

Purpose of Compensation for Medical Negligence: An Argument for Vindictive Justice*

INTRODUCTION

"I cannot say I'm pleased with the quantum of compensation after spending so much money to fight this legal battle, but this fight was never for money. The verdict has sent the right message to the medical community in India."¹ These words of Dr. Kunal Saha on the judgement in *Balram Prasad vs. Kunal Saha & Ors*² on 24 October, 2013 is relevant not only because it talks volumes on the difficulties one will have to face in fighting medical negligence in India, but more importantly it resurges important questions on the purpose of awarding compensation in such cases.

This article is focusing on the second aspect. The significant considerations in computing compensation for medical negligence. And how far it is doing justice to its original purpose?

In the above mentioned case, Supreme Court ordered the AMRI Hospital in Kolkata and three doctors to pay Rs 60 800 000 (£616 566; €719 918; \$990 520) plus interest in compensation to Indian-American doctor Kunal Saha for medical negligence that led to the death of his wife, Anuradha, aged 36, in 1998. This is the highest compensation ordered by the apex court of India in a case relating to medical negligence. Tragedy struck when Anuradha came to Kolkata from the United States for a vacation in March 1998. The child psychologist consulted Sukumar Mukherjee after developing skin rashes. Mukherjee did not prescribe any medicines and asked her only to take rest. The rashes intensified in May and Mukherjee then prescribed injections, a step later faulted by experts. However, Anuradha's condition worsened and she was admitted to AMRI Hospital under Mukherjee's care. When matters worsened, Anuradha was flown to Mumbai where she was admitted to Breach Candy Hospital. She died there on 28 May³. The claimant filed Original Petition in 1999 before the National Commission claiming compensation for Rs.77,07,45,000/- and later the same was amended by claiming another sum of Rs.20,00,00,000/-. The National Commission held the doctors and the AMRI Hospital negligent in treating the wife of the claimant on account of which she died. However, the claimant, the defendant hospital and the doctors were aggrieved by the amount of compensation awarded by the National Commission and also the

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¹ Nivedita Choudhuri, Record damages are awarded in medical negligence case in India, *BMJ* 2013; 347:f6551. Available at: <http://www.bmj.com/content/347/bmj.f6551>

² CIVIL APPEAL NO.2867 OF 2012. Available at: <http://judis.nic.in/supremecourt/imgs1.aspx?filename=40897>

³ *Supra* note 1

manner in which liability was apportioned amongst each of them. While the claimant was aggrieved by the inadequate amount of compensation, the appellant-doctors and the Hospital found the amount to be excessive and too harsh. They further claimed that the proportion of liability ascertained on each of them is unreasonable.⁴

Remedy for medical negligence

In order to seek remedy for an adverse outcome from the medical practitioner responsible, a patient may bring an action under several different areas of law. It can be the tort law of negligence or battery, contract law, or consumer protection law.⁵ A tort suit enables the victim of a wrong to seek a remedy from the person who injured her. Unlike a criminal case, which is initiated and managed by the state, a tort suit is prosecuted by the victim or the victim's estate. A successful tort suit is followed by a judgment of liability, rather than a sentence of punishment. Such a judgment normally requires the defendant to compensate the plaintiff financially. In principle, an award of *compensatory* damages shifts all of the plaintiff's legally cognizable costs to the defendant. On rare occasions, a plaintiff may also be awarded *punitive* damages, which go beyond what is necessary for compensation⁶.

Word compensation has been given a very wide connotation by Supreme Court⁷ by taking in its fold mental agony, harassment, actual loss and expected loss, humiliation, insult, emotional suffering suffered by the consumer. In most Anglophone jurisdictions, compensation is paid through a court-based tort law system. The tort systems typically endorse the 'fault criterion' according to which the victim of an injury is awarded compensation, paid by the injurer, only if it is established that the injurer in question was *at fault*.⁸ In a second group of jurisdictions, including Sweden, Denmark, Norway, Finland, France, New Zealand, Florida and Virginia, the fault criterion has been eliminated, at least for some kinds of medical injury. These moves have been taken to their greatest extent in New Zealand, where a statutory accident compensation system has for over 30 years compensated medical injury on a *no-fault* basis⁹

Under a regime of fault liability, a person is liable for injuries he causes while failing to act as a reasonable person in the similar circumstances. It will not make anyone liable for injuries, causing which he is blameless. The difference between the two regimes of liability is that under fault liability you can avoid liability if you act as a reasonable person, whereas you will be liable subject to strict liability even if you had sufficient reason for what you did.¹⁰ Justifications or reasonableness will not undermine strict liability.

⁴ Supra note 2

⁵ Rachel Callinan, Medical Negligence and Professional Indemnity Insurance, Background Paper No 2/01, NSW PARLIAMENTARY LIBRARY RESEARCH SERVICE. Available at: [https://www.parliament.nsw.gov.au/prod/parlament/publications.nsf/0/06606E8109509100CA256ECF000B1907/\\$File/bg02-01.pdf](https://www.parliament.nsw.gov.au/prod/parlament/publications.nsf/0/06606E8109509100CA256ECF000B1907/$File/bg02-01.pdf). Last accessed on 01-07-2016 at 17.47.

⁶ Coleman, Jules, Hershovitz, Scott and Mendlow, Gabriel, "Theories of the Common Law of Torts", *The Stanford Encyclopedia of Philosophy* (Winter 2015 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/win2015/entries/tort-theories/>>.]

⁷ Ghaziabad Development Authority vs. Balbir Singh (2004) 5SCC 65

⁸ Thomas Douglas, Medical Injury Compensation: Beyond 'No-Fault', *Med Law Rev* (2009) 17 (1): 30. Available at: <http://medlaw.oxfordjournals.org/content/17/1/30.full>

⁹ Supra note 6

¹⁰ Supra note 6

The philosophical relevance of strict liability consists in accepting certain situation as special, in which a liability can arise, even in the absence of a faulty conduct.¹¹ . Each of us accepts, in daily life, a degree of risk that we must tolerate in light of our own production of similar risks to others. When people do not use reasonable care in engaging in those activities, they generate a nonreciprocal risk and therefore take responsibility if the risk is realized in an injury. This is negligence based liability. In case of hazardous activities, the reciprocity of risks does not apply and people who engage in such actions will be held liable for the results. This is strict liability¹²

In this regime, there is a general principle of responsibility which holds that in order to do justice, liability must depend on the responsibility of the injurer. Responsibility is analyzed in terms of causality, not in terms of fault. The principle of autonomy and negative liberty states that each individual is free to exercise his autonomy until his doing so invades the space of others. At the point of invasion, he is either harming another or invading another's right. Since it does not matter whether the invasion is innocent or deliberate, liability imposed upon invaders is strict.¹³

Purpose of Compensation in Tort

The purpose of compensation in Tort is to allocate the risk of losses. This is the compensatory function .The compensation is also to create the incentives for potential wrongdoers not to cause harm. This corresponds to the preventive function. Apart from this, the compensation has a purpose of distribution of income, in cases where the wrong doer and victim belongs to groups having different levels of income. ¹⁴ . The liability component is arrived at by following the philosophy of either corrective or distributive justice.

The concepts of distributive and corrective justice belong to Aristotle, who has coined the relation between parties as a bipolarity. Justice according to him is affected by the direct transfer of resources from one party to another. It is as if there is a divided line between unequal parts and he takes what exceeds the half of the bigger segment and adds it to the smaller one. The resources represent the plaintiff's wrongful injury and the defendant's wrongful act.¹⁵ As distinguished by Aristotle, corrective justice requires "arithmetic" allocation and distributive justice "geometric" allocation. While allocating, social and other factors come into consideration in the second case¹⁶.Corrective justice simply requires the reversal of wrongful changes to an initial distribution of resources. If the initial distribution of resources is not just then, it is distributive justice, which will help society maintain the equilibrium from a socialistic point of view¹⁷.

¹¹ Ionuț Tudor, Tort Law From The Perspective Of Corrective And Distributive Justice , Journal of Public Administration, Finance and Law, Issue 7/2015.Available at: http://www.jopafl.com/uploads/issue7/TORT_LAW_FROM_THE_PERSPECTIVE_OF_CORRECTIVE_AND_DISTRIBUTIVE_JUSTICE.pdf, quoting Weinrib, E. (1995). The idea of private law, Oxford: Oxford University Press

¹² Ionuț Tudor, Tort Law From The Perspective Of Corrective And Distributive Justice , Journal of Public Administration, Finance and Law, Issue 7/2015.Available at: http://www.jopafl.com/uploads/issue7/TORT_LAW_FROM_THE_PERSPECTIVE_OF_CORRECTIVE_AND_DISTRIBUTIVE_JUSTICE.pdf

¹³ Coleman, Jules L. (1992) "Tort Law and the Demands of Corrective Justice," Indiana Law Journal: Vol. 67: Iss. 2, Article 6. Available at: <http://www.repository.law.indiana.edu/ilj/vol67/iss2/>

¹⁴ Supra note 12

¹⁵ Supra note 12

¹⁶ Hanoch Sheinman, Tort Law and Distributive Justice .Available at: http://law.biu.ac.il/files/law/shared/tort_law_and_distributive_justice.pdf

¹⁷ Supra note 6

The justice conception holds that negligence law is an articulation of our ordinary moral conceptions of agency and responsibility, carelessness and wrongdoing, harm and reparation¹⁸. The economic conception holds the law of negligence as one which embodies an appropriate public morality, but it takes that morality to be at best a distant echo of the morality of responsibility and reparation found in ordinary life. Where ordinary morality links responsibility for harm with the duty to repair that harm, economic analysis of torts takes the two to be distinct from each other. When we think about preventing harm, we should think about which harms we wish to deter, and how to deter them. When we think about reparation for injury, we should think about which injury we wish to compensate and how best to compensate for them¹⁹.

When tort compensation is not limited to the redress of wrong conduct, the liability rule will necessarily serve two functions—it identifies the conditions under which injury compensation is desirable and accordingly creates financial incentives for duty holders to avoid injuring others by acting safely.²⁰

Richard Epstein elaborated this theory. His main argument is that just as each person who infringes upon another's property right is required by the law to compensate the property owner for the infringement, so each one who causes injury to another's body is also liable to the other for the costs of the injury inflicted. The purpose of tort law is not to compensate or deter certain conducts, but to protect each person and his holding against the infringements of others.²¹ Invading the rights of another a wrongdoer upsets a pre-existing equilibrium between the parties. Liability is imposed upon him to re-establish that equilibrium and is for that reason required by justice. In *Rylands v. Fletcher*²² the principle of liability was laid down that a party who owns land and collects and keeps there anything likely to do harm is liable to compensate that damage, if such thing escapes and does damage to another. This rule applies only to non-natural user of the land and it does not apply in certain situations. That is, if those things are there naturally on the land or where the escape is due to an act of God. An act of a stranger or the fault of the person injured is exempted. If the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority are also excused²³. The Indian Supreme Court in *M.C.Mehta's*²⁴ case evolved new principle of liability called absolute liability. This is a stricter form of strict liability by which any person who is engaged in use of land which is inherently hazardous is absolutely liable to compensate the damages it causes.

The Court observed, "An enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute non-delegable duty to the community to ensure that if any harm results to anyone, the enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity must be conducted with the highest standards of safety and if any harm results on account of such activity the enterprise must be absolutely liable to compensate for such harm irrespective of the fact that the enterprise had taken all reasonable care and that the harm occurred without any negligence on its part. It was further held that, "The measure of compensation in such cases must be co-

¹⁸ Gregory C. Keating, *Distributive And Corrective Justice In The Tort Law Of Accidents*, 74 SO. CAL. LAW REV. 193 (2000)). Available at: http://papers.ssrn.com/paper.taf?abstract_id=269347

¹⁹ Ibid

²⁰ Mark A. Geistfeld, New York University School Of Law
Public Law & Legal Theory Research Paper Series Working Paper No. 13-38
Law & Economics Research Paper Series Working Paper No. 13-22 July 2013 . Available at:

²¹ *Supra* note 12, quoting Weinrib, E. (1995). *The idea of private law*, Oxford: Oxford University Press Quoting Epstein, R., (1973). *A theory of strict liability*. University of Chicago Law School, 203-204.

²² 1866 Law Report 1 Exchequer 265

²³ *M.C.Mehta vs. Union of India* 1988 AIR 1115

²⁴ Ibid

related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in carrying on of the hazardous or inherently dangerous activity by the enterprise”.

Purpose of Compensation in Medical Negligence

If, as the result of medical negligence, an unplanned but healthy child is born, can a court in awarding damages to the parents, require the doctor to bear the cost of raising the child? The High Court of Australia in *Cattanach v Melchior* answered this question in the affirmative. The ruling affirmed a decision by the Queensland Court of Appeal to award damages in the amount of \$105,000. The damages were to compensate for the cost of raising and maintaining a healthy child.²⁵

In *Spring Meadows hospitals case*,²⁶ the Indian Supreme Court upheld the order awarding compensation in favour of the minor child taking into account the cost of equipment and the recurring expenses that would be necessary for the minor child who is merely having a vegetative life. The compensation awarded in favour of the parents of the minor child is for their acute mental agony and the lifelong care and attention which the parents would have to bestow on the minor child. Considering this judgment as an example to follow, in *Nizam's Institute's case*,²⁷ it was held that, “...we are of the view that the facts and circumstances of the case justify the award to the Complainant of an amount of Rs.8 lakhs towards prospective charges for physiotherapy, nursing and associated expenses, Rs.4 lakhs for supplementing the complainant's future earnings and Rs.2 lakhs as compensation for his mental agony, physical suffering and pain and also for physiotherapy, nursing and associated expenses already incurred by him and award of compensation of Rs.1.5 lakhs to the parents for their perpetual mental agony, stress and depression and for the continued support, care and attention they have to provide to the complainant and for the income loss of the mother due to dislocation in her job to look after her son.”

There is no standard set by any statute or judicial pronouncement for determining compensation or damages in the case of death due to medical negligence. Such standard of compensation is available only in the Motor Vehicle Act 1988 by way of application of multiplier provided in the Schedule II.²⁸

Determination of compensation is, a difficult task where no standard or formula is laid down in the statute or in judicial decisions by higher fora or courts said the State Commission in *Uttam Sarkar vs. The Management of Tura Christian Hospital*²⁹. Moreover, this uncertainty is torturous, even for those who approach the judiciary for any relief.

The method of calculating compensation in the above said cases appears to be compensatory. The major facts which were considered were the cost of recovery, loss of income, including the future income. A serious lack of guidelines exist in respect of calculation of compensation for the death due to negligence of house wives or people who do not have potential income which can be measured in economic terms.

²⁵ Martin Vranken , Damages For 'Wrongful Birth': Where To After *Cattanach*?, (2003) 24 *Adelaide Law Review* 243-262. Available at: <http://www.austlii.edu.au/au/journals/AdelLawRw/2003/20.pdf>

²⁶ *Spring Meadows Hospital & Anr vs Harjol Ahluwalia*. A <http://indiankanoon.org/doc/1715546/vailable> at:

²⁷ *Nizam'S Institute Of Medical Sciences vs Prasanth S.Dhananka & Ors*

²⁸ *Uttam Sarkar vs. The Management of Tura Christian Hospital*. Available at:

<http://indiankanoon.org/docfragment/155940150/?formInput=TURA>

²⁹ *Ibid*

In *Lata Wadhwa v. State of Bihar*³⁰ the Supreme Court held, "So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation on the basis of services rendered by them to the house. ...This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life." In *Smt. Savita Garg vs. Director, National Heart Institute*³¹, the court observed that " the deceased in the instant case is a housewife and we have keenly borne in mind the following illuminating observations of the Apex Court while determining the quantum of compensation while, at the same time, we are deeply conscious of the fact that no amount of money can ever compensate the sudden loss of a precious life and its heart-rending emotional impact on the deceased's family."

In *Malay Kumar Ganguly vs Sukumar Mukherjee & Ors.*³², it was opined, "Loss of wife to a husband may always be truly compensated by way of mandatory compensation. How one would do it has been baffling the court for a long time. For compensating a husband for loss of his wife, therefore, courts consider the loss of income to the family. It may not be difficult to do when she had been earning. Even otherwise a wife's contribution to the family in terms of money can always be worked out. Every housewife makes contribution to his family. It is capable of being measured on monetary terms although emotional aspect of it cannot be. It depends upon her educational qualification, her own upbringing, status, husband's income, etc."

*Arun Kumar Agarwal Vs. National Insurance Company*³³, the Court expressed, "In India the Courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family."

As far as, medical negligence is concerned, there are specific factors which makes it non-comparable with other forms of negligence, particularly that of motor accidents. It requires a separate treatment because, it effects the rights of the patients who approach doctors, nursing homes and other similar establishments, spending all their money with the hope to live a better life with dignity. The patients irrespective of their social, cultural and economic background are entitled to be treated with dignity which not only forms their fundamental right as well as human right. This is not the case of a victim of other form of negligence, even though; there is certainly a violation of right which demands reparation.

The purpose of remedy in medical negligence, no doubt, is compensating the loss in pecuniary terms. However, is it the only function? Is it not expected to prevent such mishaps in future? Regarding the preventive function, the question arises how we can deter? Unlike traditional torts like battery or assault, negligence lacks a wrongful intention. Rather it stems from an absence of application of mind. It is an omission to take care. A wrongful absence of sense of duty. In order to deter a potential wrong doer, the compensation should be something which the person wants to avoid at any cost. It should be an incentive to him for being diligent. Do the practices of compensating medical negligence in India does that job?

As we have seen in the above mentioned cases, loss of income had been a significant criterion in determining the amount of compensation. And standards are uncertain, rather absent, when it comes to victims who do not earn or earn insignificantly. The amount of compensation awarded

³⁰ AIR 2001 SC 3218

³¹ AIR 2004 SC 5088

³² (2009) 9 SCC 22

³³ (2010) 9 SCC 218

in Balram Prasad's³⁴ case was arrived at by calculating the prospective loss of income for the wrongful death of claimant's wife based on her future potential in the U.S.A. by an economic expert. This was a weighty factor in the amount being the highest ever granted by a court of law in India in such cases. But imagining that the victim was poor house wife of a daily wage worker with nominal academic qualifications, the amount would have been some mere thousands. Arithmetical allocation of compensation satisfies the concept of corrective Justice. But from a socialistic angle, how the equilibrium can be maintained when the initial distribution of resources is not just? When it is between a mighty professional and a poor worker, an influential establishment and an insignificant woman, a strong doctor and a delicate patient.

In Sarla Verma's case³⁵ the Court, held that the multiplier method is the proper and best method for computation of compensation as there will be uniformity and consistency in the decisions. The said view has been reaffirmed in Reshma Kumari & Ors. Vs. Madan Mohan & Anr³⁶. In Sarla Verma's case the Court defined the expression 'just compensation' as ".....Just Compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit."

Justice emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision-making process. While it may not be possible to have mathematical precision or identical awards in assessing compensation, same or similar facts should lead to awards in the same range. Consistency and uniformity should be the result of adjudication³⁷.

The methods of computation used in motor accidents cannot be used in medical negligence. In a motor accident, how much ever, the driver is negligent; he has no idea about the victim of his recklessness. That means, his behaviour is not affected by the socio-economic and political background of the victim. In other words, the increase or decrease in amount of compensation linked to the social position of the victim will not influence his behaviour. On the other hand, a doctor or a hospital for that matter gets a clear idea about the socio-economic background of patient. Therefore, this factor can influence his behaviour. At this point of time 'intention' creeps into negligence, since, he has a choice to be negligent or not. It is dangerously associated with the victim's position.

If the potential income or loss of income is the determining factor in calculating compensation in medical negligence, it can be counter-productive in current Indian socio-economic profile.

In civil law, compensatory damages are the primary monetary remedy, awarded on the basis of the loss or injury to the plaintiff, rather than on the basis of the defendant's fault. The common law has, however, long made provision for the award of non-compensatory damages. These have been variously described as punitive, exemplary, aggravated, vindictive, or retributive.³⁸ The place of these damages, in a civil law that is ostensibly purely compensatory, has always been precarious,

³⁴ Supra note 2

³⁵ Sarla Verma v. Delhi Transport Corporation (2009) 6 SCC 121

³⁶ Civil Appeal No.4646 of 2009 decided on April 2, 2013.

³⁷ Supra note 2

³⁸ *Atcheson v Everitt*, 98 Eng. Rep. 1142, 1147 (27 K.B.1775), Consultation Paper on Aggravated, Exemplary And Restitutionary Damages, The Law Reform Commission, Ireland, April, 1998, pp 3-20. Available at: http://www.lawreform.ie/_fileupload/consultation%20papers/cpAggravatedDamages.htm

and they have often been criticised as anomalous.³⁹ Non-compensatory damages exist on the boundary between the civil and the criminal law, and appear to import elements of the criminal law into the civil.⁴⁰ . The primary purpose of an award of exemplary damages may be deterrent, or punitive and retributory; and the award may also have an important function in vindicating the rights of the plaintiff. The award signals to the defendant that “tort does not pay”⁴¹ and at the same time it vindicates the rights of the plaintiff and the strength of the law. Subjected to a closer analysis, the distinction between the compensatory and punitive purposes of monetary sanctions is difficult to distinguish. J M Kelly has pointed out that a monetary award for the loss of a limb cannot in any real sense compensate for the loss. He argues that the real purpose of the award of compensatory damages is “to put the plaintiff in possession of a sum of money which in the court’s judgment ought to be enough to satisfy his vindictive feelings against the wrongdoer”⁴². Lord Hope said, ‘The function of the law is to enable rights to be vindicated and to provide remedies when duties have been breached.’⁴³ It is agreed that the basic purpose of tort damages is to compensate for the loss of the plaintiff. But in *Blake*, the House of Lords acknowledged that English ‘law does not adhere slavishly to the concept of compensation for financially measurable loss’: damages may be measured by the gain made by the defendant⁴⁴ There exist a controversy regarding the true nature of such damages. Gain-based damages are considered by some as restitutionary and compensatory by some others. The better view is that these damages are vindicatory in nature. Vindicatory damages, which to date have only been explicitly recognised in public law, are neither loss-based nor gain-based: they are a rights-based remedy⁴⁵.It is this function that a remedy must also do while compensating medical negligence.

Recommendations

- The very nature –lack of care can be originated from the disadvantaged position of victim-makes medical negligence different from any other form of negligence and therefore demands separate treatment.
- Calculating the potential income of the victim is not always advisable. This may encourage the wrongdoer to have different standards of duty of care to different people, based on their social position
- Compensation is not possible in many cases as the loss is not computable in monetary terms. Undoubtedly remedy should compensate, but it should also vindicate the rights of the victim.
- The method of computing damages needs to have components satisfying both-compensation and prevention-functions of remedy.

³⁹ *Fay v Parker*, 53 N. H. 342 (1873) at p.382.Supra note 36

⁴⁰ *Ibid*

⁴¹ *Rookes v Barnard* [1964] AC 1129), Consultation Paper on Aggravated, Exemplary And Restitutionary Damages, The Law Reform Commission,Ireland, April, 1998, pp 3-20. Available at: http://www.lawreform.ie/_fileupload/consultation%20papers/cpAggravatedDamages.htm.

⁴² *Ibid*

⁴³ *Chester v. Afshar* [2004] UKHL 41; [2005] 1 A.C. 134 at para. 87 by Lord Hope of Craighead, quoted by David Pearce and Roger Halson, *Damages For Breach Of Contract: Compensation, Restitution, And Vindication*, Oxford Journal of Legal Studies (2007), <http://eprints.whiterose.ac.uk/3518>

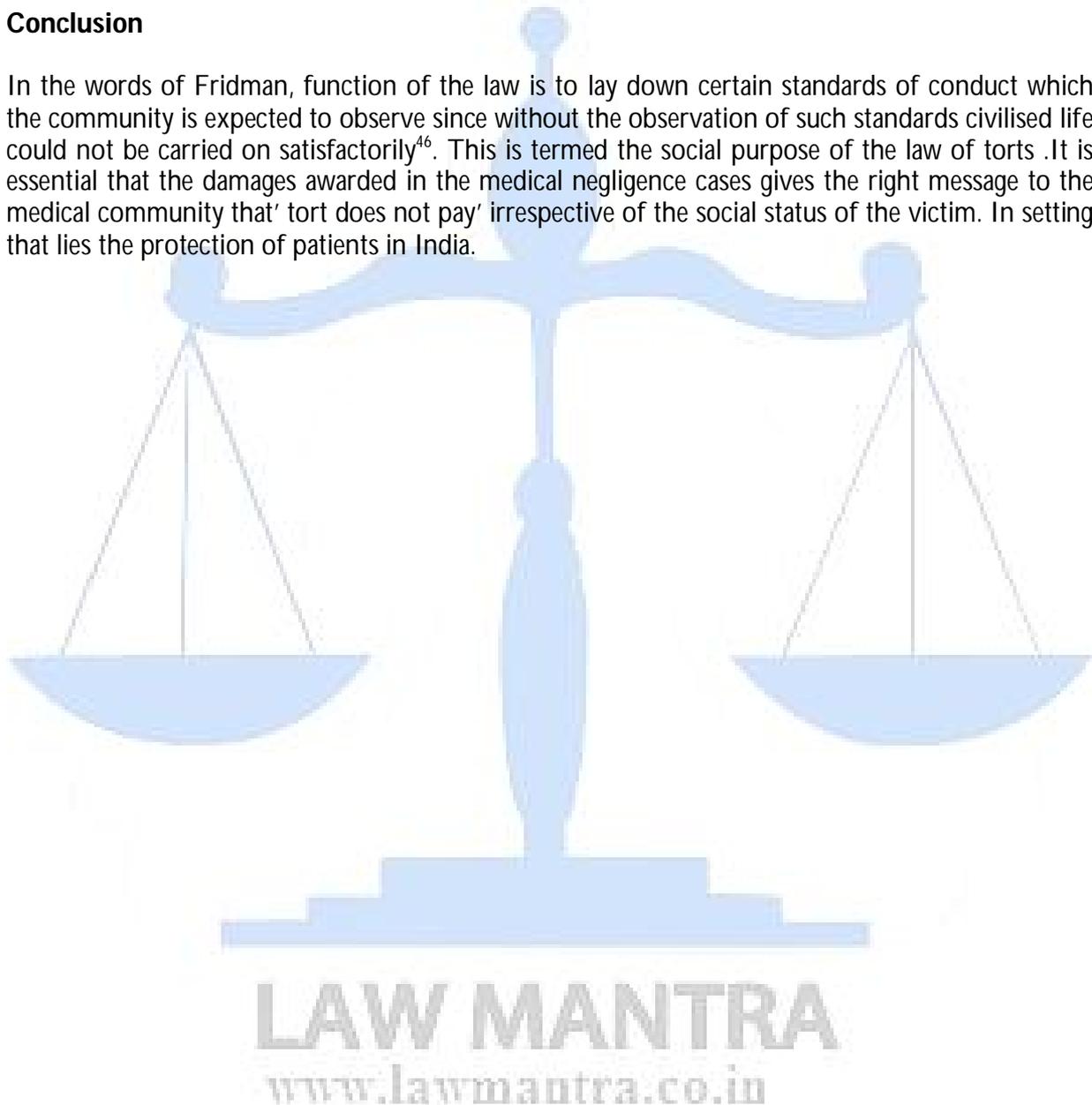
⁴⁴ *A.G. v. Blake* [2001] 1 A.C 268 at 285 by Lord Nicholls of Birkenhead , quoted by David Pearce and Roger Halson, *Damages For Breach Of Contract: Compensation, Restitution, And Vindication*, Oxford Journal of Legal Studies (2007), <http://eprints.whiterose.ac.uk/3518>

⁴⁵ David Pearce and Roger Halson, *Damages For Breach Of Contract: Compensation, Restitution, And Vindication*, Oxford Journal of Legal Studies (2007) Available at: <http://eprints.whiterose.ac.uk/3518>

- Methods of awarding compensation for medical negligence in India, needs to have clear and certain standards, which will ensure consistency and uniformity.
- A comprehensive legislation, in the lines of Motor Vehicles Act, 1988, exclusively dealing with medical negligence is an urgent need.

Conclusion

In the words of Fridman, function of the law is to lay down certain standards of conduct which the community is expected to observe since without the observation of such standards civilised life could not be carried on satisfactorily⁴⁶. This is termed the social purpose of the law of torts. It is essential that the damages awarded in the medical negligence cases gives the right message to the medical community that 'tort does not pay' irrespective of the social status of the victim. In setting that lies the protection of patients in India.



⁴⁶ Fridman, *Punitive Damages in Tort* (1970) 48 Can Bar Rev 373:Supra note 41