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# UNVEILING THE FRIVOLOUS MEDICAL PRACTITIONER

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## INTRODUCTION

A layperson might go to a general practitioner who makes him feel as though he can solve all of his problems without any problems and then think of him as a supernatural being who trusts and has a school to prevent wasting lives rather than ever knowing what a person can handle. his general practitioner and placed outside of his realm of influence to awe the hands of this almighty deity; alas, it appears that the entity is a demon for a human.

## Negligence in Torts

In tort law, negligence is, in fact, a major factor in assessing liability—whether in a criminal or civil setting. Although damages play a vital role in evaluating the effects of negligence, the degree of negligence is ultimately what determines responsibility.<sup>1</sup>

## Medical negligence:

" Errors ranging from giving the incorrect prescription to improperly handling anaesthetic can result in major repercussions and legal implications in cases of medical malpractice. In these kinds of situations, the legal doctrine known as *res ipsa loquitur*, or "the thing speaks for itself," may apply, which under certain circumstances transfers the burden of proof from the plaintiff to the defendant. This means that, unless the defendant can demonstrate otherwise, they will be assumed to be negligent if an injury or harm happens under conditions that wouldn't often occur without negligence. <sup>2</sup>

If the person to whom duty is assigned lacks the necessary tools or knowledge to perform their job, even assigning responsibility in a professional context may be considered neglect. This emphasizes how crucial it is to have competent supervision and to make sure that jobs are given to people who are qualified to complete them. In the field of medical negligence, the Indian

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<sup>1</sup> Negligence Tort Law by R.K Bangia

<sup>2</sup> [https://www.legalserviceindia.com/articles/Res\\_Ipsa\\_Loquitur.htm](https://www.legalserviceindia.com/articles/Res_Ipsa_Loquitur.htm)

Medical Association case represents a significant ruling. This ruling established significant precedents and norms for medical practice and patient safety by bringing the healthcare industry under the jurisdiction of the 1986 Patient Protection Act. The different decisions and rulings rendered in this case have shaped policies and procedures meant to safeguard patients and maintain quality of care, which has had a significant impact on the Indian medical community.

In conclusion, carelessness can have detrimental effects on both patients and professionals, especially in the medical industry. To ensure justice and fairness in circumstances of carelessness and to hold parties accountable, it is crucial to comprehend and apply legal ideas such as *res ipsa loquitur*.

If specific requirements are met, assigning responsibility to a third party may be deemed negligent in the context of negligence. One such circumstance is when an adviser assigns work to a less experienced colleague without first making sure that person has the knowledge or skills needed to do the task at hand. This idea emphasizes how crucial it is to have effective supervision and make sure that jobs are given to people who are qualified to complete them.

It is true that the ruling in the Indian Medical Association case is historic and has important ramifications for both patient safety and the medical community. The case was crucial in bringing the healthcare industry inside the purview of the 1986 Patient Protection Act. In the process, it set significant legal precedents and norms that governed medical practice and patient safety.

The legal environment around medical negligence in India has been shaped in part by the rulings rendered in the Indian Medical Association case. These rulings probably include a wide range of topics, such as patient rights, medical malpractice legal options, healthcare providers' obligations, and standards of care. To comprehend how the arguments and concepts put forward in the case relate to the particular circumstances under discussion, it is imperative that you carefully review the case. By doing this, it is possible to evaluate liability, maintain legal requirements, and guarantee accountability in the medical community. In the process, it set significant legal precedents and norms that governed medical practice and patient safety.

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range of topics, such as patient rights, medical malpractice legal options, healthcare providers' obligations, and standards of care. To comprehend how the arguments and concepts put forward in the case relate to the particular circumstances under discussion, it is imperative that you carefully review the case. By doing this, it is possible to evaluate liability, maintain legal requirements, and guarantee accountability in the medical community. The hospital or physicians offering non-medical services, the court pointed out, might nonetheless be bound by the Act's provisions pertaining to those services.

Accordingly, the type of services rendered will determine whether a patient receiving treatment from a medical professional or in a hospital meets the requirements to be considered a "consumer" under Section 2(1)(d) of the Act<sup>3</sup>. The services might not be covered by the Act if they are only medical in character. However, the person receiving non-medical services may be regarded as a "consumer" under the Act if they are offered in addition to or apart from medical care. This distinction is essential to comprehending how consumer protection laws relate to healthcare services and how individuals can seek compensation for any unsatisfied experiences with the care they received.

Let's dissect each of the points:

- A. The Act's definition of "services" includes services rendered by healthcare professionals, unless they are given for free or under a private service agreement. The Act still applies to the services provided by doctors even though they may face disciplinary action from medical bodies.
- B. A "contract for personal services" is not the same as a "contract for personal employment." The latter usually includes services rendered by a physician to a patient, which are exempt from the Act's definition of "service." In addition to domestic workers, health professionals who provide medical services to their employers may also be included in the term "personal employment contract"; nevertheless, this would fall beyond the Act's definition of "service".

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<sup>3</sup> Status Of Health Care Services In Consumer Protection Act 2019: An Appraisal, <https://www.legalserviceindia.com/legal/article-14701-status-of-health-care-services-in-consumer-protection-act-2019-an-appraisal.html> (last visited May 5, 2024).

- C. Even if registration fees are collected, services that are given out for free in hospitals or assisted living facilities do not qualify as "services" under the Act. at the same way, services rendered at private medical facilities or assisted living facilities, where all residents get care at no cost to them, do not meet the Act's definition of "service."
- D. The Act defines "services" as those rendered in retirement communities or non-state hospitals that demand payment."Services" under this definition are those rendered in non-government hospitals that require money but also provide free services to individuals who are unable to pay.<sup>4</sup>

Services rendered in government hospitals that offer free care to all patients are not included in the Act's definition of "service, but services rendered in government hospitals that offer free services to a range of people can fall under the Act's definition of "service." Under the Act, services are deemed "services" if they are paid for by insurance policies or employer-sponsored health benefits. Likewise, in the event that employers cover health-related expenses for staff members and their families, hospital or physician treatments would not be regarded as gratuitous and would instead come under the Act's definition of "service."

These points offer a thorough summary of the various situations and interpretations of what, in the context of healthcare services specifically, is considered a "service" under the Consumer Protection Act

### **A Three-Tier Structure For The Redressal of 4 Consumer Grievances:-**

A three-tiered system is established by the customer Protection Act of 1986 for the resolution of customer complaints: <sup>5</sup>

1. **Regional Forum:** The Regional Forum is a consumer forum that operates at the regional level. The first port of call for local dispute resolution is this forum.

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<sup>4</sup> Medical Negligence under Consumer Protection Act: A Judicial Approach By: Abhipsha Mohanty, LATESTLAWS.COM, <https://www.latestlaws.com/articles/medical-negligence-under-consumer-protection-act-a-judicial-approach-by-abhipsha-mohanty/> (last visited May 5, 2024).

<sup>5</sup> undefined & Insights Editor, *INSIGHTSIAS - Top IAS Coaching in Bangalore*, INSIGHTSONINDIA (Mar. 12, 2020), <https://www.insightsonindia.com/> (last visited May 5, 2024).

State Commission: The State Commission is the state-level consumer dispute resolution commission. This is the appeal that goes beyond the Regional Forum.

2. National Commission: The National Commission is at the top of the consumer dispute resolution hierarchy. This acts as the supreme authority for settling complaints from customers nationwide. The quantity and quality of customer claims that are submitted determines how these three consumer dispute resolution centers are run. The Regional Assembly's guidelines are followed for appointing candidates for the State Commission.

**At every stage, there is a mechanism for additional appeal:**

The National Commission may hear appeals of decisions rendered by the State Commission. A higher court may hear appeals about National Commission orders. As per the 1986 Consumer Protection Act<sup>6</sup>: Within two years of the date the cause of action occurred, claims must be filed. Without the aid of an expert, the parties state their claims.

There are no court costs associated with filing complaints. The consumer forum has ninety days to rule on the complaint; if further time is needed for any analysis or testing of the goods, this time may be extended to one hundred and fifty days. The objective of this framework is to offer consumers convenient and effective channels for addressing complaints regarding products and services.

**Various legal remedies for injured patients:**

There are several legal options accessible to injured patients to get compensation for their complaints:

1. Financial Compensation through Civil Court: Through the civil court system, patients who have been harmed or injured as a result of medical malpractice may pursue financial compensation. In order to recover damages for their losses, they may bring legal action against the accountable person or healthcare practitioner. Legal remedies are also possible under a

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<sup>6</sup> NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, <https://ncdrc.nic.in/fa.html> (last visited May 5, 2024).

number of acts, including the Torts Act, section 1(A) of the Fatal Accidents Act of 1855, and section 357 of the Penal Code of 1973.<sup>7</sup> These laws offer channels for pursuing damages and making careless parties answerable for their deeds. PILs, or public interest litigation, are a tool for addressing systemic problems or worries about patient safety and healthcare. PIL allows knowledgeable patients to advocate for changes in practices or policies that impact public health and safety. Monopolies and Restrictive Trade Practices (MRTP) Commission: In accordance with the MRTP Act of 1969, medical negligence disputes may be heard by the MRTP Commission. Cases involving healthcare providers may be among the concerns this commission addresses in relation to unfair trade practices and monopolistic activity.

2. Medical negligence is covered by a number of sections of the Indian Penal Code, 1860, including 52, 80, 81, 83, 88, 90, 91, 92, 304-A, 337, and 338. These clauses define carelessness, harm, and endangerment violations and give victims of medical malpractice legal redress.

3. Medical Council of India Act, 1956: By creating the Medical Council of India (MCI) and State Medical Councils, the Medical Council of India Act governs the medical profession. The MCI has the authority to establish and uphold moral guidelines and behavior standards for medical practitioners. Discipline by the State Medical Councils may be applied for breaking certain rules, which are considered misconduct<sup>8</sup>.

4. Indian Penal Code, 1860: A number of the code's provisions, including parts In conclusion, harmed patients have access to a variety of legal remedies, such as civil lawsuits for monetary damages, legal redress under different legislation and codes, public interest litigation channels, and procedures for handling medical professional misconduct.

#### **Related Case Laws:** <sup>5</sup>

1. In the medical negligence case of *Bolam Hospital Management v. Friern Hospital Management Committee*,<sup>9</sup> the "Bolam test" was developed. It says that even in cases when there are opposing views, a physician is not considered negligent if their actions were in line with a procedure that a responsible body of medical opinion has recognized as appropriate. The ruling highlights that a physician has an obligation to use a

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<sup>7</sup> Medical Negligence under Consumer Protection Act, *supra* note 4.

<sup>8</sup> *Id.*

<sup>9</sup> *Bolam v Friern Hospital Management Committee*, [1957] 1 WLR 583

reasonable level of expertise and care, taking into account what a reasonable person with the same information and abilities would do.

2. **Minor Harjot Ahluwalia vs. Meadows and Another:**<sup>10</sup> In this instance, the topic of little children's medical care and psychological trauma compensation was discussed. The court acknowledged the patient's older children as customers of the medical institution and emphasized their right to damages under Section 2(1)(d)(ii) of the Consumer Protection Act due to the patient's fault.
3. **Maharashtra State v. Kurban Hussein Mohamedalli Rangawalla:** The factors required to prove criminal culpability under Section 304-A of the Indian Penal Code for death stemming from a careless and reckless act were made clear by this case. *Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra*: This case made clear what conditions must be met in order for Section 304-A of the Indian Penal Code to impose criminal culpability for death brought on by a careless or reckless act. The ruling stressed that the irresponsible behavior could not only be a *causa causans* but also the direct cause of death. It emphasized that the act had to be the direct cause of the victim's death.
4. **State of Madhya Pradesh v. Juggankhan:**<sup>11</sup> In this instance, the patient died as a result of a registered homeopath giving poisonous drugs to them without fully comprehending the consequences. In accordance with Section 302 of the Indian Penal Code, the court determined that the defendant was negligent.

It was underlined that a doctor writing a prescription for a medication needs to be knowledgeable about their specialty; failing to do so is considered negligent.

## CONCLUSION

In the expectation of recovering quickly, pain patients see their doctors for treatment. Nonetheless, there are frequently instances where the course of treatment does not proceed as expected, either because of a doctor's error or a natural style. Remembering that they are all

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<sup>10</sup> *Harjot Ahluwalia (Minor) Through Parent v. Spring Meadows Hospital, Bombay High Court, Judgment, Law, casemine.com, [HTTPS://WWW.CASEMINE.COM](https://www.casemine.com), <https://www.casemine.com/judgement/in/56e6696a607dba6b53434b95> (last visited May 5, 2024).*

<sup>11</sup> *Juggankhan v. State Of Madhya Pradesh, 1965 AIR 831, 1965 SCR (1) 14*

fallible human beings is one thing to bear in mind. Nonetheless, any harm brought about by a medical professional's or staff member's negligence will result in culpability. Anybody who has been harmed by medical malpractice will go to the High Authorities/Courts to file a claim for damages.