Review Article

RFP Journal of Hospital Administration
Volume 7 Number 1, January-June 2023

Healthcare Through the Lens of Indian Law: An Overview

Abhishek Yadav[1], Benjy Tom Varughese[2], Karthi Vignesh Raj K[3], Aravindan V[4], Pooja Gupta[5]

How to cite this article:
Abhishek Yadav, Benjy Tom Varughese, Karthi Vignesh Raj K, *et al.*/Healthcare Through the Lens of Indian Law: An Overview/ RFP Journal of Hospital Administration. 2023;7(1):21-26.

Abstract

Healthcare services do not always meet the expectations of patients as a result of which litigations of negligence arise. In the absence of an exclusive law dealing with such litigations in the Indian scenario, cases of medical negligence are analyzed and concluded on the basis of prior judgments of the Honorable Courts. This article discusses a few landmark judgments of Honorable Courts with respect to medical practice and negligence. These judgments have shaped the course of action in issues related to Medical Negligence in such a manner so as to provide justice to the aggrieved as well as provide protection to the doctors from undue harassment.

Keywords: Healthcare; Consumer Protection Act; Supreme Court; Medical Negligence; Medical Malpractice.

INTRODUCTION

Healthcare is a field wherein a person afflicted by illness of his body, seeks counsel and remedy from a medical professional. And in turn the professional, by means of his expertise, manages the illness resulting in recovery of the patient. However, in many instances this may not be the result and the patient and/or his next of kin are further aggrieved due to an unexpected outcome. The aggrieved patient or relatives thereafter turns to the law in the hope of obtaining some redressal to alleviate the grievance. They may approach Medical councils, courts of law (both civil and criminal) and consumer forums. Sometimes the frivolous complaints are also filed against the doctors due to the lack of understanding of intricacies of Medical science, over expectations and as a grief reaction to loss of their relatives.

In the Indian scenario, there is no specific defined law which has been enacted to exclusively address the issue of medical negligence. Hence, such cases are analyzed and interpreted through various judgments of the Honorable Courts, especially those of the Honorable Supreme Court of India. The Consumer Protection Act of 2019, does not explicitly include healthcare services within its ambit, however the Act has not been specifically exempted as well and hence *status quo* is maintained.[1-3] Some of the famous judgements of the Supreme Court that continue to be cited and are still relevant in the

Authors Affiliation: [1]Additional Professor, [3,4]Senior Resident, [5]Junior Resident, Department of Forensic Medicine and Toxicology, All India Institute of Medical Sciences, New Delhi 110029, India, [2]Senior Resident, Department of Forensic Medicine, Christian Medical College, Vellore 632002, Tamil Nadu, India.

Coressponding Author: Abhishek Yadav, Additional Professor, All India Institute of Medical Sciences, New Delhi 110029, India.

E-mail: drayad_in@yahoo.com

Received on: 23.01.2023

Accepted on: 11.02.2023

present time are discussed hereunder. The authors aim to highlight the importance of these judgments and sensitization of Medical Professionals towards the impact of these judgments towards Medical Profession.

IMPORTANT COURTS JUDGMENTS[3-7]

1. *Indian Medical Association vs. V.P. Shantha: [1995 SCC (6) 651][8]*

This was the landmark judgment of the Honorable Supreme Court that brought healthcare services within the ambit of the Consumer Protection Act. Patients who sought healthcare for their well-being and paid for the same, belong to the category of consumers and they had the right to expect quality services from the provider. Even those medical establishments that provide free healthcare to some patients while charging fees from others come under the ambit of CPA, so as to maintain a uniform standard of service irrespective of the paying capacity of the patient. Even Government establishments that provide free service to poor patients but charge fees from other patients also come within the Act. As per the judgment, those people who can't afford healthcare services are in greater need of the protection of the Consumer Protection Act and therefore cannot be excluded from its provisions.

2. *Achutrao Haribhau Khodwa and others vs. State of Maharashtra and others [1996 SCC (2) 634, JT 1996 (2) 624][9]*

Considering the very nature of the nature of medical profession, the Honorable Supreme Court noted that skills differ from doctor to doctor and many alternative treatments are available for a single diagnosis, all of which are acceptable and admissible. As long as the doctor performs his duties to the best of his ability while maintaining due care and caution, he cannot be held negligent. However complications can arise when the doctor acts without due care and caution and leaves a foreign body inside the patient after performing an operation and it suppurates. In cases where the doctors act carelessly and in a manner which is not expected of a medical practitioner, then in such a case an action in torts would be maintainable.

3. *Poonam Verma vs. Ashwin Patel and others [1996 AIR 2111, 1996 SCC (4) 332][10]*

It was contended before the Honorable court about the absence of qualification and lack of expertise in the Allopathic System of Medicine was responsible for deficiency in the treatment administered by a homeopathic doctor. A registered medical practitioner has the statutory duty to not enter the field of any other system of medicine, except the one in which he has received training and is qualified to practice. A person who does not have knowledge of a particular System of Medicine but practices in that System is a Quack and a mere pretender to medical knowledge or skill, or to put it differently, a Charlatan Trespassing into another field and prescribing such treatment which the doctor is unfamiliar and unqualified to do so, amounts to negligence for which the practitioner can be held liable.

4. *M/s Spring Meadows Hospital and Anr v. Hariol Ahluwalia through K.S. Ahluwalia and Anr [1998, SCC (4) 39][11]*

While deciding a case of maintainability of commission awarded by National consumer dispute redressal commission, Honorable Supreme Court observed that an error of judgment may or may not amount to negligence, depending on the nature of the error. If the error is one that would not have been made by a reasonably competent professional providing ordinary care, then the error amounts to negligence. On the other hand, if the error is one that could have occurred to any competent professional, then it is not considered as negligence.

5. *Smt. Savita Garg vs. The Director, National Heart Institute [2004; Appeal (civil) 4024 of 2003][12]*

As per this judgment, when a patient goes to a private clinic, he goes by the reputation of the clinic and with the hope that proper care will be taken by the Hospital authorities. It is not possible for the patient to know that which doctor will treat him. Hospital and medical institutes have responsibility for the actions of its doctors as well as other staff. Irrespective of whether the doctor is a permanent or temporary employee, as long as the hospital is availing services of the doctor, it can also be held liable for the negligent actions of the doctor.

6. *Jacob Mathew vs State of Punjab [2005; Appeal (crl.) 144-145 of 2004][13]*

The Honorable Supreme Court through this judgment provides protection to doctors against legal action, up to the point where medical negligence has not yet been established. It restrains the authorities from taking legal action merely

on the basis of allegations. The Honorable Court observed that a medical practitioner ordinarily tries to redeem a patient of his suffering. Fear of legal action hinders a doctor from confidently providing the best treatment to his patient and distorts tolerant and constructive relationship between people. The Honorable Court through its judgment, distinguished between civil and criminal negligence; for an act to amount to criminal negligence, the degree of negligence must be much higher, i.e., gross or of a very high degree. If this criterion is not satisfied, then the negligent act may be a ground for action in civil law but cannot form the basis for prosecution in criminal law.

Based on the above observations, the Honorable Court concluded that to prosecute a medical professional for negligence under criminal law, it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury, which resulted, was to such an extent that it most likely led to the imminent death of the patient.

7. State of Punjab vs. Shiv Ram [SCC 2005; Case No.: Appeal (civil) 5128 of 2002][14]

The Supreme Court as per its order, acknowledges the medical literature which states that natural failure of treatment can occur in individuals, despite the best of care being provided by the doctor to the patient. Such natural failure cannot be attributed to negligent actions of the healthcare professional.

8. Samira Kohlivs Dr. PrabhaManchanda [SCC 2008; Case No.: Appeal (civil) 1949 of 2004][15]

In this instance, the doctor resorted to radical surgery instead of conservative treatment for a diagnosis made at the operating table, without obtaining necessary consent. The Honorable Supreme Court found the doctor to have professionally erred and guilty of deficiency of service and liable to compensation.

9. Martin F. D'Souza vs. Mohd. Ishfaq [SCC 2009; Civil Appeal No. 3541 OF 2002][16]

The Honorable Supreme Court directed that whenever a complaint is received against a doctor or a hospitalby the Consumer Fora (whether District, State or National) or by the Criminal Court, the matter must first be referred to a competent doctor or a committee of doctors specialized in the field. Only on the basis of the report of such doctor(s) should it be held that a prima facie case of medical negligence exists and only then a notice is to be issued to the concerned doctor / hospital.

10. V. Krishna Rao vs. Nikhil Super Specialty Hospital [SCC 2010; Civil Appeal No. 2641 of 2010, Arising out of SLP(C) No.15084/2009)][17]

The Honorable Supreme Court ruled that it is not mandatory to obtain expert evidence in all cases. Especially in instances of *res ipsaloquitor*, where sufficient material evidence is available to prove negligence, consultation of professionals is not required.

11. Healthcare vis-à-vis Consumer Protection Act, 2019:[2021 Bombay HC; PIL 58/21][18]

The Consumer Protection Act of 2019, does not explicitly include healthcare services within its ambit, however the Act has not exempted it as well. Following the enactment of CPA, 2019, aPublic Interest Litigation (PIL)was filed by Medicos Legal Action Group in the Honorable High Court of Bombay. The PIL sought a declaration from the Honorable High Court that healthcare service providers should not be included within the purview of the Consumer Protection Act. The grounds for filing such a PIL was the parliamentary debates that led to the exclusion of healthcare from the definition of the term 'service' upon enactment of the Bill; this could be considered a clear indication of the intent of Parliament to not include healthcare under the ambit of CPA 2019.

The Honorable High Court, however, stated in its order that the CPA 1986 also did not include healthcare in the definition of services but the same was considered as to be included by the Honorable Supreme Court in its decision in Indian Medical Association vs. V P Shantha. The only two exceptions to this inclusion, as stated by the Honorable Supreme Court, were: a) Services are provided free of cost to all patients uniformly, and b) Contract of personal service, where a relationship similar to that of a master servant was established between the patient doctor respectively.

The Honorable High Court also referred to a judgement of the Honorable Supreme Court wherein it was ruled that speeches made on the floor of the Parliament are notadmissible as extrinsic aids to the interpretation of statutoryprovisions.Hence, the Honorable High Court dismissed the petition with costs to be paid by the petitioner.

12. Government Healthcare vis-à-vis Consumer Protection Act: [SCC Civil Appeal No 2823 of

***2020, Arising out of Special Leave Petition (C) No 28056 of 2017)]*[19]**

The Honorable Supreme Court vide its order in 2020 stayed an order by the National Consumer Disputes Redressal Commission to bring Government hospital's freemedical services under the ambit of the Consumer Protection Act.

The case in reference was one where a woman had delivered prematurely and the child required a Nursery ICU. The hospital in which delivery was conducted did not have such facilities hence they were referred to a higher medical institute. The referral institute was a Government one, wherein they had nursery facilities for newborn; however these were reserved for in born babies. The reasons cited was that they had a high number of deliveries and that it was hospital policy to not admit out-born babies to its nurseries, as it could result in cross-infection. The complainant claimed that had the child been admitted to a nursery, he would have survived.Hence the complaint was filed at the District Forum.

The District Forum dismissed the complaint following which the complainant appealed to the State Commission. The State Commission however found negligence on behalf of both hospitals, but stated that the complaint was not maintainable against the Government institute as treatment was administered free of charge. The first hospital however appealed against this order to the National Commission.

The National Commission maintained that both hospitals were negligent in their services and that immunity to the Government Hospital granted by the State Commission was unsustainable. According to the National Commission, the Government Hospital provided services free of cost to certain persons while to others it provided services on the payment of charges and hence could not be exempted from the ambit of Consumer Protection Act.

The Central Government however appealed to the Supreme Court against this order as it could set a dangerous precedent in which all Government Hospitals are brought uniformly under the Consumer Protection Act. Hence, the Supreme Court, affirming the judgement of the National Commission as to compensation to the complainant, explicitly states that the impugned order of the National Commission shall not be cited as a precedent. Since the issue is one of a recurring nature, the Honorable Supreme Court ordered that all future cases will be decided on the merits of the individual case and that the order of the National Commission with respect to the present case shall not be quoted as a reference.

DISCUSSION

Now, we can see that Medical negligence has been debated and deliberated at different level of courts and consumer forum, with many cases being decided at the top level of judiciary i.e. Honorable Supreme court of India. Generally, Medical negligence cases arise only when a physical/Mental/emotional damage is suffered by the patient or relatives. Though there is always a sympathy factor to the patients who have died or suffered damages in the allegations, but still by looking at the court judgments, we can see that the Medical professional have been adequately safeguarded by the Honorable courts over time and time again, both in civil and criminal matters. But still extreme actions have been seen against the Medical Professional particularly in cases of deaths when there is allegation of Medical negligence. The police under public pressure has even booked and even arrested the doctors under sections of murder i.e. Section 302 IPC and culpable homicide i.e. Section 304 IPC. Though these charges are not maintainable in the courts but the doctors face huge harassments and public shame particularly in today's world where one can tarnish anybody's image in social media. In recent times, we have witnessed a boom in social media and online news portals. These channels may spread any news (true or fake) without verification of authenticity. The allegations of medical negligence against any Medical Practitioner, Nursing home or Hospital may be spread via these portals rapidly causing irreparable damage to the reputation and future practice. In a recent case, a female doctor even committed the suicide in one such case.[20] It also leads to development of mistrust and lack of confidence towards medical professionals in the mind of general public. Even though the courts protect the Medical Professional from criminal harassments but have awarded exemplary monetary compensation to the patients even to the amount of Rs. 11 crores in a well known case of death of a doctor. Recently NCDRC directed a Kolkata bases tertiary care hospital to pay Rs 1.25 crore to the family of the patient who died while undergoing Laparoscopic dye test. The litigation costs in such cases are also very high. So Medical professionals particularly private must take Medical Indemnity insurance which covers a medical professional against the law suits of medical negligence in exchange to the

premiums paid to the insurance company.

CONCLUSION

Although healthcare has advanced over the years, it is far from perfect and cannot guarantee the best outcome in all circumstances. The expectations of the patients are also considered consumers by law, and if they are not met, it will lead to an increase in allegations and litigations. So, Doctors particularly private practitioners and hospitals must have suitable medical indemnity insurances to take care of the costly aspect of litigation. Being healthcare professionals, we need to keep our knowledge and awareness regarding the law of the land up to date, especially with respect to our profession, and maintain a good medical practice. Rumors and misconceptions as to the non-applicability of the Consumer Protection Act to the medical profession have time and again been put to rest by the Honorable Courts; such notions can no longer be used as a defense against allegations of medical negligence.

Conflict of interests: Nil

Funding: Nil

REFERENCES

1. Government of India. Ministry of Law and Justice, The Consumer Protection Act, 1986. [Cited 2023, Jan 19] Available from https://legislative.gov.in/sites/default/files/A1986-68_0.pdf.
2. Government of India. Ministry of Law and Justice, The Consumer Protection Act, 2019. [Cited 2023, Jan 19] Available from https://www.indiacode.nic.in/bitstream/123456789/15256/1/A2019-35.pdf.
3. Yadav A, BT Varughese, Abilash S, V Chandran, SK Gupta. Medical Negligence vis-à-vis Consumer Protection Act 2019. RFP Journal of Hospital Administration. 2021; 5(1): 25-27.
4. Guharaj PV, Gupta SK. Medical Council of India, Medical ethics and Negligence. In: Forensic Medicine and Toxicology, 3rd ed. Hyderabad; Universities Press, 2019.
5. Rao NG. Ethics of Medical Practice. In: Textbook of Forensic Medicine and Toxicology. 2nded. New Delhi; Jaypee brothers medical publishers pvt ltd, 2010.
6. Kannan K. Medical Negligence and Consumer Protection Act. In: A textbook of medical jurisprudence and toxicology. 25th ed. Haryana; LexisNexis, 2016.
7. Reddy KSN, Murty OP. Medical Law and Ethics. In:The essentials of forensic medicine and toxicology. 34thed. New Delhi: Jaypee brothers medical publishers pvt ltd, 2014.
8. Justice S Agrawal. Supreme Court of India. Indian Medical Association vs V.P. Shantha & Ors on 13 November, 1995 [Internet]. (Cited 2022 Nov 17). Available from: https://indiankanoon.org/doc/723973/.
9. Justice BN Kirpal. Supreme Court of India. Achutrao Haribhau Khodwa vs State Of Maharashtra And Ors on 20 February, 1996 [Internet]. (Cited 2022 Nov 17). Available from: https://indiankanoon.org/doc/1917076/.
10. Justice A Saghir S, Justice K Singh. Poonam Verma v. Ashwin Patel and others [1996 AIR 2111, 1996 SCC (4) 332]. [Internet]. (Cited 2022 Nov 17). Available from: https://indiankanoon.org/doc/611474/.
11. Justice A Saghir S, Justice GB Pattanaik. M/s Spring Meadows Hospital and Anr v. Hariol Ahluwalia through K.S. Ahluwalia and Anr [1998, SCC (4) 39]. [Internet]. (Cited 2022 Nov 17). Available from: https://indiankanoon.org/doc/1715546/.
12. Justice BN Agrawal, Justice AK Mathur. Smt. Savita Garg vs. The Director, National Heart Institute [2004; Appeal (civil) 4024 of 2003]. [Internet]. (Cited 2022 Nov 17). Available from: https://indiankanoon.org/doc/150881/.
13. Justice RC Lahoti. Supreme Court of India. Jacob Mathew vs State Of Punjab & Anr on 5 August, 2005. [Internet]. (cited 2022 Nov 17). Available from: https://indiankanoon.org/doc/871062/.
14. Justice RC Lahoti. Supreme Court of India. State Of Punjab vs Shiv Ram & Ors on 25 August, 2005. [Internet]. (cited 2022 Nov 21). Available from: https://indiankanoon.org/doc/1599759/.
15. Justice RV Raveendran. Supreme Court of India. Samira Kohli vs Dr. Prabha Manchanda & Anr on 16 January, 2008. [Internet]. (cited 2022 Nov 21). Available from: https://indiankanoon.org/doc/438423/.
16. Justice M Katju, Justice RM Lodha. Supreme Court of India. Martin F. D' Souza vs Mohd. Ishfaq on 17 February, 2009. [Internet]. (cited 2022 Nov 21). Available from: https://indiankanoon.org/doc/1092676/.
17. Justice Singhvi GS, Justice Ganguly AK. V. Kishan Rao vs Nikhil Super Speciality Hospital on 8 March, 2010. [Internet]. (cited 2022 Nov 21). Available from: https://indiankanoon.org/doc/1920027/.
18. Chief Justice Dutta D, Justice GS Kulkarni. Bombay High Court. Medicolegal Action Group Vs Union of India on 2021 Oct 25. [Internet]. (cited 2023 Jan 19). Available from: https://bombayhighcourt.nic.in/ordqrywebcase_action.php.
19. Justice Chandrachud DY. Supreme Court of India. Civil Appeal No 2823 of 2020 on 23 Jul 2020. [Internet]. (cited 2023 Jan 19). Available from: https://main.sci.gov.in/supremeco

urt/2017/29510/29510_2017_34_8_23077_Judgement_23-Jul-2020.pdf.

20. Wadhawan DA. Booked for murder, Rajasthan doctor dies by suicide, leaves note: 'Stop harassing doctors'. 2022 Mar 31. India Today. [Internet]. (cited 2023 Jan 19). Available from: https://www.indiatoday.in/india/story/booked-murder-rajasthan-doctor-dies-suicide-leaves-note-stop-harassing-doctors-1931681-2022-03-31.
21. Misra B. Death of Doctor during Laproscopic dye test: NCDRC Slaps Rs 1.25 Crores Compensation on Kolkata Hospital. Medical Dialogues. 2023 Jan 18. National Consumer Disputes Redressal Commission, New Delhi consumer case no. 428 of 2015. [Internet]. (cited 2023 Jan 19). Available from: https://medicaldialogues.in/pdf_upload/kothari-medical-compensation--198607.pdf.