

**MEDICAL NEGLIGENCE AND CONSUMER PROTECTION LAW****J. Yadav<sup>1</sup>, M. Rani<sup>2</sup> and T. Sinha<sup>3</sup>**<sup>1,2</sup>Institute of Legal Studies & Research, Mangalayatan University, Aligarh, UP<sup>2</sup>Faculty of Law, Usha Martin University, Ranchi, Jharkhand**ABSTRACT**

*The Doctor and patient relation is predicated on mutual trust and faith. Health profession may be a noble profession. A doctor owes certain duties to the patient who consults him for illness. Consumer Protection Act, 1986 could be a very unique and highly progressive piece of welfare legislation and also the provisions are intended to produce effective and efficient safeguards to the consumers against various kinds of exploitations and unfair dealings. The Indian judiciary has commendable service in protecting and preserving the rights of the consumers further as sensitizing the society concerning the rights of the consumers.*

**Keywords:** Consumer, Medical Negligence, Consumer law.

**Introduction**

Consumer Protection Law may be a handy weapon of consumer to confirm accountability of service providers. Medical negligence gives rise to civil moreover as criminal liability. Civil wrongs an aggrieved person can file claim of compensation either through suit or a complaint lodged in consumer forum. The patients have started using consumer protection law, after they are aggrieved by medical negligence of the health care. Every doctor regardless of the place of his service contains a professional obligation to increase his service for safeguarding life. A doctor owes certain duties to the patient who consults him for illness. Medical Negligence means the failure to exercise reasonable skill as per the final standards and prevalent situations is termed as medical negligence. Consumer Protection Act, 1986 may be a very unique and highly progressive piece of financial aid legislation and therefore the provisions are intended to supply effective and efficient safeguards to the consumers against various types of exploitations and unfair dealings. The Indian judiciary has commendable service in protecting and preserving the rights of the consumers further as sensitizing the society concerning the rights of the consumers. The most objective of the Consumer Protection law is to push and protect the rights of consumers.

**Consumer-**A consumer may be a one that person who hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised or under any system of credit and includes any beneficiary of such services aside from the person hires or

avails of the services for consideration paid or promised, or under any system of credit, when such services are availed of with the approval of the primary mentioned person. This definition is wide enough to incorporate a patient who merely promises to pay. Sec. 2(7) Consumer Protection Act, 2019 defines consumer as-

**"consumer"** means any person who— (i) buys any goods 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 user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) 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<sup>1</sup>.

**Medical Negligence**

It means the failure to exercise reasonable skill as per the overall standards and prevalent situations is termed as medical negligence. It

had been also defined as want of reasonable degree of care and skill or willful negligence on a part of medical practitioners within the treatment of a patient with whom relationship of professional attendants established soon result in his bodily injury or permanent disability or loss of life. So as to prove negligence the aggrieved consumer must be prove following ingredients before the court-

- The doctor breached the duty of care
- The doctor owed him duty of care of a selected standard of professional conduct.
- The patient (Plaintiff) has suffered any injury because of his breach and cause actual damage and therefore the doctor's conduct was directly and approximate cause damage<sup>ii</sup>.

Negligence is just the failure to exercise charge. Medical negligence is not any different. It's only that in an exceedingly medical negligence case, most often, the doctor is that the defendant. It's well-known that a doctor owes an obligation of care to his patient. This duty can either be a contractual duty or an obligation arising out of tort law. In some cases, however, though a doctor-patient relationship isn't established, the courts have imposed a obligation upon the doctor<sup>iii</sup>.

In case of *Parmanand Kataria v. Union of India*<sup>iv</sup> -the Supreme Court observed that "every doctor, at the governmental hospital or elsewhere, contains a professional obligation to increase his services with due expertise for safeguarding life".

In Case of *Laxman v. Trimback*<sup>v</sup> - The duty owed by a doctor towards his patient. The Supreme Court said that "to bring round his task an affordable degree of skill and knowledge and to exercise "a reasonable degree of care".

In *Dr. Kummud Garg v. Raja Bhatia*<sup>vi</sup> - The Court Observed that the doctor would guilty of negligent only if it's when it is proved that he has fallen wanting the quality of reasonable medical aid. It's the chance of complaint to prove the negligence of the doctor. "Merely because the operation didn't succeed, the doctor can't be said to be negligent

In *Jacob Mathew v. State of Punjab and Anr.*<sup>vii</sup> The court observed that: "The practitioner must awaken his task anaffordable

degree of skill and knowledge and must exercise anaffordable degree of care. Neither the very highest nor a really low degree of care and competence is what the law requires." Now what's reasonable and what's unreasonable may be a matter on which even experts may disagree. Also, they will disagree on what's a high level of care and what's an occasional level of care.

### The Consumer Protection Act, 2019

The aim and object of the Act is to produce for defense of the interests of consumers and for the said purpose, to ascertain authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto. It's a really unique and highly progressive piece of welfare legislation and also the provisions are intended to supply effective and efficient safeguards to the consumers against various varieties of exploitations and unfair dealings. It's a handy weapon of consumer to confirm accountability of service providers.

### Deficiency in medical service

"deficiency" means any fault, imperfection, shortcoming or inadequacy within 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 an individual in pursuance of a contract or otherwise in relevancy 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;<sup>viii</sup>

In landmark case in England *Bolam v. Frien Hospital Management Committee*<sup>ix</sup> - the court held that, a doctor isn't guilty of negligence if he acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in this particular act. A doctor isn't responsible for taking one choice out of two for favoring one line of treatment rather than another.

The Indian judiciary has commendable service in protecting and preserving the rights of the consumers likewise as sensitizing the society

concerning the rights of the consumers. The researchers through some case laws try to focus upon the new approaches of the judiciary regarding medical negligence liability under the Consumer Protection Act.

In *Laxman B. Joshi v. T. B. Godbole and Another*<sup>x</sup> in this case the duties which a doctor owes to his patients are clear. someone who holds himself out, able to give medical advice and treatment undertakes that he's possessed of skill and knowledge for the aim. Such a person, who consulted by the patient owes him certain duties, i.e. a obligation of care when deciding to undertake the care, a obligation of care when deciding what treatment to administer and a obligation of care within the admiration of that treatment. A breach of any of these duties gives right of action for negligence to the patient. The practitioner must bring his task an affordable degree of skill and knowledge and must exercise an affordable degree of care, neither the very highest nor a really low degree

of care and competence judged within the light of the actual circumstances of every case is what the law requires.

### Conclusion

The judges observed that the legal system has to do justice to both patients and doctors. The fear of medical profession should be taken into consideration while the legitimate claims of the patient. The core essence of the judgment makes it very clear that there cannot be an assumption that doctors cannot be negligent while rendering care and treatment. The Consumer Protection Act, 2019 protect the interest of the consumers. It provides simplified procedure for resolving the consumer's grievances. Through this Act consumers can protect their interest against deficiency in services. This Act provides a forum to the victims of negligence or deficiency in medical services by providing cheap, speedy and efficacious remedy

### References/End notes

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<sup>i</sup> Consumer Protection Act, 2019.

<sup>ii</sup> Medical negligence liability under consumer protection act: Judicial approaches in India Dr. VG Shinde International Journal of Law ISSN: 2455-2194 Impact Factor: RJIF 5.12 www.lawjournals.org Volume 3; Issue 5; September 2017; Page No. 107-110.

<sup>iii</sup> Medical negligence liability under the consumer protection act: A review of judicial perspective S. V. Joga Rao Indian J Urol. 2009 Jul-Sep; 25(3): 361–371. doi: 10.4103/0970-1591.56205.

<sup>iv</sup> AIR 1989 SC2039.

<sup>v</sup> Air 1969 SC 128.

<sup>vi</sup> 2004, (I)CPJ 369.

<sup>vii</sup> (2005) 6 SCC1.

<sup>viii</sup> Sec.2(11) of The Consumer Protection Act, 2019.

<sup>ix</sup> W.C.R. 582,586,1957.

<sup>x</sup> Air 1969 C 128.