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RIGHT OF PATIENTS IN INDIA WITH SPECIAL REFERENCE TO NATIONAL AND INTERNATIONAL STATUTES AND PRECEDENTS

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Introduction

A medical practitioner is primarily a doctor/ physician (registered or certified under law) who practices medicines. Medical practitioner diagnoses and treats the unhealthiness of the patients whether physical, psychological or any harm. They also refer the patient to another specialist, if necessary. Medical practitioner plays a genuinely vital part in the society. They're responsible for society's adding life expectation and well- being. Indeed, during the tough times in Covid- 19, they worked efficiently and effectively as an anterior bottom warrior and saved lives of so numerous people. Doctors are critical to a successful response to the Covid- 19 Epidemic. Doctors, since we all know, play a truly important part in our subsistence that it's critical that there enjoy rights be defended from any other wrongdoing or prejudice by few doctors towards patients.

Legal documents on patient's rights:

In India, there are various legal provisions related to patient's rights which are scattered across different legal documents, such as:

- The Constitution of India, Article 21
- Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002
- The Consumer Protection Act 2019
- Drugs and Cosmetic Act 1940
- Clinical Establishment Act 2010 etc.

In 2019, Charter of Patients' Rights for adoption by National Human Rights Commission was also released which provides a guideline for the central and state to make legislative laws to protect patient's rights.

Do doctors come under Consumer Protection Act,2019:

In a single line, we can say that doctors are neither included nor excluded in the Act. The arguments and counter-arguments both remain strong till this point and is still debatable.

The core arguments that Doctors do not come under the CPA'19 is as follows

- Primary argument is that, that the term medical professionals/ medical service/ health care services or anything referring to medical field is not expressly mentioned under the definition 'Service'. Also, it is not mentioned anywhere else in the Act.
- In the Consumer Protection Bill, initially the term Healthcare was there in the definition of 'Service' but later was removed after receiving criticism from many medical professionals. It was feared that if Medical Professionals come under the Act, then they will be made vulnerable to excessive suits, many of which would be filed to harass doctors or to evade the payment of medical bills.

The core counter-arguments that Doctors do come under the CPA'19 is as follows

- Firstly, under the definition of 'Service' as given in Section 2(42)- "service" means service of any description which is made available to potential users and includes, **but not limited to**, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, **but does not include the rendering of any service free of charge or under a contract of personal service;**
 - Though the definition expressly included many services, the definition does not limit its ambit by including the phrase- **but not limited to** – in it, which clearly gives a broader scope for the 'service' definition.
 - The definition expressly mentions only two things which are excluded, which are services which are rendered at free of charge and services under a contract of personal service e.g., Services provided by a household maid (There is a master servant relationship and not supplier consumer relationship). Doctors and Medical professionals do not fall under either of these categories.

Therefore, we can say that Medical Professionals do come under the CPA '19.

- Secondly, in 1995, the Supreme Court delivered a historic decision in the case of **Indian Medical Association v VP Shantha** which brought the medical profession within the ambit of a service as defined in Section 2(1)(o) of the Consumer Protection Act, 1986 and the same is applied to Section 2(42) of the Consumer Protection Act, 2019.
- Thirdly, the Apex court in the same previous case, also defined that the relationship between the patient and the medical professional is contractual in nature.

Keeping this in mind read with Sec 2(11), CPA '19, which states-

(11) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by aperson in pursuance of a contract or otherwise in relation to any service and includes—

- (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and*
- (ii) deliberate withholding of relevant information by such person to the consumer;*

We can say that Medical Professionals are bound under CPA '19.

Though the chances of medical professionals being harassed through excessive cases are high, the fact which cannot be overseen, is that, to protect the integrity of this profession, the growing cases of medical negligence are a matter of concern, that must be kept under check. Therefore, we can clearly state that, Medical Professionals are governed under the CPA '19. In any special cases, where the question arises regarding Medical Professionals being a part of this act, then at those extraordinary circumstances it is at the discretion of the Court to decide and give answer to its jurisdiction.

Do Patients come under the definition of consumers as per Consumer Protection Act, 2019:

As per Sec 2(7)(ii) "consumer" means any person who—

hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or

promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

It clearly signifies that all the patients making payments for availing health services do come under the definition of “Consumer” by this act. Online consultation is also included in it.

6 prescribed rights of the consumers as per Sec 2(9) of CPA’19

Keeping in mind that patients are consumers, the 6 prescribed rights of the consumers are also given to patients.

- (9) "consumer rights" includes, —
- i. *the right to be protected against the marketing of goods, products or services which are hazardous to life and property;*
 - ii. *the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices;*
 - iii. *the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;*
 - iv. *the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora;*
 - v. *the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and*
 - vi. *the right to consumer awareness;*

In a nutshell, the patient has the right to be informed about the standards, quality and most importantly they have the right to be informed about the critical conditions, the possible ways to go forward with the situation and the possible outcomes of the treatment (So that they could take a voluntary and firm decision) of the medical service which they are availing, the right to be assured that the interests of patients are well taken care of, the right to be heard and they are not exploited. The doctor must always get consent from the patients or the attenders whoever is in the state to give consent before a treatment starts. All these aforementioned rights are directly given to the Patients (consumers) as per Sec 2(9) of the CPA’19.

Why to file a complaint against Medical Professionals in Consumer court?

In **Indian Medical Association v VP Shantha**¹, the Apex court held that all the other Medical Councils have rules, disciplinaries, punishments to medical professionals in cases against him/her. So, what is need for consumer courts in include a forum/remedy for medical negligence case? For this the Apex court in **Indian Medical Association v VP Shantha**² held that Consumer Court, Sec 100 of CPA'19, is an additional remedy given to Patients. It also stated that the procedures/remedies of Medical Council are against practitioners and are done on disciplinary basis. The patients are not benefited from this and they are not compensated for their loss. So, the patients can redress their issues and can claim for damages through Consumer Forum.

The president of District forum is a retired District Judge, the President of State Commission is a retired State Judge and the President of National Commission is the retired Supreme Court judge. The Consumer Forum has the power to get expert opinions from skilled people while giving a fair judgement, therefore one cannot argue that Consumer Forums do not have full capabilities to give proper judgements in complex cases relating to medical field. Therefore, it is best to file a case in Consumer Court for any acts of Medical Negligence. The procedure for filing a case in Consumer court by patients for any sort of medical negligence, is same as filing a normal Consumer protection case. The case can be filed by both online and offline mode.

Rights Provided to Patients as per the Charter of Patients' Rights:³

The charter defines some rights of a patient listed below:

- Right to Information

Every patient has a right to satisfactory and pertinent information about the nature, reason of unhealthiness, provisional verified diagnosis, proposed examinations and operation, and possible complications to be explained at their position of understanding in a language known to them. Patients and their appointed caregivers also have a right to know the professional status of various care providers who are giving service to the patient.

¹ 1996 AIR 550, 1995 SCC (6) 651

² ibid

³ <http://clinicalestablishments.gov.in/WriteReadData/8431.pdf>

- **Right to Records and Reports**

Every patient or his caregiver has the right to look into originals or copies of case papers, internal patient records, and examination reports(during a period of admission, rather within 24 hours and after discharge, within 72 hours) This should be made available after paying applicable fees for photocopying or allowed to be photocopied by patients at their cost.

- **Right to Emergency Medical Care**

As per Supreme Court, all hospitals both in the government and in the private sector are duty bound to supply essential emergency medical care, and injured persons have the right to get emergency medical care. similar care must be initiated without demanding payment/ advance, and basic care should be supplied to the patient irrespective of paying capacity.

- **Right to Informed Consent**

Every case has a right that informed permission must be sought previous to any potentially risky test/ treatment (e.g., invasive investigation/ surgery/ chemotherapy) which carries certain pitfalls. The doctor may advance only if concurrence has been given in writing by the patient/ caregiver or in the manner explained under the Drugs and Cosmetic Act Rules 2016 on informed consent.

- **Right to Confidentiality, Human dignity, and Privacy**

All patients have the right to privacy, and doctors have a duty to hold information about their health conditions and treatment plans in strict confidentiality unless it's essential in specific circumstances to communicate similar information in the interest of guarding other or due to public health considerations. Female patients have the right to be examined in the presence of another female person during physical examination by a male practitioner.

- **Right to Second Opinion**

Every patient has the right to opt for second opinion from a suitable practitioner, of patients' or caregivers' choice. The hospital management has a duty to respect the patient's right to second opinion and should give to the patient's caregivers all required records and information needed for seeking corresponding consultation without any excess cost or delay. Any kind of discriminative practice adopted by the hospital or the service providers will be deemed as Human Rights' violation.

- **Right to Non-Discrimination**

Every patient has the right to receive treatment without any distinction based on his or her sicknesses or conditions, including HIV status or other health conditions, religion, estate, race,

gender, age, sexual aspect, linguistic or geographical/ social origins.

- **Right to Safety and Quality Care According to norms**

Patients have a right to safety and security in the hospital ground. They've the right to be handled with care in an surroundings having necessary cleanliness, infection control measures, and safe drinking water as per BIS/ FSSAI norms and sanitation facilities.

- **Right to Choose Alternative Treatment Options if Available**

Patients and their caregivers have the right to choose between alternative treatment and administration options, if these are available, after considering all aspects of the situation. This includes the option of the patient disapproving care after considering all available options, with responsibility for consequences being borne by the patient and his/ her caregivers.

- **Right to Choose Source for Obtaining Medicines or Tests**

When any drug is specified by a doctor or a hospital, the patients and their caregivers have the right to choose any registered drugstore of their choice to buy them. also, when a particular investigation is advised by a doctor or a hospital, the patient and his caregiver have the right to gain this inquest from any registered diagnostic center/ laboratory having good labor force and accredited by National Accreditation Board for Laboratories (NABL).

- **Right to Take Discharge of Case, or Receive Body of Deceased from Hospital**

A patient has the right to take the discharge and cannot be detained in a hospital, on procedural grounds similar as a disagreement in payment of hospital charges. Furthermore, caretakers have the right to the dead body of a patient who had been treated in a hospital and the dead body cannot be stationed on procedural grounds, including non- payment/ disagreement, regarding payment of sanitarium charges against wishes of the caretakers.

- **Right to Patient Education**

Patients have the right to receive education about major information material to his/ her condition and healthy living practices, their rights and liabilities, officially supported health insurance schemes applicable to the case, applicable entitlements in case of charitable hospitals, and how to seek redressal of grievances in the language the cases understand or seek the education.

- **Right to be heard and seek redressal**

Every patient and their caregivers have the right to give feedback, make commentary or lodge complaints about the health care they're entering or had entered from a doctor or hospital. This

includes the right to be given information and advice on how to give feedback, make commentary, or make a complaint in a simple and user-friendly manner.

Rights to patients under Medical Negligence:

Medical Negligence is one of the most common and important situations where Rights of Patients come into play, so it's very important to know what is medical negligence and what are the remedies that a person can seek for to get justice.

Medical Negligence- Meaning⁴

There are 3 components of medical negligence:

- Existence of legal duty
- Breach of legal duty
- Damage caused by such breach

There are various kinds of situations which amount to medical negligence by a medical professional such as incorrect diagnosis, deferred diagnosis, inaccurate surgery, long term negligent treatment, childbirth and labour malpractice, needless surgery and erroneous administration of anaesthesia etc.

In *Vinod Jain vs. Santokba Durlabhji Memorial Hospital and Ors.*⁵, the Hon'ble Supreme Court observed that the test for negligence shall be from the view point that a doctor who has been accredited with a special skill or competence but does not possess highest expert skill, it would in such case be sufficient that he exercises skill of an ordinary competent man under similar scenario. This is primarily done for greater good of the community at large, to prevent the doctors from thinking about their own safety instead of the safety of the patients.

Standard of Care

The Hon'ble Supreme Court in *Dr. Laxman Balkrishna Joshi Vs. Dr. Trimbak Babu Godbole*⁶ had observed that every doctor must exercise reasonable "standard of care" that are set out in the profession. Any breach towards these duties shall hold him liable for medical negligence.

⁴ <https://lexpeeps.in/consumer-protection-act-2019-reach-on-healthcare/>

⁵ Supreme Court, CIVIL APPEAL NO.2024 of 2019

⁶ 1969 AIR 128, 1969 SCR (1) 206

The State Consumer Disputes Redressal Commission of Jharkhand in *Jagdish Prasad Singh v. Dr. A.K.Chatterjee* directed the opposite party to pay a sum of Rs. 25,000 to the complainant as compensation for his mental agony and physical harassment and Rs. 5,000 as litigation cost. It was observed that the accused had failed to take due care to return the precise findings in their reports. Whether harm came to the patient or not would not be the criteria for case against negligence.

Remedies of Medical Negligence

- **Medical Council of India**

An aggrieved party can file a complaint of negligence against a medical practitioner to the concerned State Medical Council as they have the power to take action against the concerned doctor by suspending or cancelling his registration. However, the Indian Medical Council Act, 1956 does not give them the power to compensate the aggrieved party.

The accused is required to file a complaint to the council precisely specifying all the facts and relevant details in the concerned matter. The council shall then allow the accused 30 days' time to submit his reply. If the council is not satisfied with the reply, then they shall call upon both the parties to present evidence in support of their claims.

- **Civil liability under Consumer Forum**

An aggrieved person can approach the consumer courts to file a case against the accused person and the hospital. The Consumer Protection Act, 2019, the medical services shall fall under the ambit of services as mentioned in section 2(42) of the Act. Any matter in medical negligence on the part of the service provider will be considered as deficiency under section 42(11) of the new Consumer Protection Act, 2019.

Any aggrieved person can claim damages for medical negligence against a doctor or a hospital. Section 69(1) of the Consumer Protection Act, 2019 lays down the time limit within which a complaint for medical negligence must be filed as 2 years from the date of injury.

- **Criminal liability**

Under various provisions of Indian Penal Code, 1860 any person who acts negligently or rashly that results in threat to human life or personal safety or; results in death of a person then the person

shall be punished with imprisonment and/or fine. However, the court have observed that in a matter of negligence where a criminal case is being perused, the element of "mens rea" must be shown to exist. To check for criminal liability, it must be clearly shown that the accused did something or failed to do something which in the given circumstances no other medical professional in his ordinary senses and prudence would have done or failed to do.

- If a medical professional behaves in a "bad faith" manner or without providing the necessary care or attention [**Section 52, IPC**],
- Simply put, the issue is whether the harm that a doctor intended to prevent or dissuade was so severe and imminent that it justified or excused the risk of performing the act while knowing that it was likely to do harm. [**IPC, Section 81**]
- The practitioner is responsible if a medical operation is carried out with the patient's permission and in good faith but is still against the law [**Section 88 read with S. 91, IPC**].
- Rash or careless behavior that puts someone's life in danger or harms them [**Sections 337, 338, IPC**]

The aggrieved party will first file a complaint with the local police authority against the concerned person/persons. If no action is taken, the aggrieved party can file a criminal complaint under Criminal Procedure Code, 1973.

Inferences

Patients should have more power as consumers to advance patient-centered treatment and enhance results. However, because the health care industry differs from other consumer-oriented industries, it cannot be entirely the patients' burden to lower costs and improve quality. Because the health care sector differs from other industries, we must be cautious when seeing patients as consumers. Medical personnel are not allowed to treat patients like consumers and provide unneeded care. Additionally, while demanding specific therapy, the patient is not always right.

More than ever, consumers are actively involved in making decisions about their health care. Despite the fact that technology has increased everyone's access to information, more information is not always better, and misinformation can be particularly harmful in circumstances related to health care. The disparity in authority between the patient and the doctor has led to numerous other problems. Doctors are no longer the stewards of medical knowledge due to changes in access to patient records. Patients run the danger of serious misinterpretation when they have access to

all of this information and lack the necessary knowledge. Patients can find a lot of information in the form of qualitative patient narratives, which, while enticing, can be misleading in the absence of quantitative data. It is crucial for doctors to direct their patients to helpful tools and services and act as good custodians of patient-generated data.

Suggestions and Conclusion

Any practitioner's primary responsibility is to do their duties carefully and diligently. They must be knowledgeable of all the procedures that must be followed and that have been established by the Indian Medical Council. Records, a narrative of the case, and a list of therapies administered must all be properly filed and available upon request for patients or submission to the court. Always obtain the patient's or the attender's consent if they are in a position to do so and are in a reasonable state to do so. The patient must be fully informed of the purpose for their assent, and the consent paperwork must be prepared in plain language that the patient can understand.

The patient has to be informed of any potential risks and hazards that might exist during the course of their therapy. Finally, the practitioner should not worry about a case being brought against them unnecessarily by the patients if they act carefully and practice quality care. The court has recently dismissed many instances that were manifestly fraudulent, superfluous, or unreasonable claims made by patients even before they went to trial. The consumer courts take special precautions in these circumstances to safeguard the medical professionals from harassment by patients with their flawed claims.