JUDICIAL INTERPRETATIONS ON MEDICAL NEGLIGENCE IN THE CONTEXT OF CONSUMER PROTECTION ACT, 1986

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MEDICAL NEGLIGENCE: NEGLIGENT DOCTOR TO BE HELD LIABLE?

ABSTRACT

"Medical profession is highly respected in society. Doctors in private practice or hospital services try their best to treat patients with due care and diligence. Even then there are many such cases where there are instances of medical negligence. In Sushrutha Samhita stated that the physicians who act improperly are liable to punishment and the quantum of the penalty varies according to the status of the victims. However, the damages for medical negligence varied based on the severity of injury or loss of life. "Medical negligence is a combination of two words. The second word solely describes the meaning, though the meaning of negligence has not been described properly it is an act recklessly done by a person resulting in foreseeable damages to the other. Medical Negligence is the misconduct by a medical practitioner or doctor by not providing enough care resulting in the breach of their duties and harming the patients. A professional is deemed to be an expert in that field at least; a patient getting treated under any doctor surely expects to get healed and at least expects the doctor to be careful while performing his duties. Medical negligence has caused many deaths as well as adverse results to the patient's health." The question that arises is will the doctors be liable for their act of negligence or will they be left free even after committing the wrong?

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The most significant characteristic of a 'profession' is the asymmetric information that exists between the professional and the one who receives the services of such a professional. The medical profession is no exception to this rule. It is considered to be a noble profession, where the professional helps in preserving life. In India, the information asymmetry between the doctors and the patients is even more skewed, it is perhaps the reason why doctors are considered god-like. Since the dawn of civilization, medical professionals have always been accountable to the rule of law as any other citizens. However, that would also imply that their

'accountability' has been measured in each civilisation[1]. Thus, one could say that the Consumer Protection Act is the result of the evolution of measuring the accountability of medical practitioners over time.

"*A professional entering into the certain profession is deemed to know that profession and it is assured impliedly by him that a reasonable amount of care shall be taken to profess his profession. The person can be held liable under negligence if he did not possess the required skills to profess or he failed to take an essential amount of care to profess the said profession.*"

The Consumer Protection Act 1986 had successfully managed to provide a civilised outlet for the discontent amongst the consumer of the health. However, it has also increased the friction between the relationship between the doctors and the patients, who once revered each other due to the nature of their relationship. It is thereby necessary to understand the COPRA first to realise its implication for the consumers as well as the members of the medical fraternities[2]. Negligence has been an integral part of civil and criminal law from the very beginning as we know it. It has however been poured into different moulds of professions to provide what is exclusively applicable to a particular industry. 'Negligence' refers to the omission of certain imperative acts that lead to a breach of 'duty of care'; care that is reasonably expected out of a professional while exercising his expertise. In other words, actionable negligence would refer to the failure of observing regular care or skill that the discharge of the professional expertise requires, and this failure has thereafter resulted in causing damage or injury to the recipient of the aforementioned services. Thus, one can consider these as the essential ingredients of 'negligence' as an offence, and as we move forward to explore its roots in civil and criminal law, we would be able to understand how these ingredients shall remain constant while determining the actions of the professional. However, the threshold of care shall vary according to the profession and shall be in proportion to the risks involved while the professional discharges his function.

To understand these basic ingredients of 'negligence', we also have to look at the loophole, the laws for negligence were directing at. The first essential ingredient that we talked about was the '*duty of care'* owed by one party towards another party. 'Duty of care' flows from the perfectly knowledgeable to the imperfectly knowledgeable party, to preserve the rights of

[1] Mathiharan, K. (2006). Supreme Court on Medical Negligence. *Economic and Political Weekly*, 111-115.
[2] Bal, A. (1993). Consumer protection act and the medical profession. *Economic and Political Weekly*, 432-435.

those who are not so fluent with the services that are being offered to them. In the situation at hand, a perfectly knowledgeable party would refer to the professional who is dispensing the service, however, our prey to asymmetrical information would be the consumer! It stems from the fact that one who is perfectly knowledgeable will be more informed with regards to the possible pitfalls, therefore, he would be able to foresee such pitfalls and work accordingly to avoid them. Therefore, the professional needs to adhere to the duty of care he owes to his consumer.

The second ingredient in this regard is that of a '*breach of the duty'*, as we shall continue to explore COPRA, we shall see how the breach has also been synonymously replaced with 'deficiency in service'. Thus, after establishing that there was a duty of care that was owed to the consumer of the service, the second test to determine whether there was negligence on the part of the professional would be to look at whether the actions undertaken by the professional were in consonance to the duty he owes to the consumer. More often than not, the courts herein have employed the test of a reasonable/prudent man to determine whether there was an actual breach of duty, however, as we shall see later, different fraternities have different definitions and different expectations attached to the professional prudent man. It is seen that the burden of reasonability is higher when it comes to medical practitioners when compared to other sets of professionals.

The third and the last ingredient of negligence is '*damage or injury'* suffered by the consumer that has been a result of the breach of duty on the part of the professional. Since the intensity of the damage and injury involved in the medical profession is a lot more dangerous than that in any other industry, it perhaps then explains why we expect a higher duty of care on the part of the medical practitioners. The breach of duty must result in damage, that is the time when the cause of action arises which can be used by the consumer to enforce his dissatisfaction with the service rendered to him.

CONSUMER PROTECTION ACT, 1986 AND MEDICAL NEGLIGENCE

The Consumer Protection Act of 1986 was enacted to provide better protection of the interests of the Consumers, to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes. This is indeed a very unique and highly progressive piece of Social Welfare Legislation. The provisions of this Act are

intended to provide effective and efficient safeguards to the consumers against various types of exploitations and unfair dealings. Unlike other laws, which are punitive or preventive, the provisions of the Act are compensatory.

As discussed earlier, there are three vital elements in a case of medical negligence. They are as follows:

1. A duty was owed: It is necessarily important to show that the doctor or medical practitioner owed a duty of care to the plaintiff where the latter opted for the medical treatment.
2. The duty was breached: The plaintiff must prove that the health provider did not comply with the required and standard care, thus breaching his/her duty.
3. The breach caused an injury/ damage: There was a breach of duty and this breach was an immediate cause of the injury to the plaintiff. Without damage, there is no basis for a claim, regardless of whether the medical provider was negligent. However, damage can also occur without any negligence. An example of it is when someone dies due to a fatal disease.

As it is already mentioned, the patient is a consumer under the consumer protection act and the services provided to the patient will fall under the definition of the service defined under the consumer protection act. Therefore, there is a need to analyse the definition of the consumer, services and deficiency provided under the Consumer protection act, 1986.

Since there are so many cases filed for medical negligence in consumer forums, the doctors or the service providers need some defence for their acts, which are-

1. If the patient is treated in a government hospital and pays only nominal charges, he cannot be considered as a consumer as per the Consumer Protection Act as there is no consideration and therefore, the doctor will not be held liable for medical negligence under the Consumer Protection Act, 1986[3].
2. One of the prima facie necessities of negligence is that the breach of duty must be the proximate cause of damage to the patient. If the patient is unable to prove the same, then the doctor will not be held liable.

[3] Prabhat, Vasu, Medical Negligence in India, Medico-legal (2011).

Apart from these defences, the burden of proof is on the patient according to the case of *Calcutta Medical Research Institute V. Bimalesh Chatterjee and Ors.*[4] in the National Consumer Disputes Redressal Commission (NCDRC). Thus, if the patient cannot prove that the doctor is responsible for the damages incurred by the patient, the doctor cannot be held liable. This is important to ensure that the medical practitioners are not attacked with unnecessary litigious suits, therefore, the patient needs to show that the duty of care was owed to him, and that was breached by the negligent acts on the part of the doctor.

Medical Negligence can be a civil wrong under the law of torts and a plaintiff can seek redressal with the help of the Consumer Protection Act, 1986. In the *Santra* case[5], the Supreme Court elaborated on medical negligence as follows:

"*Negligence is a 'tort'. Every doctor who enters the medical profession must act with a reasonable degree of care and skill. This is what is known as 'implied undertaking' by a member of the medical profession that he would use a fair, reasonable and competent degree of skill.*"

It is also a criminal offence under the Indian Penal Code, where any person who causes the death of a person by a rash or a negligent act not amounting to culpable homicide shall be punished with imprisonment for a term of two years, or with a fine or both[6].

WHO IS A CONSUMER?

The Act applies to all goods and services unless specifically exempted by the Central Government[7]. Section 2 (1)(d) defines consumer in the following words:

"consumer" means any person who—

(i) "buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person but does not include a person who obtains such goods for resale or any commercial purpose; or

[4] F.A NO. 388 of 1994
[5] *Supra* note 37.
[6] Indian Penal Code 1860, Section 304 A
[7] Section 2 (d) of the Act. So far, no goods or services have been exempted from the purview of this Act

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who 'hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person but does not include a person who avails of such services for any commercial purposes. By this definition, it can be documented that, the definition of the consumer is wide enough to cover the patient who promises to pay medical expenses."

"The definition of 'consumer' in Section 2(1)(d)(ii) is very wide. It includes not only one who 'hires or avails of any service for a consideration' but also includes 'any beneficiary of such services, other than the one who hires or avails of the services for consideration'. Thus, where a child was admitted to a hospital for treatment then both the child and his parents would be 'consumers'. If the injury is caused to any one of these two it would be proper to award compensation to both.

This approach was taken by the Supreme Court in ***M/s.* Spring Meadows** *Hospital v. Harjol Ahluwalia*[8]. The Supreme Court held:

"If the parents of the child having hired the services of the hospital are a consumer within the meaning of Section 2 (i) (d) (ii) and the child also is the consumer being a beneficiary of such services hired by his parents in the inclusive definition in Section 2 (1) (a) of the Act, the Commission will be fully justified in awarding compensation to both of them for the injury each of them has sustained. In the case in hand, the Commission has awarded compensation in favour of the minor child considering the cost of equipment and the recurring expenses that would be necessary for the said minor child who is merely having a vegetative life. The compensation awarded in favour of the parents of the minor child is for their acute mental agony and the lifelong care and attention which the parents would have to bestow on the minor child."[9]

It was argued on behalf of the hospital that not only the hospital authorities had immediately on their own taken the assistance of several specialists to treat the child but also even after the child was discharged from AIIMS, a humanitarian approach was taken by the hospital

[8] AIR 1998 SC 1801.
[9] Id. At pp. 1807-1808.

authorities and child was taken care of by the hospital even without charging any money for the services and consequently in such a situation the award of damages for mental agony to the parents, is wholly unjustified. Refusing this contention, the Supreme Court said:

"We, however, fail to appreciate this argument advanced on behalf of the … the appellants in as much as the mental agony of the parent will not be dismissed in any manner merely seeing the only child living a vegetative state on account of the negligence of the hospital authorities on a hospital bed. The agony of the parents would remain so long as they remain alive and the so-called humanitarian approach of the hospital authorities in no way can be considered to be a factor in denying the compensation for mental agony suffered by the parents.[10]"

As regards medical services received from a private doctor or a medical practitioner, or in a private nursing home there was controversy at the beginning of the 1990s. In *Dr. A.S. Chandra v. Union of India*[11], a Division Bench of the Andhra Pradesh High Court was of the view that service rendered for consideration by a private medical practitioner, private hospitals and nursing homes, is service within the purview of Section 2(1)(o) of the Consumer Protection Act, 1986 and persons availing of such service are 'consumers' within the meaning of Section 2(1) (d) of the Act."

"But a contrary view was taken in *Dr. C.S. Subranianiam v. Kumaraswamy* by a Division Bench of the Madras High Court and held that services rendered to a patient by a medical practitioner or by a hospital by way of diagnosis and treatment would not come within the definition of 'service' under the Act and a patient who undergoes treatment cannot be considered to be a 'consumer' within the meaning of Section 2(1) (d) of the Act. This controversy was finally resolved by the Supreme Court in *Indian Medical Association v. V.P. Shantha*[12].

A three judges' bench held that merely because medical practitioners belong to a profession, they are not outside the purview of the Consumer Protection Act and that the services rendered by the medical practitioners are covered by Section 2 (1) (o) of the Act[13] and the medical practitioners cannot be excluded from the ambit of the Act. Thus, it was conclusively

[10] Id. at p. 1808.
[11] (1992) Andhra Law Times 713.
[12] AIR 1996 SC 550.
[13] Id. at p. 559.

resolved that a patient receiving treatment in a private nursing home or from a medical practitioner for consideration is a 'consumer' within the meaning of Consumer Protection Act, 1986.

The Supreme Court in this case repelled the contention that the Consumer Fora were not equipped to appreciate complex issues which might arise in cases of medical negligence and observed that these Fora were presided over by Judges/retired Judge who were well versed in law and, combined with lay decision making by members with knowledge and experience in various. fields, the constitution of the Fora was adequate to deal with cases of medical negligence. Further, the safeguard of appeal against the orders of the Fora was available.

The Court also did not agree that the summary procedure provided for in the Act was not enough to deal with such cases and observed that not every complaint would raise complicated questions. It also observed that in the complaint' involving issues requiring recording of expert evidence, the Fora could ask the complainants to approach the civil court. It also noted that very few cases of medical malpractice had been filed till 1985. One of the reasons for this was the court fee payable in an action for damages (before civil courts) but no court fee was required to be paid under the Consumer Law. Holding medical practitioners, government hospitals / Nursing Homes and private hospitals/nursing homes fell into three categories:

1. Where services are rendered free of charge to everybody.
2. Where charges are required to be paid by everyone; and
3. Where charges are required to be paid by a person availing of services but certain categories of persons who could not afford to pay were rendered service free of charge."

"The Court also laid down the following criteria for the applicability of the Act to hospitals and medical practitioners.

1. Service rendered to a patient by a medical practitioner (except where the doctor rendered service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medical and surgical, would fall within the ambit of 'service' as defined in section 2(1)(o)

2. Merely because 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 would not exclude the services rendered by them from the ambit of the Act
3. A 'contract of personal service' was to be distinguished from a 'contact for personal services' (as the only contract of personal service is expressly excluded from the definition of service in section 2(1)(0). In the absence of a relationship of master and servant between the patient and the medical practitioner; the service rendered by a medical practitioner to the patient would be under a 'contract for personal services and thus, is not outside section 2(1)(0)
4. The expression 'contract of personal service' in section 2(1)(0) of the Act could not be confined to contract for employment of domestic servants only and the expression would include the employment of a medical officer to render medical service to the employer. However, such a service would be outside the purview of section 2(1)(0).
5. 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 service was rendered free of charge to everybody would not be 'service' as defined in section 2(1)(o). The payment of a token amount only for registration purposes at the hospital/nursing home would not alter the position.
6. Similarly, service rendered at a non-Government hospital/nursing home where no charge whatsoever was made from any person availing of the service and all patients (rich and poor) were given free service was outside the purview of tile expression 'service.' The payment of a token amount only for registration purposes only at such a hospital/nursing home would not alter the position.
7. Service rendered at a non-Government hospital/nursing home where charges were required to be paid by all persons availing of such services fell within the purview of the expression 'service' as defined in section 2(1)(o).
8. Service rendered at a non-Government hospital/nursing home where charges were required to be paid by persons who were in a position to pay and persons who could not afford to pay were rendered service free of charge would fall within 'service' as defined in section 2(1)(0). Free service rendered to those who could not pay would also be 'service' and the recipient a 'consumer' under the Act. In arriving at this conclusion, the Court opined that:
9. the protection envisaged under the Act was for consumers as a class;

10. otherwise, it would mean that the protection of the Act would be available to only those who could afford to pay and not to the poor, although the poor required the protection more; and
11. Else the standard and quality of service rendered at and the establishment would cease to be uniform.
12. Service rendered at a government hospital/health centre/dispensary where no charge whatsoever was made from any person availing of the services and all patients (rich and poor) were given free service was 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 purpose only at the hospital/nursing home would not alter the position.

However, the decision of the Supreme Court in the Indian Medical Association case should not be understood to mean that doctors should be harassed merely because their treatment was unsuccessful or caused some mishap which was not necessarily due to negligence. In fact, in the aforementioned decision, it has been observed that:

"*In the matter of professional liability professions differ from other occupations for the reason that professions operate in spheres where success cannot be achieved in every case and very often success or failure depends upon factors beyond the professional man's control.*"[14]

PROCESS FOR REDRESSAL:

A consumer has the option to approach the Consumer Forums to seek speedy redressal of his grievances or file a criminal complaint. A complaint can be filed in the following forums:

1. **DISTRICT FORUM**

The District Forum can be approached if the value of services and compensation claimed is less than 20 lakh rupees. There is a minimal fee for filing a complaint before the district consumer redressal forums.,

2. **STATE COMMISSION**

The consumer can approach the State Commission if the value of the goods or services and the compensation claimed does not exceed more than 1 crore rupees. An appeal against the decision of the District Forum can be filed before the State Commission.

[14] Vide para 22.

3. NATIONAL COMMISSION

The National Commission, if the value of the goods or services and the compensation exceeds more than 1 crore rupees. It is also used as an appellate forum for an appeal arising out-state commission.

4. SUPREME COURT

The Supreme Court is the last appellate authority, wherein the appeal arising from the National Commission can be challenged.

The time limit within which the appeal should be filed is 30 days from the date of the decision in all cases.

WHERE COMPENSATION WAS AWARDED

In the State *of Haryana and Ors.* V. *Smt. Santra,*[15] a Special Leave Petition was filed to claim compensation in a case of incomplete sterilisation. Smt. Santra has undergone a family planning operation related only to the right fallopian tube and the left fallopian tube was not touched, indicating that a complete sterilisation operation was not performed. She was a poor labourer woman who already had many children and again became pregnant despite the sterilisation operation. This proved the failure of the sterilisation operation and was held to be a deficiency in service. A claim for damages was made on the principle that the person who commits a civil wrong must pay compensation by way of damages to the victim. While determining the number of damages, the Supreme Court noted that 'maintenance' would include food, clothing, residence, education of children and medical treatment or attendance. The Court further noted that the obligation to maintain besides being statutory is also personal in the sense that it arises from the very existence of the relationship between a parent and a child.

About the quantum of compensation payable to an injured patient, the Supreme Court observed in *IMA* v. *V.P. Shanta*,[16]

[15] *Supra* note 37.
[16] *Supra* note 74.

"*A patient who has been injured by an act of medical negligence has suffered in a way which is recognized by the law – and by the public at large as deserving compensation. This loss may be continuing and what may seem like an unduly large award may be little more than that sum which is required to compensate him for such matters as loss of future earnings and the future cost of medical or nursing care. To deny a legitimate claim or to restrict arbitrarily the size of an award would amount to substantial injustice. After all, there is no difference in legal theory between the plaintiff injured through medical negligence and the plaintiff injured in an industrial or motor accident*."

In the *Spring Meadows* case,[17] a compensation of Rs.5 lakhs was awarded to compensate for the mental agony caused to the parents of a child who became incapacitated for life. In addition to this, a compensation of Rs.12 lakhs was also awarded to the child.

If the employee of a hospital acts incompetently, thereby hurting a patient, the hospital will also be liable for any resulting injuries to the patient[18]. In *AcchutraoHaribhauKhodwa v. State of Maharashtra*[19], the plaintiff's wife was hospitalized in a government hospital and was operated. The doctors while performing a sterilization operation left the mop in the body of the patient which resulted in the formation of puss and eventually leading to death subsequently. It was held that negligence was writ at large and the surgeon performing that operation and the government were liable as res ipsa loquitur could be attracted. Similarly, in *Mr. M Ramesh Reddy* v. *State of Andhra Pradesh*,[20] the hospital authorities were held to be negligent for not keeping the bathroom clean, which resulted in an obstetrics patient falling in the bathroom and eventually dying. The Court in this case awarded compensation of Rs.1 lakh.[21] In *Ms Neha Kumari and Anr.* v. *Apollo Hospital and Ors.*,[22] a complaint was filed on the allegation that while operating on the spinal canal, a rod was fitted inappropriately at the wrong level that resulted in the non-functioning of the lower limbs. The Commission held that the CT scan of the complainant showed that she suffered from complex birth defects of the spine and whole body, and hence there was no medical negligence. The Commission observed,

[17] *Supra* note 70.
[18] Coulter Boeschen, Can I Sue a Hospital for Medical Malpractice?, Nolo.
[19] AIR 1996 SC 2377
[20] 2003 (1) CLD 81 (AP SCDRC).
[21] J Sharma and V Bhushan, Medical Negligence & Compensation (2nd ed., Bharat Publications, New Delhi, 2004).
[22] I (2003) CPJ 145 (NC).

"We do not find it is a case of medical negligence as alleged. Complaints have not denied that Neha Kumari was suffering from ailments from the very birth and that she was operated upon when she was only four years of age. On detailed investigations, Neha Kumari was found to have multiple congenital complicated problems in Kiphoscoliotic deformity with weakness and wasting right upper limbs and (i) complex Khyphoscoliotic deformity of the mid-dorsal spine with hemivertibrae of the D and D6 spinal levels and spinal Bifida of the D and D7 vertebrae….Further filing of the appeal was delayed and no sufficient cause was shown to the satisfaction of the Commission. However, on the question of vicarious liability of the hospital for negligence on the part of the consultants, the Hon'ble Commission relying on the judgment in Basant Seth V Regency Hospital O P No.99 of 1994 rejected the contention of the hospital and held that the hospital is vicariously liable for any wrong claiming on the part of consultants."

ABUSE OF THE CONSUMER PROTECTION ACT

"The CPA was promulgated mainly to safeguard the interests of its consumers. However, the easy and quick disposal of the cases under the Act has led to its increasing misuse. Today, it seems that unscrupulous patients have started using it as a means to blackmail medical professionals. However, doctors need to be alarmed as the law safeguards the rights of the medical professional as well. As per section 26 of the CPA, if a complaint is found to be frivolous or vexatious, the consumer forum will dismiss the complaint and make an order that the complainant shall pay the opposite party costs, not exceeding ten thousand rupees. There are provisions in the act to check frivolous and speculative complaints.[23]" The following judgments shall discuss this point further:

"**Tarun Kumar Pramanik vs. Dr. Kunal Chakraborty &Ors,[24]**

The complainant alleged that during the operation for the left inguinal hernia his left testis was removed negligently and without consent. On account of this suffered and has become handicapped. The State Commission based on the evidence placed on record, and opinion of expert witness held that the removal of testis was done of expert witness held that the removal of testis was done to avoid gangrenous infection, the operation was done with

[23] Medical Negligence under Consumer Protection Act: A Judicial Approach, available at https://www.latestlaws.com/wp-content/uploads/2018/08/Medical-Negligence-under-Consumer-Protection-Act-A-Judicial-Approach-By-Abhipsha-Mohanty.pdfaccessed on 06/04/2020

[24] 1995(2) CPR 545(WE SCDRC)

reasonable care and skill and had not resulted in any handicap. The complainant was held to be vexatious and the complainant liable to pay the cost of 1st opposite party.

JayantilalGovindalal Parmar vs. Managing Trustee &Ors.[25]

The complainant was operated on for gallstones but subsequently, he developed stricture near the bulbous urethra due to which he could not enjoy sex and could not pass urine easily. He ultimately had to be operated at a Urological Hospital for relief and a heavy amount had to be spent due to the negligent performance of his first operation. The State Commission observed as under and the complaint was dismissed. There is no evidence to establish that there was any negligence on the part of the opponent in operating on July 30, 1992, and that it was a result of such negligence that the second operation became necessary. The connection between the two operations has not been established. There is no certificate of the doctor of the urological hospital at Nadiad wherein it is alleged to have been stated that the second operation became necessary on account of the first operation on record. In the absence of any expert evidence, we cannot hold the opponent who has stated that he had performed the operation on the complainant carefully and that the complainant had not complained of pain when he was discharged from the hospital and thereafter. There is also some force in the opponent's submissions that if the complainant was suffering from intense pain as alleged by him, he would not have waited for seven months to consult Dr. Rajguru. There is nothing in the documentary evidence placed on record, which would support the allegations made by the complainant. The complaint was dismissed without costs.

CONCLUSION

As is clear from the preamble to the Consumer Protection Act and various Supreme Court judgments, the Consumer Protection Act is one of the social laws enacted to protect the common people. To do justice to the consumer, the law should therefore adapt to the needs of changing society. It must be flexible and adaptable to do justice to the consumer. With the rapid population growth and lack of health facilities in state hospitals, private hospitals have played a critical role in society. Although many government hospitals provide health services

[25] (1997 (1) CPJ 295: 1997 (2) CPR 9 (Gujarat SCDRC)

to a region's population, the services provided are insufficient in terms of quantity and quality. Medical negligence is a very important aspect. It does not assume that doctors are negligent or irresponsible but merely recognises that while performing their duties, which require a lot of care and patience, doctors might sometimes fail or breach their responsibility towards the patient. However, it is very difficult to determine when a doctor is liable for medical negligence or when he is not. There is a very thin border to distinguish whether they stick or not. A wrongful claim can damage a doctor's reputation if he is not guilty of such an act. Negligent doctors will be punished. And the court attaches importance to properly punishing negligent doctors. At the same time, it is also not right for people to make doctors responsible for every human life lost during the treatment of the patient. A doctor would not deliberately kill someone for revenge. Doctors perform the holiest act of healing a person and it is of no use to society if they hold a doctor responsible for their lost life. Therefore, the correct rules and principles should be followed before filing a case of medical negligence against a doctor.

The complex legal relationship between hospitals, doctors and paramedical staff leads to issues, which the courts find difficult to resolve. However, certain trends have emerged in modern medicine about the standard of care required by a medical practitioner:

1. There is a need to provide competent care based on a national standard.
2. Competent care is no longer predicated on 'locality rules'. The state has to intervene with statutes and regulations to ensure that a 'standard' of practice is established in hospitals.
3. The hospital has both a vicarious as well as an inherent duty of care (corporate obligation) to its patients.
4. The statutory regulations result in doctors being involved directly in the setting of standards. This brings a separate liability upon the doctors independent of their professional liability.
5. There is a demand not only for establishing initial standards of care but for continuous monitoring of these standards and proactive measures to ensure that they are updated."

In addition to this, it needs to be recognised that professional negligence is too important and broad a topic for it to be included in other laws or statutes. Independent and unique legislation should be made which would apply to all professionals whose practice area

requires skill and duty of care towards the consumer. Legislation to govern malpractices by such professionals shall go a long way in a just determination of professional negligence cases.