

Medical Negligence as A Social Problem and Consumer Protection Act, 1986

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Abstract

As we know the fact that in general, the government hospitals and the hospitals of the like nature eg. hospitals run by various charitable trusts etc. are being used by the weaker sections of the society and in very few specific types of problems by every section of the society. The treatment in these hospitals is either free of cost or a very nominal or token amount is to be paid by the patients. The doctors working there are simply doing their duties or render service free of charge to every patient by way of consultation, diagnosis and treatment both medical and surgical. They would not fall within the ambit of 'service' as defined in section 2(1)(o) of Consumer Protection Act, 1986 [Indian Medical Association case]⁶

The exemption to such categories of hospitals etc. raises various issues. Some of these are as follows -

- 1. Whether the doctors of such hospitals should be exempted from liability in cases of medical negligence?*
- 2. Should there be no accountability when there is a charity?*
- 3. Should the patients who cannot afford to pay for treatment be left without any remedy?*
- 4. Should the quality of services rendered in government and charitable hospitals etc. be of a lower degree?*
- 5. Should the duty to take care or standard of care of the patients be different in private hospitals and govt. or charitable trusts run hospitals?*

These questions can only be answered in negative. After examining the reported judgements, press reports and other records regarding the act of medical negligence caused in hospitals and dispensaries exempted above, I have felt a strong need for determining the accountability of the medical professionals giving their services free of cost/charge. And accordingly I recommend the Consumer Protection Act, 1986 be amended suitably to include the category excluded by the enactment.

Keywords: *Consumer, Service, Medical Negligence, Care etc.*

Reference to this paper should be made as follows:

Received: 05.04.2019

Approved: 15.06.2019

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Social Problem and
Consumer Protection Act
1986*

*RJPSS 2019, Vol. XLIV,
No. 1, pp. 147-151*

Article No. 19

Online available at:

[http://
rjpss.anubooks.com/](http://rjpss.anubooks.com/)

Introduction

As we all know that the word society, in its wider sense, is a very complex phenomenon. And when we are talking about Indian society, it is more complex than any other else. The factors like different religions, caste, class, gender, poverty etc. makes it more complex. The Indian society, at large, today, is combating with many social problems. There are various burning issues which needs specific attention. Every person, by its very nature, wants to grow. It's very much natural. The problem occurs when the pace of growth is disproportionate with the labour put to achieve it. The lust of acquiring (hoarding) money also adds fuel to the fire. Everybody is behind money. The amount of wealth you have, decides your status in the present day society of India. But while we are saying that the Indian society is emerging, the issues like medical negligence create problems. The medical profession which is primarily meant for the service of the humanity also not remained untouched from the race.

Health and human development form integral components of overall socio-economic development of any nation. "Health is wealth and a healthy mind resides in a healthy body" had been assuming importance since the dawn of civilization. Health is considered as imperative to the satisfaction of the basic human needs and to an improved quality of life. Health is not only important for the enjoyment of persons life, but it also ensures the growth and development of the sacred life of the individual.¹

Every sovereign state has plenary powers to do all things which promotes the health, peace, education, morals and good order of the people. Maintenance and improvement of public health have to rank high and these are indispensable to the very physical existence of the community and on the betterment of these depends the building of society.

The preamble of the constitution of India which strives to provide for a welfare state with socialistic pattern of society, under Article 21 guarantees the right to life and personal liberty. The obligation of the state to ensure the creation and the sustaining of conditions congenial to good health is cast by various provisions of the constitution of India. There is a statutory obligation on states as well as central government to ensure that every citizen in need of medical services should get good and timely treatment in government hospitals and health centres. The apex court, in *Paschim Bang Khet Mazdoor Samiti case*², while widening the scope of Article 21 and the government responsibility to provide medical aid to every person in the country, also confirmed these things by stating that in a welfare state, the primary duty of the government is to secure the welfare of the people. Providing adequate medical

facilities for the people is an obligation undertaken by the government in a welfare state. Preservation of human life is thus of paramount importance. The government hospitals, run by the state, are duty bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment, results in violation of his right to life guaranteed by constitution of India.

The medical profession is based on high ethical standards and it is rendering a noble service to the humanity. It is still generally believed that doctors render a missionary service and they take the oath of “service”³ to the suffering human beings and in return receiving subsistence and satisfaction. However, it is also true that this noble profession is tending towards commercialization. Due to increased pressure on the hospital facilities and owing to lack of time, the doctors spend less and less time with their patients and the standard of professional competence is falling day by day. The medical professionals owe a great degree of care, vigilance and responsibility towards society and if there is rashness and grave negligence on the part of doctors, the sufferers must get remedy in a welfare state through an appropriate forum.

According to the *Natyashastra*⁴ the doctor is also subject to punishment and fine for not providing proper information to the patient, committing a mistake and for negligent treatment.

However, the doctors considered to be visible God, were not held responsible for their negligent acts by our ancestors and even now, to some extent by us. The number of cases filed against the doctors and succeeded in securing justice are very negligible. It is due to the reason that a very little percentage of the cases of negligence on the part of doctors are being registered by the patients. The reasons behind this scenario may be their poverty, illiteracy, want of legal awareness etc.

The liability of medical professionals in India under consumer law is of very recent origin. The consumer Protection Act, 1986 has been regarded as a milestone in the history of socio-economic legislation in India. It is one of the benevolent pieces of legislation intended to protect large body of consumers from exploitation. This Act has now provided a wider access to the justice system that has a speedy procedure, absence of court fees and adequate compensation. “Service” rendered to a patient by a medical practitioner (except free of charge and contract of personal service) by way of consultation, diagnosis and treatment both medical and surgical would fall within the ambit of broader term “service” as defined in section 2(1)(o) of the Act [Indian medical association case]⁵.

For taking the help of this Act , we must know about the term “service” as defined in section 2(1)(o) of Consumer Protection Act ,1986 –which describe it as –service of any description which is made available to potential users and includes the provisions of facilities in connection with banking , financing , insurance ,transport ,processing ,supply of electrical or other energy , 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 .

The term “deficiency” is defined in section 2(1)(g)of Consumer Protection Act ,1986 –which means –any fault , imperfection or shortcoming in the quality , quantity , potency ,purity ,or standard which is required to be maintained by or under any law for the time being in force or under any contract , as is claimed by the trader in any manner whatsoever in relation to any goods .

As we know the fact that in general, the government hospitals and the hospitals of the like nature e.g. hospitals run by various charitable trusts etc. are being used by the weaker sections of the society and in very few specific types of problems by every section of the society. The treatment in these hospitals is either free of cost or a very nominal or token amount is to be paid by the patients. The doctors working there are simply doing their duties or render service free of charge to every patient by way of consultation, diagnosis and treatment both medical and surgical. They would not fall within the ambit of ‘service’ as defined in section 2(1)(o) of Consumer Protection Act ,1986 [Indian Medical Association case]⁶

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