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Liability of Medical professionals and hospitals under Consumer Protection Law

Introduction

In India, the position of doctor as accepted by the public generally is next to God. The doctor is always expected to treat or provide assistance to the patient to the best of his knowledge and ability without any material expectation which is why renders such profession as noble and they are considered as emissary of God in our country.¹

In today's world, healthcare is no longer a privilege, it's a necessity. There are, unfortunately rare cases where the medical professionals prioritise financial gain over patient well-being. These actions are not only unethical but also damage the trust patients have in the medical field.

The Consumer Protection Act, 2019² is one such Act which empowers patients in India by bringing healthcare services under its ambit. This act holds medical professionals and hospitals accountable for deficiency in service.

- What is deficiency in service?

In order to understand deficiency in Services, there is a need for understanding two terms:

1. Service; and

The term 'services' defined under section 2(42) of the Consumer Protection Act, 2019, includes the provision of facilities related to banking, financing, insurance, transport, telecom, etc., but does not include rendering of any services free of charge or under contract of personal service. The definition of the term 'service'

¹ Dr. Biswas Mohan Mishra v. State of Orissa, 2023 SCC OnLine Ori 5433: (2023) 136 CLT 821.

² India Code

<https://www.indiacode.nic.in> > ...PDF

1 THE CONSUMER PROTECTION ACT, 2019.

has been made inclusive rather than conclusive by the Consumer Protection Act, 2019.

In the case of *Indian Medical Association v. V.P Santha*³, which brought medical profession within the purview of Consumer Protection Act, 1986 vide section 2(1)(o) (at present, section 2(42) of the Consumer Protection Act, 2019).

2. Deficiency.

The term 'deficiency' is defined under section 2(11) of the Consumer Protection Act, 2019, means any fault, imperfection, shortcoming or inadequacy in the quality, nature or 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 and includes:

- i. Any act of negligence, or omission or commission by such person which causes injury or loss to the consumer ; and
- ii. Deliberate withholding of relevant information by Such person to the consumer.

When the above definition is viewed within the context of healthcare, it can be understood as follows:

- The term 'quality' in the definition refers to the standard of care expected from the medical professional.
- The term 'nature' relates to the inherent characteristic of the service.
For example: A hospital advertising a specific treatment, but lacking the necessary equipment or expertise would be deficiency.
- The term 'manner of performance' focus on how the service is delivered.

The definition also includes two crucial aspects:

i. Negligence

Negligence is simply the failure to exercise due care. The three ingredients of negligence are as follows⁴:

1. Owes a duty of care by the defendant;
2. The defendant has breached this duty of care; &

³ Indian Political Association v. V.P Santha, AIR 1996 SC 550.

⁴ S. V Joga Rao: Medical Negligence liability under the Consumer Protection Act : A review of judicial perspective, Indian Journal of Urology, July- September; 25(3): 361-371,(2009).

3. The plaintiff has suffered injury due to this breach.

It also encompasses medical errors like surgical mistakes, medication errors or improper treatment decisions.

In *Jacob Mathew v. State of Punjab*⁵, explained that the jurisprudential concept of negligence differed in civil and criminal law.

In *Medical Superintendent Safdarjung Hospital v. Sudhir Kumar Verma*⁶, a wife with diabetics and obesity suffered severe abdominal pain. Her husband rushed her to Safdarjung Hospital, but claims she received poor care for over 40 hours. The wife's condition worsened and she died. The husband sued accusing the hospital of negligence. The hospital defended that they provided good care and a lack of ICU beds wasn't their fault. The NCDRC upheld the State Commission's finding, that medical negligence occurred in the treatment of the wife. The NCDRC has criticized a hospital's failure to provide proper care due to lack of resources. It also emphasized that such shortcomings constitute negligence and overcrowded wards or overworked doctors are not valid excuses. The commission highlighted the importance of upholding medical standards and ensuring that healthcare institutions are held accountable to their actions.

In *Usha Kumari o. & Ors v. State of Kerala & Ors*⁷, Justice PV. Kunhi Krishnan observed that:

‘In medical negligence case both sides want immediate action. Sometimes, unnecessary complaints will be there against the doctors alleging medical negligence, and if the investigation is delayed, the doctors may have to face unnecessary humiliation. Similarly the victims also want early decisions in medical negligence case. Therefore, a time bound investigation is necessary in these type of cases’.

From the above observation it is concluded that medical negligence cases are tough for everyone. To avoid unnecessary stress, both patients and doctors need investigations to happen quickly. This protects doctors from false claims and helps patients get answers sooner.

⁵ Jacob Mathew v. State of Punjab AIR, 2005 SC, 3180.

⁶ Indiankanoon

https://indiankanoon.org/docfragment/192312206/?formInput=safdarjung%20%20%20doctypes%3A%20consumer_national (last accessed on April 1, 2024).

⁷ Ushakumari o. & Ors v. State of Kerala & Ors, 2023 Livelaw (ker) 700.

In *Sarwat Ali Khan v. R Gogi*⁸, in a free eye camp, 14 persons lost their vision due to negligence of doctors, staff and defective functioning of equipment used for operation. It was held that the doctors and eye camp organising hospital are liable for deficiency in service and negligence.

ii. Deliberate withholding of information:

This refers to doctor or hospital intentionally failing to disclose relevant information about the patient's condition, treatment options, risks and benefits.

Relevant case law

In *C. Sivakumar v. Dr. John Mathur & another*⁹, the complainant had the problem of blockage of urine, but the doctor (opposite party) in an attempt to perform the operation for curing the problem, totally cut off the complainant's penis and he became permanently impotent. It was held to be deficiency in service and liable.

There are certain cases where it does not amount to negligence or deficiency on the part of medical professionals or hospitals are as follows :

In the case of *Hucks v. Cole*¹⁰, Lord Denning opined that:

' a medical practitioner was not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgement in choosing one reasonable force of treatment in preference of another. A medical practitioner, it was said to be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field'.

From the above observation it is clear that the medical practitioners are responsible for there actions if they act don't like a reasonably skilled professional would.

In *Manju Garg v. Goel Hospital*¹¹, the doctor's decision to administer fortwin and compose was justified according to medical practice. Hence not liable under negligence for deficiency of service. It was also observed that will not be proper to attribute negligence or deficiency on the part of doctor where he has one option out of the two are more available in a case before him.

Conclusion

⁸ Sarwat Ali Khan v. R. Gogi, III (2007) CPJ, 179 (NC).

⁹ C. Sivakumar v. Dr. John Mathur & another, III (1998), CPJ 436 (Tamil Nadu S.C.D.R.C).

¹⁰ Hucks v. Cole, (1968), 118 New L.J. 469.

¹¹ Manju Garg v. Goel Hospital, IV (2005) CPJ 62 (NC).

The Consumer Protection Act has significantly strengthened the rights of patients and provided them with avenues for seeking redressal in case of medical negligence or deficiency in service. The act provides a simpler and faster forum for redressal compared to traditional medical negligence lawsuits. It focuses on patient rights. Moving forward, it is imperative for all stakeholders in the healthcare system to uphold ethical standards, prioritise patient safety and comply with regulatory frameworks to promote trust and confidence in the healthcare system.