

## Medical Negligence in Consumer Protection Act

Akanksha Yadav\*

### Abstract

*Various Indian laws like IPC (Indian Penal Code), Torts, Indian Contract Act, Consumer Protection Act etc. provides liability for medical negligence. The medical profession is a highly respected responsibility in our society and in here doctors are play important role, they try to contribute their best in it. And they take proper care of patients and treat them extra precautions. But there are also cases of medical negligence because of due to doctors small mistake, the patient has to face many difficulties and some times he has to lose his life too. Consumer court, criminal court or civil court entertain medical negligence cases and there are circled around the consumer protection act, 1986. The act only protects the interest of consumer but also goods and services that consumer purchase for daily use. But it also protects his interest when he goes on medical field. Many medical association have lodged strong opposite of against the doctors and on the basis of that the relationship stuck between the doctor and the patient should not similar to that buyer and supplier and the misconduct or negligence of medical professionals can be exhausted or dispute can be resolved on existing forum like medical council of India, stated medical council and civil and criminal courts.*

**Keyword:** Consumer protection act, medical negligence, civil court, criminal court, liability, protection, interest, patient, doctor

### INTRODUCTION

“Health is Wealth” an old and popular saying [1]. A healthy human being can work hard to earn money. Good health is a great asset, which is the most valuable treasure that everyman can have if he takes good care of his health. One of the largest service sector in India covers under the healthcare sector. In India State, local and central government are also responsible for health sector. But majority healthcare are provided by the private sector in India [2]. Medical service is a highly honourable and noble task. Purity and honour are associated with this profession but now days it has become a commercialization. Many professionals do not follow the full ethics and the code of conduct. With the increasing time, now in the field of medical professional, day by day professionals have come to make fun and a normal man bears his negligence. This concern has now forced us to look at various issues and take action on it. Medication is one of the considerable duties, which is based on the trust relationship plus hope connecting the patient and the doctor.

**Consumer Protection Act**, This act is very important and unique and highly progressive part of the social welfare. Medical negligence is a punishable offence under the various laws as torts, Indian

Penal Code, Indian Contract Act, The Consumer Protection Act, etc. [3]. And it may be defined as the misconduct by doctors is because of this many deaths or illnesses are happened each year. And this paper is cover the legal impact or effect of medical negligence under the Consumer Protection Act. Doctors may be legally responsible for their misconduct according to the act; in here a patient is a “consumer” and the medical services which they get hold of or make available by the doctor under the variety of the services under consumer protection act.

#### \*Author for Correspondence

Akanksha Yadav

E-mail: yakanksha735@gmail.com

Student (BBA LLB 5th Year), Jammalal Bajaj School of Legal Studies, Banasthali Vidyapith, Rajasthan, India

Received Date: October 19, 2021

Accepted Date: November 17, 2021

Published Date: January 04, 2022

**Citation:** Akanksha Yadav. Medical Negligence in Consumer Protection Act. Indian Journal of Health & Medical Law. 2021; 4(2): 39–45p.

In the law of negligence, there are specialized such as, doctors, architects, lawyers, and others and it is generally included in the category of professors of certain skills or expert persons. Furthermore, any duty that needs to be complete by means of a particular skill that will be in general accepted or only if the person possesses the mandatory skills for that performance will it be performed task. Depending on certain pattern, a specialized can be held answerable for one of two negligence, experiment consequence:

1. Either he did not possess the required skills, which he accepted,
2. Or he might not exercise the appropriate qualification

These are the two standards upon which a supporter may be held legally responsible. In addition these justifications need to be proven without any logical doubt.

### MEDICAL NEGLIGENCE

This is derived from the maxim, “**ubi jus ibi remedium**”. It means “medical negligence is the disappointment of a medical practitioner to obtain or make available the logical care as well as the concentration or to make use of the skills that a prudent, capable person would have the under comparable situation [4]. Medical negligence means disappointment to exercise properly. Skills are according to ordinary principles in addition to prevailing circumstances which are called medical negligence. It was also defined as appropriate degree of care and ability or wilful negligence Medical practitioners contribute to in the treatment of a patient with whom a relationship with expert attendant was recognized so that he has physical injury or permanent disability or loss of life.

The consumer needs to prove the following element the court:

1. The doctor violated the responsibility of care;
2. The doctor assigned him a responsibility of care to a particular standard of specialized conduct;
3. The patient is hurt by him violation and actual damage and cause of doctor's conduct was the cause of damage directly and nearly [5].

Doctors perform certain duties for patients who seek advice from for it sickness or lack of sensitivity is a consequence of lack of duty negligence. Breach of duty means to the something or which an appropriate doctor would perform or something that the proper doctor will not do this, even if there is an injury and this injury must have instant and direct consequences compulsion.

Experts are like the medical practitioners an additional point of view is added from side to side an examination which is well-known as the Bolam Test and it is an accepted test in India. In the case of **Bolam v. Fern Hospital Management Committee**, [6] 1A Queen's Bench of British Court Organized that a doctor is not guilty of negligence if he has acted according to acknowledged practice as suitable by an answerable body of men expert in medicine in that particular skill.

Doctors have always been blamed for the death for the reason that they go back as of their duties and look subsequent to their own profit devoid of caring about anyone's life, they still do not be acquainted with that their small blunder can kill an innocent person's life.

There are four important elements of medical negligence:

1. **Duty Was Owed:** It is important to show that the duty of care to the plaintiff was taken by the doctor or medical practitioner is that where the latter opted for the medical treatment.
2. **The Duty Was Breached:** The plaintiff need to confirm that the health provider was not fulfilled with essential and standard care, thus breach of duty.
3. **Injury Due to Breach:** If it was a breach of duty which was the cause of the injury of the plaintiff.
4. **Damage:** Without damages, a claim has no basis, whether the medical provider is negligent or not. However, the loss can also happen without any negligence. Such as someone dying due to fatal disease [7].

As it has previously been stated that the patient is a consumer under consumer protection act and all services provided to the patient are under The Consumer Protection Act. Therefore, there is a require to analyze the meaning of consumer, services and scarcity provided under The Consumer Protection Act, 1986.

### **CONSUMER PROTECTION ACT IN MEDICAL PROFESSION**

**Indian Medical Association v. V P Shantha [8]**, in this case Supreme Court held that Consumer Protection Act, defined that the medical profession within the extent of a facility. It is distinct as the relationship among the patients and the medical expert contractually. Patient who is suffered injuries during the treatment, they can now sue the doctors and can get the compensation by going to the courts under consumer protection court, and it is extremely supportive for the patient.

The court has held that even if the services provided by the medical practitioners are personal other than in the nature they cannot be considered as a contract of individual service (it is excluded under The Consumer Protection Act). They will be a contracted for service because if he does not do this then even a doctor in the consumer protection courts, under this they can be prosecuted.

### **AIMS AND OBJECTIVE OF CONSUMER PROTECTION ACT**

The Consumer Protection Act, 1986 [9] is extremely significant and far above the ground standard which is a progressive element of the social welfare law and to provide safeguard and helpful provisions to the consumers against a variety of forms of exploitation and inappropriate actions. It is a trouble-free weapon to ensure responsibility of service provider to the consumer.

The most important principle of this act to protect and encourage the rights of consumers. Which are as follows:

- i. Right to be protected in opposition to marketing of goods, which are dangerous for life and property.
- ii. The right to seek rectify against the unreasonable practices or dishonest exploitation of consumers.
- iii. Right to be heard and assured that consumers will received interest proper views on appropriate forums;
- iv. Right to be quality, quantity, purity, capacity, explained measure and value of goods to save from harm the consumer in opposition to unfair trade practices.

It is necessary for the consumers to know that how to get their own rights and furthermore be attentive of it. As well as responsiveness is also required for redresses of their grievances so that they keep away from victim of exploitation.

### **WHO IS CONSUMER**

The word consumer is defined separately for this principle of goods and services. A consumer means someone who:

- i. Purchases any goods intended for consideration that has been paid or promised or partially under any structure of delayed payment promised or partially paid and paid to any such user or promised or partly paid or partly promised or is include anyone who acquires such goods for resale or in favour of any commercial intention.
- ii. Who hires a service or service for consideration and has been paid or partly promised or under a system of delayed payment any recipient or included services which are other than heirs or partially or partially promise or paid under any system of deferred payment or the benefit of services for the promised promise when such services are taken with endorsement of the primary person mention.

Each human being who hires or assist the services of a medical specialist after compensation is distinct under section 2 (1) (o) [10]. A patient is also a consumer. The movement of provided that

medical assistance for the expenses through by hospitals and members of the medical occupation falls contained by the extent of service defined under section 2 (1) (o) of the act and every person availing such services under this act will be a consumer. And a consumer is not just an important person who hires or takes benefit of someone rather, it will be well thought-out as the person who is the beneficiary of the services consideration.

### LIABILITY OF MEDICAL SERVICE

It has been observed that Consumer Protection Act, 1986 do great in medical services. Through this Act, the consumer can protect his interest and the services received against his insufficiency. This act does not in particular that the consumer's medical services as per Section 2 (O) of this Act service means services of any description, which is accessible to potential user and take in provision of facilities in relation to banking, financing insurance, transportation, electricity, processing, supplies includes energy, board or lodge or both, housing, entertainment, construction or news purse or information etc. but does not include any appearance of rendering that is suffering flawed drug services to aggrieved consumers.

**Lucknow Development Authority v. M. K. Gupta**, [11] Supreme Court Observed that, the concept of 'service' has a range of significance, it may mean that several benefits or any action will promote the interest of happiness. It can be professional, contractual, statutory, legal, public etc., thus the conception of services is extremely broad.

### INSUFFICIENCY IN THE MEDICAL SERVICE

Insufficiency refers to several defect or imperfection and deficiency or inadequacy in the worth, nature and manner of performance which is to be preserve under any law or performed by a person in compliance with the similar. A contract in relation to a service or otherwise it is incredibly significant to be maintained. Regardless of their place, every doctor should have an obligation to extend his service and save from harm people's lives. Negligence can be the effect of inefficiency and absence. It is essential to note down that there will be decline in all cases of negligence but not negligence in all cases of insufficiency. In landmark case in **Bolam v. Friern Hospital Management Committee** [12], the court held that a doctor is not guilty of negligence.

**Nihal Kaur v. Director, P. G. I. M. S. R** [13], in this case patient dies the day later than surgery and the relatives found a pair of scissors and that scissors is used by the surgeon in the time of surgery. Then they file the case under the medical negligence against the surgeon and in this case court held that a doctor was liable and patient's family get the compensation of Rs 1.20 lakh which was make available by the state consumer forum, Chandigarh.

Some one more case **Malay ku. Ganguly v. Sukumar Mukharjee** 2005 [14] in this case broad terms to deal with medical negligence and standard of care that needs to be used by one doctor. The court implied certain principles and found that there is no doubt or may be there is a dispute that to establish medical negligence or deficiency in services, the courts will set the following rules:

- a. It is not guaranteed by any doctor or surgeon that the patient will recover completely.
- b. The doctor must take a proper and competent degree of skill, so that the highest skill may not be.
- c. If there are many methods of treatment, then doctor should adopt the best method that can give quick relief to the patient. And while treating the patient
- d. Proper care should be taken and there should be no negligence, so full of care should be taken.
- e. Failure to work according to standards, appropriate degrees and skills the knowledge he has. Failure to use certain skills in diagnosis with consequences wrong treatment is negligence.
- f. In a complex case, there will be slow action from the court for negligence doctor, if he is performing his duty to the best of his ability.

The court also made the view that after the assessment of risks, informing consent is growing rapidly, so keeping in the view of development of medical science has become a necessary and it has become clear that in this case there was no communication by the doctors about the risks involved in the line and now the treatment patient will make a decision in case to opt for such treatment. If patient don't want this treatment than doctor can't force it, it's all up to the patient.

### **INCLUSION OF THE MEDICAL SERVICES UNDER THE CONSUMER PROTECTION ACT, 1986**

This is possibly for the most important issue that was clarified by the Supreme Court in the Indian Medical Association case. In this case, this is cleared up all the confusion initially prevalent regarding the inclusion of medicine and also service within the purview of the act. And under all the types of medical services brought under the purview of Consumer Protection Act. The Supreme Court held that the medical profession is a profession other than a profession and medical professionals provide a service to patient and thus they are not immune to claim from damages on the ground of negligence. From this point of observation the court over and done with that a patient may be a 'consumer' for the purpose of Consumer Protection Act, 1986. In addition to this, the court also held that consumer protection is extremely well established in both UK and USA in the field of medical practice. The Supreme Court referring to the well known book **law and Medical Ethics**, by **Mason and McCall Smith** and **Arizona v. Maricopa Country Medical Society**, these books is the most important leading cases of health care Industry. In this case court was determining that the minimum prices for the insured users medical services charger per invalid rate under section 1 of Sherman under the Antitrust Act, 1890. Keeping all these most important facts in mind, the Supreme Court thus concludes:

That is why we are unable to subscribe to this scene only due to medical reasons. Physicians are associated to the medical profession and they are not enclosed by the provisions of this act and the services provided by medical practitioners from outside its scope by section 2 (I) (o) of the act. After this conclusion, a lot of changes took place in India such that most medical negligence cases started being registered in the consumer in courts under this act. The Indian Medical Association had also given the lot of view point to convince the court that doctors should not be brought under the scope. Consumer Protection Act's, all the arguments were taken by the court and their clear judgment was also given.

### **AUTHORITY OF CONSUMER COURTS**

Medical negligence confers arise to civil and criminal legal responsibility. As we have already mentioned that the citizen who suffers mistake and an aggrieved person can claim for compensation either through civil suit or by filing a complaint in the consumer forum. Constantly since the performance of the consumer protection act, 1985, a significant boost in medical negligence cases has been recorded. In a since, the means of access of this law has optimistic consumers to move towards the courts on the subject of negligence. Before we delve into the extensive part of the medical negligence, it is significant to see that the courts have enacted The Consumer Protection Act and it's how to give explanation the jurisdiction. Lots of questions were also raised by the doctors on the Consumer Protection Act. Applicability of the act in medical profession differs from the protection act to broader subject and the nature of consumers who would be covered by the act. Since this is the most frequently used law by patients and their relatives, it becomes major to the first see to whom it applies.

Even after the consumer protection act was passed, there was ferocious debate for a long time. Whether it is not this applies to doctors, hospitals and nursing homes, and under what conditions Supreme Court passed a landmark judgement in the case **Indian Medical Association v. V.P. Shantha** [15]. The court held that under consumer protection act is a summary proceeding for speedy redress and treatment are in addition to confidential law solution.

**Spring Meadows Hospital v. Harjo Ahluwalia [16]**, Supreme Court shows concern about the right of the parents where a child died due to the medical negligence. In this hospital was argued that parents were not the consumer so they could not get a relief under this act for the medical negligence. But court rejects the argument and gave decision in favour of the parents. And court order the compensation for child Rs. 12.5 lakh and for parents Rs 5 lakh for mental agony. And held that child is also become consumer and avail the all benefit regarding the services.

In **Rajaram S. Parale v. Dr. Kalpana Desai, [17]** in this case court held that if patient is married daughter than parents are also treated as consumer.

In **Sailesh Munja v. AIIMS [18]**, in this case hospital claimed that the treatment which is given by the hospital. This is granted under the act will not be covered, but national commission rejected the argument and held that the treatment is subsidized and not completely exempt, so it will be hospital to be cover under the Consumer Protection Act.

### **CAN CONSUMER COURT GO INTO THE PROPRIETY OF FEES CHARGED BY A HOSPITAL OR THE DOCTOR?**

**B.S. Hegde v. Dr Sudhanshu Bhattacharya 1992 CPJ 449**, in this case court held that doctor was legally responsible and state of commission awarded 2 lakh for compensation to the patient. And also held that he did not have any jurisdiction to go owned by a doctor to be charges.

### **MISUSE OF THE CONSUMER PROTECTION ACT**

The Consumer Protection Act was promulgated first and foremost to protect the interest of its consumers. However, the easy and speedy disposal of these cases under this act which has resulted in its increasing misuse. Today it seems like as if unscrupulous patients have started using it to blackmail medical professionals. However, the doctors require to be cautions that the rights of law are protected and well as a medical professional. As per section 26 of this act if any complaint is found insignificant or unstable, the consumer forum will dismiss the complaint and the order that complainant the opposite party pay the cost, not to exceed ten thousand rupees. And the act also has special provisions for investigating complaints of speculative kind.

### **ROLE OF BOLAM TEST IN MEDICAL NEGLIGENCE**

Bolam test has been considered as one of the gold standard or it can called landmark case in the medical negligence. In this case, bolam is a patient and this case not by any kind of surgery or orthopaedics, it is a psychiatric case so bolam is a person who is a recurrent depressive disorder patient and he goes to the primary hospital for treatment of the depression, it is during that period 1952-53 and this case was decided on 1957 in UK and he is advised electroconvulsive therapy it can called that shock treatment and he agree for this treatment but there have two type therapy modified ECT or unmodified ECT, they go for modified ECT, they do not offer him to choose. And after many session he get hip fracture because of the ECT procedure but by this time he has improved with depression but now he is angry with the hospital and he goes to the court.

The court held the doctor not liable of the negligence if due care and prescribed procedure is taken in an appropriate manner. And bolam test case is accepted in India also. But if they do not follow proper care and precaution than doctor is not liable for negligence.

### **CONCLUSION**

As it is understandable from the consumer protection act and numerous of Supreme Court findings that consumer protection act is for the social welfare. And it was enacted for the protection of common people. That's why judging the consumer and law it is necessary to adapt ourselves to the need of changing the society. And it should be flexible and friendly so that justice can be done to the consumer with the rapid expansion and reduction of population, the value of health facilities in the

government hospitals or private hospitals of society disgusting. The game is on. Nevertheless there are several government hospital which are providing health service however the service provided to the population of the region are insufficient in terms of value and measure. And serious liability or damage must be given in the medical negligence. Consumer protection protect the rights of consumer, and it's provide the procedure for the solve the problem. And the fear of medical field, it should be consider to claim the of patient.

## REFERENCES

1. <https://www.india.com/photos/health/10-quotes-to-prove-health-is-more-important-than-wealth-124478/>
2. <https://docu.tips/documents/medical-negligence-and-consumer-rights-an-analysis-by-madhuri-irene-amp-anita-yadav-5c165baa3daed>
3. <https://acadpubl.eu/hub/2018-120-5/2/184.pdf>
4. <https://www.google.com/amp/s/blog.ipleaders.in/ubi-jus-ibi-remedium/%3famp=1>
5. [https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2779963/&ved=2ahUKEwjR0-HL4Zz0AhVFOSsKHZIwD\\_0QFnoECAYQAQ&usg=AOvVaw1dSRokGuSKtrKKGK\\_JLSd99](https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2779963/&ved=2ahUKEwjR0-HL4Zz0AhVFOSsKHZIwD_0QFnoECAYQAQ&usg=AOvVaw1dSRokGuSKtrKKGK_JLSd99)
6. <https://www.lawteacher.net/cases/bolam-v-friern-hospital-management.php>
7. <https://www.medicalnewstoday.com/articles/248175>
8. 1996 AIR 550, 1995 SCC (6) 651
9. The Consumer Protection Law b. Dr H K Saharay, 3<sup>rd</sup> Edition
10. The Consumer Protection Act, 1986.
11. 1994 1 SCC 243
12. (1957) 1 WLR 583
13. (1996) CPJ 112
14. <https://www.google.com/amp/s/www.latestlaws.com/amp/articles/medical-negligence-under-consumer-protection-act-a-judicial-approach-by-abhipsha-mohanty>
15. <http://www.legalservicesindia.com/article/1097/Indian-Medical-Association-V-V.P.-Shantha.html>
16. (1998) 4 SCC 39
17. 1998 3 CPR 398 (BOM)
18. 2004 3 CPR 27 (NC)