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Consumer Protection Laws in India with special references to Human Health – A Socio Legal Study

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I. INTRODUCTION

The Consumer Protection Act (CPA) is a complete statute enforced in the year 1986 in India to endorse and protect the interests of consumers. Under the statute, six various consumer rights such as the right to be heard, right to education of customer, right to choose, right to seek redress, right to safety, and right to be informed have been incorporated to safeguard the customers. For easy implementation, consumer councils and consumer courts have been incorporated at the district, state, and central levels to resolve the consumers' grievances. The CPA was implemented in our country as civilians were resisting to approach the civil courts because of the exorbitant court fee and extensive time in delivering final judgment. This Statute has been developed to be customer amiable, as the person does not have to pay a court fee, the person can present their case, and the case is decided within 3 6 months.

The doctor-patient relationship depends vitally on mutual trust and firmly held belief. However, over the decades due to the profit-oriented objective of health care and the medical profession, the profession is now lacking trust. The law was not very dynamic to punish all health care professionals causing injury to the patients but dealt only with negligent acts. The CPA provides a mechanism to protect the rights of the customers and establishes directions for the quick redress of their complaints against fraudulent medical practices.

All service delivered to a patient by a medical practitioner is incorporated under the Statute excluding when the service is rendered free of cost, particularly in charitable or governmental clinics and hospitals, and major health centers. If a patient or the relatives of a patient think that the patient agonized resulting in the death of a patient because of either careless conduct by the concerned doctor or the health facility, they can approach the Medical Council of India or the Consumer Court. The Statute comprises all the medical practitioners and does not restrict itself to the allopathic methodology to make sure that there is responsible conduct and also keeping a check on deceitfulness committed by nonallopathic practitioners.

Despite the increase in the quantum of cases that are filed against medical practitioners since the implementation of the Statute, analysis has disclosed poor consciousness in the medical and dental professionals. Additionally, it has been noticed that the standard of medical services rendered to the ordinary man has also been enhanced vitally since the enforcement of the statute. Thus, there is an enormous requirement to upgrade the knowledge about the statute amid all the patient stakeholders, doctors, and hospital management.

However, before these developments, the need for safeguarding consumers' rights and interests may be pinpointed under the Law of Torts which is even now equally efficacious and applicable. This clause on concepts, therefore, tries to throw light on the connection of Law of Torts vis-à-vis Consumer Protection with special attention on medical negligence cases. The consumer protection mechanism essentially aims to safeguard against insufficiency in services and fault in goods. Thus, the scrutiny shall mainly be around these facets under the torts law and consumer laws, with the sector-specific resolution of consumer cases[1].

II. EVOLUTION OF CONSUMER RIGHTS IN INDIA

Consumer rights were acknowledged comprehensively in many ancient Hindu, Islamic, and
Christian religious texts; although, no literary work described them in a nutshell set until the 1960s. Consumer rights in India and the modern world owe their genesis to the consumer revolt of the pre-60s in the United States of America.

In the sphere of Indian medical history, historians have paid more observation to the Indian systems of medicine, their factual and technological facets, and their connection with the Indian notions. However, such writings on Indian medicine have rendered some very useful understanding into the manner medicine was practiced, a structured examination of medical care clauses, and the rules and statutes on it, are yet to be undertaken.

[1] *Rajiv Kumar Khare, law of torts, medical negligence and consumer protection, 2010*

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However, the scope of evolution of public health structure points to some sort of state or community planning which authorized the citizens to get entitlement to sanitary public health facilities.

The written proof of the state's participation and the regulatory function is available from

Kautilya's Arthashastra. Kautilya considered scantiness as a bigger calamity than pestilence and epidemics, as the remedies can be found for the diseases. He opined that the king should direct the physicians to use medicine to resist epidemics. The Arthashastra also made it compulsory for the doctor to inform the state whenever the doctor is called to a house to operate on a seriously injured person. This is also used to medicate the one suffering from harmful food or drink. If the doctor neglects to render information to the state, he would be charged with the same crime committed by such a patient[2]. For not furnishing correct information to the patient, for committing an error in and for being careless in operating, the Arthashastra renders for punishment, fine, for the doctor, and compensation for victims. Arthashastra is filled with prescriptions of so-called primitive punishments, comprising firm advice for using physical pain for getting information or statement, and even using it for penalizing. While in the field of ancient medical ethics and laws, the code of Hammurabi prescribing "eye-for-eye" punishment for the doctor injuring patients in the treatment is well known, the punishments prescribed and practiced in Kautilya's time are less known and talked about[3]. Arthashastra is a very definitive and practical book. Its identification of each point of state-craft, economic management, infringements, and the specific and detailed punishments partly read like a code. It has received less attention perhaps because it's writing on the medical practitioners and their duties are part of crisis management, combating recurring famines and epidemics, and also a part of" consumer" protection in general. When India is still trying to properly codify and implement the doctor's duty of giving proper information to the patient, the Arthashastra had made it mandatory for the doctor to give information before about medication concerning life and having the aftermath of causing injury.

A failure to give such information invited harsher punishment if the patient died or suffered an injury. It prescribes the following punishment for "negligence" in treatment: Doctor not giving prior information about treatment involving danger to life with the consequence of Punishment prescribed

1) Physical deformity or injury to essential organs, like punishment as leads to similar physical injury.

2) Patient's death lowest level ideal punishment (mainly fine)

3) Death due to wrong treatment Middle-level standard penalty (primarily fine but high amount).

III. CONCEPT OF CONSUMER PROTECTION

Consumer protection comprising of laws and mechanisms formulated to enforce the rights of consumers along with with-decent trade competition and the free flow of honest information in the forum.

The laws are laid out in a way to avert businesses that involve in fraudulent or specified unprofessional practices from attaining a preference over competitors and may render extra safety for the fragile and those who are helpless to take care of themselves. Consumer protection statutes are a kind of government law that intends to safeguard the rights of consumers. For instance, a government may need businesses to reveal elucidated information about the goods-specifically in areas where protection or public health matters, such as food.

Consumer protection is related to the notion of "consumer rights" (that consumers have different rights as a user of goods and services), and to the establishment of consumer organizations, which aid consumers to make the fair selection in the marketplace and help them in their grievances.

The requirement of taking measures to safeguard the concern of consumers arises primarily owing to the vulnerable state of the consumers. There is no contradiction to the fact that the consumers have the elementary right to be safeguarded from the catastrophe or injury caused due to unwholesome goods and defection services. But they barely use their rights owing dearth of awareness, careless or lethargic viewpoint.

However, because of the rampant negligence and their vulnerability thereto, it is important to render their physical security, safeguard monetary interests, access to information, suitable product quality, and legal measures for the resolution of their complaints.

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[2] *Amar Jesani, laws and health care providers A Study of Legislation and Legal Aspects of Health Care Delivery, Centre for Enquiry into Health and Allied Themes, Mumbai, January, 1996*

[3] *Rangarajan l.n., "kautilya: the arthashastra", New delhi: penguin books, (1992)*

The other main reasoning in support of consumer protection are as follows:

1) *Social Accountability:* The business must be directed by specific social and ethical standards. It is the ethical responsibility of the business to benefit the interest of consumers. Keeping in line with this postulate, producers and traders should provide decent quality and quantity of goods and services at reasonable prices to the consumers.
2) *Increasing Knowledge:* Consumers are becoming more aware and vigilant of their rights against the carelessness of the business. There are various consumer organizations and institutions that are making attempts to set up consumer awareness, taking up their cases at different hierarchies and aiding them to execute their rights.
3) *The comfort of Consumers:* Mahatma Gandhi, Father of our nation, had once given a call to producers and traders to serve your consumers as God. Consumers' contentment is the factor of the success of the business. Hence, the businessmen should make sure that consumers' interests are served at a reasonable price.
4) *The doctrine of Social Justice:* Maltreatment of consumers is contrary to the directive principles of state policy as enshrined in the Constitution of India. Keeping in line with this doctrine, it is strongly believed that the manufacturers, traders, and service providers to restrict themselves from malpractices and serve the consumers' interest.
5) *The Doctrine of Trusteeship:* As per the Gandhian notions, manufactures and producers do not own the business.
6) *Resources are Provided by Society:* They are only the trustees of the resources and, therefore, they should make sure that such resources are utilized adequately for the advantage of the society, which comprises the consumers.

IV. DEVELOPMENT OF PATIENT RIGHTS IN INDIA

A. *Patient as a Consumer*

Traditionally, patients in India have unquestioning trust in their doctors. Most doctors deserve it. However, in certain cases, medical carelessness has resulted in aggravated harm in the form of physical, psychological, and financial. In addition, unqualified practitioners have brought suffering to gullible patients. Doctors have been convicted to prosecution in civil court, however, few malpractices sufferers file cases for compensation in which hearing goes for years (even decades) along with expensive litigation costs. Thankfully, the apex Court in 1995 decreed the medical profession to be considered as a "service" within the Consumer Protection Act; 1986. It quashed a Writ Petition filed by the Indian Medical Association[4].

V. THE PATIENT'S RIGHTS

In the interest of a healthy doctor-patient relationship, A patient should Know his rights as a consumer: This article discusses the patient rights addressing to the patients/readers for better understanding.

1) A patient has a right to be told all the facts about your illness; to have his/ her medical records explained to him/ her; and to be made aware of risks and side effects, if any, of the treatment prescribed for he/ she should not hesitate to question patients' doctor about any of these aspects.
2) When the patient is being given a physical examination, he/she have a right to be handled with consideration and due regard for his/her modesty.
3) The Patient has a right to know your doctor's qualifications. If you cannot evaluate them/herself, should not hesitate to ask someone who can.
4) The Patient has a right to complete confidentiality regarding his/ her illness.
5) If the patient is doubtful about the treatment prescribed and especially an operation suggested, he/ she have a right to get a second opinion from any specialist.
6) The Patient has a right to be told in advance what the operation is for and the possible risks involved. If this is not possible because of his/her being unconscious or for some other reason, his/ her nearest relatives must be told before they consent to the operation.
7) If the patient is to be discharged or moved to another hospital, he/ she have a right to be informed in advance and to make his/ her own choice of the hospital or the nursing home, in consultation with the doctor.
8) He Patient has a right to get his/ her case papers upon request.

[4] *Know your rights, Consumer Guidance Society of India, http://www.cgsiindia.org/knowyourrights.html, last accessed 1/05/2020 at 2:00PM*

A. Committees on Health Services and their Recommendations on Health Laws

During the period of independence, and the primary years of planning, the responsibility challenging the nation was to establish a physical and institutional framework for the accelerated evolution or modernization of India[5]. Consumer safeguard initiatives by the Government based on a criterion. Primarily, assuring a legal regime that consists of the consumer protection act.

Next is, developing a benchmark for various products to facilitate the consumers to make a cognizant choice about various products and services. Standards which are vital in establishing quality, play a chief role in consumer safeguard. Standards could be on the technical requirement (specifications), improved specific standard terminology (glossary of terms), codes of practice or test methods, or management systems standards. The standards are set generally by Government or inter-Governmental bodies but worldwide it is being recognized that voluntary establishment of standards plays an equally important role in protecting consumers.

Thirdly, consumer awareness and education are the main building block for consumer protection. Education is the most capable means for the advancement of the nation and is a social and political requirement. Education aids personas a consumer in making balanced choices and safeguards him from trade and business-related malpractices. But more is needed for the effective functioning of the national market to create an increased level of awareness of consumer rights, and for this consumers have to be vigilant enough about rights and duties through proper awareness campaigns. In the awareness campaigns, special emphasis needs to be given to vulnerable groups such as women and children, students, farmers, and rural families, and the working class.

VI. PATIENT RIGHTS IN INDIA

In the year 2002, the Medical Council of India circulated a Code of Ethics Regulations (COER) which was concerned with the obligations and accountabilities of physicians in addition to the specific rights of patients. It must be highlighted that this regulation does not represent patients' interests; those stated are incidental to the duties and responsibilities of physicians. A differentiation must, therefore, be established amid a duty-centric method as represented by the COER and the rights-centric way of the AAPS. A medical practitioner may have grievances with the rights-centric approach of AAPS but is obligated to promote the rights of patients that are related to his/her duties. At the time of registration with the Medical Council of India (MCI), all medical practitioners are required to sign a declaration, stating inter alia as follows: ―I shall abide by the code of medical ethics as laid down the Indian Medical Council[6]. The Consumer Guidance Society of India (CGSI) has a more comprehensive charter on its website listing eight specific rights of patients. Interestingly, the CGSI's regulation does not incorporate the right to refuse medication. Thus, if the doctor decides on a specific procedure, the patient can at the most ask for a second viewpoint. Besides this, the rights of patients are alike in the US and India. However, there is no voluntary recognition for patients' rights in India, and if they are infringed, the only remedy for patients is to approach the consumer courts. Violation of patients' rights is not a cognizable offense in India as it is in the US and some other countries. The differences between the responsibilities described in the COER and each point of the CGSI 's charter of rights may be worth discussing.

1) The patient has a right to be told all the facts about illness; to have medical records explained; and to be made aware of risks and adverse effects, if any, of the medication laid down for the patient, do not hesitate to ask from the doctor or surgeon about any of these facets. Physicians and surgeons rarely have the time or the inclination to discuss with the patient the diagnosis, treatment, or prognosis. In those rare circumstances where the physician is tending to do so, the close relatives may try not to tell the patient. There is little awareness that the patient's anxiety can increase manifold in the absence of clear information. This may be specifically true in the case of diseases like cancer, where patients and relatives think that there are fewer chances of improvement. In many cases the patient or relatives may not understand the approaches of medication; in any case, the physicians are hardly keen to inform them. The COER does address this problem, as it encourages all physicians to provide factual information to patients and their relatives mentioning: The physician should not distort a patient's condition. Best interest is often a controversial issue and cannot be the same for all patients. This may have to be examined on a case-to-case basis and varies from patient to patient.

2) When a patient is being given a physical examination, you have a right to be handled with consideration and due regard for your modesty. This right is majorly respected, and physicians ensure to protect the patient from unnecessary disclosure. Most doctors also empathize with their patients and show due consideration. Patients are medicated with utmost care as a rule, yet, as an exception, infringement of this right cannot be eliminated. However, this is not specifically mentioned in the COER.

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[5] *Supra note 2*

[6] *Professional Conduct, Etiquette and Ethics) Regulations 2002.‖ (Appendix 1, Declaration, clause k)*

3) The Patient has a right to know your doctor's qualifications. The unequal nature of the doctor-patient relationship, patients approach doctors when they need help may make patients reluctant to ask their physicians for their qualifications or experience. However, the COER obligates that doctors render this information without being asked, as it mentions: Physicians shall display as suffix to their names only recognized medical degrees or such certificates/diplomas which confer professional knowledge or identify any exemplary qualification achievements.

4) A patient has a right maintain to complete confidentiality regarding illness. The COER backs patients 'right to confidentiality: Patience and delicacy should define the doctor. Confidences concerning individual or domestic life entrusted by patients to a physician and defects in the character of patients noticed at the time of medical attendance should never be disclosed unless their disclosure is necessitated by the laws of the State. However, in Indian society where the physician may be required to discuss with the entire family, and maybe ask for information about the patient, physicians are generally wishing to discuss the patient's ailment with her relatives.

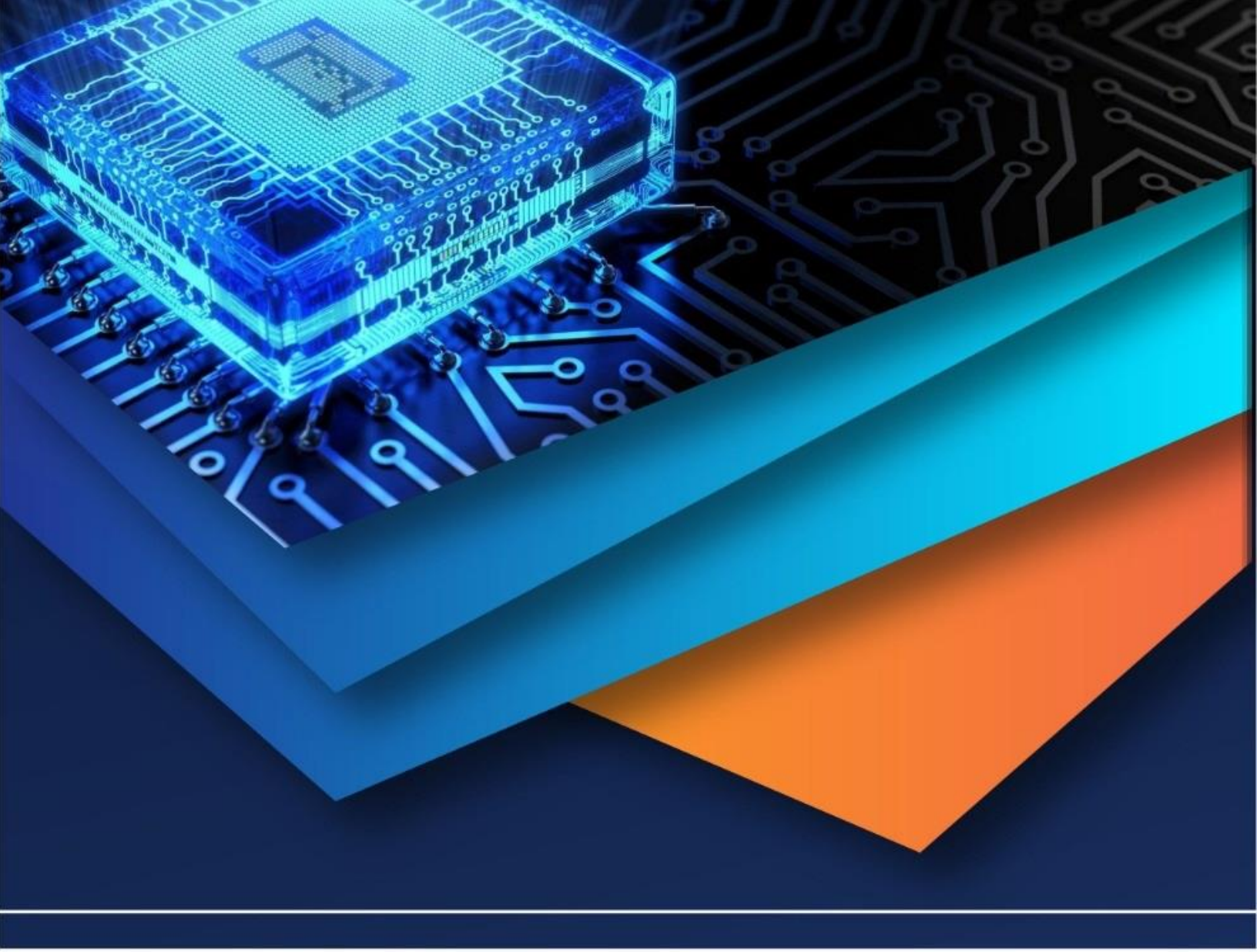
5) If the patient is in doubt about the medication advised and especially an operation suggested, the patient has a right to get a second viewpoint from any specialist. However, should a patient seek a second opinion, and if the same turns out to be radically different from the first, the patient is in a quandary as to which opinion to accept. The COER backs the right of the patient to take a second viewpoint, but adds as follows: Different viewpoints should not be leaked but when there is a major difference of viewpoint the situations should be clearly and impartially discussed with the patient or his relatives or friends. It is on them to seek further advice.

VII. CONCLUSION

The efficient and effective program of Consumer Protection is of special significance to everyone because everyone is a consumer. Even a producer of service is a consumer of some other goods or services. If both the producers and consumers understand the necessity for coexistence, then, contaminated products, bogus goods, and another dearth of services would be eliminated majorly. The active engrossment and cooperation from all authorities, i.e. the central and state governments, the educational institutions, the NGO's, the print and electronic media and the acceptance and adherence of a voluntary code of conduct by the trade and industry and the citizen's charter by the service providers are significant to see that the consumers get their interest. The need of the hour is for absolute assurance to the consumer cause and social impartiality to consumer requirements.

There should be no basic quarrel holding that a patient harmed by the treatment rendered by a doctor or a hospital for consideration can claim damages under the Consumer Protection Act, 1986. Punishment for medical negligence is made conditional on several parameters to serve the longer objective that medical practitioners should conform to the code of medical ethics. It is also established that doctors and hospitals if failing to exercise reasonable skill and care in the treatment of patients entrusting themselves to their care are as much liable to pay the price of negligence as others.

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