THE LAW OF CONSUMER PROTECTION AND MEDICAL NEGLIGENCE: A JUDICIAL APPRAISAL

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ABSTRACT

A doctor is seen as a ray of God's light in every universe. But they are still human and comprised of human characteristics, which undoubtedly includes doing or failing to do something bad. It is also possible for the support workers to be at fault here. So, in this kind of situation, finding out who was careless and why is crucial. The Indian Judiciary is entrusted with making such determinations in India. However, the judges have a challenge in making a decision on the case since they lack the necessary medical training. After considering the expert's view, they must adhere to the fundamental principles of the law of the country. The researcher in this paper deals with medical negligence as a legal concept, and its essentials and goes on to elaborate on what can be included and what cannot be included in medical negligence. The researcher discusses various remedies available for the act of medical negligence including the one under The Consumer Protection Act 2019. In the next part, the researcher focuses on the approach of the judiciary towards medical negligence and discusses various cases in detail with reference to the Consumer Protection Act. The article also investigates the exclusion of healthcare from the term ‘service’ under The Consumer Protection Act 2019 and finally concludes the paper with his observation.

Keywords: Medical Negligence, Healthcare, Consumer Protection, Patient, Medical Professional, Doctor, etc.

Introduction

The healthcare sector is often regarded as honourable, yet it has frequently been under examination, along with all those working in this field. Medical malpractice is regarded as a very significant issue, not merely in our nation but globally. The main factor is the occurrence of several situations when a medically unqualified practitioner has been subjected to investigation for failing to exercise enough caution during procedures, diagnoses, and other medical activities. The medical profession is often regarded as one of the most esteemed occupations globally. The commercialization and exploitation of the medical sector have transformed it into a typical business, causing healthcare professionals to increasingly prioritize profit over service. This situation has led to unethical and careless behaviour. Medical negligence is a compound term consisting of the terms "medical" and "negligence". The term "Negligence" lacks a comprehensive definition, nonetheless, it may be understood as an action that an individual carelessly carries out, leading to predictable injury to another party. In recent times, the Indian populace has shown a growing awareness of the rights of patients. The well-known Latin maxim, "ubi jus ibi remedium," translates to "where there is a legal right, there is a legal remedy". It indicates that if legislation has established a right, an associated redress should be provided for any violation of that right. Within any legal framework, one of the fundamental human rights that have been historically recognised is the ability to seek redress or a solution for a legal grievance. The concept that rights must be accompanied by remedies is ancient and highly respected. Remedies are a commitment to fulfil and carry out an obligation in practice. In the case of Marbury v. Madison[1], Chief Justice Marshall asserted that "it is an established principle in English law that whenever a legal right is violated, there must be a corresponding legal remedy available through a lawsuit or legal action. This principle holds that every right, when denied, must have a remedy, and every harm must be appropriately addressed".

The modern age is also called the consumer era. It is clear that governments throughout the globe cannot ignore their people' interests; legislations to safeguard consumers have been passed in almost every country. Consumer protection laws are not just present in developed countries, but they have also seen a dramatic increase in the number of laws passed in nations that are developing. This idea is also followed by India. In an effort to guard the priorities of

[1] Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).

Indian customers, the government passed the landmark Consumer Protection Act, in 2019. It repeals the old Consumer Protection Act 1986. Stakeholders from the consumer, commerce, and business sectors in India and abroad were heavily engaged in its development, which followed a thorough examination of consumer protection legislation in several countries. Consumer councils are one of several authority organisations that are springing up to better defend consumers' interests and help them resolve disputes. The law of Consumer Protection has a wide-ranging jurisdiction. The main goal of the Consumer Protection Act (CPA) is to ensure and advance the well-being of customers by swiftly and efficiently addressing their complaints. This legislation was promulgated by the Indian government and is applicable across the entire Indian territory. The objective of this act is to protect and uphold the interests and rights of consumers.[2]

Any individual who purchases products or services from a merchant is referred to as a consumer. Anyone who books a room at a hotel is likely to be considered a customer. One example of a customer is a person who hires a lawyer to advise them on a legal issue. A patient may also be considered a consumer when they seek medical advice or have surgery. There have been reports of doctors and nurses becoming careless with their patients in recent years. Some examples of surgical errors include doctors not paying enough attention to their patients and accidentally leaving cotton swabs or other surgical tools within their bodies.[3] Serious health problems and, tragically, deaths have been reported as a consequence of these incidents. All of the aforementioned instances of negligence are together known as medical negligence, and they are all included under the Consumer Protection Act of 2019.

Conceptualizing Medical Negligence-

Anyone who advertises themselves as a doctor or other healthcare provider is essentially promising that they have the necessary training and experience to treat patients. Anyone consulting with a patient, regardless of whether they are a licensed doctor or not, has a responsibility to exercise care when choosing to take on the case when determining a course of treatment, and when carrying out that treatment. Failure by the medical professional to meet

[2] V. K. AGARWAL, BHARAT'S CONSUMER PROTECTION: LAW & PRACTICE: A COMMENTARY ON CONSUMER PROTECTION ACT, 2019 (8th edition ed. 2021).
[3] TAPAS KUMAR KOLEY, MEDICAL NEGLIGENCE AND THE LAW IN INDIA: DUTIES, RESPONSIBILITIES, RIGHTS (2010).

any of these standards may serve as proof in an action for negligence.[4] According to the ruling in Hunter v. Hanley[5], a doctor's inability to provide the kind of ordinary care that all other doctors with comparable training would provide in the course of their work is the real standard for proving negligence in treatment or diagnosis.

Bolam v. Friern Barnet Hospital Management Committee[6] established a number of standards for medical practice, one of which is that a doctor must have used the same level of clinical observation, diagnosis, and treatment as a doctor of ordinary skill in the case at hand, as determined by the consensus of relevant professional organizations.

So, to sum up, medical negligence involves three distinct elements:

- A legal duty
- A violation of that duty
- The harm that resulted from such a violation

Legal duty - Medical professionals or hospitals may be held legally responsible for any activities that cause harm to patients due to a failure to provide the appropriate level of care. The responsibility to provide evidence must be on the individual making the complaint in order to establish a case of carelessness. First and foremost, it is essential to establish that the person charged had a statutory duty to take caution, and it needs to be disclosed that this obligation was not met. Medical professionals may be negligent in a number of ways, including making a wrong diagnosis, postponing a diagnosis, performing surgery incorrectly, providing care that is either too short or too long, performing unnecessary surgery, administering anaesthesia incorrectly, and many more examples.

In the Indian case of "Jacob Mathew v. State of Punjab"[7], the Apex Court discussed the level of skill and care expected from a medical practitioner. The court referred to "Halsbury's Laws of England", which stated that "The practitioner must bring to his task a reasonable degree of

[4] ANOOP K. KAUSHAL, UNIVERSAL'S MEDICAL NEGLIGENCE AND LEGAL REMEDIES: WITH SPECIAL REFERENCE TO CONSUMER PROTECTION LAW (Fourth edition ed. 2016).
[5] Hunter vs. Hanley (1955) SLT 213 (217).
[6] Bolam v Friern Hospital Management Committee [1957] 1 WLR 583.
[7] Jacob Mathew v. State of Punjab AIR 2005 SC 3180.

skill and knowledge, and must exercise a reasonable degree of care, neither the very highest nor a very low degree of care and competence must judge in the light of the particular circumstances of each case, is what the law requires and a person is not liable in negligence because someone else of greater skill and knowledge would have prescribed different treatment or operation differently…"

In the matter of "Dr. Laxman Balkrishna Joshi vs. Dr. Trimbak Bapu Godbole"[8], the honourable Apex Court declared that all practitioners must follow the reasonable "standard of care" determined by their association. Noncompliance with these obligations will lead to the person being deemed liable for medical negligence.

In the matter of Chandigarh Clinical Laboratory vs. Jagjeet Kaur[9], the judgments rendered by the State and District commissions were upheld by the National Commission for the Redress of Consumer Disputes. The person who filed the appeal was directed to pay the complainant a compensation of Rs.25,000, along with costs of Rs. 2,000. The patient was given inaccurate results by the laboratory of the appellant, which prompted the honourable Commission to conclude that the appellant had a "duty of care" to furnish the victim with precise results. The Commission concluded that the appellant's failure to exercise appropriate care would be considered medical negligence.

In the case of Jagdish Prasad Singh vs. Dr. A.K. Chatterjee[10], the State Consumer Disputes Redressal Commission of Jharkhand ordered the defendant to pay the plaintiff a total of Rs. 25,000 as recompense for the emotional distress and physical mistreatment endured, together with Rs. 5,000 as reimbursement for legal expenses. It was noted that the defendant had neglected to use proper caution in accurately presenting the conclusions in the reports. The presence or absence of injury to the patient would not serve as the determining factor in a matter of negligence.

Res Ipsa Loquitur and Medical Negligence - Nevertheless in some instances, the courts use the idea of "Ipsa loquitur," which signifies that the facts or evidence are self-evident and need no more explanation. Although the burden of evidence often lies with the plaintiff in negligence

[8] Dr. Laxman Balkrishna Joshi vs. Dr. Trimbak Bapu Godbole 1969 AIR 128.
[9] Chandigarh Clinical Laboratory vs Jagjeet Kaur IV (2007) CPJ 157 NC.
[10] Jagdish Prasad Singh vs Dr.A.K.Chatterjee on 23 October, 2008, INDIAN KANOON, https://indiankanoon.org/doc/23607173/ (last visited Jan 11, 2024).

proceedings, medical negligence presents unique challenges for the plaintiff in establishing that the defendant was negligent in causing his injuries. The medical industry is often seen as intricate and difficult for a lot of patients to comprehend. Additionally, many patients are asleep while procedures that may result in harm are performed on them. Furthermore, it is unattainable to provide evidence that the injury inflicted upon him is a direct result of the doctor's carelessness. The Latin Maxim "Res Ipsa loquitur," which is a theory in Anglo-American common law, meaning "the thing speaks for itself," is applicable in this context.[11] In the lack of unambiguous evidence on the actions of a suspect, the court will infer carelessness solely based on the occurrence of an accident or harm. It functions as a legal principle that applies to any harm inflicted against an individual. Under the theory of Res Ipsa Loquitur, the Plaintiff may establish a claim of negligence against the defendant by presenting circumstantial evidence or proof that shifts the burden of proof onto the defendant. This proof demonstrates that the defendant's behaviour was not that of negligence. Under such circumstances, it is assumed that the healthcare practitioner has performed below the established level of care, resulting in negligence. According to this theory, it is assumed that the harm could only have been caused by the carelessness of the medical expert. Implementing this logic, the judge's decision would indicate that the negligence has already occurred. Here, the doctor has the responsibility to substantiate the argument to the contrary. Some instances include inadvertently leaving an item within the patient's body or doing surgery on the incorrect patient. Circumstantial evidence comprises specific information that strongly suggests the defendant's involvement in crime, without requiring more discussion or proof in court.[12]

What is not Included in Medical Negligence- Doctors are not always legally liable for their patients' injuries, even when such injuries are the result of their own negligence. The medical professional will not face charges for acting negligently if he makes a wrong judgment. Doctors, like all humans, are susceptible to making errors, and hence they should be granted some leniency. The medical professional cannot be held accountable for the mistake in judgment only because the outcome of their decision was unfavourable. The Courts have noted that the doctor's selection of an alternative method or therapy to address the issue, which ultimately proves ineffective, does not automatically render the doctor legally responsible. It

[11] RATANLAL RANCHHODDAS, DHIRAJLAL KESHAVLAL THAKORE & AKSHAY SAPRE, THE LAW OF TORTS (29th edition ed. 2022).
[12] CRIME AGAINST WOMEN AND LAW RELATING TO WELFARE AND PROTECTION OF WOMEN, (Vijender Kumar ed., 2020).

is necessary to demonstrate that he failed to fulfil his obligation. It is not possible to hold a doctor responsible for negligence if he carries out his duties with due effort and caution. On the other hand, if the medical care provider's carelessness leads to an error in judgment, it becomes a breach of duty and the practitioner will face consequences.

The Honourable Supreme Court stated in "Vinod Jain vs. Santokba Durlabhji Memorial Hospital and Ors."[13] that the standard for determining negligence is based on the idea that a medical professional who has been recognized as possessing specific expertise or proficiency but does not have the highest level of expert skill should be able to perform with the skill of a normal competent individual in a comparable situation. This is largely done to prioritize the collective well-being of the community, ensuring that doctors prioritize the well-being of their patients above their personal safety.

Examples of Medical Negligence-

The following are examples of medical negligence:

1. **Wrong Diagnosis-** Erroneous or delayed diagnoses, or no diagnosis at all, constitute the vast majority of cases of medical negligence. Doctors may misdiagnose patients owing to factors such as lack of concentration, incompetence, or inadequate access to appropriate instruments. This might prevent patients from receiving the correct treatment for their disease. Inaccurate diagnosis may lead to prolonged illness, increased financial burden on the patient, and potential long-term harm.[14]

2. **Careless Medication-** Prescribing inaccurate medicine is a frequently documented occurrence of medical negligence. This may occur when a healthcare professional erroneously prescribes an inappropriate dose for a patient, prescribes the wrong prescription for the patient's condition, or administers medication intended for another patient.[15]

3. **Anaesthesia Error-** Anaesthesiologists are responsible for a wide range of vital signs monitoring, including patients' respiration, blood pressure, temperature, and heart rate,

[13] Vinod Jain vs. Santokba Durlabhji Memorial Hospital and Ors. AIR 2019 SC 1143.
[14] Mangesh Janane, *Medical Negligence In India: Laws And Remedy*, https://legalserviceindia.com/legal/article-3640-medical-negligence-in-india-laws-and-remedy.html (last visited Jan 11, 2024).
[15] *Id.*

in addition to producing relief from pain. Anaesthesia professionals are tasked with ensuring the secure administration of anaesthesia to patients. Their responsibilities include conducting pre-operative evaluations, collaborating with the surgical personnel, and managing patients throughout the postoperative period. Anaesthesia errors may occur during both complex surgeries and routine elective treatments. Anaesthesia errors have the potential to result in profound and irreversible brain damage or fatality for the patient. Anaesthesia mistakes occur often in hospitals, medical clinics, and surgical facilities. Anaesthetists and Anaesthesiologists have a crucial part in surgical procedures.

4. **Surgical Mistake-** Surgical negligence is the most prevalent kind of medical malpractice. Surgical mistakes may arise from a variety of factors, such as inadequate planning, lack of proficiency, and the use of expedient measures in operation to reduce time or resource consumption. Failures in communication encompass instances where surgical staff fail to effectively communicate with each other, such as when the doctor erroneously marks an erroneous site for surgery, when there is miscommunication regarding the appropriate dosage of medication for the patient post-surgery, when an incorrect procedure is performed, or when unnecessary surgery is conducted. Inflicting harm onto other parts of the body, nerves, or tissues during surgical procedures, Committing medical negligence by inadvertently leaving medical equipment and foreign items within the patient, failing to provide sufficient post-operative care, and neglecting to identify and address the signs of surgical problems. The reasons may vary, but the result does not benefit the patient in any way.[16]

Remedies for Medical Negligence-

- **Remedy under the Consumer Protection Act 2019-** A disgruntled individual has the option to seek recourse via the consumer courts in order to initiate legal proceedings against both the alleged perpetrator and the medical facility. The Apex Court of India, in the matter of "Indian Medical Association vs. V.P. Santha"[17], said that healthcare providers are included within the scope of the Consumer Protection Act, of 1986. In addition, section 2(1)(o) of the Consumer Protection Act, 1986 states that the medical

[16] R.K. BAG, LAW OF MEDICAL NEGLIGENCE AND COMPENSATION (2021).
[17] Indian Medical Association vs. V.P. Santha 1995 SCC (6) 651.

treatment they provide shall be regarded as services. Additionally, medical services will be deemed services under the purview of the new Consumer Protection Act, 2019, as stated in paragraph 2(42). According to Section 42(11) of the amended Consumer Protection Act of 2019, medical negligence by a healthcare professional would be considered as a deficit. Any individual who has been wronged has the right to seek compensation for harm caused by a doctor or hospital due to their failure to meet the expected standard of medical care. There is a two-year period of limitations for medical negligence claims, under Section 69(1) of the Consumer Protection Act, 2019.

- **Liability under the Law of Torts-** Financial relief is the outcome of the claim for damages in the framework of civil liability. They are liable for the previously mentioned wrongdoing and must pay compensation if someone violates their duty to offer proper care while undergoing medical treatment or while under the supervision of a healthcare facility or doctor. In the event that an employee of the hospital causes harm to a patient due to carelessness, the hospital will be held responsible. "Mr M Ramesh Reddy v. State of Andhra Pradesh" established that hospital staff were liable for uncleanliness in patient restrooms. This led to the tragic death of an obstetrics patient who had fallen in the restroom. The court fined the hospital one million rupees.

- **Remedy under Criminal Law-** In many instances, hospitals face negligence charges when diseases like HIV or HBsAg are transferred as a result. Therefore, if a patient contracts such a disease while receiving care from their doctor and it is established that the illness was caused by the hospital's negligent or careless actions, the hospital will be held accountable for neglecting to take into account the reasonable standards that were stipulated to them as part of a duty to render care and standard of care. On the other hand, if the components of the crime—such as the accused's character, the extent of the wrongdoing, and his motive or intention—are shown, then the criminal law holds him accountable.

  As per Section 304-A of the Indian Penal Code 1860 "if a person commits a rash or negligent act which amounts to culpable homicide then the person will be punished with imprisonment for a term which may extend to two years or with fine or both."

  As Per Section 337 of the Indian Penal Code 1860 "if a person commits a rash or

negligent act due to which human life or personal safety of others gets threatened. The person will be punished with imprisonment for a term which may extend to six months or with a fine which may extend to five hundred rupees or both."

As Per Section 338 of the Indian Penal Code 1860 "if a person commits a rash or negligent act due to which human life or personal safety of others gets threatened. The person will be punished with imprisonment for a term which may extend to two years or with a fine which may extend to one thousand rupees or both."

- **Disciplinary Remedy-** A patient or client who feels wronged may take legal action by submitting a negligence complaint to the appropriate State Medical Council, which can then suspend or revoke the doctor's registration. Nevertheless, the Indian Medical Council Act of 1956 does not provide them the authority to provide compensation to the injured party. The complainant must submit a formal complaint to the council, including a comprehensive account of all pertinent facts and information related to the incident in question. The council will thereafter provide the accused doctor a period of 30 days to file his response. If the council is dissatisfied with the response, they will summon both parties to provide proof in support of their assertions.

Judicial Approach towards Medical Negligence

The occurrences of purported medical malpractice have markedly increased in recent years. India witnesses around five million instances of medical negligence annually, with approximately 98,000 cases being brought in court, including consumer courts. This occurs when the courts are experiencing excessive overcrowding. According to the statistics of the National Judicial Data Grid (NJDG), there are now 21 Crore outstanding cases in Indian Courts. To alleviate the strain on the Courts, it is necessary to regularly review the situation and implement a robust action plan. Ever since the Consumer Protection Act was passed in 1986, medical services have been officially classified as consumer services. More and more claims involving medical malpractice and carelessness are being taken to the consumer courts now that they are responsible for medical litigation.

In the case of the "State of Haryana v. Smt Santra"[18], the Apex Court established that

[18] State of Haryana v. Smt Santra AIR 2000 SC 1888

it is the obligation of each medical professional to use a reasonable level of caution. Nevertheless, it is important to acknowledge that no individual in existence has flawless qualities, and even experts are prone to errors. In the case of a doctor, their liability arises only when they neglect to exercise a level of caution that is expected from any doctor with average proficiency.

The Supreme Court noted in the case of "Achutrao Haribhau Khodwa and Ors v. the State of Maharashtra"[19] that the health care field encompasses a vast array of specializations and has a long list of recognized educational programs. Consequently, we are unable to hold a doctor accountable as long as they are carrying out their responsibilities with the appropriate level of care and caution. Merely by selecting an alternative path of action, he is not legally responsible.

The court addressed a case of medical negligence involving "C.P. Sreekumar, MS (Ortho) v. S. Ramanujam"[20], where the patient sustained injuries during a bicycle ride. He was badly injured to the neck and had serious bruising. The doctor opted to do hemiarthroplasty rather than an internal fixation procedure after considering other choices. The operation took place on the following day. The complainant went to court because the doctor didn't heal the injury using the internal fixing procedure. In a 42-year-old patient, the appellant's decision to do hemiarthroplasty was not found to be medically negligent, according to the Supreme Court.

The Supreme Court, in the case of "Vinod Jain v. Santokba Durlabhji Memorial Hospital & Anr",[21] has outlined the criteria that should be taken into account while determining responsibility in situations of medical negligence. The appellant contested the decision of the NCDRC in the highest court of the nation, namely the Supreme Court. The Apex Court affirmed the verdict of the NCDRC and issued the following observations:

A. A healthcare professional is not to be deemed negligent if their actions align with established criteria, regardless of the existence of a dissenting group.

B. A doctor does not need specialized knowledge in medicine; it is sufficient for them to

[19] Achutrao Haribhau Khodwa vs State Of Maharashtra 1996 SCC (2) 634
[20] C.P. Sreekumar, MS (Ortho) v. S. Ramanujam 2009(2) RLW 1280 (SC).
[21] Vinod Jain vs. Santokba Durlabhji Memorial Hospital and Ors. AIR 2019 SC 1143.

possess the standard abilities expected of someone in their trade.

C. Since the outcome is out of their hands, doctors can only do what they can to alleviate their patients' suffering. The only assurance he is able to offer is that he is well-versed in the subject and would, while doing his duties, be a responsible professional who follows all applicable medical guidelines.

The Anuradha Saha Case, also known as "Dr. Kunal Saha versus Dr. Sukumar Mukherjee And Ors." is a landmark verdict in medical negligence lawsuits. It stands out because, while thinking of the largest amount of recompense awarded thus far, it is the very first judgment that comes to mind. In this case, the doctors failed to provide the wife with the right drugs since she suffered a medication allergy. Over time, the patient's condition deteriorated due to this neglect, and she passed away as a consequence. The court awarded the patient Rs. 6.08 crore in damages, finding the doctor negligent in his medical care.

In the "Meenakshi Mission Hospital and Research Centre vs. Samuraj and Anr. Case"[22], the National Commission declared the hospital negligent under the guise of not having the anaesthesiologist's name on the operation notes, despite the fact that anesthesia was given by two anaesthesiologists at 10 and 10.30 a.m. The infant was in a state of cardiac arrest and the doctor responsible for administering anaesthesia did not appear before the Commission. Regarding the same patient, two progress reports were meticulously documented on two distinct documents. What the two anesthetists were doing in the operating room at that exact time is something the hospital was unable to clarify. Paying compensation and paying expenditures fell squarely on the shoulders of the hospital, which was liable for everything that happened on its property. The hospital was fined Rs 3 lacs and ordered to pay costs of Rs 2000/- after the District Forum found it negligent in this case.

In the matter of "V. Kishan Rao Vs Nikhil Super Speciality Hospital"[23], a female individual seeking medical attention for symptoms of malaria was exposed to discriminatory treatment. A representative of the Malaria Department filed a lawsuit against the hospital administration, claiming that the latter negligently treated his spouse, who was really being

[22] Meenakshi Mission Hospital and Research Centre vs. Samuraj and Anr., (2005) CPJ 33 (NC).
[23] V. Kishan Rao Vs Nikhil Super Speciality Hospital [2010] 5 S.C.R

treated for typhoid fever instead of malaria. The husband was awarded an amount of Rs 2 lakhs, and in this case, the legal principle of res Ipsa loquitor was used.

In the case of "Jacob Mathew v. State of Punjab"[24], the Supreme Court ruled that healthcare professionals may be obligated to make challenging decisions in certain situations. Occasionally, individuals are compelled to pursue endeavors that entail more risk due to the increased likelihood of achieving success by making such choices. There are instances when the level of risk is lower and the likelihood of failure is greater. Therefore, the determination will be contingent upon the specific details and conditions of the case.

In the case of "Juggan Khan v. State of Madhya Pradesh"[25], the appellant had a valid license as a Homoeopathic doctor. After spotting an advertisement, a woman requested his assistance to treat guinea worms. After taking the prescribed prescription, she felt agitated. She was given several antidotes, but regrettably, she died away that evening. The appellant was convicted of the crime of murder as defined in Section 302 of the Indian Penal Code (IPC). The court ruled that the conduct of dispensing dangerous pharmaceuticals without sufficient verification and comprehension amounted a negligent behavior.

The Supreme Court, in the matter of "A.S. Mittal and another V State of UP and Others"[26], dealt with a problem involving a death that happened at an 'Eye Camp' in Uttar Pradesh. Throughout the duration of the camp, a grand total of 108 persons had surgical operations, out of whom 88 individuals underwent cataract surgery specifically. Within this cohort, a collective of 84 people had permanent deterioration of their eyesight. The root cause of this occurrence was identified as the use of typical saline all through the surgical procedures. The court determined that the doctor was liable for medical negligence. A petition was submitted in this case in accordance with Article 32 of the Constitution.

In the case of "Poonam Verma v Ashwin Patel and others"[27], despite possessing a certificate in Homoeopathic Medicine, the defendant administered allopathic drugs to a patient suffering from a high fever. Subsequently, the person being treated was taken to a nursing facility where he subsequently died. The court held the defendant accountable for his actions

[24] Jacob Mathew v. State of Punjab (2005) 6 SCC 1.
[25] Juggan khan vs State Of Madhya Pradesh 1965 AIR 831.
[26] A.S. Mittal & Ors vs State Of U.P. & Ors. 1989 AIR 1570.
[27] Poonam Verma vs Ashwin Patel & Ors 1996 AIR 2111.

of medical negligence because he was licensed to practice Homoeopathic treatment, but not under the Allopathy system.

Healthcare's Ambiguous Status: Implications of Excluding it from Services-

The Consumer Protection Act of 2019 (also known as "CPA 2019") was recently enacted. The Central government designated July 20 and July 24, 2020, as the dates on which the Act's provisions would go into effect, respectively, in notifications dated July 15 and July 23, 2020. It is noteworthy that the first iteration of the Consumer Protection Bill, which received approval from the Lok Sabha in 2018, included "healthcare" within section 2(42) of the Consumer Protection Bill, 2018 (Bill No.1-C of 2018). However, the current iteration of the CPA 2019 lacks the term 'healthcare' inside section 2(42), which delineates the notion of 'service'. The Healthcare Amendment, often referred to as a 'technical amendment,' was introduced in Parliament with the explicit purpose of exempting 'healthcare' from the roster of services. Healthcare providers and community members voiced serious worries about the Consumer Protection Act of 2019's possible misuse, prompting the implementation of the same policy. These concerns arose from the fear that consumers may utilize the Act against healthcare providers if healthcare services were included within the definition of 'service'. The CPA 2019 included a provision that allows for the possibility of healthcare being considered a service, which is subject to interpretation by the judiciary. The previous definition of the word "service" in the 2018 Bill is as follows:

Section 2 (42)-“ “service” means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, healthcare, 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;”

However, the Consumer Protection Act of 2019 removed the term "healthcare" from its scope, therefore changing the same. The amended section reads thus-

Section 2 (42) –“ "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy,

telecom, 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;"

Conclusion

The doctor-patient connection used to be much more amicable in bygone generations, but now, unfortunately, that has all changed as a consequence of the medical profession's commercialization. Modern society has rendered the Hippocratic Oath obsolete. While new healthcare technologies have helped doctors better diagnose and treat their patients, it has also given them new ways to scam their patients out of money. While in agony, sufferers seek medical attention from medical professionals in the vain expectation of a quick recovery. Nevertheless, there are instances when treatment does not go according to plan. This might be caused by the doctor's negligence or the natural course of life. Remember that they are still human and may make errors just like everyone else. However, the doctor or medical staff shall bear legal responsibility for any harm that arises due to their irresponsible conduct. That which "includes, but is not limited to" is an inclusive clause, as is stated in Section 2(42) of the CPA 2019. Section 2(42) of the CPA 2019 makes it quite clear that the term "healthcare" may still be incorporated and understood in this way. Therefore, the purported relief given to medical professionals via a deceptively altered meaning is nothing more than an illusion that will undoubtedly lead to many uncertainties and concerns about the interpretation of the aforementioned clause. Many people are concerned that the CPA 2019 definition of "service" would rule out healthcare entirely, which is why the recent removal and modification of the word has created a great deal of anxiety. It is essential to set stringent standards that safeguard medical personnel from undue harassing and public shame, while simultaneously ensuring the protection of consumers, as is the norm with prevailing regulations and laws in India. Since the government has not provided any guidance on the matter, the burden of finding a middle ground has fallen on the legal system.

To wrap things off, it can be said that medical negligence is a very difficult area of law. Establishing the "cause" is often the trickiest component. Collecting evidence to support a medical negligence claim is an intimidating task. Numerous legal, moral, and ethical obligations fall on doctors. Because medicine is a noble and honourable profession, it is

essential that all doctors fully grasp their responsibilities and carry them out to the best of their abilities.