

CONCEPT OF MEDICAL NEGLIGENCE: A CRITICAL ANALYSIS WITH THE CONSUMER PROTECTION ACT 1986

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INTRODUCTION

Medical profession is one of the noblest professions in the world. In India, the hospital system has been commercialized and aimed to increase the profit rather than to serve the public cause. There has been a continuous and rapid increase in the malpractices and unethical ways used in the particular field. There have also been cases on death or serious impairment of the patient due to the negligence of the hospital staff or the doctor.

Medical Operation is a confusing procedure where there is always a risk of something going wrong. A doctor who due to carelessness commits a mistake which leads to the death or a severe impairment to the patient will always try to avoid that mistake he committed. The main question which comes when we speak about medical negligence is “Whether the doctor will be liable for his acts or not”. In India, there has been no clear legal structure which helps in proving the liability. So this brings the victim will be in a state of confusion on whether to sue the doctor or not.

So this paper deals and analyses the issues on the medical negligence in the light of Consumer Protection Act 1986 and also with the view of the interpretations by the Indian Judiciary.

MEDICAL NEGLIGENCE

Tort

Negligence was defined by the Supreme Court in the case of *Bhalchandra @ Bapu & Another v. State of Maharashtra* the Supreme Court opined that while negligence is an omission to do something which a reasonable man, guided upon those considerations which

ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do; criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted¹

Medical negligence is an act or asset of act which is performed by the doctor carelessly which may lead to the severe impairment or loss of life to the patient. The medical negligence is a serious offence under the tort law.

- Essential Components of Negligence
 1. The defendant owed a duty of care towards the plaintiff
 2. Breach of duty by the defendant
 3. Damage occurred due to the breach of duty

After the introduction of the Consumer Protection Act of 1986, there were many allegations against the medical profession. The Consumer Protection Act provides a shelter for the victims who were affected by the Medical Negligence.

Criminal Law

Section 304 (A) of the Indian Penal Code.

*Causing death by negligence.—whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*²

*In **Kurban Hussein Mohammedali Rangawalla v. State of Maharashtra**³ it was decided that while deciding a case with the Section 304 (A) that while dealing with the criminal act of the medical negligence it is mandatory to have a direct consequence of negligence which leads to the death or impairment.*

¹ *Bhalchandra @ Bapu & Another v. State of Maharashtra*, AIR 1968 SC 1319.

² Section 304 (A) of the Indian Penal Code.

³ *Kurban Hussein Mohammedali Rangawalla v. State of Maharashtra*, (1965) 2 SCR 622

Provisions of Consumer Protection Act 1986

To understand the concepts of medical negligence we must go through the basic definitions provided under the Consumer Protection Act.

Who is a Consumer?

According to the act,

“Consumer” means any person who,—

(ii) [hires or avails of] any services 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 services 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 services for any commercial purpose];⁴

From this definition given in the Consumer Protection act, it is clear to note that even medical patients who avail services from the hospitals with the full payment are covered under this act. Also we would discuss the definitions of deficiency and service to elaborate upon it.

- Deficiency

“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 a person in pursuance of a contract or otherwise in relation to any service;⁵

- Service

“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, board or lodging or

⁴ Section 2 (d)(ii) of the Consumer Protection Act 1986

⁵ Section 2 (g) of the Consumer Protection Act 1986

*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;*⁶

By the above given definition we would come to the conclusion that medical is a service but on the exception of

A. When it is provided free of service

So medical services availed when it is provided under free of cost would not come under the purview of consumer protection act.

In the case of *Indian Medical Association v VP Shantha and Others*⁷ the 3 judge bench of the Supreme Court decided that even the service rendered by the medical practitioners are coming under the purview Service which is defined in the Section 2 (o) of the Consumer Protection Act.

INDIAN JUDGEMENTS ON MEDICAL NEGLIGENCE

In this case *Indian Medical Association v. VP Shantha and Others*⁸ the Supreme Court decided that service rendered by the medical practitioner would also amount to the medical service. But this judgement has got a huge resistance from the field medicine.

The main advantage of this judgement is that it helped the consumers being exploited from the unethical practices followed by the medical practitioner. But this would not cover the free services provided by the medical practitioner and only would cover the paid doctors.

But in the following case the judiciary didn't give the same judgement as in VP Shantha case instead gave a differing opinion. In this case *Achutrao Haribhau Khodwa v. State of Maharashtra*⁹ in this case the court refused to impose the liability neither on the doctor nor the government. The facts of the case were the doctor negligently left a towel inside the stomach of the patient while operating him.

⁶ Section 2 (o) of the Consumer Protection Act 1986

⁷ *Indian Medical Association v. VP Shantha and Others*, AIR 1996 SC 550.

⁸ *Id.*

⁹ *Achutrao Haribhau Khodwa v. State of Maharashtra*, (1996) 2 SCC 634

But in this case of *Spring Meadows Hospital v. Harjot Ahluwalia*¹⁰ the Supreme Court of India gave a very progressive judgement. The facts of the case go as the infant child was taken to a private hospital for a treatment. After the treatment the parents filed for negligence by the doctors. The hospital argued that the parents were not defined under the Consumer Protection Act of 1986 but the court said that it was clearly defined under the Act. This case was a landmark judgment which provided a great power to the consumer protection in India.

In this case of *Dr. Suresh Gupta vs. Government of N.C.T. of Delhi*¹¹ the Supreme Court decided that if a patient died due to the act of medical negligence then under the tort law, then the doctor will be liable to pay compensation for the deceased. But, under the criminal law only if the doctor negligence was the direct cause of the death of the patient then he will be liable under the Section 304 (A) of the Indian Penal Code.

These judgements from the Indian Supreme Court clearly show to us that the judiciary of India had played an efficient role to interpret the Consumer Protection Act and was working well toward the improvement of the consumer rights in India. But there are also cases which were decided on the defence of the doctor against the medical negligence which will be dealt below.

INDIAN JUDGEMENTS FOR DEFENCES OF THE DOCTORS AGAINST MEDICAL NEGLIGENCE

1. In the case of *Jacob Mathew v. State of Punjab & Another*¹² the Supreme Court held that the complainant who complains must be aware of some medical science or if the medical practitioner is held liable he would be facing a serious abuse and harassment in his public life. So there is also need for the doctors who make a noble profession to be protected against a false and frivolous claims made against him.
2. In the case of *Achutrao Haribhau Khodwa & Others v. State of Maharashtra & Others*¹³, the Supreme Court decided that the skills or practices of doctors differ

¹⁰ *Spring Meadows Hospital v. Harjot Ahluwalia*

¹¹ *Dr. Suresh Gupta vs. Government of N.C.T. of Delhi* AIR 2004 SC 4091

¹² *Jacob Mathew v. State of Punjab & Another* AIR 2005 SC 3180

¹³ *Achutrao Haribhau Khodwa & Others v. State of Maharashtra & Others* (1996) 2 SCC 634

according to their experience. Also the medication by the doctor may differ from each one and that doesn't mean that the medication was a wrong one provided that it is an ethical side of medical practice.

3. **Dr. M. Kochar vs Ispita Seal¹⁴**, in this case the National Consumer Dispute Redressal Commission has ordered that in a medical procedure if there is no cure or no success then it would not amount to negligence.
4. In this recent case of **Vinod Jain V. Santokba Durlabhji Memorial Hospital and Ors.¹⁵(2019)** the Supreme Court of India dismissed the order of the National Consumer Dispute Redressal Commission and held that wrong diagnosis does not amount to medical negligence.

THE NEED FOR THE AMENDMENT IN THE CONSUMER PROTECTION ACT 1986

There is an urgent need for the amendment in the Consumer Protection Act of 1986 because of some restriction which make the doctors to act in negligence.

1. The exception of free service which restricts the victims who goes to government hospitals and get free of service. By just excluding this government hospital itself it leads destruction of main objective of the consumer Protection Act.
2. The consideration for the inclusion of government hospitals in this is that even the doctors are paid by the government so it is also. So even they should be held liable for their medical negligence.
3. The main objective of government to provide free medical service is for the welfare of the people but by not making those liable would not serve the cause of the welfare.

¹⁴ **Dr. M. Kochar vs Ispita Seal** I(2018)CPJ41(NC)

¹⁵ **Vinod Jain vs. Santokba Durlabhji Memorial Hospital and Ors.** 2019 (no citation)

CONCLUSION

The Consumer Protection Act was passed in India to ensure the welfare of the people and also the judgements passed from the judiciary are evident that they both are a people welfare legislations. As India is a densely populated country it is difficult for the state to ensure medical facilities to the citizens. Although there private hospitals too, but the services provided in both are mostly negligent.

A human life cannot be taken so light and medical negligence is a growing issue in India. There is a slight difference between a doctors held negligent or not but still this negligence can cause a greater risk.

So it is time for the Indian Legislators to amend the consumer protection act and make it more people friendly in issues like medical errors and malpractices and also make stringent laws to protect the consumer (patients) from being exploited.