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ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

CASE COMMENT - INDIAN MEDICAL ASSOCIATION VS. V.P. SHANTA: A QUESTION OF INCLUSION OF MEDICAL SERVICES UNDER CONSUMER LAW

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ABSTRACT

The medical profession is crucial and intricately linked to the legal system and other domains. With the advancement of science and technology, there has certainly been an upskilling in medical services and patient comfort. However, this progress is also accompanied by a certain level of complexity. The author aims to shed light on an issue which has re-emerged recently, related to a case that fosters the inclusion of medical services under consumer law.

Due to the soaring expenses of healthcare, policymakers are increasingly turning to market competition to improve care quality and efficiency while lowering costs. However, healthcare markets are not flawless, and the effects of free competition in this sector may conflict with policy objectives. The Indian consumer rights landscape was completely changed by the crucial ruling in Indian Medical Association vs. V.P. Shanta (1995). By holding that medical services are covered by the Consumer Protection Act of 1986, the Supreme Court redefined the definition of medical services. The focus here is on the issue of services and their relationship to the professional sector. Nonetheless, the court's ruling gave patient rights precedence over this contention, ensuring increased responsibility for medical professionals. Through this case analysis, the author emphasises various aspects of the issue, calling for a subtle balance between the two, without neglecting the purpose and perspective of doctors.

Keywords: consumer law, medical profession, services, consent, medical negligence.

I. Introduction

An important step has been taken with the Supreme Court's recommendation to reevaluate doctors' eligibility under the CPA. The Supreme Court decided in May that advocates cannot be held accountable for service deficiencies under the 1986 Consumer Protection Act. The Court further stated that it could be necessary to review its 1995 ruling that held medical professionals liable under the Act. It recommended a re-examination of the Act's definition of

ISSN: 2582-6433

"services," which include the medical industry. A larger Bench will be presented with the matter. Should physicians be exempt from the Consumer Protection Act, just like attorneys?

The Indian Medical Association (IMA) President, Dr. R.V. Asokan, is a fervent supporter of reevaluating this ruling of Indian Medical Association Vs. V.P. Shanta[1]. According to him, the ruling was never intended to apply to medical practitioners, and its application has damaged patient-physician trust. According to Dr. Asokan, the law has produced a situation in which physicians are seen as service providers and patients as clients, undermining the basic trust that ought to be present in a medical relationship. The practice of defensive medicine may decline if physicians are exempt, which might also alter the way medical malpractice cases are handled. This could lead to reduced healthcare expenses and increased trust in the doctor-patient relationship. The discussion on the case will entail discussion on compensation aspect to the patients. Saroja Sundram, executive director of Consumer and Civic action group said, "Action against malpractice is one thing, but to compensate an aggrieved consumer is another. As we have an ombudsman for the insurance, banking, and electricity sectors, maybe we should have an independent authority to deal with these issues in the medical sector too."

To guarantee that patients still have a means of resolving valid complaints, this modification would also need to be carefully considered. It will be essential to strike a compromise between safeguarding physicians from baseless litigation and upholding patient rights.

II. Facts of the case

A Division Bench[2] of the Andhra Pradesh High Court ruled that services provided for payment by private physicians, private hospitals, and private nursing homes qualify as "services" under Section 2(1)(d) of the Act, and that those who use these services are "consumers".

A Division Bench of the Madras High Court adopted a different stance in the case[3] that a patient cannot be regarded as a "consumer" under the Act because the services provided to them by a hospital or a medical professional in the form of diagnosis and treatment—both medical and surgical—would not be regarded as "services."

Furthermore[4], there have been conflicting decisions from the National Consumer Disputes Redressal Commission (NCDRC) about whether medical services—especially those provided in government hospitals—can be classified as "services." The Supreme Court combined many

[1] Indian Medical Association Vs. V.P. Shanta 1995 (6) SCC 651
[2] Dr. A.S. Chandra v. Union of India 1992(1) ALT 713
[3] Dr. C.S. Subramanian v. Kumarasamy & Anr. [1996] 86 COMPCAS 747
[4] https://www.legalserviceindia.com/legal/article-6010-case-analysis-vp-shanta-v-s-indian-medical-association.htm

ISSN: 2582-6433

appeals to address these discrepancies under the present case of "VP Shanta v/s Indian Medical Association".

III. Issues Involved in the Case

The above case has two sets of issues as decided by the court, which were crucial to decide on the matter of inclusion of professional service as medical under consumer protection law:

- Does Section 2(1)(o) of the Consumer Protection Act of 1986 allow a doctor, hospital, or assisted living facility to be considered a "service"?
- In what situations might a hospital or nursing service be considered a "service" for the purposes of Section 2(1)(o) of the Consumer Protection Act of 1986?

IV. Arguments in Support of the Petitioner

According to the IMA, doctors' services are not only commercial in nature and the medical field is subject to ethical standards. Therefore, in accordance with section 2(1)(o)[5], they shouldn't be categorized as "service". They stressed that the Medical Council of India has the authority to discipline physicians and that they are governed by the Indian Medical Council Act.

The provision of the original judgement which states that service rendered by a medical officer to his employer are not considered as service under the contract of employment under consumer protection act as it is typical case of employment involving broader set of responsibilities should be left undisturbed. The term of medical services was included in the draft of the earlier act, but after the slew of deliberations, it was excluded.

They contended that this professional regulation should shield them from consumer legislation. IMA further contended that because of the nature of the medical field, services cannot be evaluated according to any set criteria. Given the inherent uncertainties in healthcare outcomes, it is inappropriate to use consumer law to determine the outcomes of medical treatment and to compare with other professionals due to its complexity.

Many doctors have turned to defensive medicine, ordering extra tests and treatments to protect themselves from future lawsuits, out of fear of being sued. According to numerous experts, this

[5] Consumer Protection Act, 1986, No. 68, Act of Parliament,1986

ISSN: 2582-6433

not only drives up healthcare expenses but also puts medical personnel under unnecessary stress. Sometimes proving a doctor's innocence may be a terrifying experience, especially when someone has done a wonderful job but is still viewed with suspicion. The situation truly saps doctors' souls.

According to Woolhandler and Himmelstein, the market model integrates health care into the economy, which deals with commodities or uniform items and services that are purchased and sold for a profit. The requirements and preferences of patients, as well as the quality of health care services, vary greatly.[6]

V. Arguments in Support of the Respondent

According to the respondents, patients become consumers under the Consumer Protection Act when medical services are rendered for a fee because this creates a contract. Patients have the right, as consumers, to pursue compensation for any carelessness or shortcomings in the services that physicians or hospitals provide, which is included in the definition of deficiency of services undertaken to perform contractual obligations.

They further contended that any action performed for consideration, including medical consultation, diagnosis, and treatment—whether surgical or medicinal—is included in the Act's broad definition of "service." Given the profound effects that medical malpractice may have on patients' lives, they emphasized the significance of upholding patient rights and maintaining responsibility within the medical community. Justice in these situations depended on enabling patients to seek quicker and less expensive remedies through consumer forums.

According to the Supreme Court's interpretation[7] of the definition of "service" in the main part of Section 2(1)(0), there is no justifiable reason to reduce the breadth of that section in order to exclude the services provided by a medical professional from the main part of Section 2(1).

The Consumer Protection (Mediation) Rules, 2020, Section 4, states that cases involving medical malpractice that causes grievous injury or death should not be sent to mediation cells. This suggests that the medical field may be covered by this act. Some people also argue that

[6] https://www.imo.ie/policy-international-affair/documents/imo-submissions-archive/IMO-Position-Paper-on-the-Market-Model-of-Healthcare-Caveat-Emptor.pdf
[7] Lucknow Development Authority case (1994) 1 SCC 243

ISSN: 2582-6433

adjudication of the issues related to medical services by the consumer courts could also hasten the process of justice delivery system, as they are specialised courts with lower burden of proofs and less complex procedures.

VI. Similar Concerns raised in the Legal Profession

A Supreme Court panel consisting of Justices Bela Trivedi and Pankaj Mithal ruled[8] on May 14, 2024, that advocates would not be held accountable for service failures under the Consumer Protection Act, 2019 (CPA). As explained[9] by Justice Trivedi that, a professional cannot be compared to a businessman, trader, or supplier of goods or services due to the nature of their work, which requires a great deal of education, training, specialized mental effort, and proficiency operating in particular domains where success frequently depends on factors beyond one's control. It was stressed by Justice Pankaj Mittal, that the legislature never meant for the Act to cover lawyers.[10]

The Advocates Act of 1961 is a unique statute that covers professional misconduct, including cases of negligence. Attorneys are subject to professional and ethical duties. Professionals are subject to their respective Councils' regulations. The nature of the professional-client interaction differs fundamentally. The advocates' legal services would fall outside the scope of the services specified by the CP Act due to the intricacy of legal matters and the variety of legal situations. The sui generis character of the Indian legal system, which has its roots in common law traditions, was covered.[11]

The bench came to the conclusion that the client has "considerable amount" direct control over how an advocate performs their duties while they are employed. The bench then deduces that this makes it clear that an advocate's services would be considered a "contract of personal service" and would not fall under the CPA's definition of "service."[12] The court[13] established the following test in recognition of the challenge of clearly differentiating between a "contract of service" and a "contract for services." Therefore, the proper approach would be to think

[8] Indian Lawyers v. D.K. Gandhi 2024 SCC 928
[9] https://www.scobserver.in/journal/lawyers-excluded-from-the-consumer-protection-law-are-doctors-next/
[10] https://indianlawwatch.com/advocates-not-under-the-ambit-of-consumer-protection-act/
[11] Byram Pestonji Gariwala v. Union Bank of India and Others (1992)
[12] https://consumer-voice.org/legal/advocates-are-not-service-providers-under-consumer-protection-act/#:~:text=A%20service%20hired%20or%20availed%20of%20an%20Advocate,Section%202%20%2842%29%20of%20the%20CP%20Act%202019.
[13] Dharangadhra Chemical Works Ltd. v. State of Saurashtra and Others (1957)

ISSN: 2582-6433

about whether the employer had adequate control and supervision given the nature of the task.

VII. An Insight into the Standard of Care and a Comparative Analysis of Consent

The honourable Supreme court issued guidelines in a case[14] which held that healthcare providers are legally required to conduct a duty of care towards their patients under the Consumer Protection Act of 1986. This calls for them to treat patients with diligence, expertise, and competence. When a medical professional consents to treat a patient, a doctor-patient relationship is established. The responsibility of care is based on this relationship. The Bolam test is often cited even though it is not formally stated in Indian law. It proves that a physician who adheres to a known medical practice is not irresponsible, notwithstanding disagreements within the medical community. This test highlights the need for the standard of treatment to be founded on what the medical community as a whole deems appropriate, which showcases that there cannot be a single barometer to classify under consumer's domain. But, the guidelines fail to exemplify that medical negligence may be caused by structural problems in the healthcare system, such as a lack of resources, personnel shortages, or inadequate training, which the standards might not address.

Informed consent is a basic prerequisite for medical practice under the Consumer Protection Act of 1986. Before giving their consent for a medical operation, patients have the right to be fully informed about the risks, advantages, and available options. This guarantees that patients make choices knowing exactly what they are consenting to. Consent is a complex concept which entails different implications in various spheres of lives, thus different in the context of medical services and consumer protection law:

Consent under medical services[15], which may be both oral and written, is not just about agreeing to receive healthcare services but involves understanding the risks, benefits etc., under the consumer law. Consent may be more complexed and have more legal, ethical and professional ramifications in the case of doctor-patient relationships than in the case of consumers. The onus is on the patient to demonstrate that the his/her refusal to agree to the procedure or treatment was the reason it was not performed. It may be a complex procedure, as in the case of medical services, to revoke[16] consent at any stage and thus cannot be compared

[14] Kusum Sharma & Ors. v. Batra Hospital & Medical Research Centre & Ors
[15] https://pmc.ncbi.nlm.nih.gov/articles/PMC2779959/#CIT8
[16] https://www.gilmanbedigian.com/can-consent-be-limited-or-withdrawn/

ISSN: 2582-6433

with consumer law. In addition to this, third party consent is not allowed, except in the case of minors, in consumer domain, while third party consent may be allowed under emergency situation or the patient is incapable.

VIII. View of the Court's Analysis

After considering arguments against it, the Supreme Court ruled that medical services are, in fact, covered by COPRA. It underlined that culpability for medical practice negligence can be proven using well-known tests such as the Bolam Test and that damages resulting from such negligence can be compensated for. Further, the court explained that medical services are nonetheless covered by COPRA even if there is no master-servant relationship between physicians and patients.

The ruling further clarified the types of payments for medical services, stating that both those who pay for non-paying patients and those who pay the entire amount are regarded as customers under COPRA. Consequently, this judgment broadens the scope of the CPA to encompass most private and government hospitals, along with employed and independent medical/dental practitioners, except those engaged in specified welfare activities. The law permits certain organizations, which serve low-income, disabled, or otherwise disadvantaged people, to concentrate more on delivering care rather than navigating complicated compliance procedures by exempting them from several CPA restrictions.

The Supreme Court recently heard a review petition on December 10, 2024, asking for a reconsideration of its November 7 order upholding the 1995 ruling in Indian Medical Association v. V.P. Shantha. The petition contended that removing physicians from the Act would allay their concerns about their careers, improve patient-physician confidence, and avert a medical emergency. The Court underlined how important it is to balance patients' rights with professional concerns. Since the Medico-Legal Society of India, an intervenor in the case, was not given a hearing, the petitioners emphasized the violation of natural justice norms. They maintained that in order to maintain equity, issues that have an impact on the medical community should be discussed with the competent professional associations. The following hearing will cover more general issues of litigation stress and how it affects medical practice.

No mention of the professions or services rendered by professionals, such as doctors, advocates, and others, was made in the statements of purposes and reasons of the CP Act, 198

ISSN: 2582-6433

6, or 2019. The following is a declaration of the objectives and rationale for re-enacting the aforementioned Act of 2019:

"The Consumer Protection Act, 1986 (68 of 1986) was enacted to provide for better protection of the interests of consumers and for the purpose of making provision for establishment of consumer protection councils and other authorities for the settlement of consumer disputes, etc. The modern market place contains a plethora of products and services. The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices."

IX. Examining the Decision

The judgement opens the discussion of liability of doctors under consumer protection act and its further implications on doctor-patient relations. If the doctors are solely responsible under Indian Medical Council Act, then it would mean that bodies have medical professionals and experts who can assess whether a doctor's actions in line with accepted medical standards, leading to more informed, expertise and relevant decisions regarding medical negligence or misconduct.

Neither doctors can be termed under contact for personal services as the procedures taken by them cannot be dictated by the patients as mentioned under section 2/1(o) of The Consumer Protection Act, 2019. As highlighted in Nabha Power Limited V. Punjab State Power Corporation Limited & Another.[17] Furthermore, the Hon'ble Apex Court[18] established a golden rule of law: no reasonable professional would purposefully do something that would cause the patient to suffer harm or loss because their professional reputation is on the line. His career could be severely damaged by a single setback. The *res ipsa loquitor* rule is not universally applicable, even in civil jurisdiction. It must be applied extremely carefully and cautiously to cases of professional negligence, especially that of doctors, or it would be counterproductive. Using the principle of *res ipsa loquitor*, a doctor cannot be held directly accountable only because a patient has not responded well to a treatment, they have given them or because a procedure has failed.

[17] Civil Appeal No. 8478 of 2014
[18] Jacob Mathew v. State of Punjab AIR 2005 SC 3180.

ISSN: 2582-6433

Earlier this year, a two-judge bench of the Supreme Court comprising Justices Bela Trivedi and Pankaj Mithal had observed that the 1995 judgment required reconsideration "having regard to the history, object, purpose and the scheme of the CP Act and in view of the opinion expressed by us hereinabove to the effect that neither the "Profession" could be treated as "business" or "trade" nor the services provided by the "Professionals" could be treated at par with the services provided by the Businessmen or the Traders, so as to bring them within the purview of the CP Act."

In dissonance with above arguments, it is said that there are several judgements[19] which have been decided against the consumers as well and the commissions have handled such cases diligently.

X. Implications and the Way Forward

There is a need of a very strong yet independent regulatory authority which can monitor medical professionals' activity, but they should also have powers to control what is happening. There is a medical indemnity insurance that a lot of doctors subscribe to in order to be safe if they get into any problem, but it is a difficult process if they have to go to courts regardless.

According to Senior Advocate V. Giri, who served as an amicus curiae in the D.K. Gandhi case, said[20] that the CPA should cover advocates who offer services outside of the litigation process and are contacted for legal advice or drafting, but not those who represent clients in court. This principle of differentiation can also be applied in the case of medical profession, if required.

The argument over whether or not physicians should be exempt from the Consumer Protection Act is intricate and nuanced. Although there are compelling arguments on both sides, improving the healthcare system for patients and providers should be the ultimate objective. As this problem develops, it will be critical to take into account the opinions of all parties involved and work toward a resolution that fosters trust, cuts down on wasteful spending, and guarantees that patients get the care they require. Rather than being subject to penalties based on consumer laws, physicians may be disciplined by regulating agencies or medical boards,

[19] Union of India & Anr V. N K Srivasta & Ors
[20] https://www.verdictum.in/court-updates/supreme-court/bar-of-indian-lawyers-jasbir-sigh-malik-v-dk-gandhi-ps-national-institute-communicable-diseases-advocates-under-consumer-protection-act-1535359

ISSN: 2582-6433

which prioritize professional standards over consumer complaints.

One negative implication could be that patients who do not have to bear the full cost of medical care may be inclined to consume more care than is necessary knowing that their insurance company will pick up the bill. [21] The doctor-patient relationship is replaced by a provider-customer relationship under commercialism, and the objective of healing the patient is swapped out for the objective of making money. The needs of the patient and financial requirements present a moral and ethical dilemma for doctors. Larger businesses frequently have some form of monopoly or monopsony power due to economies of scale in health care purchasing and provision, therefore one should be cautious about the potential effects of incorporating the medical profession within consumer services on the broader market and competition.[22]

XI. Conclusion

The analysis of the present case- "VP Shanta v/s Indian Medical Association" is crucial as it explores the implications for both doctors and patients. The court's earlier reasoning focusses on the protection of patients from medical negligence and fraudulent behaviour under consumer law, emphasised that even in the absence of a master-servant relationship between doctors and patients, COPRA still covers medical services. However, it is emphasised that consumer law and the medical profession cannot be compared, as they differ in important aspects, such as consent. This could complicate litigation and procedural costs. Instead of facing penalties under consumer legislation, doctors may face disciplinary action from medical boards or regulatory bodies, which prioritize professional standards over customer grievances. There is a subtle distinction between professional services like medicine or advocacy and business practices. Hence, this matter will have long term implications and a proper balance must be created. Doctors should not be held to the lower standards of consumer law, which must be carefully addressed by expert members and stakeholders to minimise future complications.

[21] Joumard I. André C. Nicq C. OECD 2010: 124
[22] https://www.imo.ie/policy-international-affair/documents/imo-submissions-archive/IMO-Position-Paper-on-the-Market-Model-of-Healthcare-Caveat-Emptor.pdfs