

**BURNISHED LAW JOURNAL****A DETAILED STUDY ON MEDICAL NEGLIGENCE AND CONSUMER PROTECTION ACT**<sup>1</sup>**AUTHOR: ASHISH J**<sup>2</sup>**CO-AUTHOR: LOGAPRIYA T****ABSTRACT**

The paper deals with the relationship that exist between the medical negligence and the consumer protection act. Medical Profession is one of the most reputed professions in the world as we know that doctors are considered as God because they save our lives and always saves us from disease like Cancer, TB, etc. So they are given much respect in our society and moreover they do their work and research for humans and their development and their main profession is to help people to come out of any diseases. This is their work and so they focus much on their research as it will be helpful to mankind in future. But then a time comes when the saviour doesn't remain the saviour but becomes the devil himself and here comes the main thing of our topic and that is about Negligence in the services rendered by the doctors. Doctor always needs to be focused on their work and they should be always exact in their work because when they are advising someone on their health issues then they cannot take a chance to give them wrong or useless advice or to do anything wrong in surgery because it can cost anybody's life. But it is an irony that we have several cases of medical negligence in our country and this paper is thus a detail study on Negligence in services rendered by doctors.

A Consumer protection is a benevolent piece of a social welfare legislation providing for a simple, speedy and less expensive remedy for redressal of consumer grievances in relation to defective goods and deficient services The act is a weapon in the hands of consumers to fight against

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exploitation by traders, manufactures and sellers on the one hand providers on the service of the other.

**Keywords** : Medical negligence , consumer protection, medical profession, consumers, exploitation.

### **OBJECTIVES**

1. To study on rules regarding a medical doctor should know about COPRA
2. To analyse the reasonable condition of medical negligence.
3. To find out the judicial perspective of medical negligence under consumer protection act.

### **HYPOTHESIS**

Ha : The legal provision in relating to consumer protection act is effective to make the medical practitioner liable to medical negligence.

Ho: The legal provision in relating to consumer protection act is effective to make the medical practitioner liable to medical negligence.

### **RESEARCH METHODOLOGY**

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This is doctrinal research and materials collected are secondary data.

**Research question:** Whether the effectiveness of consumer protection act makes medical practioner liable under medical negligence?

### **CHAPTERIZATION**

- ❖ INTRODUCTION
- ❖ CHAPTER 1 : WHAT A MEDICAL DOCTOR SHOULD KNOW ABOUT COPRA?
- ❖ CHAPTER 2 : MEDICAL NEGLIGENCE - DEFINITIONAL ASPECTS
- ❖ CHAPTER 3 : JUDICIAL INTERPRETATION OF MEDICAL NEGLIGENCE LIABILITY
- ❖ CONCLUSION
- ❖ ENDNOTES

## ❖ BIBLIOGRAPHY

### CHAPTER 1 : WHAT A MEDICAL DOCTOR SHOULD KNOW ABOUT COPRA?

The current landmark judgement by way of the Supreme Court, stating that medical services to sufferers, for which costs are charged, come below the purview of Consumer Protection Act 1986, has positioned a curtain at the long- drawn-out debate between docs and clients at the issue. Whilst the matter changed into still below deliberation through the Court, numerous claims have been made from within the scientific profession, likely as part of a strategy. Consumer courts had been no longer ready or competent to choose on complicated medical subjects involved in medico-criminal litigation, implying that there was wide scope for injustice. Once their powers had been augmented, clinical councils, and no longer Consumer Courts, ought to take those topics up. The Consumer Protection Act would in the end be against the hobbies of patients because there would be shielding medicine. These arguments release a whole lot of hot air however shed no light. Now that the dirt has settled it's far really worth analyzing how the clinical network has responded to the very positions it attempted to take. During the past two years – while the case changed into earlier than the Supreme Court – there was a public uproar on the kidney transplant racket. Many docs knew of folks who had indulged in such practices but selected to be tight-lipped bystanders. The scientific councils stirred right into a semblance of activity handiest after the media turned at the heat. Their interest seems to have easily petered out. But then, historically, the scientific councils, intended to be the guardians of ethical standards in clinical exercise, have chosen to look the other way, warding off taking action and even neglecting to exercise the powers they already have. How, then, can the argument — that the scientific community in popular and clinical councils in particular could offer adequate law and redressal to safeguard the plight of patients had been they granted more powers — inspire confidence?

As regards protecting medicine, by means of its very nature, it is going to be intended to safeguard the hobbies of the doctor.

Transferring the costs incurred in this account to patients will represent an unfair exercise beneath the Consumer Protection Act. Does this mean that the doctor is to be defenseless The need for such

defense would be minimised if we had trendy protocols for the research and remedy of not unusual diseases. We understand that the Indian Academy of Paediatrics is evolving protocols for paediatric problems. This is a step in the right direction. As lengthy as the physician follows nationally ordinary protocols, generally he can not be accused of negligence or malpractice.

The bench of the Consumer Court is headed with the aid of a retired decide who can avail of professional services if and when needed. In Bombay, the court requires the complainant to offer attestments from clinical doctors that there may be a basis for admitting the case. This way that once the case towards a doctor is earlier than the CPA court docket, at the least medical doctors feel there is prima facie benefit in it: What is extra, if the complaint proves to be frivolous, the complainant may be fined up to Rs. 10,000/- Surely, there is no room for apprehension. The judgement, by means of itself, does not encourage the filing of suits towards doctors. By and large, the Indian citizen does not want to litigate.

On the contrary, taken in the proper spirit, it is a boon for moral, patient-oriented medical doctors. Doctors claiming to stick to ethics have always lamented that colleagues stooping to unethical practices have an unfair advantage due to the fact there's no control over those practices. The CPA need to help in curtailing this unfair benefit.

A quack is someone who pretends to have knowledge which he does not possess; who promises to do what he's either now not sure he can perform or what he's certain he cannot perform; who represents his practice to be greater success than that of other men; who pretends to therapy diseases regarded and admitted to be incurable; whose way is assured and imposing; whose tone and language are unhesitating and boastful; who employs remedies, the nature and composition of which he maintains unknown and who deals in specifics and established remedies. He is addicted to handbills, newspapers and similar modes of creating recognized his pretensions and proceedings. This is the quack and the behavior of this guy is quackery.

## CHAPTER 2 : MEDICAL NEGLIGENCE - DEFINITIONAL ASPECTS

According to Winfield, "Negligence as a misconduct is that the breach of a responsibility to require care which ends in injury, unsought by the litigator to the complainant."

This definition involves 3 constituents of negligence:

1. A responsibility to exercise guardianship on the part of the party complained of towards the party querulous concerning the former's conduct inside the scope of the duty.
2. That the litigator committed the breach of the same duty.
3. That the complainant suffered of import injury thanks to the breach of duty.
4. That the results were undesirable.

Therefore, primarily these four components square measure to be checked in an exceedingly misconduct of negligence. though Lord Mc Millan in *Donoghue v. Stevenson* declared that the classes of negligence square measure ne'er closed. Duty covers wide selection thus wide is that the duty is, the court is to determine. it's not possible to grant one general, comprehensive definition of negligence because it arises from a variety of relationships.

#### The Thought of Medical Negligence

Every person UN agency enters into a selected profession undertakes to wake the exercise of it an inexpensive degree of care and ability. He needs a selected level of learning to be knowledgeable of that branch, impliedly assures the person managing him that the ability that he professes to possess shall be exercised and exercised with cheap degree of care and caution. A medical skilled doesn't assure his patient the result. An operating surgeon cannot and doesn't guarantee that the results of surgery would invariably be helpful, abundant less to the extent of 100% for the person operated on.

the sole assurance that such knowledgeable will provide or are often understood to own given by implication is that he's possessed of the requisite ability therein branch of profession that he's active and whereas enterprise the performance of the task entrusted to him he would be workout his ability with cheap ability. this is often what all, the person approaching the skilled will expect. Judged by this commonplace, knowledgeable could also be control to blame for negligence on one in all the 2 findings: either he wasn't possessed of the requisite ability that he professed to own

possessed, or, he failed to exercise, with cheap ability within the given case, the ability that he did possess.

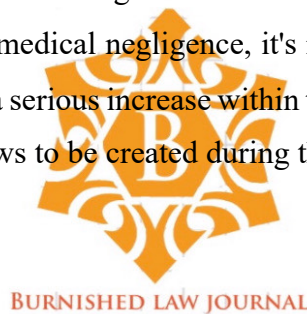
A person UN agency holds himself out able to provide medical recommendation and treatment impliedly undertakes that he is possessed of ability and data for the aim.

Such an individual once consulted by a patient owes him certain duties:

1. a requirement of care decide whether or not to undertake this case.
2. a requirement of care decide what treatment to grant.
3. a requirement of care in administering that treatment properly.

A breach of any of those duties gives a right of action for negligence to the patient.

Medical negligence nowadays are often thought of to be a wing of negligence as a misconduct. With the growing range of cases of medical negligence, it's non inheritable itself attention of the lawmakers. Recently there has been a serious increase within the cases of gross medical negligence that entails some immediate strict laws to be created during this regard.



### **CHAPTER 3 : JUDICIAL INTERPRETATION OF MEDICAL NEGLIGENCE LIABILITY**

The Supreme Court in *Achutrao Khodwa v. State of Maharashtra* laid down the law as follows: “The skill of medical practitioners differs from doctor to doctor. The very nature of the profession is such there could also be quite one course of treatment which can be advisable for treating a patient. Courts would indeed be slow in attributing negligence on the part of a doctor if he has performed his duties to the simplest of his ability and with ordinary care and caution. Medical opinion may differ with reference to the course of manner which is suitable to the medical community and therefore the court finds that he has attended on the patient, but as long as a doctor acts during a manner which is suitable to the medical community and therefore the Court finds that he has attended on the patient with ordinary care, skill and diligence and if the patient still doesn't survive or suffers a permanent ailment, it might be difficult to carry the doctor to be guilty of negligence. The Supreme Court also held that the principle of *res ipsa loquitur* may apply in certain cases. within the case of *Achutrao* a towel was left inside a woman's greater peritoneal sac while she was operated for sterilisation during a Government hospital causing peritonitis which resulted in her death. The conclusion of negligence was drawn against the doctors by applying the principle of *res ipsa loquitur* and therefore the Government was vicariously liable.

Similarly in *Aparna Dutta v. Apollo Hospital Enterprises Ltd.*, the plaintiff got herself operated for the removal of her uterus within the defendant hospital. During operation, abdominal pack was left within the abdomen. an equivalent was removed by a second operation. Leaving foreign matter within the body during operation was held to be a case of *res ipsa loquitur*. The doctor who performed the operation and therefore the hospital were held susceptible to pay compensation of Rs. 5, 80,000 to the plaintiff.

The maxim *res ipsa loquitur* acts as a rescuer for the complainant by easing their burden of proving the negligence of the doctor of the hospital authorities within the cases of gross negligence which is manifest within the very act of the doctor itself. it's a relief for the patients who are a topic of such gross negligence.

### **THE STANDARD OF CARE REQUIRED: THE BOLAM TEST**

Under English Law as laid down in *Bolam v. Friern Hospital Management Committee*, a doctor, who acts in accordance with a practice accepted as proper by a responsible body of medical men, isn't negligent merely because there's a body of opinion that takes a contrary view. In *Bolam's* case, *Mc Nair, J.*, in his summation of jury observed: “The test is that the standard of the standard

skilled man exercising and professing to possess that special skill. a person needn't possess the very best expert skill; it's well established law that it's sufficient if he exercises the standard skill of a standard competent man exercising that specific art. within the case of a medical practitioner , negligence means failure to act in accordance with the quality of reasonably competent medical practitioner at that point . There could also be one or more perfectly proper standards and if he conforms to at least one of those proper standards, then he's not negligent.” The above test laid down by Mc Nair,J., has been repeatedly approved by the House of the Lords. The test covers the whole field of liability of a doctor namely liability in respect of diagnosis; liability in respect of a doctor’s duty to warn his patients of risks inherent in treatment, liability in respect of operating upon or giving treatment involving physical force to a patient who is unable to offer his consent; and liability in respect of treatment.

Bingham L.J. in *Eckersley v. Binnie* , summarised the Bolam test within the following words:

From these general statements it follows that knowledgeable man should command the corpus of data which forms a part of the professional equipment of the standard member of his profession. He shouldn't lag behind other ordinary assiduous and intelligent members of his profession in knowledge of latest advances, discoveries and developments in his field. He should have such awareness as an ordinarily competent practitioner would have of the deficiencies in his knowledge and therefore the limitations on his skill. He should be aware of the hazards and risks in any professional task he undertakes to the extent that other ordinarily competent members of the profession would be alert. He must bring back any professional task he undertakes no less expertise, skill and care than other ordinarily competent members of his profession would bring, but need bring no more. the quality is that of the reasonable average. The law doesn't require of knowledgeable man that he be a paragon combining the qualities of polymath and prophet.

## CONCLUSION

Medical negligence can't be considered to be simply a clear category of tort. Medical negligence changes its form, from an easy tort whereby an individual is given a wrong treatment and should vomit thanks to that to a dangerous life harming tort whereby the patient loses his life thanks to an easy injury of fracture.



Medical negligence involves a comparative high degree of care which is predicted from a doctor of an inexpensive degree. the quality of care isn't of a standard prudent man but of a standard prudent doctor who belongs thereto category to which the doctor belongs to who is to be judged by that standard.

With the growing number of cases in India and therefore the world at large it becomes a major concern that ought to the remedies be still given under a law of tort and Consumer Protection Act, 1986 or if the time has come to enact a legislation to carve out the remedies for the patients who have suffered in serious ways thanks to the negligence of the doctors or the medical authorities. There are patients who have suffered thanks to negligence but haven't made a complaint either thanks to their own unawareness or thanks to long proceedings etc. Not only this, many doctors give medicines which are too strong for the patients. These can damage their brain also as body. generally , such defects within the treatment never come to the limelight. this could be taken care of. A doctor should be made liable for the varied compositions of drugs which he prescribes.

It is time now that a forum should be established to simply provide the remedies to such patients. But this is able to not do alone. it's required to be implemented in its full swing by making the ways easier and advertising it so on make people conscious of their rights.

But certainly the principles and regulations shouldn't be made so strong so on completely deduct the liberty of the doctor to treat the patients. A doctor should tend the liberty to treat his patients liberally and not in fear and to seek out better ways to treat the patients. the very fact that doctors do play a serious role in bringing happiness to several lives can't be denied.

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