

REVIEW ARTICLE

Patient-tailored Personal Treatment Services against Consideration is a Contract for Personal Services

Shri Gopal Kabra¹, Vivekanshu Verma²**HOW TO CITE THIS ARTICLE:**

Shri Gopal Kabra, Vivekanshu Verma. Patient-tailored personal treatment services against consideration is a Contract For Personal Services. Indian J of Legal Medi. 2025; 6(2): 109–117.

ABSTRACT

Background: The judicial interpretation in V P Shantha (1995) extended the Consumer Protection Act (CPA), 1986, to medical services by distinguishing «contract of personal service» (excluded) from “contract for personal service» (included). Despite amendments in the CPA 2019 [Section 2(42)], this interpretation persists. This article challenges that stance using AI-assisted legal analysis, arguing that patient-tailored medical services constitute a «contract for personal service» and should be excluded from CPA 2019.

Objective:

To demonstrate that patient-specific medical treatments (e.g., surgeon-tailored surgery) fall under “contract for personal service as defined in CPA 2019, warranting exclusion from consumer law.

Methods:

- **Legal Analysis:** Scrutiny of Section 2(1)(o) (CPA 1986) and Section 2(42) (CPA 2019).
- **AI Inputs:** Interrogation of AI tools to define "personal service" and its applicability to medical contexts.
- **Case Law Review:** V P Shantha (1995), 1 parliamentary debate on CPA 2019, and Bar of Indian Lawyers v. D.K. Gandhi (2023).²

Results:**1. Contract Typology:**

- **Contract for Personal Service:** Relies on unique skills (e.g., surgeon’s expertise), autonomy in execution, and patient choice.
- **Contract of Personal Service:** Employer-controlled labor (e.g., hospital staff).

AUTHOR’S AFFILIATION:

¹ Director, Department Legal Affairs and Medical Audit, SDMHS, Jaipur, Rajasthan, India.

² Associate Consultant, Department of Emergency and Trauma Care, The Medicity, Sector-38, Gurugram, Haryana, India.

CORRESPONDING AUTHOR:

Vivekanshu Verma, Associate Consultant, Department of Emergency and Trauma Care, The Medicity, Sector-38, Gurugram, Haryana, India.

E-mail: vivekanshuv@gmail.com

➤ Received: 15-07-2025 ➤ Accepted: 22-10-2025



Creative Commons Non Commercial CC BY-NC: This article is distributed under the terms of the Creative Commons Attribution NonCommercial 4.0 License (<http://www.creativecommons.org/licenses/by-nc/4.0/>) which permits non-Commercial use, reproduction and distribution of the work without further permission provided the original work is attributed as specified on the Red Flower Publication and Open Access pages (<https://rfppl.co.in>)

2. Medical Services: Patient-tailored procedures (e.g., custom surgery) meet "contract for personal service" criteria due to individualized care, skill reliance, and consideration (payment).

CPA 2019: Parliamentary intent and post-Shantha amendments support excluding such services.

Conclusion:

Patient-tailored medical services are "contracts for personal service" under Section 2(42) of CPA 2019 and must be **excluded**. Judicial recognition of this distinction aligns with legislative intent and modern medical practice.

KEYWORDS

- Service • Contract • Consumer Protection Act 2019 • Medical Negligence
- Contract for Personal Service • Contract of Personal Service • Patient-Tailored Treatment • *V P Shantha Case* • Informed Consent • Judicial Interpretation
- Healthcare Law.

INTRODUCTION

Judicial interpretation of the vague language of Section 2(1)(o) of the Consumer Protection Act, 1986 in *V P Shantha case*, led to the inclusion of Health Care and Medical Services as included amongst the services named in the inclusory part of the section, and hence under CPA. The exclusory part was not interpreted to apply to medical services as it was deemed not to be a 'contract of personal service' but a 'contract for personal service'. The reasoned discussion here under is to demonstrate that the interpretation was wrong considering the intricate details of the practice of modern medicine. Health Care was included in the Section of 2018 C P Bill and excluded by amendment in the 2019 Bill after parliamentary debate. In spite of several amendments in the section over the years, including those effected in C P Bill 2018 and 2019, the interpretation is deemed to hold good for CPA 2019 on the ground that the basic language of the Sec 2(42) in 2019 Act continues to be same.

Section 2(1)(o) of the Consumer Protection Act, 1986,

"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 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.³

Section 2(42) in Consumer Protection Act, 2019

(42)"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, telecom, boarding or lodging or 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;⁴

*added by subsequent amendments.

Excerpts of Case Law

In the *IMA Vs VP Shantha (1995)*, by Supreme Court, which was labelled as the first Indian case law, to include the medical profession under the ambit of consumer protection act. During court proceedings, an explanation sought to be made by IMA in this case between a "profession" and an "occupation" to contend that a person engaged in an occupation only renders service which falls within the ambit of Section 2(1)(o) of the Act, the services rendered by a person belonging to a profession do not fall within the ambit of said provisions of the Act. It discussed at length the issues of medical services and the liability of medical professionals, and Hospitals, including the Government and charitable hospitals and supreme court held.

"Service rendered to patient by medical practitioner (except where the doctor renders service free of charge to every patient or

under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of 'service' as defined in Section 2(1)(0) of the Act.

The fact that medical practitioners belong to the medical profession and are subject to the disciplinary control of the Medical Council of India and/or State Medical Councils constituted under the provisions of the Indian Medical Council Act would not exclude the services rendered by them from the ambit of the Act.

A 'contract of personal service' has to be distinguished from a 'contract for personal service'. In the absence of a relationship of master and servant between the patient and medical practitioner, the service rendered by a medical practitioner to the patient cannot be regarded as service rendered under a 'contract of personal service'. Such service is service rendered under a 'contract of personal services' and is not covered by the exclusionary clause of the definition of 'service' contained in section 2(1)(0) of the Act.

The expression 'contract of personal service' in section 2(1)(0) of the Act cannot be confined to contracts for employment of domestic servants only and the said expression would include the employment of a medical officer for the purpose of rendering medical service to the employer. The service rendered by a medical officer to his employer under the contract of employment would be outside the purview of 'service' as defined in Section 2(1)(0) of the Act.

Service rendered free of charge by a medical practitioner attached to a hospital/nursing home or a medical officer employed in a hospital/nursing home where such services are provided free of charge to everybody, would not be 'service' as defined in Section 2(1)(0) of the Act. The payment of a token amount for registration purposes only at the hospital/nursing home would not alter the position.

Service rendered at a non-government hospital/nursing home where no charge whatsoever is made from any person availing the service and all patients (rich and poor) are given free service-is outside the purview of the expression 'service' as defined in Section 2(1)(0) of the Act. The payment of a token amount for registration purposes only at the hospital/nursing home would not alter the position.

Service rendered at a non-Government hospital/nursing home where charges are required to be paid by person availing such services falls within the purview of the expression 'service' as defined in section 2(1)(0) of the Act.

Service rendered at a non-government hospital/nursing home where charges are required to be paid by persons who are in a position to pay and persons who cannot afford to pay are rendered services free of charge would fall within the ambit of the expression 'service' as defined in section 2(1)(0) of the Act irrespective of the fact that the service is rendered free of charge to persons who are not in a position to pay for such services. Free service, would also be 'service' and the recipient a 'consumer' under the Act.

Service rendered at a Government Hospital/health care/dispensary where no charge whatsoever is made from any person availing the services and all patients (rich and poor) are given free service is outside the purview of the expression 'service' as defined in Section 2(1)(0) of the Act. The payment of a token amount for registration purposes only at the hospital/nursing home would not alter the position.

Service rendered at a Government hospital/health centre/dispensary where services are rendered on payment of charges and also rendered free of charge to other persons availing such services would fall within the ambit of the expression 'service' as defined in section 2(1)(0) of the Act irrespective of the fact that the service is rendered free of charge to persons who do not pay for such service. Free service would also be 'service' and the recipient a 'consumer' under the Act.

Service rendered by a medical practitioner or hospital/nursing home cannot be regarded as service rendered free of charge, if the person availing the service has taken an insurance policy for medical care where under the charges for consultation, diagnosis and medical treatment are borne by the insurance company and such service would fall within the ambit of 'service' as defined in Section 2(1)(0) of the Act.

Similarly, where, as a part of the conditions of the service, the employer bears the expenses of medical treatment of an employee and his family member dependent on him, the service rendered to such an employee and his

family members by a medical practitioner or a hospital/nursing home would not be free of charge and would constitute 'service' under Section 2(1)(0) of the Act."⁵

DISCUSSION WITH INPUTS FROM AI

In *Indian Medical Association v. V.P. Shantha* (1995 SCC (6) 651), the Supreme Court of India conclusively brought medical services within the ambit of the Consumer Protection Act, 1986 (CPA). This seminal ruling rejected the Indian Medical Association's contention that "professions" (including medicine) were distinct from "occupations," and thus exempt from the definition of "service" under Section 2(1)(o) of the CPA. The Court meticulously delineated the liability of medical professionals and hospitals, including governmental, charitable, and private institutions, holding as follows:

1. Inclusion of Medical Services: Services provided by medical practitioners encompassing consultation, diagnosis, and medical or surgical treatment constitute «service» under Section 2(1)(0) of the CPA. This inclusion applies **unless**:

- The service is rendered **free of charge to every patient**, or
- The service is provided under a **“contract of personal service”** (i.e., an employer-employee relationship).

2. Professional Status Irrelevant: The regulatory oversight of medical practitioners by the Medical Council of India or State Medical Councils under the Indian Medical Council Act does not exclude their services from the CPA's purview.

3. "Contract of Personal Service" vs. "Contract for Personal Services":

- A **“contract of personal service”** implies a master-servant relationship (e.g., a doctor employed by a company to treat its staff).⁶ Services under such a contract are **excluded** from the CPA's definition of "service."
- A **“contract for personal services”** exists where there is no master-servant relationship between the patient and doctor (e.g., a private practitioner treating a paying patient). Such services **are covered** by the CPA.

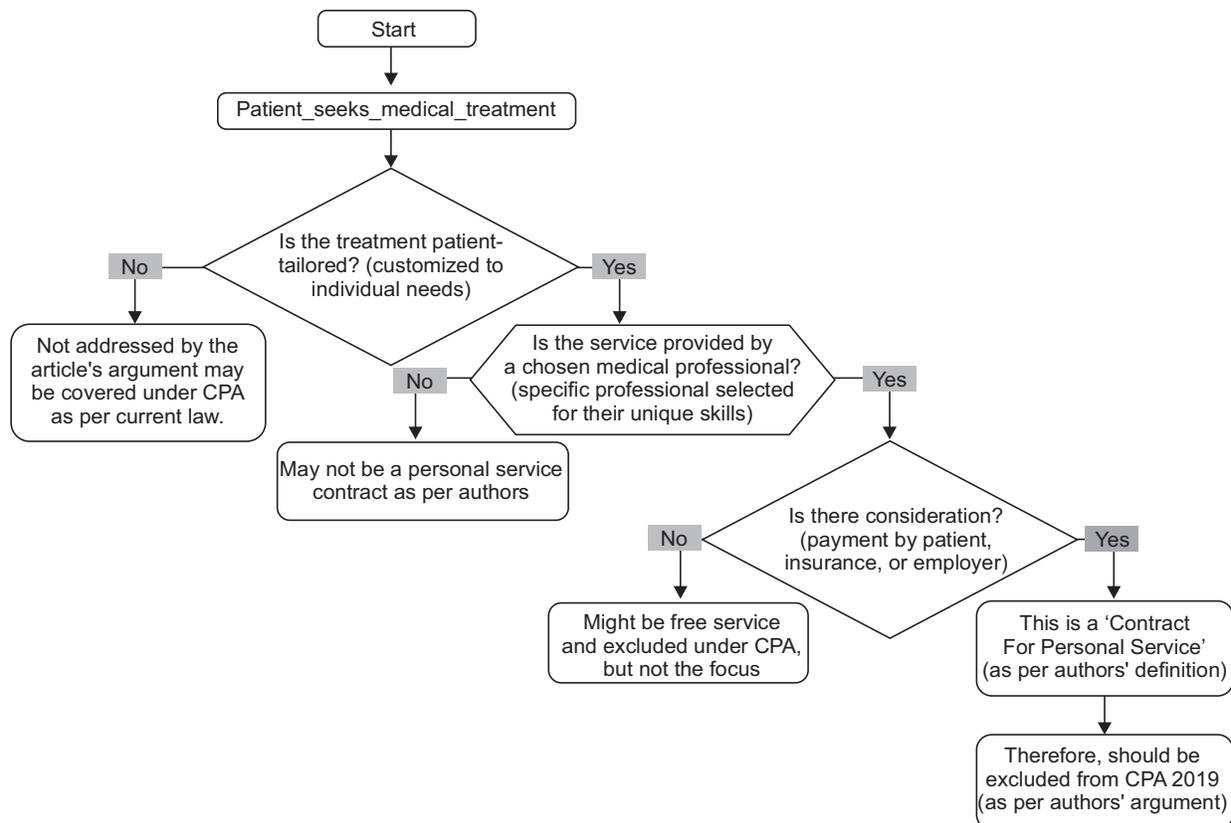


Figure 1: Flowchart for Medical profession as Contract for Personal service

Q. What is personal service? has it to be under employee employer contract to be a personal service?

AI: > Personal service refers to a contract where one party agrees to perform services that rely heavily on their unique skills, expertise, or personal qualities. It doesn't necessarily require a formal employer-employee relationship, but it often involves a close, direct relationship between the parties involved.

Here's a more detailed explanation:

What is Personal Service?

- ◆ A personal service contract is an agreement where the quality and execution of the work are intrinsically tied to the individual or entity providing the service.
- ◆ It emphasizes the individual's unique skills, talents, or expertise, rather than simply the completion of a task.
- ◆ Examples include contracts with consultants, artists, athletes, or professionals like lawyers and doctors.

Q. Does it require an employee-employer contract?

AI: >

- No, a personal service contract doesn't inherently require a formal employer-employee relationship.
- While it can exist within an employment context (e.g., a contract for a specific role within a company), it can also exist independently.
- For example, a freelance artist hired to paint a mural on a building, is providing personal service, even if they are not an employee of the building owner.

Key characteristics of personal service contracts:

- ◆ **Reliance on individual skill:** The service provider's unique abilities are central to the agreement.
- ◆ **Close relationship:** There's often a direct and personal connection between the parties involved.
- ◆ **Specific work:** The contract clearly defines the scope of the work to be performed.
- ◆ **Confidentiality and non-compete:** These are common clauses in personal service

contracts to protect the client's interests.

In contrast to a "contract of service":

- ◆ A "contract for service" (often an employer-employee relationship) involves the employer having control and direction over the work.⁵
- ◆ In a personal service contract, the individual providing the service retains more autonomy and control over how the work is done.

In conclusion:

Personal service contracts are a broad category that can encompass various situations. While they are often associated with a close working relationship, they don't necessarily require a formal employer-employee setup.

Q. What have to be the specific attributes of a medical service for it be personal service?

AI: > For a medical service to be considered a personal service, it should prioritize individual patient needs and experiences, emphasizing aspects like empathy, communication, and tailored care. This involves understanding the patient's unique circumstances, preferences, and values, and providing care that is both effective and respectful of their individuality.

Here's a breakdown of specific attributes:

1. Patient-Centered Approach:

• Individualized Care:

Medical services should be tailored to the specific needs of each patient, considering their medical history, preferences, and values.

• Holistic Perspective:

Recognizing the patient as a whole person, not just a collection of symptoms, and addressing their physical, emotional, and social well-being.⁶

2. Empathy and Compassion:

• Understanding and Sharing Feelings:

Healthcare professionals should be able to understand and share the patient's feelings, creating a safe and supportive environment.

• Respectful Treatment:

Patients should be treated with respect, dignity, and kindness, regardless of their background or condition.

3. Effective Communication:

- **Clear and Concise Explanations:**

Medical information should be communicated in a way that is easy for the patient to understand, avoiding jargon and technical terms.

- **Active Listening:**

Healthcare professionals should actively listen to the patient's concerns, questions, and feedback, demonstrating genuine interest and attentiveness.

4. Building Trust and Rapport:

- **Open and Honest Communication:**

Building trust through transparent communication and honest feedback is crucial.

- **Confidentiality:**

Maintaining patient confidentiality is essential for fostering trust and ensuring a safe space for open communication.

5. Cultural Sensitivity:

- **Respecting Diverse Beliefs:**

Healthcare providers should be aware of and respect the cultural and religious beliefs of their patients.

- **Language Accessibility:**

Providing services in a language that the patient understands, or offering translation services, is crucial for effective communication.

6. Continuity of Care:

- **Coordination of Services:**

Ensuring smooth transitions between different stages of care, such as from hospital to home, is vital.⁶

- **Follow-up Care:**

Providing adequate follow-up care to monitor the patient's progress and address any emerging needs.

By focusing on these attributes, medical services can move beyond a transactional approach and deliver truly personalized care that enhances the patient experience and promotes better health outcomes.

Q. Is a surgical procedure tailored to the particular medical needs and desire of the patient by her chosen surgeon, a personal service?

AI: > Yes, a surgical procedure tailored to a patient's specific medical needs and desires, especially when chosen by their surgeon, can be considered a personal service. This is because the process involves customizing the treatment plan based on individual patient characteristics and preferences, moving beyond a standardized approach to healthcare.

Here's why:

- **Individualized Care:**

Tailoring a surgical procedure means considering the patient's unique anatomy, medical history, and desired outcomes.

- **Shared Decision-Making:**

The surgeon and patient collaborate to determine the best course of action, taking into account the patient's values and preferences.

- **Holistic Approach:**

Personalized care considers not just the medical aspects but also the patient's psychological and cognitive characteristics, aiming for a holistic approach to treatment.

- **Enhanced Patient Experience:**

When patients feel their needs are understood and addressed, it can lead to increased satisfaction and engagement with the healthcare process.

- **Avoiding Paternalism:**

Respecting patient autonomy means acknowledging their right to make informed decisions about their own bodies and treatment options, rather than imposing a predetermined course of action.

While surgical procedures are inherently medical interventions, the process of tailoring them to the individual patient reflects a shift towards more personalized and patient-centered care, which can be seen as a form of personal service.

Q. An informed consent for medical procedure is treated as a contract, is it not a personal service contract??

While an informed consent for a medical procedure can be seen as having contractual elements, it is not typically treated as a personal service contract in the same way as a traditional business agreement. It's more accurately described as a therapeutic agreement or a communication process establishing a legal relationship with rights and responsibilities for

both the patient and the healthcare provider.

Here's why:

- **Focus on Autonomy and Disclosure:**

Informed consent is primarily about ensuring the patient understands the proposed treatment, its risks and benefits, and alternatives, allowing them to make an autonomous decision.

- **Therapeutic Relationship:**

The foundation of the relationship between a doctor and patient is a therapeutic one, with the goal of improving the patient's health. While consent is a crucial element, it's not the sole basis of the relationship.

- **Not a Commercial Transaction:**

Unlike a personal service contract, informed consent doesn't typically involve a commercial exchange of goods or services for payment in the same way as a typical contract.

- **Legal Ramifications:**

Failure to obtain proper informed consent can lead to legal issues, such as battery or negligence claims, but the focus is on patient autonomy and safety, not just breach of contract.

- **Varying Legal Interpretations:**

While some legal frameworks may view informed consent through a contractual lens, particularly in cases involving specific procedures or research, the prevailing view emphasizes the importance of communication, transparency, and patient autonomy.

- **Shared Decision-Making:**

Informed consent is increasingly viewed as a shared decision-making process where the patient and provider collaborate to determine the best course of action.

In essence, while informed consent involves a form of agreement, it's not a traditional contract in the same sense as a personal service contract. It's a legal and ethical mandate aimed at protecting patient autonomy and ensuring that medical procedures are performed with the patient's informed consent.⁷

Q. While you have agreed that a surgical procedure tailored to the individual patient specific needs is a personal service, is it not a contract for personal service this is service provided against consideration for the particular tailored procedure?

AI: > Yes, a contract for a surgical procedure tailored to an individual patient's needs, with consideration exchanged, is indeed a personal service contract. While the procedure itself is a service, the agreement to perform it, especially when customized and paid for, creates a contractual obligation. This aligns with the definition of a personal service contract where the unique skills and expertise of the provider are engaged for a specific task, in this case, the surgical procedure.

Here's a more detailed explanation:

- **Personal Service:**

A surgical procedure, particularly when tailored to a patient's specific condition, relies on the surgeon's individual skill and judgment. This makes it a personal service.⁷

- **Contractual Agreement:**

When a patient and a surgeon agree on a procedure, with a clear understanding of the service to be provided and the consideration (payment) involved, a contract is formed.⁸

- **Consideration:**

The exchange of value (payment for the surgery) is crucial. Without consideration, there is no contract, just a potential service offering.

- **Specific Needs:**

The fact that the procedure is tailored to the patient's specific needs further emphasizes the personal nature of the contract. The surgeon is not just providing a general service but is using their expertise to address the individual's unique medical situation.

Therefore, a contract for a tailored surgical procedure is a personal service contract because it involves a customized service performed by an individual professional, with consideration exchanged.

Q. A contract for providing personal service by the agreed specific procedure, for consideration commensurate with the surgical procedure, is it not a contract for personal service?

The contract is for the procedure to be personally provided by the chosen surgeon.

AI:> Yes, a contract specifying that a surgical procedure will be personally provided by a chosen surgeon, in exchange for commensurate compensation, is indeed a contract for personal

service. This type of agreement clearly outlines that the service is to be performed by a specific individual, making it a contract where the individual's personal skills and expertise are central to the agreement.

Explanation:

• **Personal Service Focus:**

The core of the contract is the surgeon's personal skill and the specific procedure they will perform. The agreement hinges on the patient's choice of this particular surgeon for this particular procedure, making it a contract for personal service.

• **Consideration:**

The "consideration" in this case refers to the payment the patient provides in exchange for the surgeon's services. This payment is directly linked to the specific surgical procedure being performed, further emphasizing the personal service aspect.

• **Distinction from "Contract for Service":**

While a "contract for service" might involve hiring someone to perform a task, it doesn't necessarily require the specific individual's personal involvement. The focus is more on the outcome or result, rather than the individual providing the service. In a "contract of service" (employment), the employer controls how the work is done, and the employee is subject to the employer's direction. However, in a contract for personal service, the individual providing the service retains control over how the service is performed.

• **Examples of Personal Service:**

This type of agreement is common in professional services like legal representation (where a specific lawyer is chosen), medical treatment (where a specific doctor is chosen), and other specialized services where the client's choice is based on the individual's skills and reputation.

Table 1: Here's a medicolegal poem distilling the article's core argument, weaving legal precision with rhythmic clarity:

<p>The Scalpel's Covenant <i>(On Contracts for Personal Service in Tailored Care)</i> When VP <i>Shantha's case</i> stretched the CPA's embrace To the clinician's & surgeon's work in time and space, It deemed the Allopathic healer's skilled vocation No "contract of" but for the whole nation. Yet hark! The surgeon's craft implies No factory gear where standard lies. Each cut, each stitch, each dose designed Springs from one <i>mind</i> to one <i>mankind</i>: The breast conserved, the joint replaced This is true <i>personal service</i>, traced To critical skill no institution owns, Where choice and covenant intones. <i>Consideration?</i> Gold exchanged For wisdom <i>singularly</i> arranged: Not service rendered as a thrall To masters' clocks on office wall, But sovereign art freely bestowed Down pathways <i>patient-chosen</i>, owed To autonomy, not oversight; To <i>consent's</i> flame, not corporate light. So let the Act's exclusion breathe: Where hands and hearts <i>personally</i> sheathe Disease in grace, bespoke and true Contract for service! CPA, withdraw your view.</p>

CONCLUSION

A specific patient tailored service to be provided personally by the chosen medical professional, against consideration for the treatment modality, is a 'Contract for personal service' and not 'contract of personal service.'

Therefore, as per the definition in Sec 2(42) of CPA, patient-tailored treatment services are excluded from the purview of Consumer Protection Act 2019. It should be so declared in the light of the debate on the Act in the parliament, and the recent decision of the Two Judge Supreme Court judgment in the Bar of Indian Lawyers case.

Conflict of interest: Nil

Disclaimer: The authors utilized AI tools for conceptual clarification and definitional inputs in the preparation of this article. However, the legal analysis and conclusions are those of the authors. The authors declare no conflict of interest.

REFERENCES

Cases:

1. *Indian Med Assoc v V P Shantha* (1995) 6 SCC 651.
2. *Bar Indian Lawyers v D K Gandhi* (2023) SCC OnLine SC 1016.

Legislation:

3. *Consumer Protection Act 1986* (India), s 2(1)(o).
4. *Consumer Protection Act 2019* (India), s 2(42).

Books:

5. Mehra, AB. Kumar, S. *Laws on Medical Negligence and Legal Remedies, with references to New Criminal Laws, 2023: 2nd Ed.* Delhi. Whitesmann Publishing; 2025.
6. Singh, A. *Contract and specific Relief.* 13th ed. Lucknow: Eastern Book Co; 2022.
7. Naseem, M. *Medical Law in India.* 3rd ed. Netherlands: Wolters Kluwer; 2023.
8. Kabra, SG. Verma, V. *Medical Negligence and Judicial Overreach.* Delhi: Red Flower Publication; 2025.