

REVIEWING THE CONSUMER PROTECTION ACT, 2019 AND ITS SCOPE AND IMPACT ON HEALTHCARE

ABSTRACT

The Consumer Protection Act, 2019 (CPA, 2019) introduced significant reforms in Indian consumer law, aiming to safeguard consumer rights, streamline grievance redressal, and hold service providers accountable. With specific relevance to healthcare, the CPA, 2019 extends its scope to medical services, empowering patients to seek redressal for grievances related to medical negligence, deficiency in service, and unfair practices. While CPA, 2019 represents a proactive step towards consumer protection in healthcare, it has faced criticism for potential misuse by patients and the healthcare professionals resulting into adverse impacts on medical practice. Healthcare providers argue that the law's general consumer-oriented approach may not fully consider the specialized nature of medical disputes, potentially fostering defensive medicine practices, increased litigation, and higher healthcare costs. Additionally, recent challenges include the rapid adoption of telemedicine, where inadequate regulatory coverage under CPA, 2019 leaves a gap in addressing digital healthcare grievances, raising concerns over patient privacy, data protection, and liability in remote medical consultations. These emerging issues highlight the need for healthcare-specific grievance mechanisms or medical tribunals that ensure balanced adjudication, fostering a regulatory environment that protects patient rights without compromising healthcare providers' ability to deliver high-quality, risk-tolerant care. A balanced approach could involve creating specialized healthcare tribunals or a healthcare-specific grievance redressal mechanism within the existing CPA framework. This approach would allow cases to be reviewed by professionals with medical expertise, ensuring more accurate assessments of healthcare disputes. By focusing on specialized adjudication and clear standards, this solution would reduce the burden of defensive medicine on healthcare providers while safeguarding patients' rights under CPA, 2019.

Keywords: Consumer Protection Act, 2019, Healthcare accountability, Vicarious liability, Grievance redressal, Telemedicine regulations, Patient safety.

INTRODUCTION

The healthcare industry is a specialized and intricate subject. Critics contend that the CPA, 2019's overall consumer-oriented approach might not sufficiently take into account the subtleties of medical practice, which could result in misunderstandings of medical errors and a higher chance of pointless lawsuits. Healthcare providers may take a defensive stance, ordering needless tests and procedures to reduce the risk of malpractice claims, out of fear of being sued under the CPA, 2019. In addition to potentially harming patients by exposing them to needless medical procedures, this can raise healthcare costs.

The Consumer Protection Act, 2019 (CPA, 2019) marks a transformative milestone in Indian consumer law, designed to safeguard consumer rights and ensure accountability across various service sectors. Among its notable provisions, the CPA extends its ambit to healthcare services, thereby offering patients an avenue for legal recourse against medical negligence, deficient services, and unethical practices. This shift reflects the growing need to balance consumer rights with the complexity of modern healthcare delivery.

The inclusion of healthcare within the CPA's scope has sparked significant debate among stakeholders. While proponents argue that the legislation empowers patients and enhances transparency, critics contend that it overlooks the intricacies of medical practice. The potential for frivolous lawsuits under the CPA raises concerns about fostering defensive medicine—where healthcare providers prioritize self-protection over patient welfare. This phenomenon not only escalates healthcare costs but also dilutes the focus on effective treatment.

In today's rapidly evolving landscape, the rise of telemedicine adds further complexity to the application of the CPA. Issues such as patient privacy, data protection, and the absence of clear liability guidelines highlight the inadequacy of existing regulatory frameworks in addressing grievances stemming from digital healthcare services.

Against this backdrop, the need for a nuanced approach to adjudicating medical disputes is evident. Specialized healthcare tribunals or grievance mechanisms tailored to the sector can ensure balanced decision-making. These solutions would mitigate the adversarial implications of the CPA, protecting both patient rights and the professional integrity of healthcare providers.

This paper critically examines the scope and impact of the CPA, 2019 on healthcare services in India. By analyzing key challenges, including medical negligence, vicarious liability, and the telemedicine revolution, it seeks to propose actionable solutions that promote a just and equitable healthcare system.

A. MEDICAL NEGLIGENCE AND ACCOUNTABILITY

Medical negligence, sometimes referred to as medical malpractice, happens when a healthcare provider harms a patient by not providing the level of care that a reasonably competent practitioner would provide. Misdiagnosis, surgical errors, pharmaceutical errors, and delayed or insufficient treatment are just a few ways this can show up.

Four essential components must typically be demonstrated in order to prove medical negligence:

1. **Duty of Care:** In order to establish a legal duty of care on the part of the healthcare provider, a doctor-patient connection must exist.
2. **Breach of Duty:** According to expert testimony, the healthcare provider must have fallen short of the recognized norms of medical care.
3. **Causation:** The patient's injury has to be directly brought on by the duty violation.
4. **Damages:** There must have been real harm to the patient, such as bodily harm, psychological suffering, or monetary loss.

It's critical to strike a balance between securing justice and making medical personnel responsible for their conduct:

1. **Clear Standards of Care:** To guarantee uniformity and equity in the evaluation of negligence claims, it is crucial to establish precise and well-defined standards of medical care.
2. **Expert Testimony:** To ascertain if a breach of the standard of care has taken place, it is essential to rely on the testimony of qualified medical professionals.
3. **Prioritize Patient Safety:** Patient safety should always come first. Cases involving medical negligence ought to be utilized to pinpoint structural problems and enhance patient care procedures.

4. Safeguarding Medical Professionals: Accountability is crucial, but it's also critical to shield ethical medical practitioners from pointless litigation.
5. Alternative conflict settlement: Promoting arbitration and mediation as alternatives to traditional conflict settlement procedures can assist in avoiding expensive lawsuits and resolving medical disagreements amicably.

B. MEDICAL NEGLIGENCE IN THE CONSUMER PROTECTION ACT

When a medical professional or related service engages in an unusual activity while carrying out their professional responsibilities, it is considered medical negligence. This is a violation of the duty of care imposed by law. Medical personnel who purposefully or negligently cause harm to a patient may be subject to disciplinary action, compensation, or criminal culpability.

The medical field and healthcare services are included in the CPA's inclusive definition of services. Only two categories of services are excluded by the CPA: personal services and free services. Generally speaking, services provided in accordance with a personal service contract—such as those between an employer and employee—are not included. Services rendered in exchange for no payment are also not covered. In certain situations, certain professional services—such as those rendered by attorneys and certified public accountants—may not be covered. Furthermore, services pertaining to agricultural operations may also be disregarded.

Therefore, medical negligence in the Consumer Protection Act is limited to paid services and professional services only. Say, a physician donates their time to a non-profit organization's free medical camp. For underprivileged areas unable to pay for routine healthcare, they offer basic examinations, screenings, and prescription drugs. In this scenario, the CPA is not applicable if a patient dies from such physician's medical negligence.

C. MEDICAL NEGLIGENCE OR HONEST MISTAKES?

Unexpected problems include unexpected drug side effects, unanticipated surgical issues, or the development of disorders that were previously unknown. There could be diagnostic errors: inaccurate diagnosis made in spite of thorough analysis and sound clinical judgment. Moreover, systemic failures also exist where medical professional cannot be held liable: mistakes brought on

by structural problems in the healthcare system, like a lack of personnel, poor communication, or malfunctioning equipment. Unintended negative consequences can result from a variety of factors, including patient variability, the quick advancement of medical knowledge, and the inherent limitations of human judgment.

In other words, the following must be balanced by the legal system:

1. Patient safety: In order to protect patients and stop further injury, it is crucial to hold healthcare providers responsible for their carelessness.
2. Treating medical professionals fairly means acknowledging the inherent complexity of medical practice and avoids placing an excessive burden on diligent healthcare personnel.
3. Fostering a culture of safety entails establishing an environment in which medical personnel can report and learn from mistakes without worrying about facing consequences.

It demands a sophisticated and well-rounded strategy to address sincere errors in healthcare. While acknowledging the inherent complexity of medical practice and promoting a culture of safety and learning, the legal system must work to hold healthcare providers accountable for carelessness. By focusing on patient safety, promoting fair treatment of healthcare professionals, and encouraging open communication and collaboration, we can create a healthcare system that is both safe and just.

D. VICARIOUS LIABILITY OF HOSPITALS

Because of the vicarious liability doctrine, hospitals are frequently involved in legal disputes pertaining to medical misconduct. According to this theory, even if the employer was not personally involved in the misconduct, they are nonetheless liable for the careless actions of their staff—in this case, the hospital. Although the goal of this theory is patient protection, it can also provide difficulties for specific practitioners who might be unjustly held accountable in instances of institutional negligence. A key idea in tort law is vicarious liability, sometimes referred to as the *respondeat superior* doctrine (Latin for "let the master answer"). It enables a plaintiff to bring a lawsuit against a company for the careless actions of its workers while they were on the job. This

implies that a hospital may be held accountable for the carelessness of its physicians, nurses, and other employees in the healthcare industry.

The main goal of vicarious responsibility is to guarantee that harmed patients have a wealthy defendant from whom they can seek damages. Hospitals are better able to compensate victims of medical negligence since they usually have larger financial resources than individual practitioners. Although vicarious responsibility has a vital function, it can also provide difficulties for certain practitioners. Through a procedure called as indemnity, a hospital that is found vicariously accountable for a patient's injury may attempt to recoup the money it paid the careless employee. Individual practitioners may experience severe financial hardships as well as harm to their reputations as a result.

In situations involving institutional negligence, individual practitioners may be protected by a number of legal theories and tactics: The hospital may not be held vicariously liable for the carelessness of a practitioner if they are an independent contractor rather than an employee. However, determining whether someone is an independent contractor can be difficult and change based on the particular work arrangement.

1. Contributory Negligence: Should the damage have been caused by the patient's own activities, the hospital may contend that the patient's carelessness lessens the hospital's responsibility.
2. Comparative Negligence: The hospital, the practitioner, and the patient may all be held liable by the court in certain jurisdictions. This may lessen the sum of damages the hospital is attempting to collect from the practitioner.
3. Professional Liability Insurance: It is essential for individual practitioners to maintain sufficient professional liability insurance. Legal defense expenses and possible damages in malpractice cases may be covered by this insurance.

In the legal context of healthcare, vicarious responsibility is important because it strikes a balance between the need to protect patients and guarantee that individual practitioners are treated fairly. Achieving a balance that safeguards patients and healthcare professionals is crucial, even though

hospitals are partially accountable for the conduct of their staff. Individual practitioners can reduce their risk exposure and concentrate on offering patients high-quality care by being aware of the intricacies of vicarious liability and making use of the legal safeguards that are available.

E. COMPENSATION SCHEME

When a healthcare professional fails to give the level of care that a reasonably competent practitioner would provide, the patient is harmed. This is known as medical malpractice or medical negligence. Both civil and criminal remedies are available to victims of medical negligence in India. Healthcare providers may face criminal penalties in specific instances of egregious carelessness or recklessness that cause serious injury or death. Infractions including causing death by negligence (Section 304A¹) and inflicting grievous hurt by negligence (Section 337² and Section 338³) are covered under the Indian Penal Code (IPC).

1. Section 304A: Causing death by negligence: This section applies when a negligent act by a healthcare professional result in the death of a patient. The punishment can include imprisonment of up to two years, a fine, or both.
2. Section 337: Causing hurt by act endangering life or personal safety of others: This section covers situations where a negligent act causes harm to a patient, endangering their life or the safety of others. The punishment includes imprisonment of up to six months, a fine, or both.
3. Section 338: Causing grievous hurt by act endangering life or personal safety of others: This section applies when the negligence results in grievous hurt to the patient, such as serious injuries or permanent disabilities. The punishment includes imprisonment of up to two years, a fine, or both.

¹ Section 304A- Causing death by negligence

² Section 337- Causing hurt by act endangering life or personal safety of others

³ Section 338- Causing grievous hurt by act endangering life or personal safety of others.

F. MEDICAL COUNCIL OF INDIA (MCI) REGULATIONS

In order to ensure moral and skilled medical practice, the Medical Council of India (MCI) is essential to the regulation of the medical field. In India, the MCI is the legislative authority in charge of overseeing medical education and professional behavior. If a medical professional is determined to have engaged in professional misconduct, including medical negligence, it has the authority to discipline them. The Indian Medical Council Act, 1956, and its regulations specify the MCI's authority.

Depending on the extent of the negligence, the MCI may discipline negligent medical personnel in a number of ways:

1. **Warning or Censure:** For small transgressions, the doctor may receive a formal warning or censure.
2. **Suspension of Registration:** The physician may not be able to practice medicine for a predetermined amount of time if their registration is suspended.
3. **Removal from Medical Register:** A doctor's name may be permanently struck from the medical register, so ending their medical practice, in circumstances of severe carelessness or repeated infractions.

The MCI may also fine negligent physicians, even though its primary concentration is on disciplinary measures. Depending on the type and extent of the negligence, the fine amount will change. Medical malpractice is a severe problem with moral and legal ramifications. In order to guarantee that medical personnel uphold the highest standards of care and moral behavior, the MCI is essential. The MCI's disciplinary measures help preserve public confidence in the medical community by discouraging careless behavior.

G. JAPAN MEDICAL ASSOCIATION (JMA)

In order to safeguard the health of Japanese residents, the Japan Medical Association (JMA) is a nationwide organization that supports doctors and advances medical ethics and education. Through its professional liability program, the JMA provides a nonbinding out-of-court evaluation of cases.

The following details pertain to medical malpractice in Japan:

1. Principles of law: According to Japanese tort law, there cannot be responsibility in the absence of fault. This implies that negligence cannot be proven if a doctor's actions were in line with accepted standards of care.
2. Number of claims: Although there are more medical malpractice cases in Japan than in other nations, the frequency is still modest. The number of cases per 1,000 doctors dropped from 4.9 in 2006 to 2.8 in 2020.
3. Diagnostic errors: Diagnostic mistakes accounted for 68.5% of malpractice claims in a study of emergency rooms in Japan.
4. The professional liability program offered by JMA: This program provides a quicker and less costly nonbinding out-of-court examination of claims than judicial resolution.

CONCLUSIONS AND SUGGESTIONS

The Consumer Protection Act, 2019 (CPA, 2019) is a pivotal piece of legislation aimed at reinforcing consumer rights in India, with significant implications for the healthcare sector. By including medical services within its ambit, the CPA empowers patients to address grievances related to medical negligence, deficiency of service, and unfair practices. However, its implementation has sparked debates over the balance between protecting consumer rights and ensuring a fair environment for healthcare professionals.

A critical issue is the potential for defensive medicine practices, driven by healthcare providers' fear of litigation, which may lead to unnecessary procedures and inflated healthcare costs. Additionally, the Act's lack of specificity in addressing the nuances of medical errors risks oversimplifying complex healthcare disputes. This highlights the need for clearly defined standards of care and the inclusion of expert medical testimony to adjudicate cases effectively.

The rise of telemedicine further complicates the landscape, exposing gaps in the CPA's regulatory framework. Issues such as data privacy, patient safety, and liability in virtual consultations demand immediate attention to ensure the law remains relevant in the digital age.

To address these challenges, establishing specialized healthcare tribunals with legal and medical expertise is essential. These tribunals can offer a more informed approach to resolving medical disputes, minimizing undue burdens on healthcare professionals while safeguarding patient rights.

Alternatively, a healthcare-specific grievance redressal mechanism within the CPA framework could achieve similar objectives.

An important step toward improving consumer protection in India, notably in the healthcare industry, is the CPA, 2019. But putting it into practice in the medical field calls for a careful, well-rounded strategy that takes into account the unique issues and difficulties that patients and healthcare professionals confront. Policymakers can safeguard patient rights, reduce the likelihood of pointless lawsuits, and foster a culture of patient safety and high-quality healthcare by establishing specialized healthcare tribunals or developing a specific grievance redressal mechanism within the current CPA framework.

The creation of specialized healthcare tribunals with legal and medical professionals on staff might offer a more sophisticated and knowledgeable forum for resolving medical disputes; these tribunals would be better equipped to evaluate the veracity of medical claims and would have a deeper comprehension of medical practice. Developing a grievance redressal process specifically for the healthcare industry within the current CPA framework could be an alternate strategy. To help consumer commissioners assess medical evidence and make well-informed choices, this may entail hiring medical specialists.

In conclusion, while the CPA, 2019 marks a significant step forward in consumer protection, its effective application in healthcare requires a balanced approach. Policymakers must strive to protect patient rights, foster patient safety, and support healthcare professionals in delivering quality care without fear of unwarranted litigation. This comprehensive approach will ensure that the CPA fulfills its promise of justice and fairness in the healthcare domain.

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