

Doctor Patient Relationship at Present

M. Amaraa

Assistant Professor, School of Excellence

No Doctor knows everything. There's a reason as to why it is called "practising medicine." – Anonymous

Abstract

Medicine has been practiced serving mankind since forever. In India and from all over the world, a huge number of individuals enter emergency clinics to go through treatment for one or another ailment. Today, the financial thought is in actuality has turned into the sole criteria to decide the patient-specialist relationship. The specialists are depending on unreasonable practices to earn money. In addition to these unfair practices rehearses, doctors commit errors and blunders at any time during the hour of treatment.

The medical profession is one of the most dignified and recognised professions in today's world. Doctors are highly respected and treated like God by the patients. The patients entirely trust the doctors that their disease will be cured by proper treatment. To err is human. These doctors think they take utmost care while treating, but even doctors make mistakes which costs the life of the person.

"In my opinion, our health care system has failed when a doctor fails to treat an illness that is treatable." [i] – Kevin Alan Lee. The duty to take care of the law imposes a duty on everyone to adhere to a certain standard of conduct for the protection of others. To establish liability for negligence, the defendant must have an obligation to take care of the plaintiff. The need for the existence of a duty of care is illustrated by LORD WRIGHT¹ as follows:

"All that is necessary as a step to establish the tort of actionable negligence is to define the precise relationship from which the duty to take care to be deduced."

The dereliction of duty can be caused either by not doing something that a reasonable man, by virtue of a given set of circumstances would do, or, by doing some acts which a reasonable and prudent man would not do². A medical practitioner has various. duties towards his patient and

he must act with a reasonable degree of skill and knowledge, which he is to exercise with a reasonable degree of care. This is the least which a patient expects from a doctor.³

¹ Grant v Australian Knitting Mills Ltd. [1936] AC 85 (103); 154 LT 18; 79 Sol Jo 815.

² Poonam Verma v Aswin Patel AIR 1996 SC 2111; (1996)4 SCC 332; 1996(3) CPR 205 (SC); II (1996) CPJ 1 (SC); (1996)4 CTJ 465 (SC) (CP).

³ Achutrao Haribhau Khodwa v State of Maharashtra (1996)2 SCC 634; 1996 ACJ 505; (1996)4 CTJ 950 (SC) (CP).

WHO IS A CONSUMER?

The new act of consumer protection of 2019 has widened the scope of the definition of ‘consumer’.

Definition of consumer:

The new law broadened the definition of “**consumer**”.

Under 2(7) "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; or⁴

(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.⁵

Section 2(11) of the Consumer Protection Act 2019 defines the term deficiency in service as any error, inconsistency, failure, or insufficiency in the standard, manner, or method of performance which, for the time being, is needed to be maintained by or under any law or has been committed to be performed by an individual pursuant to a contract or otherwise in

conjunction with any service, any act of negligence or omission or commission on the part of the individual concerned that triggered damage or injury to the person concerned; or deliberate concealment of relevant information by any such person.⁶

Who is a consumer in medical negligence?

- A patient who gets treatment from the doctor/hospital.
- Any person or a legal representative of the patients, who pays the bill.
- In case of death of the patient who is the consumer or legal representative of the deceased will be considered as a consumer.

⁴ 2(7) of Consumer protection act 2019

⁵ 2(7) of Consumer protection act 2019

⁶ Consumer protection act 2019

- If any person other than the legal representative pays the bill, he/she will also be considered as a consumer.

MEDICAL MALPRACTICE AND CRIMINAL LIABILITY OF MEDICAL PRACTITIONERS

Medical malpractice is an act of negligence committed by a healthcare professional, a physician in most situations. It is defined as doing something that a physician of ordinary skill would not have done or not doing what a physician of ordinary skill would have done.

A person can be subject to one of various forms of medical malpractice whenever they seek care from a health care provider. Malpractice can range from something as simple as not putting the rails of a hospital bed in an upright position, to something as complex as improper open heart surgery. A related question in these cases is whether a patient has given informed consent to a particular treatment. It is only if a patient has been informed of the details, risks, benefits, and alternatives to a recommended form of care that it can properly be said to have given informed consent.

Fortunately, there are laws that allow patients to receive comprehensive medical care. If you have been seriously injured due to substandard medical care, our attorneys may be able to obtain compensation on your behalf for the damage caused. To establish a medical malpractice claim, there must be personal injury and damage to the patient resulting directly from the negligence. A shocking fact about medical malpractice is that they often go unnoticed or at least overlooked. Different studies have concluded that the percentage of medical negligence that escapes prosecution can approach ninety (90%) *.

In Ohio, as elsewhere, pursuing a medical malpractice case is a tedious, lengthy, and costly process. Defense lawyers know this and make it as difficult, expensive, and cumbersome as possible to successfully pursue a claim. People are witnessing the conspiracy of silence in local medical communities. Patients generally receive very little frank and truthful help from the physicians involved in identifying medical negligence when it occurs. For similar reasons, negligent physicians find it much easier to find expert physicians to support the quality of their care.

The duties of a physician when undertaking the treatment of the patient were clearly outlined by the Supreme Court in *Lakhsman Joshi v. Trimbak*.¹⁴ A person who stands ready to give medical advice and treatment, implicitly commits to possessing the necessary skills or knowledge, this person, when consulted by a patient, owes him certain duties. Failure to comply with these obligations gives the patient a right of action for negligence.

In a landmark decision of August 5, 2005, the Supreme Court ordered law enforcement agencies not to prosecute physicians accused of reckless or negligent acts or omissions without obtaining independent and competent medical advice. to substantiate the charges. Noting that the cases of doctors facing criminal prosecution were on the increase, the Supreme Court ruled that a private complaint alleging negligence against a doctor should not be considered a routine matter unless the complainant filed a complaint. in court a credible opinion from another competent doctor. in support of charges.

The Supreme Court judgment in *Jacob Mathew v. State of Punjab*¹⁵ is a landmark judgment as the Supreme Court has formulated guidelines under which a doctor could be held criminally responsible due to professional negligence or lack of service. The judgment came on appeal from a CMC doctor, Chandigarh, who had been convicted of the death of a terminally ill cancer patient. According to the

complaint filed on behalf of the family members of the deceased, JiwanLal who was a patient, the hospital could not provide oxygen on time because there was no gas in the cylinder.

On the facts, the supreme court considered that the doctor could not be prosecuted for this. The Supreme Court has declared that extreme caution and caution should be exercised in bringing criminal proceedings against doctors for alleged medical negligence and has developed elaborate safeguards against them, including avoiding arrest unless it is inevitable. Inspired by established provisions of law and practice, the Court ruled that this was necessary for the service which the medical profession renders to humans to be probably the noblest of all and therefore necessary to protect physicians from unfair prosecution. Neglect in the context of the medical profession necessarily calls for different treatment. A simple lack of care, an error in judgment or an accident is not proof of negligence on the part of the health professional, he said. The court clarified, however, that this did not mean that the doctors could not be prosecuted at all. All we do is stress the need to exercise prudence in the interests of society, the court added.

CONSUMER LAW TO THE MEDICAL PROFESSION ANALYSIS OF “NEGLIGENCE” UNDER CONSUMER LAW:

The Consumer Protection Act 1986 was enacted by Parliament to provide for better protection of the interests of consumers in the background of the guidelines contained in the Consumer Protection Resolution passed by the United Nations General Assembly on 9th April 1985. The legitimate needs which the guidelines are intended to meet include the protection of consumers from hazards to their health and safety and the availability of effective consumer redress. Accordingly, the Consumer Protection Act 1986 is to provide protection and relief to persons who have hired any services for consideration when the services provided are found to be suffering from a deficiency in any respect.⁷

According to our Apex Court, a determination about deficiency in medical service is to be made by applying the same test as is applied in an action for damages for medical negligence.⁸

Since the very purpose for which the statute was enacted is to provide a cheap and speedy remedy to the aggrieved consumers by way of an alternative to the time consuming and expensive process of civil litigation, the Consumer Forum cannot refuse to adjudicate the dispute regarding deficiency in service rendered by medical practitioners for consideration.¹⁸

Naturally, the complaint about deficiency in service rendered by a medical man is not liable to be dismissed, merely because the complaint involves complicated questions of law and facts requiring detailed investigations. The order of dismissal of the complaint passed by the National Commission was set aside by the Supreme Court by holding that the National

⁷ Consumer Unity and Trust Society, Jaipur v State of Rajasthan 1991(1) CPR 241 (NC); I (1992) CPJ 259 (NC); (1993)1 CTJ 89 (NCDRC).

⁸ Indian Medical Association v V.P. Shantha AIR 1996 SC 550, (1995)6 SCC 651; III (1995) CPJ 1 (SC), 1995(3) CPR 412 (SC); (1995)3 CTJ 969 (SC) (CP); 1996 CCI 1 (SC). ¹⁸ S.K. Abdul Sukur v State of Orissa II (1991) CPJ 202 (NC).

Consumer Forum should have taken the complaint to its logical conclusion by asking the parties to adduce evidence and render its findings on merit.⁹

However, it is observed by the Supreme Court of India²⁰ that in complaints involving complicated issues requiring recording of evidence of experts, the complainant can be asked to approach the Civil Court for necessary relief. As a matter of policy and principle where the subject matter of a complaint is sub judice before the ordinary court, a concurrent adjudication in respect of the same should not be conducted under Consumer Protection Act by a Redressal Agency.¹⁰

The dispute whether the professional fee charged by a doctor is reasonable or exorbitant cannot be determined by the consumer courts,¹¹ because the amount of professional fee charged by a medical practitioner depends on a number of factors viz, qualification, experience and nature and quality of service rendered by him.

It is well-settled by various decisions of the National Commission¹² that the activity of providing medical assistance for payment carried on by private hospitals and members of the medical profession falls within the scope of the expression "service" as defined in s. 2(1)(o) of the Consumer Protection Act 1986 and in the event. of any deficiency in the performance of such service, the aggrieved party can invoke the remedies provided before the Consumer Forum having jurisdiction. The principle enunciated by the National Commission is elaborated by the Supreme Court¹³ by categorizing the medical practitioners, government hospitals, private hospitals, and nursing homes as follows:

- (1) Where services are rendered free of charge to everybody availing of the said services.
- (ii) Where charges are required to be paid by everybody availing of the services; and
- (iii) Where charges are required to be paid by a person availing of services, but certain categories of persons who cannot afford to pay are rendered service free of charges.

It is, thus, well-settled that the Consumer Protection Act 2019 is applicable to persons engaged in the medical profession either as private practitioners or as Government doctors working in hospitals or Government dispensaries and that a patient who is a "consumer within the meaning of the Act, has to be

⁹ R. Gopinathan v Eskeycee Medical Foundation (1994) CPJ 147 (NC); (1994)2 CTJ 97 (CP) (NCDRC); 1994(2) CPR 488 (NC) affirming decision of State Commission, Madras 1993(1) CPR 456 (Mad). ²⁰Charan Singh v Healing Touch Hospital (2000)7 SCC 668; AIR 2000 SC 3138; 2000(3) CPR 1; (2000)6 Scale 431.

¹⁰ Indian Medical Association v V.P. Shantha AIR 1996 SC 550; (1995)6 SCC 651; III (1995) CPJ 1 (SC); 1995(3) CPR 412 (SC); (1995)3 CTJ 969 (SC) (CP); 1996 CCJ 1 (SC).

¹¹Dr. K.B. Kapoor vs phool dev prasad

¹² Consumer Education and Research Society v Dr.Ratilal B. Patel III (1992) CPJ 25 (NC) reversing decision of State Commission, Gujarat, reported. in 1991(2) CPR 204, M/s. Cosmopolitan Hospital v Smt. Vasantha P. Nair 1992(1) CPR 820 (NC), I (1992) CPJ 302 (NC) affirming decision of State Commission, Kerala, reported in 1991(2) CPR 155; II (1991) CPJ 444.

¹³ Indian Medical Association v V.P. Shantha AIR 1996 SC 550; (1995)6 SCC 651; III (1995) CPJ 1 (SC); 1995(3) CPR 412 (SC); (1995)3 CTJ 969 (SC) (CP); 1996 CCJ 1 (SC).

awarded compensation for loss or injury suffered by him due to negligence of the doctor by applying the same test as are applied in an action for damages for negligence.¹⁴

Need for the new law: CONSUMER PROTECTION ACT, 2019

- The digital age has ushered in a new era of digital commerce and branding, as well as a new set of customer expectations. Digitization has provided easy access, a wide variety of choices, convenient payment mechanisms, improved services, and convenience shopping. However, there are also many other challenges related to consumer protection.
- To help address the new challenges facing consumers in the digital age, the Indian Parliament has passed the landmark Consumer Protection Bill, 2019 which aims to provide prompt and effective resolution of consumer disputes.
- The Consumer Protection Act 2019 is a law designed to protect the interests of consumers. This law ensures the safety of consumers regarding defective products, unsatisfactory service, and unfair business practices.
- The fundamental objective of the Consumer Protection Act 2019 is to safeguard the rights of consumers by establishing authorities for the prompt and efficient administration and resolution of consumer disputes.

Professional duty-ambit of the doctors owe a duty of care to their patients. Failure to show due care or skill in medical treatment resulting in death, injury, or pain of the patient, gives rise to a cause of action in negligence. SHELAT, J. while delivering the judgment of the Supreme

Court of India in *Dr. LaxmanBalkrishna Joshi v Dr. TrimbakBapuGodbole*¹⁵ lays down the criteria for determination of the professional duty of a medical man in the following way:

"A person who is ready to give medical advice and treatment implies that he has the skills and knowledge necessary for the particular purpose." Such a person, when consulted by a patient, has certain obligations on him, namely a duty of care in deciding whether to undertake the case, a duty of care in deciding on the treatment to be given, or a duty of care in administration of this treatment. A violation of any of these obligations gives the patient a right of action for negligence. The practitioner must engage in his task to a reasonable degree of skill and knowledge and must exercise a reasonable degree of diligence.

A charge of professional negligence against a physician is serious. This is a different charge from a negligence charge against the driver of an automobile. The consequences are much more serious. This

¹⁴ Poonam Verma v Aswin Patel AIR 1996 SC 2111; (1996)4 SCC 332; 1996(3) CPR 205 (SC); II (1996) CPJ 1 (SC); (1996)4 CTJ 465 (SC) (CP).

¹⁵ AIR 1969 SC 128; 1968 ACJ 183 (SC); 1968 Mah LJ 599; 1968 SCD 866; (1968)2 SCWR 73

affects his professional status and reputation. With the best will in the world, things sometimes go amiss in surgery, operations or medical treatment.

A doctor should not be taken for granted just because something is wrong. He is not responsible for any bad luck or mishap, or for an error in judgment. He is not responsible for taking every second choice or favouring one school over another. He is only liable when he falls below the standard of a reasonably competent practitioner in his field so much so that his conduct may be deserving of censure or inexcusable.¹⁶ A surgeon or anaesthetist will be judged by the standard of an average practitioner of the class to which he belongs or holds himself out to belong.¹⁷

The likelihood of injury or damage caused is the criterion for determining what degree of care needs to be taken in a particular case. To paraphrase LORD DUNEDIN¹⁸, "People must guard against reasonable probabilities, but they are not bound to guard against fantastic possibilities."

In *Glasgow Corporation v Muir*, LORD MACMILLAN¹⁹ felt that the degree of concern for the safety of others that the law requires of human beings in the conduct of their affairs varies according to the circumstances. There is no absolute standard, but it can generally be said that the degree of care required varies directly with the risk involved. Those who engage in operations inherently dangerous must take precautions that are not required of persons engaged in the ordinary routine of daily life. To be precise, the degree of care must be commensurate with the degree of risk involved in an action.

A person having studied one system of medicine cannot possibly claim deep and complete knowledge about the other system of medicine. A doctor registered as a homeopathic practitioner cannot prescribe allopathic medicines to the patient without being qualified in that system of medicine and without being registered under Indian Medical Council Act 1956 or the State Medical Council Act. One homeopathic practitioner is held guilty of negligence for prescribing allopathic medicines to the patient without being qualified in that system of medicines by the Supreme Court of India,²⁰ which enunciates the following principle of negligence:

"When the law, under which a person was registered as a medical doctor. Practitioner required him to practice homeopathy only, he was under duty not to enter the field of any other system of medicine and when he trespassed into a prohibited field, without being qualified in that system, his conduct amounted to actionable negligence."

¹⁶ Per LORD DENNING, M.R. in *Hucks v Cole* (1968)118 New LJ 469; 112 Sol

¹⁷ *Dr. P. Narasimha Rao v Gundavarapu Jaya Prakash* AIR 1990 AP 207; (1990)1 ACC 468; 1990(1) ACJ 350; (1989)3 Andh LT 564; (1989)2 APLJ (HC) 491.

¹⁸ *Fardon v Harcourt Rivington* (1932)146 LT 391; 76 Sol Jo 61.

¹⁹ [1943] AC 448; [1943]2 All ER 44; 169 LT 53.

²⁰ *Poonam Verma v Aswin Patel* AIR 1996 SC 2111; (1996)4 SCC 332; 1996(3) CPR 205 (SC); II (1996) CPJ 1 (SC); (1996)4 CTJ 465 (SC) (CP).

It is held by the Supreme Court of India, that for establishing medical negligence or deficiency in service, the court would consider the following points:

- (1) No guarantee is given by any doctor or surgeon that the patient would be cured.
- (2) The doctor must undertake a fair, reasonable, and competent degree of skill, which may not be the highest skill.
- (3) Adoption of one of the modes of treatment, if there are any, and treating the patient with due care and caution would not constitute any negligence.
- (4) A medical practitioner must exercise the reasonable degree of care, skill, and knowledge which he possesses. However, failure to use due skill in diagnosis with the result that wrong treatment is given would be negligence.
- (5) In complicated cases the court would be slow in attributing negligence on the part of the doctor if he is performing his duties to the best of his ability.

Conclusion

The patients who experience the ill effects of the negligence of doctors are too many, but very few have access to the courts. Not all many patients who have experienced unfriendly results move the courts and surprisingly in that, not many get compensation. In this specific circumstance, the current review expects its significance in assessing the viability of the Consumer Protection Act in managing medical negligence cases and legal methodology towards doctor patient relationship.

The basic investigation of legal choices of the National Commission and the Supreme Court. An endeavour to comprehend the result of judicial decisions and its effect on doctor-patient relationship which might have a clear approach to future examinations and exploration, in the field of medical negligence more especially under the ambit of the Consumer Protection Act is made here.