CONSUMER PROTECTION AND MEDICAL NEGLIGENCE IN INDIA: BOON OR BANE

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ABSTRACT

Medical Negligence is a growing area of concern in India and this research paper shall deal with the medical malpractices, negligence and ethics in India. A critical analysis shall be done to find out the reasons behind the increasing number of medical negligence cases after the establishment of the Consumer Protection Act. Ever since the relationship between doctors and patients had been established as a contract for personal service and not contract of personal service according to the Consumer Protection Act, 1986, in the Indian Supreme Court judgement of Indian Medical Association V. VP Shantha, doctors have been found negligent in most cases appealed by patients. The steady growth of medical negligence cases over the years has led to a rise of questions such as- Are the doctors ignoring medical ethics? Are the doctors devaluing patients' well-being? But, there can also be questions from other perspectives such as- Are doctors afraid to come to a probable diagnosis because of the growing knowledge of the patients' ability to find out the risks involved in procedures due to the concept of informed consent? Is that a reason for the doctors to take less effective but safer treatment methods, as they do not want to be the reason for the hospital to get sued? Doctors are considered to be next to God in this country. The objective of this research is to find out if the growth of medical negligence in India, is a boon or a bane; to look at perspectives from both the patients' (consumers) and doctors' (service providers). The elements of negligence, defense to negligence, duty of care, degree of care, standard of care, the history of medical negligence, the inclusion of medical negligence in the Consumer Protection Act, the difference between civil and criminal negligence in the medical field, the growth of medical negligence, landmark judgements of the Supreme Court defending the patients and landmark judgements of the Supreme Court defending doctors shall be discussed in this article.

Keywords: *Medical Negligence, Consumer Protection Act, Doctors (service providers), Patients (Consumers)*

AIMS AND OBJECTIVES

The objective of this research is to find out if the growth of medical negligence in India after the implementation of the Consumer Protection Act, is a boon or a bane; to look at perspectives from both the patients' (consumers) and doctors' (service providers).

SCOPE AND LIMITATION

The scope of this research is to look into the elements of negligence, defence to negligence, duty of care, degree of care, standard of care, the history of medical negligence, the inclusion of medical negligence in the Consumer Protection Act, the difference between civil and criminal negligence in the medical field, the growth of medical negligence, landmark judgements of the Supreme Court defending the patients and landmark judgements of the Supreme Court defending doctors shall be discussed in this article. However, the research is limited to the situations happening only in India and the cases are concerned only with the Consumer Protection Act.

RESEARCH QUESTIONS

1. Whether there has been a cumulative increase in the number of medical negligence cases after the implementation of the Consumer Protection Act.
2. Whether the creation of consumer awareness among patients in India has created an effect on the doctors' ability to make decisions.
3. Whether there is an increase in apathy, ignorance of ethics and devaluation of patient's well-being by doctors; and to find out if this increase in negligence by the service providers has led to the increase in medical negligence cases in India.

RESEARCH METHODOLOGY: DOCTRINAL

SOURCES

1. **PRIMARY SOURCES**

CASES:

- Indian medical association V. VP Shantha
- Nizam's Institute Of Medical ... vs Prasanth S.Dhananka & Ors
- Jacob Mathew V. State of Punjab and Another
- Calcutta Medical Research Institute V. Bimalesh Chatterjee and ors
- Janak Kanthimathi V. Murlidhar Eknath Masane
- State of Haryana and Others V. Smt. Santra
- Mohanan V. Prabha G Nair
- Dr. Suresh Gupta V. NCT of Delhi
- Laxman Balkrishna Joshi V. Trimbak Bapu Godbole and Another

ACTS:

- CONSUMER PROTECTION ACT, 1986

2. SECONDARY RESOURCES

BOOKS

- Reflections on Medical Law and Ethics in India

ARTICLES

- Medical Negligence liability under the Consumer Protection Act: A review of judicial perspective
- Medical negligence and the law
- Medical Negligence in India
- Medical Negligence
- A Study of Medical Negligence Cases decided by the District Consumer Courts of Delhi
- Medical negligence- Meaning and Scope in India

CHAPTER I- CIVIL NEGLIGENCE (CONSUMER PROTECTION ACT, 1986) AND CRIMINAL NEGLIGENCE (INDIAN PENAL CODE, 1860)

Negligence is a legal wrong under the law of torts. It is a tort that is committed when one fails to fulfil their duty of care on another. The prima facie case for negligence are- there must be a duty of care, there must be a breach of that duty of care, the breach is the proximate cause for the plaintiff's damage and there is actual damage caused. In most cases, there need not be any explicit or implied contract between two parties as per the civil law. However, in this case, there is a contract for personal service between a doctor and patient in India[1]. The doctor has a primary duty of care to take care of their patient and make sure they treat the illness properly. The doctor must take informed consent[2] of the patients before going ahead with any treatment. If they fail to do so, or if there is any breach of duty of care while treating the patient even after the consent, the doctors will be held for the tort of negligence if there is a damage to the patient because of the breach of duty. The standard of care taken by the doctor to take care of a patient is that of a professional. A professional is a person who possesses more skills in that particular than a reasonable person of common prudence. A professional can be from different fields such as lawyers, doctors, architects etc. With the skills a professional possesses, he must also take up the responsibility in providing care to another and must not breach it. In the case of "Jacob Mathew V. State of Punjab and Another[3]", it was held that in the field of medicine, a doctor is considered as a professional and therefore, has a standard of duty of care more than that of a reasonable person of common prudence.

The Consumer Protection Act was enacted in the year 1986 with its objective being creating social responsibility, increasing awareness, providing consumer satisfaction, principle of social justice, principle of trusteeship, survival and growth of business etc. The most important objective being safeguarding the rights of a consumer from producers who give faulty goods and provide deficient services. The relationship of a doctor and patient was found to be that of a service provider and consumer relationship in the case of "Indian Medical Association V. VP Shantha[4]", where the doctor was held liable for medical negligence as the doctor had breached

[1] Indian Medical Association V. VP Shantha (1995) 6 SCC 651
[2] Nizam's Institute Of Medical ... vs Prasanth S.Dhananka & Ors C.A No. 3126 of 2000
[3] AIR 2005 SC 3180 2005 6 SCC 1
[4] In Re. 1

in his duty of care to their patient which led to the tragic demise of the patient. Shantha, the wife of the deceased had filed a case which was decided in the Supreme Court that the relationship between a doctor and patient is a contract for personal service, where in there is an implied contract whereby one party undertakes to render services. Therefore, medical negligence is an accepted case in the consumer forums as the doctors are service providers while the patients are consumers.

A patient is a consumer under Section 2(d)(ii) of the Consumer Protection Act, 1986 while a doctor provides service as per Section 2(o) of the Consumer Protection Act, 1986. Medical Negligence is a form of deficiency of service under Section 2(g) of the Consumer Protection Act, 1986[5]. Ever since this has been laid down, the doctors are feeling the heat as the service they provide is definitely very difficult. They must exercise perfect duty of care and since the doctors are also humans, mistakes can sometimes happen. In India alone, there has been 5.2 million injuries recorded each year due to medical negligence alone[6]. This study was done after the implementation of the Consumer Protection Act in 1986.

Since there are so many cases filed for medical negligence in consumer forums, the doctors or the service providers need some defence for their acts, which are-

1. If the patient is treated in a government hospital and pays only nominal charges, he cannot be considered as a consumer as per the Consumer Protection Act[7] as there is no consideration and therefore, the doctor will not be held liable for medical negligence under the Consumer Protection Act, 1986[8].
2. One of the prima facie necessities of negligence is that the breach of duty must be the proximate cause of damage to the patient. If the patient is unable to prove the same, then the doctor will not be held liable.

Apart from these defences, the burden of proof is on the patient according the case of "Calcutta Medical Research Institute V. Bimalesh Chatterjee and ors.[9]" in the National Consumer

[5] Consumer Protection Act, 1986
[6] J Indian Acad Forensic Med. Jan-March 2015, Vol. 37, No. 1
[7] In Re. 5
[8] Prabhat, Vasu "Medical Negligence in India" Medico legal, December 14, 2011
[9] F.A NO. 388 of 1994

Disputes Redressal Commission (NCDRC). Thus, if the patient cannot prove that the doctor is responsible for the damages incurred by the patient, the doctor cannot be held liable.

However, in certain cases, there is a shift in onus and the burden of proof is on the doctor and the principle of “res ipsa loquitor” will be applied. One such case where the burden of proof was shifted was in the case of “Janak Kanthimathi V. Murlidhar Eknath Masane[10]” where the patient had died due to epilepsy less than 2 days after being admitted and there was clear negligence on the part of the doctors.

Medical Negligence can be a civil wrong under the law of torts and a plaintiff can seek redressal with the help of the Consumer Protection Act, 1986. It is also a criminal offence under the Indian Penal Code, where any person who causes the death of a person by a rash or a negligent act not amounting to culpable homicide shall be punished with imprisonment for a term of two years, or with a fine or both[11].

There are two defences under the IPC for negligence, Sections 80 and 88. Section 80 of the IPC states that nothing is an offence that is done by an accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution[12]. Under Section 88 of the IPC, a person cannot be accused for an offence if they perform an act for the benefit of others in good faith and does not intend to cause harm even if there are risks involved, and the patient has explicitly or implied consent[13].

CHAPTER II- THE GROWTH OF MEDICAL NEGLIGENCE IN INDIA

Medical negligence cases have been steadily increasing in India ever since the Consumer Protection Act has been enacted. Studies show that approximately 3 million lives are lost in India due to medical negligence alone. Medical mishaps are due to incorrect prescriptions, wrong dosages, wrong patients and wrong surgeries. Around 3.2 lakh medical negligence cases

[10] Complaint No. 203/92, F.A No. 739 of 1994
[11] Indian Penal Code 1860, Section 304 A
[12] Indian Penal Code 1860, Section 80
[13] Indian Penal Code 1860, Section 88

are pending in the consumer forums all over the country, which is more than any other type of case in the consumer forums. According to the former registrar of the Delhi Medical Council, the appellate authorities for dealing with such cases, the number of cases from overcharging needless procedures, wrong doctors to wrong decisions has increased since 2013 from 15 cases a month to 40 cases a month. In Mumbai alone, there have been 910 medico-legal cases since the inception of the Consumer Protection Act, 1986 to 2006 according to a report by the Association of Medical Consultants[14].

The duties of the doctors are very difficult. They must not only try to diagnose and cure an illness, but also try to avoid breaching the duty of care towards a patient by making sure their diagnosis of a patient is correct based on theories if the tests conducted are inconclusive. The doctors are sued for a hefty sum of money for their negligence and they suffer a lot. Therefore, the doctors can take the easy route by conducting more tests even though they are inconclusive and follow protocols. This way, even though the doctors follow ethics, they are unable to cure the disease in time and the patients die as the doctors are not allowed to treat illness based on theories even if it seems logical. Thus, there is a possibility that the doctors are more lethargic and do not try to cure the illness of the patient even though they can as it is against the ethics of a doctor.

At the same time, even if the doctor is trying to do the right thing by trying to cure a disease, they might have to break a few ethical rules to do so. if their judgement is wrong like in the case of "State of Haryana and Others V. Smt. Santra[15]", the doctors and the hospital ended paying Rs.2 lakh as compensation. After the outcome of this case, it can be argued that the doctors do not want to take the risk of trying to cure an illness unless they are 100% sure of the disease. This can only mean that the doctors are afraid of being sued. Therefore, even the doctors studied medicine to cure illness and treat patients, they refrain from doing so due to the legal repercussions involved.

Thus, it is difficult to prove whether the implementation of a legal statute to promote consumer awareness is a boon or a bane, as even though the Consumer Protection Act, 1986 has helped in reducing medical malpractices, it has also indirectly curbed the practice of medicine. It can

[14] Supra Note 6
[15] AIR 2000 SC 1888

be argued that the field of medicine is called “practice” of medicine for a reason as no doctor can be a 100% sure even though the law expects the doctor to be so.

CHAPTER III- SUPREME COURT JUDGEMENTS

IN FAVOUR OF THE DOCTORS

1. Mohanan V. Prabha G Nair[16]

In this case, the appellant’s wife had died in a hospital and he therefore filed a case seeking redressal. The doctor was accused of criminal negligence under IPC Section 304 A[17], as the doctor (a gynaecologist) had assured the appellant that his pregnant wife will be alright. This case was appealed to the Supreme Court and the apex court held that, “The mere fact that a patient dies in a hospital does not lead to the presumption that the death occurred due to the negligence of the doctor and in order to make a doctor criminally responsible for death of his patient, it must be established that there was negligence or incompetence on his part which went beyond a mere matter of compensation on the basis of some civil liability and that he did something in disregard for the life and safety of the patient."[18]

2. Dr. Suresh Gupta V. NCT of Delhi[19]

This case helped in differentiating between culpable negligence and error of judgement. It held that a doctor cannot be held for a criminal offence for every medical mishap or misfortune without proper medical opinions and therefore mere carelessness cannot be used to define recklessness and gross negligence as demanded by the IPC[20]. The Supreme Court, understanding the gravity of the situation stated that, “A doctor may be liable in a civil case for negligence but mere carelessness or want of due attention and skill cannot be described as so reckless or grossly negligent as to make her/ him criminally liable. The courts held that this distinction was necessary so that the hazards of medical professionals being exposed to civil

[16] 2004 (2) SCR 112
[17] Supra Note 11
[18] In Re. 16
[19] AIR 2004 SC 4091: (2004) 6 SCC 42
[20] Supra Note 11

liability may not unreasonably extend to criminal liability and expose them to the risk of imprisonment for alleged criminal negligence."[21]

3. Jacob Mathew V. State of Punjab and Another[22]

This case, is perhaps the most important Supreme Court judgement in favour of the doctors as the court laid down certain guidelines to save doctors from undue pressure and unnecessary harassments while performing their duties. The court also held that until the government laid down new guidelines, the guidelines set by the Court shall prevail.

The guidelines laid down in this case are-

- "A private complaint of rashness or negligence against a doctor may not be entertained without prima facie evidence in the form of a credible opinion of another competent doctor supporting the charge.
- In addition, the investigating officer should give an independent opinion, preferably of a government doctor.
- Finally, a doctor may be arrested only if the investigating officer believes that she/ he would not be available for prosecution unless arrested."[23]

IN FAVOUR OF THE PATIENTS

1. Laxman Balkrishna Joshi V. Trimbak Bapu Godbole and Another[24]

The brief facts of the case are, a man met with an accident on the beach in a village which resulted in the fracture of the femur of his left leg. The doctor who had treated him did not give sufficient anaesthesia, which was the death of the patient. The case had been appealed to the Supreme Court where, it was laid down that in this case, the doctor was negligent in his duty

[21] Supra Note 19
[22] Supra Note 3
[23] Supra Note 3
[24] 1969 AIR 128, 1969 SCR (1) 206

which led to the death of his patient and thus had to pay compensation to the patient's family.[25]

2. Indian Medical Association V. VP Shantha [26]

The main issue in this case was that if the field of medicine can be considered under the Consumer Protection Act, 1986. Shantha's husband had died due to the negligence of a doctor and therefore, she sought redressal in the consumer forum claiming that there was a deficiency of service. This case was appealed before the Supreme Court. The apex court differentiated between Contract of personal service and Contract for personal service in this case. The latter implies a contract whereby one party undertakes to render services while the former implies a contract whereby one party must obey the orders of another. Thus, it was decided that the relationship between a doctor and patient is a contract for personal service.

The court stated that a patient in a doctor-patient relationship is a consumer as per Section 2(d)(ii) of the Consumer Protection Act, while the doctor treats the patient by providing service as per Section 2(o) of the Consumer Protection Act. If there is any medical malpractice or mishap involved, then there is Deficiency of Service as per Section 2(g) of the Consumer Protection Act, 1986[27].

This case is a landmark judgement in opening the gate way to a massive number of medical negligence appeals in the consumer forums.

CONCLUSION

The elements of negligence, the standard of duty of care, difference between civil and criminal negligence as per the Consumer Protection Act and Indian Penal Code, the growth of medical negligence cases in India and some landmark judgements in the Supreme Court has been discussed in this research. It is very difficult to deduce whether the implementation of

[25] In Re. 24
[26] Supra Note 1
[27] Supra Note 5

Consumer Protection Act, 1986 is a boon or bane to the nation. The research questions have been answered with relevant examples of statutes and articles.

The number of medical negligence cases filed in the consumer forum will continue to increase. It is difficult to say which doctor is ethical and which doctor is not, which doctor is curing illness and which doctor is not. It is also difficult to tell if the doctors are apathetic or if they are afraid of taking risks due to legal repercussions.

Thus, the question remains, whether the implementation of the Consumer Protection Act, 1986 is a boon or a bane to India.

RECOMMENDATIONS

1. There is need for similar studies on medical negligence, malpractice and ethics from a legal background.
2. Doctors are advised to follow protocols unless it is a situation between life and death while curing an illness of a patient.
3. Need for organisation and classifications of the medical negligence cases in India into Petty, Considerable and Rare.
4. Need for further improved research

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