CPA: HAS IT DONE JUSTICE?

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CONSUMER PROTECTION ACT 1986

• Medical Profession related consumer dispute and redressal are currently under purview of section 2(1) Of the Consumer protection act 1986
• This followed landmark Supreme court verdict in Indian Medical Association (IMA) vs V.P. Shanta & Ors delivered
• However even after nearly three decades the Consumer Courts have not been able to satisfactorily provide the intended results – speedy justice and fair trial to all parties
• The CPA has neither been helpful to the aggrieved public nor has it provided the peaceful atmosphere necessary for medical practitioners to functions.
Service rendered to a patient by a medical practitioner (except where the doctor renders service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of ‘service’ as defined in section 2(1) (0) of the Act.

The fact that 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 constituted under the provision of the Indian Medical Council Act would not exclude the services rendered by them from the ambit of the Act.
DOCTOR – PATIENT RELATIONS

• The National Consumer Disputes Redressal Commision’s order decreed that the doctor – patient relationship is a contract for personal service and it is not master – servant relationship.

• The doctor–patient relationship is a contract for personal service and could not contract of personal service

• Hence patients who had sustained injuries in the course of treatment can sue doctors in consumer protection courts for compensation.
NEGLIGENCE

There were no guidelines or criteria in full detail for assessing what constitutes negligence both criminal and civil negligence and deficiency of service.


“HUMAN BODY AND MEDICAL SCIENCE BOTH ARE TOO COMPLEX TO BE EASILY UNDERSTOOD. TO HOLD IN FAVOUR OF EXISTENCE OF NEGLIGENCE ASSOCIATED WITH THE ACTION OR IN ACTION OF A MEDICAL PROFESSIONAL REQUIRES AN IN-DEPTH UNDERSTANDING OF THE WORKING OF A PROFESSIONAL AS ALSO THE NATURE OF THE JOB AND OF ERRORS COMMITTED BY CHANCE, WHICH DO NOT NECESSARILY INVOLVE THE ELEMENT OF CULPABILITY”.

"FOR A MEDICAL ACCIDENT OR FAILURE, THE RESPONSIBILITY MAY LIE WITH THE MEDICAL PRACTITIONER AND EQUALLY MAY NOT. THE INADEQUACIES OF THE SYSTEM, THE SPECIFIC CIRCUMSTANCES OF THE CASE, THE NATURE OF HUMAN PSYCHOLOGY ITSELF AND SHEER CHANCE MAY HAVE COMBINED TO PRODUCE A RESULT IN WHICH THE DOCTOR 'S CONTRIBUTION IS EITHER RELATIVELY OR COMPLETELY BLAMELESS.

"HUMAN BODY AND ITS WORKING IS NOTHING LESS THAN A HIGHLY COMPLEX MACHINE. COUPLED WITH COMPLEXITIES OF MEDICAL SCIENCE, THE SCOPE FOR MISIMPRESSIONS, MISGIVINGS AND MISPLACED WHICH ARE DIFFERENT FROM THE REALITY OF HOW MEDICAL PRACTICE IS CARRIED ON OR HOW IN REAL LIFE THE DOCTOR FUNCTION."
NEGLIGENCE

THE FACTORS OF PRESSING NEED AND LIMITED RESOURCES CAN NOT BE RULED OUT FROM CONSIDERATION. DEALING WITH A CASE OF MEDICAL NEGLIGENCE NEEDS A DEEPER UNDERSTANDING OF THE PRACTICAL SIDE OF MEDICINE”.

PARA 11 –”THE DEFINITION INVOLVES THREE CONSTITUENTS OF NEGLIGENCE: (1.) A LEGAL DUTY TO EXERCISE DUE CARE ON THE PART OF THE PARTY COMPLAINED OF TOWARDS THE PARTY COMPLAINING THE FORMER’S CONDUCT WITHIN THE SCOPE OF THE DUTY; (2.). BREACH OF THE SAID DUTY; AND (3). CONSEQUENTIAL DAMAGE, CAUSE OF ACTION FOR NEGLIGENCE ARISES ONLY WHEN DAMAGE OCCUR; FOR DAMAGE IS A NECESSARY INGREDIENT OF THIS TORT”. 
NEGLIGENCE

NEGLIGENCE BECOMES ACTIONABLE ON ACCOUNT OF INJURY RESULTING FROM THE ACT OR OMISSION AMOUNTING TO NEGLIGENCE ATTRIBUTABLE OF NEGLIGENCE ARE THREE: ‘DUTY’, ‘BREACH’ AND RESULTING DAMAGE.

PARA 11 “NEGLIGENCE IS THIS BREACH OF ADUTY CAUSED BY THE OMISSION TO DO SOMETHING WHICH A REASONABLE MAN, GUIDED CONDUCT OF HUMAN AFFIRS WOULD DO, OR DOING SOMETHING WHICH A PRUDENT AND REASONABLE MAN WOULD NOT DO”.
PROFESSIONAL MAY BE HELD LIABLE FOR NEGLIGENCE ON ONE TWO FINDINGS: EITHER HE WAS NOT POSSESSED OF THE REQUISITE SKILL WHICH HE PROFESSED TO HAVE POSSESSED, OR THE DID NOT EXERCISE, WITH REASONABLES COMPETENCE IN THE GIVEN CASE, THE SKILL WHICH HE DID POSSESS.

“It is not necessary for every professional to possess the highest level of expertise in that branch he practices. The professional is to be judged by the lowest standard that would be regarded as acceptable. The standard is that of the reasonable average. A medical practitioner was not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference of another. Let it also be noted that a mere accident is not evidence of negligence.”
- Medical professionals are sworn to a time-honored code of ethics

- They are concerned that the dignity of the medical profession is never sullied

- It is in their interest and that of their patients that any allegation of negligence or malpractice is immediately looked into by competent authorities and fairly dealt with

- Unfortunately the present consumer dispute and redressal system functioning under the CPA has failed to deliver the expected results
A landmark judgment necessitating modification of CPA

Supreme Court of India 2009
Martin F. D'Souza Versus Mohd. Ishfaq
Coram: Hon. Mr. Justice Markandey Katju & Mr. Justice R. M. Lodha
Date of judgment: 17/2/2009
http://indiankanoon.org/doc/1092676/

This important judgment written by Hon. Markandey Katju included paragraph (117):

“We, therefore, direct that whenever a complaint is received against a doctor or hospital by the Consumer Fora (whether District, State or National) or by the Criminal Court then before issuing notice to the doctor or hospital against whom the complaint was made the Consumer Forum or Criminal Court should first refer the matter to a competent doctor or committee of doctors, specialized in the field relating to which the medical negligence is attributed, and only after that doctor or committee reports that there is a prima facie case of medical negligence should notice be then issued to the concerned doctor/hospital. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent.”
Hon. Justice Markandey Katju also observed:

However, now what is often seen is it that doctors out of fear of facing legal proceedings do not give first aid to the patient, and instead tell him to proceed to the hospital by which time the patient may develop other complications.”
A 1994 CASE THAT ANTICIPATED THE NEED FOR MODIFICATION OF CPA

Madras High Court 1994
Dr. C.S. Subramanian vs. Kumarasamy and Others
Coram: Hon Mr. Justice Raju and Mr. Justice A.R. Lakshmanan
Date of judgment: 17-2-1994
http://indiankanoon.org/doc/929255/

5 senior advocates analyzed the applicability or otherwise of the provisions of the Consumer Protection Act. This 1994 case foresaw the present day scenario of doctors resorting to:

• Defensive practice
• Cost escalation in medical management due to litigation as they have to cover indemnity
• Need for medically qualified persons in the courts trying a medical negligence case
• Desirability of a separate court such as a Medical Tribunal as a possible better alternative
Fear of litigation has resulted in defensive practice.

This is one reason for increase in cost of treatment.

Scientific advancements are indeed a great help in diagnosis.

A few decades ago clinical acumen was the only tool doctors needed for many simple ailments.

They are now forced to use diagnostic tools routinely to safeguard their practice.

WHAT IS THE OUTCOME OF CPA?
SOME EXAMPLES OF DEFENSIVE PRACTICE

1. Computerized Tomography for headache that is not relieved after a day’s treatment
2. ECG for all patients in Emergency room with chest pain
3. Coronary Angiogram for patients who consult a Cardiologist with non-cardiac pain
4. Pathological evaluation even for one-day fever
5. Repeat Ultrasound in Obstetric practice to reassure the patient of false pain before labour
6. Intervened pregnancy in infertility patients unwilling to wait for the appropriate time and request for early conception
7. Patients themselves request for CT Brain as though it is a commodity in the market
8. Repeat CT scan of the Brain in Trauma cases just to reassure that treatment is progressing well
9. MRI of brain on most occasions done to re-emphasize the CT brain finding
10. Admitting a patient who comes with vague symptoms repeatedly just in case the symptoms aggravate
More examples of defensive practice

11. Extended stay in hospital on patient’s demand, only for recuperating
12. Such extended stay may at times end in Hospital-acquired infection and mortality
13. Early Caesarian section as patient wants the delivery to happen at specific time
14. Caesarian section done when patient is unable to tolerate pain and is uncooperative
15. Removal of Uterus for trivial complaints as the patient is not reassured or unable to carry on daily work due to bleeding problems
16. Use of Steroids in several chronic ailments when its benefits outweigh the response to disease
17. Use of higher doses of antibiotics for fear of delayed response or resistance.
18. Use of antibiotic in viral fevers just to satisfy the querying patients
19. Blood transfusions in non-emergency conditions though simple nutrition and iron tablets will be adequate
20. Use of costlier stents in Cardiology and appliances in orthopedic surgery just in case the less costly does not last long. The rough life style may be the cause but the doctor will not be able to take the risk
Many complaints in Consumer Forums end up in Courts

Selected cases below reveal

- Lack of expert advice by medical professionals
- Consequent delay of many years – even up to 18 years
- Low compensation – Rs. 50,000 in a case claiming Rs. 10 lakh given after 14 years
- Instances where expert opinion reversed judgments under CPA
- Poor interpretation of medical cases by National Commission
- Doctor found not negligent when medical facts are explained
- Defensive practice
MEDICAL PROFESSION TODAY

- Earlier the role and the service provided by the medical professional was considered noble and charitable.
- But today with the increase in medical negligence and malpractices this profession is looked upon with doubt and contempt.
- Commercialization and globalization on all spheres of life has not even spared the medical profession as well.
- As a result, the doctor-patients relationship has deteriorated considerably.
DOCTORS ARE PERPLEXED

1. Are we Service providers or traders?

2. MCI says follow Ethics but Government has placed 52 laws on Healthcare including Shop Act
“Medical Knowledge & skills are governed by medical Ethics,
Investment into healthcare system will be governed by Business principles”
PREVENTION AT PRACTICE (Legal aspects)

DOCUMENTATION!!! DOCUMENTATION!!! DOCUMENTATION!!.

- Make good clinical notes of findings on examination and treatment given with specific dates and time.
- Negative records act as important tool while defending the cases in court of law.
- Please make sure that your handwriting is legible.
Three major drawbacks of the CPA system:

1. Delay in disposal of cases, the expected 3 months closure is not happening

2. Need for expert opinion

3. Inequitable compensation – Either too low or too high like AMRI hospitals. NO CAPPING
• Medical profession is unique: only professionals can inform/educate the legal system about the nuances of each medical case/situation under consideration
• Healthcare is pivoted on patient confidence and Physician possessing competent knowledge and skills which culminate in relief of patient distress

• Today Profession is in crossroads. Value system of society has undergone dramatic change
• Society often started treating Health Professionals as lay criminal
• CM of Bihar commented “Physicians who are guilty of negligence to the poor will have their hands chopped”
WHAT TO BE DONE

• Medical profession to be removed from the ambit of the CPA
• Civil & Criminal laws are adequate
• For Speedy Justice establish “Healthcare Tribunal” like Motor vehicle tribunal
• Medical Expert should be a part of Tribunal

CPA HAS NOT DONE JUSTICE
CONCLUSION

*** Patient rights are to be protected, but not at the cost of professional integrity & autonomy.