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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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CRITICAL ANALYSIS OF MEDICAL PROFESSION UNDER CONSUMER PROTECTION ACT

AUTHORED BY - PRAKRITI THAKUR

ABSTRACT-

The Consumer Protection Act of 1986 was extended to the medical profession in 1995 with the historic ruling in Indian Medical Association v. VP Shantha. This was a total game changer in the sphere of liabilities, accountabilities and doctor patient relationship. The CPA was put into effect in 1986 with the aim of delivering efficient and impactful results, effective protections for consumers against different kinds of threats of abuses and unjust actions. This article delves into doctor patient relationship and talks about the history of samr vis-a-vis the consumer protection act. The paper discusses the various fundamental aspects related to medical negligence, analyses the nature of liability, different legislations which are governing medical negligence; alternate to Consumer Protection Act.

The Consumer Protection Act plays a vital role in ensuring that those harmed by medical negligence are compensated, offering a path for victims to seek justice through civil lawsuits. Many individuals have benefited from the protections this law provides. However, it's important to recognize the delicate nature of handling medical malpractice cases. Each case not only involves legal complexities but also the lives and well-being of both patients and healthcare providers. The legal system must tread thoughtfully, balancing the need for accountability with an understanding of the challenges doctors face. Approaching these cases with care ensures that justice is served without compromising the integrity of medical practice. The researcher by this analysis aims to add to the current discussion on the convergence of law, healthcare, and consumer rights in India.

Key words: Consumer Protection Act, 1986, consumers, medical negligence, doctor patient relationship, law.

INTRODUCTION-

"To array a man's will against his sickness is the supreme art of medicine."

– Henry Ward Beecher

The medical profession is one of the most noble professions; saving lives and curing people is respected in society and has the power to save and save someone's life. Medical professionals are often very vigilant, but at times, negligence might occur, which may result in severe consequences like loss of life or lifetime disability. In medicine, practitioners must offer care according to a standard skill level and dedication, as it is primarily service-centred. Nonetheless, medical malpractice sparks substantial worries over patient well-being and the legal consequences for healthcare professionals. The problem is made worse by the system created by the Consumer Protection Act (CPA) that permits patients to address complaints related to substandard medical care. The medical industry faces profound challenges concerning negligence and liability, with reported cases rising by 90% annually. The Consumer Protection Act (CPA) of 1986 allows patients to seek redress for harm resulting from medical malpractice. Yet, the complexities of proving negligence, legal scrutiny, and the consequent effects on medical practice remain significant hurdles. Under the CPA, patients can file complaints against healthcare providers for inadequate care. Still, concerns are mounting that the fear of litigation may deter doctors from taking on complicated cases or push them toward overly cautious treatments.

The number of frivolous complaints in the medical profession under CPA has also increased. People tend to extort money from doctors and hospitals by filing false complaints over minor issues, naming its negligence. On the other hand, this also affects the doctor-patient relationship as the doctors are hesitant to use mechanisms with lower success rates, which may result in successful remedies sometimes. Still, they don't use medical mechanisms due to the risk and fear of litigation.

HISTORICAL EVOLUTION OF MEDICAL NEGLIGENCE-

Medical errors have been recognized and addressed for numerous years. In ancient times, medical practitioners who made harmful errors faced severe consequences according to laws in Egypt and Rome. From ancient civilizations in India to various parts of the world, people who embarked on a respected career in medicine were assigned particular duties and responsibilities. History shows that the idea of medical carelessness has moved from

wrongdoing to the tort approach. In prior human advancement (code of Hammurabi created by Babylon's top Administrator), specialists' hands were cut off if the patient passed on during the operation. In like manner, the issue of medicinal carelessness in Islamic law, Mosaic law, Charaka Samhita, Sushruta Samhita, Manusmriti, Kautilya's Arthashastra, Yajnavalkya Smriti, where restorative carelessness was viewed as more as a wrongdoing than as a tort.

Before this, the patients were distressed by restorative carelessness and had no compelling adjudicative body to redress their grievances. The Indian Medical Council Act, 1956, after its revision in 1964, now gives that the regulation made by the Council might indicate directly, the infringement of which should constitute unfortunate behaviour. Also, the Council was arranged and accessible just as the state central command, making it scarcely agreeable to the more significant part of gatherings who wished to look for redressal. Further, the Council cannot honour pay to the patients for the harm maintained due to the carelessness of the therapeutic experts. In this way, it does not straightforwardly change the loss of the patients by granting compensation to the distressed victims or complainants.

1. Negligence Under Tort Law-

By virtue of providing his service to the patient, the doctor is burdened with this duty of care by tort law. When the doctor agrees to see and treat a patient, it begins forming a legal relationship between the doctor and the patient, which results in the duty of care by the doctor. The patient is also given rights through tort law so the doctor can provide a proper duty of care. The basis of this legal relationship is the rule of "reasonable reliance" by the claimant on the skills of the defendant.¹ Dealing with the question of duty to take care, the court observed: "Where a person is so placed that others could reasonably rely upon his judgement or his skill or upon his ability to make careful inquiry, and a person takes it upon himself to give information or advice to, or allows his information or advice to be passed on to, another person who, as he knows or should know, will place reliance upon it, then a duty of care will arise."²

2. Negligence Under Criminal Law-

The most stringent and exacting system used by communities to punish and discourage bad conduct is the criminal law. In light of the medical profession, the common transgressions are

¹ Indian Law Institute, "Legal Framework for Health Care in India", Butterworths(2002), p.p. 27

² Bolam v Friern Hospital Management Committee, 1 WLR 582, 1957

listed in the IPC under sections like 304A (Causing death by negligence), 336 (Act endangering life or personal safety of others), 337 (Causing hurt by act endangering life or personal safety of others), 338 (Causing grievous hurt by act endangering life or personal safety of others), 420 (Cheating) and 471 (Forgery).

In addition to these, crimes unique to the medical profession are covered by legislation such as the Medical Termination of Pregnancy (MTP) Act, 1971, and the Transplantation of Human Organs and Tissues Act (THOTA), 1994.

3. Negligence under Constitution of india-

The Constitution of India does not provide any special rights to the patient In fact the patient's rights are basically indirect rights, which arise or now from the relevant 'Articles' which can be applied to cases of medical negligence.

Fundamental Rights

Article 21. "Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law."³

Article 32. 'Remedies for enforcement of rights' conferred by this Part:

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.⁴

Therefore, Indian citizens have the ability to defend their constitutional rights against any party, even the Indian government.

Right to life has been interpreted differently by the Constitutional courts to include right to health,⁵ and this right implies that there is a correlating duty on the doctor corresponding towards the patient to ensure that the medical service provided is reasonable and not negligent

³ INDIA CONST. art. 21

⁴ INDIA CONST. art. 32

⁵ Gian kaur v. st. of punjab, 1996 SCC (2) 648

nor is it lacking, in the event it is proved that the doctor does not fulfil his duties, it can result into a violation of the Fundamental Right, primarily Article 21.

Subsequent to the violation of Article 21, Article 32 provides redressal, article 32 itself is a fundamental right under Part III, which guarantees that no person can be restrained from enforcing or ensuring their rights guaranteed under Part III. Hence the aspect of violation of Article 21, can be a ground to seek remedy under Writ relief in the event a medical negligence can result in violation of Right to Life.

4. The Medical Council Act,1956

IMC Act came into force in 1956, confers powers to the Medical Council of India to discipline erring members of the medical profession. However, this act does not have any provision for the award of damages to the complainant, though it has enough powers to punish the medical practitioners.

Section 24 of the Act, empowers the Council to remove the name of any person enrolled on a state medical register on the grounds of professional misconduct.⁶

Additionally, the Council mandates a code of ethics, manners, and professional behaviour for medical practitioners. The medical councils are responsible for overseeing the abilities and behaviour of medical professionals as well as provide ongoing education in order to self-regulate the industry.

EVOLUTION OF MEDICAL PROFESSION UNDER CPA-

India's Consumer Protection Act, 1986 has given consumers of products and services access to a new, affordable, convenient, and quasi-judicial mechanism of redress. Section 2(1)(d) of the Act defines "service" and "consumer" in section 2 (1) (o). Since the term "service" is not exhaustive, if health Although the service is not expressly stated in the agreement, it has been concluded that the offer covers these services despite the presence of organisations that regulate professionals.

The Supreme Court in *Indian Medical Association v. Shantha*⁷ has been the first case in which the court has included health services in the definition of services under the Consumer Protection Act:

⁶ The Medical Council Act, 1956, sec.24

⁷ Indian Medical Association v. Shantha, 1995 (6) SCC 651

1. Medical Services are treated as in ambit of “services” under Section 2(1) (o) of the Act.
 - It is not a contract of personal service as there is absence of master servant relationship.
 - Contract of service in Section 2(1) (o) cannot be confined to contracts for employment of domestic servants only. The services rendered to employers are not covered under the Act.
2. Medical Services rendered by hospital/nursing home free of charge are not in the purview of Section 2(1) (o) of the Act.
3. Medical Services rendered by independent Doctors free of charge are under Section 2(1) (o) of the jurisdiction of the Act.
4. Medical Services rendered against payment of consideration are in the scope of the Act.
5. A medical service where payment of consideration is paid by a third party is treated as in the ambit of the Act.
6. Hospitals in which some persons are charged and some are exempted from charging because of their inability to afford such services will be treated as consumers under Section 2(1) (d) of the Act.⁸

Medical professionals claimed that the doctor-patient connection is akin to a master-servant relationship, which is a "contract of personal service" and should be excluded from CPA. However, their argument was rejected by the Supreme Court judgement. The doctor-patient relationship, according to the court, is a "contract for personal service" rather than a master-servant one. Additionally, it is believed that the doctor works as an independent contractor and is employed, much like a servant, to do a certain duty. But only the patient, as the master or principal, may decide what has to be done and when. The independent doctor has a specific choice over the "how." Consequently, the doctor-patient relationship cannot be exempt from CPA as it is a "contract for personal service." Nonetheless, the Supreme Court ruled that the same standard used in a negligence damages suit must be applied for determining a deficit in service under the CPA.

However, services provided by a medical professional affiliated with a hospital or nursing home that are provided without charge are outside the purview of the CPA. The status remains unchanged if a token payment is made only for registration purposes.

Section 9 of the Consumer Protection Act, 1986 provides for the establishment of Consumer Dispute Redressal Agencies for the purpose of discharging their duties provided under the Act. According to Section 9, there are three types of agencies:

1. District Consumer Dispute Redressal Forum.

⁸ Id.

2. State Consumer Dispute Redressal Agencies.

3. National Consumer Dispute Redressal Agencies.

District Consumer Dispute Redressal Forum is established by the State Government in each district of the state. The forum consists of a member who is or has been qualified to be a district judge as President and two other members, of which one should be a woman.⁹

When the sought compensation and the value of the goods or services don't exceed twenty lakhs, district forums are able to consider complaints. State Consumer Dispute Redressal Commissions are established by the relevant State Governments. The commission consists of a minimum of two members, one of whom must be a woman, and one member who possesses the necessary qualifications to hold the position of President of a High Court Judge. State Consumer Dispute Redressal Commissions are empowered to hear complaints if the requested compensation and products and services are valued at more than twenty lakhs but not more than one crore.

Furthermore, within 30 days of the District Forum's judgement, anyone who feels wronged by it may very possibly file an appeal with the State Commission. Additionally, the State Commission has the authority to request records and issue directives in relation to any consumer dispute that is either pending before it or has already been resolved by a District Forum and comes before it. that such District Forum has exercised a particular jurisdiction which is not vested in it by law or has failed to exercise a jurisdiction so vested or has irregularity.¹⁰ Performed in the exercise of its jurisdiction illegally or with material National Consumer Dispute Redressal Commission was legally established by the Central Government.

The commission is made up of at least four members, one of whom need to be a woman, and one member who is or has been competent to serve as President of the Supreme Court. The National Consumer Dispute Redressal Commission is empowered to hear complaints if the requested compensation and the value of the products and services total more than one crore. Additionally, anybody who feels wronged by the State Commission's ruling has the option to appeal to the National Commission. Within 30 days of the National Commission's ruling, any person who feels wronged by the order may file an appeal with the Supreme Court of India. The Supreme Court's ruling is definitive.

National Commission, also has the power to call for the records and pass appropriate orders in any consumer dispute which is pending before it or has been decided by any State Commission

⁹ Consumer Protection Act, 1986, sec.10

¹⁰ Consumer Protection Act, 1986, sec. 17

where it appears to the National Commission that such State Commission, in question, has exercised a jurisdiction, not vested in it by law or has evidently failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. The Commission is also having power to review its decision.¹¹

In the past, patients who were harmed by medical misconduct lacked an effective mechanism to file complaints. The Indian Medical Council Act, 1956 was modified in 1964 and now states that regulations enacted by the Council may dictate behaviour, a violation of which may be deemed misconduct. Second, because the Council could only be accessed at the state headquarters, the majority of parties seeking redress had limited access to it.

Further, the council does not have compensating powers for the negligence caused. Therefore, it does not directly redress the loss of the patients by awarding compensation to the aggrieved parties. The introduction of the Consumer Protection Act had a great impact and influence and it changed the scenario of medical services dramatically.

5. Deficiency in service

The word "deficiency" has been defined by Section 2(1) (g) of the Consumer Protection Act, 1986 as follow:

"Deficiency means, any fault, imperfection, shortcoming or inadequacy in the quality, nature, and manner of performance that is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise, in relation to any service."¹²

Consequently, it is evident from the above definition's analysis that inadequate care given by a medical professional is actionable and may be covered by the definition above.

6. Reasonable Standard of Care

In common professional practice, as a general rule, the fact that a defendant performed in accordance with the common practice of other professionals in similar situations is strong evidence that he has not been negligent. To follow a common practice is only evidence, however, it is not conclusive, since the Court may find that the practice is itself negligent. There could be many reasons such as convenience, expenditure, or habit as to why a particular practice is commonly followed, which has nothing to do with exercising reasonable care to

¹¹ Consumer Protection Act, 1986, sec. 21

¹² Consumer Protection Act, 1986,sec.21(1)(g)

avoid harming others. Theoretically there is no reason as to why the general approach taken by the Courts to compliance with the accepted practice should not also apply to actions for medical negligence and it is frequently an issue in many cases.

In the case of *Laxman Balakrishna Joshi v. Dr. Trimbak Bapu Godbole and Another*¹³ certain principles in determining negligence and compensation were laid down. The Supreme Court held that a person who holds himself ready to give medical advice and treatment when consulted by a patient owes him certain duties viz.,

A duty of care in deciding whether to undertake the case.

1. A duty of care in deciding what treatment to give or duty of care in the administration of that treatment.

A breach of any of these duties gives a right of action for negligence to the patient.

The Supreme Court laid down in this case also that a patient can claim compensation in cases of medical negligence if the answers to the following three questions are affirmative.

I. Whether there was a duty of care?

II. Whether that duty was breached?

III. Whether one suffered damage due to that breach?¹⁴

PROTECTION FROM FRIVOLOUS LITIGATION-

Medical practitioners face a difficult and drawn-out trial if they are charged. They could experience severe psychological anguish and social shame.

Since trust is the foundation of the medical profession, any damage to one's reputation would surely have a negative impact on one's career.

Because of this, the courts have frequently adopted a compassionate stance towards physicians, providing them with immunity from arbitrary, hasty punishment. They were concerned with the possibility of frivolous complaints in general, as well as the use of malicious prosecutions by a civil complainant to force the doctor to settle the matter.¹⁵ Unlike the less stringent civil standard of "preponderance of the evidence," criminal law requires the prosecution to establish medical negligence "beyond a reasonable doubt" because of its extremely severe nature. Further safeguards for healthcare providers have been established by the Supreme Court, which established the following rules in the *Jacob Mathew case*:

- On private complaints -the complainant must present prima facie evidence before the

¹³ Laxman Balakrishna Joshi v. Dr. Trimbak Bapu Godbole and Another, 1969 SCR (1) 206

¹⁴ Laxman Balakrishna Joshi v. Dr. Trimbak Bapu Godbole and Another, 1969 SCR (1) 206

¹⁵ Jacob Mathew v State of Punjab MANU/SC/0457/2005

private complaint may be considered. court in the shape of a reliable judgement rendered by an additional capable physician to back up the accusation due to haste or carelessness on the part of the accused physician.

- On First Information Reports (“FIRs”)-- Before taking any further action against the physician who is being accused of acting rashly or negligently, the investigating officer should seek the advice of an independent, qualified medical professional. Preferably, this professional should be employed by the government and qualified in that particular area of medicine. This way, the professional can be expected to provide an unbiased, objective assessment of the information gathered during the investigation. The Supreme Court relied on the English case of *Bolam v Friern Hospital Management Committee*¹⁶ to place the onus to produce independent medical opinion on the complainant. This criteria is commonly referred to as the Bolam test.
- On arrest -Unless the arrest of them is required to collect evidence, advance the investigation, or satisfy the investigating officer that the medical professional didn't make, making oneself accessible to be prosecuted unless arrest, the arrest might not be made.

The prosecution of medical practitioners in a regular manner has effectively been barred by the Supreme Court based only on the charges made in a grievance. Rather, prior to filing for prosecution, Police officers need to ensure that they at least. A strong first argument might be presented in opposition to the healthcare professional and to determine doing this, they need to have a qualified medical opinion from a physician. Thus, even to register an FIR against a medical practitioner, a preliminary inquiry is mandatory.¹⁷

In *Martin F. D'Souza v Mohd. Ishfaq*, the Supreme Court extended this protection to consumer cases, holding that when a complaint is received against a doctor or hospital by the Consumer Fora, then notice can only be issued after a competent doctor reports that a prima facie case of medical negligence is made out.¹⁸

RECOMMENDATIONS FOR FUTURE-

The following are the Suggestions which the researcher would like to put forward:

1. The special forum or mechanisms should be created in order to deal with only medicinal cases, since consumer dispute redressal organisations aren't adequately

¹⁶ *Bolam v Friern Hospital Management Committee*, 1 WLR 582, 1957

¹⁷ *Lalita Kumari v Government of Uttar Pradesh* MANU/SC/1166/2013

¹⁸ *Martin F D'Souza v Mohd. Ishfaq* MANU/SC/0225/2009

manned and qualified to deal with such cases. This would also solve the problem of unnecessary delays, as most cases face extensive delays by judges, who are not fully aware of the medical complexities, which compels them to refer to specialists, a procedure that consumes a lot of time. Therefore, it's very important to remember that justice delayed is justice denied.

2. Otherwise, the provisions of the Consumer Protection Act of 2019 may be used to establish a forum that would only handle complaints involving medical negligence.
3. The Consumer Protection Act is very silent about the concept of medical negligence, so the act needs to be amended so as to widen the scope of the Act and to avoid difficulties and confusions arising while dealing with the medical negligence cases.
4. If establishing a separate Forum to deal with medical negligence cases proves to be a difficult task then one member who is well versed and proficient with principles of medical science or who is a medical practitioner himself must be appointed to sit as a judge exclusively when cases related to medical negligence are brought before the consumer courts.

CONCLUSION-

Life of a person is very important; everybody has the right to life, which also includes their right to health along with the right for the required medical facilities. It is very true that the doctors are taken as equivalent to Gods, as they are considered as the saviours of life. However, this does not mean that any wrongful act done by them or any breach of duty on their part should be ignored and freely let go of. The Indian Penal Code and Consumer Protection Act are the two important and effective pieces of legislation that deal with remedies to any negligent acts committed by a medical practitioner.

These laws are not so drastic to deal with the increasing medical negligence cases appearing before courts. Alternatively as the principles of Natural Justice dictate, there is every likelihood of inherent bias as judges refer to the expert opinion of other medical experts who are likely to hide negligent acts of doctors to protect and foster their fraternity.

Respect for the medical profession has always been in a declining trend. Among the reasons are a deterioration in social values, a materialist approach to life, commercialization of the profession of medicine, greater expectations, and increasing consumer activism.

The remedy of filing a case against the negligent doctor in civil court is not of much use for the victims of medical negligence as it involves heavy expenditure, rigid procedure, and time consumption. The victim of medical negligence who is already suffering because of the doctor's negligence has also had to suffer in getting appropriate relief from civil courts.

Regarding holding medical practitioners criminally liable, courts have taken a sympathetic attitude towards doctors and restrained themselves from punishing doctors under criminal law.

In several appeal cases, the higher forums have sent back the case to the lower forum advising them to consult an expert or specialist due to the fact that the case involves extraordinary circumstances which are beyond the understanding of the members of the forum to adjudicate and hence directions have been issued by the Supreme Court in this regard as to the appointment of an independent authority who has prowess in the said field of medicine. Lastly, it can be concluded that the Forums have failed to appreciate that in the field of medicine, there is always an element of risk which the consumer must be aware of before giving consent to any operations undertaken to be performed on the patients. The trend however, has always been that the consumer ignores the possibility of a failure of the treatment owing to various factors. The factors such as mental health and psychology, bodily acceptance of the medication, diet and proper care by the families of the parents after the surgery/diagnosis are very much essential in rendering the treatment to be made a success.

Lastly to conclude the inclusion of medical profession in the CPA is like a coin with two sides with its own pros and cons, the advantages to patients for early remedy comes at the cost of frivolous litigation and hence creating the fear leading to lack in effective doctor patient relationship and treatment. This can be reformed by few changes in the statute and procedure for just and fair procedures.