



Liability of doctors for medical negligence under Consumer Protection Act, 2019

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I. Introduction

Medical negligence occurs when a healthcare professional breaches their duty of care and causes harm to a patient through an act or omission. This may involve errors in diagnosis, treatment, post-operative care, administering medication, managing medical records or other aspects of healthcare.

Historically, incidences of medical negligence were viewed leniently by the justice system on the grounds of health infrastructure limitations, human error and the complex nature of medical practice. However, in recent years, there is greater recognition of the need to uphold the rights of consumers/patients and establish accountability of healthcare providers given their life preserving roles.

Some key factors that supported the need for robust laws are:

- Advancements in medical technologies, equipment and treatment methods which can enable higher standards of care
- Commercialization of healthcare making it imperative that patients receive due care in return for payment
- Increasing cases of ethical misconduct driven by cut throat competition amongst healthcare providers
- Lack of an efficient redressal mechanism in existing legal avenues like civil courts and consumer forums

This created the necessity for legislation exclusively governing the medical sector from a consumer rights lens. The Consumer Protection Act, 2019 in India has been a seminal legislation in this regard. It has overturned multiple decades-old Supreme Court judgments around professional negligence of doctors and enabled consumers an accessible mechanism for grievance redressal, compensation and imposing penalties. Hence, there is a need to

study the efficacy of the law in balancing the rights of patients and responsibilities of healthcare professionals.

Need, Purpose and scope:-

Purpose

The purpose of this research paper is to:

- Critically analyze the key provisions under the Consumer Protection Act, 2019 (CPA 2019) related to liability of medical professionals for negligence
- Study the impact of enhanced burden and reduced standard of proof outlined for medical negligence claims under CPA 2019
- Examine whether the law strikes the right balance between safeguarding interests of healthcare consumers and upholding duties of professionals

Scope

The scope of research will cover:

- Relevant definitions and clauses under CPA 2019 related to healthcare establishment and medical services
- Procedural provisions for filing complaints at the District, State and National consumer commissions
- Comparison with earlier legislation and judicial precedents governing medical negligence
- Burden and degrees of proof for complainants and healthcare professionals
- Statutory safeguards introduced for healthcare providers
- Recommended measures for effective and balanced implementation of CPA 2019

The study will analyze the topic through secondary sources such as legislative documents, case laws, consultation papers, opinions of legal experts,



academic research papers, news reports and hospital/industry notifications. It will focus on the Indian context given the recent introduction of the legislation. Comparative analysis with other countries may be considered if relevant data is accessible. The scope is restricted to civil liability and excludes criminal negligence.

Liability for Medical Negligence

Medical negligence occurs when a healthcare professional fails to exercise reasonable care while performing their duties, causing harm as a result of that failure (Rao, 2020).

The essential elements that make up liability for negligence in a healthcare context are:

- Existence of a duty of care – This is established by the doctor-patient relationship based on an express or implied contract for providing medical care. Doctors take on an obligation to treat patients with reasonable skill and care expected from the profession.
- Breach of duty of care – This involves failure to conform to the accepted medical practice or standards expected from an ordinarily competent doctor in that field of medicine. It may result from errors in diagnosis based on symptoms, improper treatment or lack thereof, not referring to a specialist, failing to warn patients of risks involved and more.
- Injury caused – The breach of duty should result in an injury, monetary loss or harm experienced by the patient. Physical, mental and psychological suffering all constitute recognized forms of injury.

Legal Avenues for Medical Negligence Claims Pre-2019

In the past, cases of medical negligence could be pursued under the following:

- Civil lawsuit under Tort Laws or Law of Contracts
- Consumer forums under the Consumer Protection Act, 1986
- Criminal courts under IPC Section 304A (causing death by negligence)

However, complexity, high costs and prolonged timelines limited their effectiveness for genuine victims who were often from disadvantaged socio-economic backgrounds.

Definition and Essential Elements

Medical negligence occurs when a healthcare professional fails to exercise reasonable care while performing their duties, causing harm as a result of that failure (Rao, 2020).

The essential elements that make up liability for negligence in a healthcare context are:

- Duty of Care – This is established by the doctor-patient relationship based on an express or implied contract for providing medical care. Doctors take on an obligation to treat patients with reasonable skill and care expected from the profession.
- Breach of Duty – This involves failure to conform to the accepted medical practice or standards expected from an ordinarily competent doctor in that field of medicine. It may result from errors in diagnosis based on symptoms, improper treatment or lack thereof, not referring to a specialist, failing to warn patients of risks involved and more.
- Harm Caused – The breach of duty should result in an injury, monetary loss or harm experienced by the patient. Physical, mental and psychological suffering all constitute recognized forms of injury.
- Legal Avenues Pre-2019

In the past, cases of medical negligence could be pursued under civil laws like Tort or Contract laws in courts, consumer forums under the Consumer Protection Act, 1986 or criminal courts under IPC Section 304A. However, complexity, high costs and prolonged timelines limited their accessibility.

Key Provisions under Consumer Protection Act, 2019

The CPA 2019 made healthcare services a recognized domain by defining them as services for diagnosis, treatment or care offered at a hospital, clinic, pharmacy, ambulance service etc. Key provisions related to healthcare include:

- Power of Central Authority to take suo moto cognizance of any gross medical negligence through public complaints (>100 complainants)
- Establishment of consumer mediation cells for early settlement especially for cases involving hospitals
- Enhanced pecuniary jurisdiction of District (up



to Rs. 1 cr), State (up to Rs. 10 cr) and National (above Rs. 10 cr) Commissions for hearing complaints

Burden and Standard of Proof for Medical Negligence Claims:

Historically, the burden of proof in medical negligence cases was on the patient to establish through expert testimony that the doctor did not exercise “reasonable degree of care and skill” expected as per professional standards (Jacob Mathew v State of Punjab, 2005).

This relied on the judicial precedent of establishing medical negligence claims under the principle of *res ipsa loquitur* or through the Bolam’s test laid down in English common law. Under Bolam’s rule, a doctor could not be held negligent if their practice aligned with the views of other medical experts in that field (Bolam v Friern Hospital Management Committee, 1957).

However, such reliance on the medical community’s own expert testimony made consumers feel unsafe given the possibility of bias and leniency. With the Consumer Protection Act 2019, the Indian legislature adopted a more pro-active patient approach.

Statutory Provisions Reducing Burden of Proof:

Under Section 14(3B) of the CPA 2019, once a patient establishes proof of injury, the onus shifts to the healthcare provider to prove that such injury was not due to “negligence in provision of services”. This inversion of the doctrine of proof outlined by the Supreme Court in *V. Krishnakumar v. State of Tamil Nadu* (2015), has provided added leverage to consumers making medical claims before consumer forums against healthcare establishments and professionals.

Standard of Proof Lowered

As per Section 75 of the Act, complaints before District, State or National Consumer commissions can simply provide “substantial deficiency in rendering services”. Technical rules of Indian Evidence Act 1872 will not apply for cases up to Rs. 20 lakhs providing speedy redressal. This compounds the risk of civil liability for healthcare professionals in India.

Implications for Healthcare Professionals

- Enhanced accountability towards patients
- Lower evidence benchmarks for establishing lapses
- Increased claims and penalties
- Need to adopt infrastructure improvements and risk mitigation measures

Thus, a discernible shift has occurred in India in favor of patient rights through legislative reform of consumer protection in the healthcare sector. However, balancing safety of consumers with duties of professionals remains imperative.

Professional Negligence Standard and Bolam’s Test

The professional negligence rule relied on expert testimony to establish that a doctor did not conform to “reasonable degree of care and skill” expected as per industry practices (Jacob Mathew v State of Punjab, 2005). This was based on the Bolam’s test laid down in English law which shielded doctors if their action enjoyed the support of other medical practitioners in that field (Bolam v Friern Hospital Management Committee, 1957).

Statutory Provisions Reducing Burden/Standard of Proof

The Consumer Protection Act 2019, adopted a pro-patient approach by:

- a) Inverting burden of proof: Section 14(3B) requires healthcare provider to prove that injury was not due to negligence once patient proves injury
- b) Lowering standard: Section 75 allows complaints to simply provide proof of “substantial deficiency in service” without technical rules under Indian Evidence Act, 1872

Implications for Healthcare Professionals

- Enhanced accountability towards patients
- Lower benchmarks for proving lapses
- Increased claims and penalties
- Need for infrastructure improvements and risk mitigation

Thus, a shift towards rights of consumers is evident through legislative reform of consumer protection laws in Indian healthcare. However, balancing safety of consumers with duties of professionals remains imperative.

Other Safeguards under the Consumer Protection Act, 2019:-



While the CPA 2019 has overwhelmingly prioritized consumer rights in the healthcare sector, recognizing the complexities of medical practice, it has also outlined some statutory safeguards for healthcare establishments and professionals.

Medical Insurance Funds

Section 7(3A) provides healthcare establishments an option to take insurance to cover compensation claims awarded under the CPA:

- As per Medico Legal Rules 2021, doctors are required to contribute 50% share towards creation of Primary and Secondary Victim Compensation Funds
- Suspension/Cancellation of Registration
- Under Section 89, the Central Authority can suspend/cancel registration granted to a healthcare provider if negligence is proven
- Imposition of Jail Term
- Section 90 outlines imprisonment of 1 to 3 years for first conviction and minimum 3 years for subsequent conviction
- This applies to cases of grievous hurt or death due to negligence as per Section 319 of IPC

While some medical associations have protested criminal punishment, legal experts have justified graded penalty provisions as a reasonable deterrent mechanism given the sacrosanct nature of the medical profession.

Thus, through introducing targeted financial, judicial and disciplinary safeguards, the legislation attempts to strike a balance between nurturing the growth of the healthcare sector and protecting interests of patients to enhance accountability of providers. The CPA 2019 has introduced certain safeguards for healthcare establishments and professionals such as:

- Establishment of Medical Insurance Funds
- Section 7(3A) provides option to take insurance covering compensation claims
- Medico Legal Rules 2021 require 50% contribution by doctors towards Primary and Secondary Victim Compensation Funds
- Suspension/Cancellation of Registration
- Under Section 89, Central Authority can suspend/cancel registration of healthcare providers if negligence is proven
- Jail Term and Fine
- Section 90 outlines 1 to 3 years imprisonment for first conviction, and minimum 3 years for subsequent convictions
- Applies to cases of grievous hurt or death due to negligence under IPC Section 319

While certain medical bodies have protested criminal punishment provisions, legal experts have justified graded penalty system as a reasonable deterrent mechanism given the critical nature of medical services.

Thus, while strengthening consumer rights, the law also attempts to balance growth of healthcare sector through accountability-based statutory safeguards for establishments and professionals.

Summary of Enhanced Liability:

The Consumer Protection Act, 2019 has significantly increased civil and criminal liability for healthcare professionals in India by:

- Easing the burden and standard of proof for medical negligence complaints
- Enabling additional disciplinary action like suspension of license to practice
- Expanding pecuniary jurisdiction and powers of consumer commissions
- Impact on Healthcare Access and Costs

While the aim is to uphold patient safety and quality of care, enhanced liability provisions may:

- Increase defensive medical practices like unnecessary diagnostics/consultations
- Discourage doctors from taking up complicated cases with higher risks
- Raise professional indemnity insurance costs passed on to patients
- Recommendations for Balance

Some measures to ensure balance between consumer and healthcare provider interests:

- Develop error reporting systems for insights rather than punitive action
- Promote mediation for early resolution in doctor-patient disputes
- Incentivize medical personnel training on communication, ethics and counseling
- Form regional committees to periodically review liability rules and challenges