encourages pre-litigation mediation in some types of disputes, and treat mediation settlement agreements as legally binding tools, increasing the credibility and effectiveness of mediation procedures.

### **1. Indian Medical Association v. V.P. Shantha<sup>16</sup>**

In this landmark judgment, the Supreme Court held that medical services fall within the definition of “service” under the Consumer Protection Act, 1986. This decision was crucial because it enabled patients to file complaints against doctors and hospitals in consumer forums for deficiency in medical services. The Court clarified that medical professionals are liable

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<sup>16</sup>(1995) 6 SCC 651

under consumer law if there is negligence or lack of reasonable care in treatment.

## **2. Jacob Mathew v. State of Punjab<sup>17</sup>**

In this case, the Supreme Court laid down strict guidelines for fixing criminal liability in cases of medical negligence. The Court held that a medical professional cannot be held criminally liable unless there is gross negligence or recklessness. It also emphasized the need for expert medical opinion before initiating criminal proceedings against doctors, thereby protecting them from frivolous prosecution while ensuring accountability in serious cases.

## **3. Kusum Sharma v. Batra Hospital & Medical Research Centre<sup>18</sup>**

The Supreme Court in this case provided comprehensive guidelines for determining medical negligence. It held that courts must consider that doctors are not expected to guarantee cure and should not be held liable for every error of judgment. The Court stressed the importance of balancing patient rights with protection of medical professionals acting in good faith and introduced a cautious approach in assessing negligence claims.

Moreover, the Consumer Protection (Mediation) Rules to the Consumer Protection Act, 2019 also offer mediation as a means of solving consumer disputes, such as deficiency in medical services. These regulations also show that the legislature appreciates the use of mediation as an appropriate place where medical malpractice suits can be addressed.

The judiciary has also been proactive in encouraging ADR mechanisms. In a series of landmark decisions the Supreme Court of India has repeatedly stressed the role of settlement by means of mediation in the right cases. The Court has promoted the use of ADR processes in order to decrease the litigation load and get justice quickly especially in cases where the dispute can be resolved by settling without necessarily going through the merit adjudication process.

## **Conclusion**

There is a special place of medical negligence disputes in the legal system since they deal with issues of life, health, professional ethics, and legal responsibility. Such conflicts necessitate a dispute resolution mechanism that is not only legally viable but also sensitive to emotional and

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<sup>17</sup>Citation: (2005) 6 SCC 1

<sup>18</sup>Citation: (2010) 3 SCC 480

financial suffering experienced by patients and providers of healthcare. The currently available litigation-based system is also necessary to provide the authoritative judgment; however, it is frequently slow, complex, and adversarial.

The conventional court system in India especially in the metropolitan areas such as Delhi is overrun with high number of pending cases. Such cases are further burdened by medical negligence cases, which are highly technical in nature and the proof needed.

### **3. Recommendations**

#### **Introduce special medical mediation panels in Delhi.**

Delhi ought to establish special medical mediation panels that are made up of trained mediation panels that have law and healthcare systems knowledge. Such panels must be recognised institutionally by the oversight of the Delhi State Legal Services Authority or other regulatory authority. The specialised panels will also be in place to make sure that the disputes are resolved by persons with the knowledge of the technicalities of medical negligence cases, which will enhance the quality of mediation results. This institutionalisation will also boost the level of trust that people have on the mediation process and create uniformity of settlements.

#### **Compel all medical negligence actions that fall under a set cap to go through pre-litigation mediation.**

A statutory threshold ought to be established to decide which medical negligence cases are obligatory to go through pre-litigation mediation. The lower to moderate compensation claims can be properly addressed by the mediation process as they do not necessarily strain courts. The compulsory mediation at this point will guarantee that any disagreements are resolved at an early stage so that serious and complicated cases can be taken to court. This method of classification will be balanced in efficiency and access to justice.

#### **Make sure that medical experts take part in the mediation process.**

The nature of medical negligence cases is very technical and the parties involved may not be knowledgeable enough to comprehend medical records and procedures. Thus, it is necessary to have neutral medical specialists in the mediation. These professionals are able to help them explain medical matters, clarify standards of care and assist the sides to evaluate the merits and

demerits of their arguments. Their presence will result in better informed decision-making and equitable settlements.

**To mediate in support of patients.**

Medical negligence victims are oftentimes in the less economically well-off groups and lack sufficient legal knowledge or representation. Legal aid services should be offered during mediation so that there can be equality of bargaining power.

**Develop time-limited mediation framework**

In order to retain the efficacy of the mediation, a rigid time limited framework must be adopted. Medical negligence mediation is preferably supposed to be accomplished in a period between 30-60 days of referral.

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