

**"LEGAL ASPECT OF MEDICAL NEGLIGENCE
WITH SPECIAL REFERENCE TO
CONSUMER PROTECTION ACT"**

*Submitted in Partial Fulfilment of the Final Examination of
Post-Graduate Diploma in Health Care Administration*

Under the Guidance of
DR. C.M. FRANCIS, M.B.B.S., Ph.D. (Cambridge)

By
SR. SUMA VADAKKECHURAVAILIL

**HEALTH CARE ADMINISTRATION
ST. JOHN'S MEDICAL COLLEGE & HOSPITAL
BANGALORE - 560 034
AUGUST - 1993**

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PREFACE

Negligence is as ancient as humanity, yet something so modern and a reality. It is present everywhere and in everyone although in varying degrees. Negligence is present in the Medical Profession and health care services. This seems to be on the increase. There is a certain amount of deterioration in the standard of medical profession today; and this is probably a reflection of the deterioration of the standard that is prevailing in the other professions and in the Society itself.

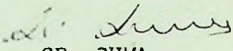
Man is never satisfied. His greed for money, wealth and power prompts him to deviate from that which is right and good, ultimately ending up in malpractice and in unethical ways. In such a situation that is saturated with this malpractice, negligence and corruption where people seem to pay a deaf ear to the voice of conscience, every one gets cheated by the other. Malpractice and negligence has almost become something epidemic. Legal approaches seem to be the only remedy. So we have the Consumer Protection Act.

In this paper, I have tried to explain the legal aspects of Medical negligence and the application of Consumer Protection Act to the medical profession and the health care institutions.

Generosity is exactly that has helped me in the preparation of this paper. A number of people have generously helped me in this endeavour. I am grateful to all of them. I gratefully place on record the direction and guidance that was given to me by Dr. C.M. Francies, MBBS, PhD (Cambridge) in every possible way. His vast knowledge on the subject and his rich experience in the field of medicine and life itself were the best of reference material, I could ever have. I cannot forget the kindness and the understanding I have experienced from my Guide. It was a learning process.

Special thanks are due to Rev. Fr. Percival Fernandez, M.A., MBPA, PhD (USA), the Director of the Course; and to Prof. A.K. Roy, MBA(USA), the course Co-ordinator of D.H.C.A., who had been instrumental in selecting this subject for my study, I certainly cannot forget the help I received from Prof. C.K. Tewari, M.H.A., who had been so generous with his time and possessions (materials). The generosity of Dr. Ravi Narayan who provided me with the printed materials certainly lightened my anxiety to a great extent. I also owe my gratitude to Dr. Thankaraj who helped me to take the initial steps in this study. I extend my gratitude to one of the Officials from the State Consumer Protection Redressal Commission, Bangalore, all the Administrators and Doctors of the three hospitals where I was able to carry out my study. My special thanks to Fr. Patrick Rodrigues, Administrator of St. John's Medical College Hospital, Bangalore and Dr. Lobo, the Medical Superintendent of the same hospital, who did give me their kind co-operation to complete this study. I also appreciate the co-operation and support that was extended to me by all the faculty members and my colleagues of D.H.C.A.

I extend my gratitude to my superiors and sisters in my congregation for giving me the time and opportunity to attend this course and conduct this study. I am really grateful to all those who had been a help to prepare this paper and also to Mr. Rajan who helped me with the typing of this paper.


SR. SUMA

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CHAPTER I

A. INTRODUCTION

B. MEDICAL CARE SERVICES

- PURPOSE AND SCOPE
- CHRISTIAN INVOLVEMENT

C. LEGAL STATUS OF MEDICAL PROFESSION

D. DEMAND FOR SERVICE

E. MEDICAL ETHICS

- MEDICAL COUNCIL OF INDIA
 - INTERNATIONAL CODE
(MEDICAL & NURSING)
-

CHAPTER I

Medical Negligence

A. INTRODUCTION

Law regulates public activities. It can be in the industrial field, or in the educational field or in the medical field. In the medical world, the law is concerned with improvement of physical, mental, and social well-being of the people. It is meant to promote health and prevent illness. It is also meant to have better management of people with disease. Therefore, the laws relating to the medical world need to be examined and modified even rectified from time to time in relation to their impact on the society and people they aim to regulate.

Medical Negligence :

~~We have~~ The law related to medical negligence, ~~which is~~ a branch of the law of negligence, which in turn ~~is~~ a branch of the law of torts. Torts is mainly a judge-made law developing over the years through changing judicial decisions. Torts is a wrong done by one person to another for which the law provides a remedy. Unlike the criminal law, torts aims at monetarily compensating the victim

rather than punishing the offender. Its focus is on the victim and not on the motives of the offender. The torts offer civil redressal in the form of compensation.

Negligence is a careless act, ~~an act wanting~~ care and may result in harmful consequences. "A person is said to be negligent when he/she acts without due care in regard to the harmful consequences of his/her action." The tort of negligence is made up of various components - namely

- a. A duty or an obligation recognised by the law requiring the person to comply with certain standards of conduct for the protection of others against unreasonable risks.
- b. A failure on the part of the person to conform to the standard required - what is known as the "breach of duty".
- c. A reasonable close causal connection between the conduct and the resulting injuries.
- d. Actual loss or damage resulting to the other.

~~Medical negligence is like any other negligence.~~
~~It is the negligence by a medical person. A physician,~~
~~a surgeon, or any other member of the medical profession;~~
or the health care institution, if he/it has not exercised

reasonable care in the management of a patient may be liable to a negligence suit. The degree of care a person or institution is expected to exercise, varies from case to case depending on the fact of each case. ~~But~~ The test is the standard of the ordinary skilled person, exercising and professing to have that special skill. This principle becomes applicable when the doctor accepts the patient. The doctor is expected to possess the required skill and knowledge to treat that patient. He owes certain duties to the patient, namely, the duty of care, i.e., the duty of care in his decision to take the patient; duty of care in his decision to treat the patient duty of care with regard to the type of treatment to be administered; and the duty of care in providing the patient the right kind or the proper information. Any deviation from these duties of care is negligence.

Rights of the patient :

~~Where there is a right, there is a remedy.~~ Any patient who is treated by a particular doctor or a hospital, has got certain rights. The patient has the right to ~~accessibility and availability of health services.~~ He has a right to be treated as an integrated whole person. His rights are extended to receive information and to ^{be} ~~give~~ informed of the medical consequences of the action. He has a right to second opinion, and also to receive information from the doctor. He has the right also to privacy and confidentiality. He

and his family has^{ve} the right to adequate legislation when he is deprived of any of the above mentioned rights, or have suffered damage or injury as a part of it. In such situation he has the right to ~~appeal or ask for~~ the remedial measures. ~~It was always there.~~

What are the

^ Remedies for deficient services ?

In the past there were two options open to the patient with complaints against the doctor ^{or} the hospital. The first option was to file a case in the civil/criminal court of law. This was not very much appealing to the plaintiff as it was very expensive (a large amount had to be deposited as court fee), and time consuming (it may take many years for a decision to be arrived at and then there was the possibility of appeals). The aggrieved person also had to employ a lawyer. All these resulted in frustrating and harassing experience for the patient/the plaintiff, with the original purpose getting diluted and lost in the labrynthine corridors of time, procedure and jurisprudence. // The aggrieved person can have recourse to ^a the second option by filing a complaint with the Medical Council of India, a statutory body composed of medical professionals. This too had its own disadvantages, ~~namely~~ If the council finds that the doctor was negligent, they punish the doctor by de-recognising ^{permanently or temporarily} his registration or licence to practice as a doctor. The State Medical Councils

^ or by censuring him.

also have the same powers. But certainly, it did not compensate the loss or damage suffered by the patient on his relatives.

Consumer Protection Act, 1986:

~~Both the above mentioned options did not satisfy the patient. In 1986, a third option became available for the patients, ~~the consumer of the health care service~~ by the enactment of the Consumer Protection Act by the Parliament.~~

// The Consumer Protection Act provides for redressal of grievances, when there is deficiency of goods or services.

// The Consumer Protection Act assures the patient speedy redressal of grievances in special consumer courts at the district, state and national levels. There is no court fee charged, ^{It} and ^{It} does not need the service of an advocate either. All that is required is a written complaint on a plain paper with the demanded amount of compensation; which ^{It} can be submitted to the Consumer Forum either in person or by post. The Consumer Court will ensure the plaintiff with a speedy decision/ redressal within 90 days.

In short, the Consumer Protection Act, while not conferring any new right, provides for a simpler, cheaper and faster avenue of redressal of grievance.



B. MEDICAL CARE SERVICES

Before Independence itself India had a well organised medical care service system along with administration, police, engineering, forestry and education. This Indian Medical Service, then, had a military and civil wing meant primarily for the needs of the armed forces; most of the civilian officers were held in reserve to meet the requirements in times of war.

With the attainment of independence, in 1947, major changes were made in the health administration. Based on the recommendations of the Bhole Committee, the medical and public health departments were combined - both in the centre and the states - under one single administrative head.

Recent happenings of national significance like the Lentin Commission report which brought to light the dangerous prevalence of spurious drugs, their use in major hospitals and the connected incidents in the matter of medical care in the country have brought in the minds of every citizen, the need for quality of medical care. In the minds of professionals who manage hospitals both large and small, the same question assumes even greater importance with the added real fear of legal implications. The legal aspects, especially the responsibilities on the

professionals as well as the institutions themselves are becoming more and more clear with new decisions and rulings, in the country and, more so, in the advanced countries.

What is this medical care service? In order to understand what is medical care service, one needs to know what is health care service; medical care forms part of health care service.

"Health care service is an expression of concern for fellow human beings. It is defined as a multitude of services rendered to individuals, families or communities by the agents of health services or professions for the purpose of promoting, maintaining, monitoring or resorting health. Such services may be staffed, organised, administered and financed in every imaginable way, but they all have one thing in common: People are being "served" , i.e., diagnosed, helped, cured, educated and rehabilitated by health professionnel. In many countries, health care service is completely or largely a governmental function." ¹

Health care is a public right. Though it is primarily the responsibility of the government, to provide it to the people in equal measures, the government is supported and helped by individuals as well as private and voluntary health care institutions to provide this right.

In India, the health care services are delivered through the health system which constitute the management sector and involves organizational matters such as planning, determining priorities, mobilising and allocating resources, translating policies into services, evaluation and health education. These health systems aim at health development. Currently the goal of health system is to achieve health for all by 2000 A.D. The best way to achieve this goal, the three tire system of health care service has been introduced:

- Primary health care whereby the first level contact between the individual and health system takes place and 'essential' health care is provided. It is at this level the health care will be most effective within the context of the individual's and community's needs and limitations.
- Secondary health care is where more complex problems are dealt with - comprising essentially curative services.
- Tertiary health care is where super speciality care is provided at the regional/central level institutions.

"The health care services have certain characteristics such as appropriateness, comprehensiveness, adequacy, availability, accessibility, affordability and feasibility." ²

X

Medical Care Services :

Medical Care Services form part of health care services. "Medical care service is a subset of health care service. The term medical care service refers mainly to those personal services that are provided directly by the physicians or rendered as a result of the physician's instructions. Medical care services range from domiciliary care to resident hospital care." ³

"Medical care services begin with the sick and seek to keep them alive, make them well or minimize threat to health from disease or environmental hazards and seek to protect as many people as possible from the harmful consequences of the threat." ⁴

Problems of medical care services in India

In India we have a national health policy but we do not have a comprehensive national health service due to the inadequate financial resources to furnish the cost of running this service. Today approximately 80% of the health care service facilities are concentrated in the urban areas and is catering to the 20% elite population of the country. They are mostly disease - oriented and hospital based services. Another problem is inadequate staffing. Added to them is scarcity of essential drugs and medicines at affordable prices. The modern curative and preventive health services do not

reach the rural population which constitute 75% of the total population (1991 census). Most of the rural population rely on the primitive and indigenous systems of medicine because of the unequal distribution of available resources between the urban and rural areas, and lack of penetration of health services to the social periphery. The primary health care services try to reduce these imbalances.

Purpose of medical care service

The entire health care services, especially the medical care services aim at preservation of life and promotion of health.

- a. Preventing measures : As the proverb (expression) goes "Prevention is better than Cure", it is always better and cheaper to prevent the disease than to cure. What can be prevented need to be prevented. Preventive measures are as old as history itself. It holds good even in the case of health and medicine. Preventive medicine is a branch of medicine in general and is not the same as public health. Preventive medicine is applied to healthy people. Its primary objective is prevention of disease which in turn promotes health and preserves life. Immunization is based

on this principles; this immunization helps to prevent the occurrence of disease, protection of the person and control of the disease in the case of communicable diseases.

- b. Caring : The dictionary meaning of the word 'care' is to feel affection, to look after, to protect, to like, to feel interested in, etc. It is greatly appreciated by the healthy as well as the sick. A healthy person continues to be healthy when he is well cared for. The sick get well faster and gain good health if they are treated with care and love. Care is an important (if not more) as curative and preventive aspect of health. Caring is certainly within the boundaries of one's experience. It is something that is subjective; yet something so real and concrete. Care is something that is internal yet it cannot be contained within oneself. Caring is the life blood of health/medical care service. It is vital to the preservation of life and promotion of health.
- c. Curative measures : Curative medicine is thousands of years old. Every problem has to have a solution/ remedy. These remedial measures in medical cure service are the curative measures. Nature herself

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has provided us with provisions for it. Science and technology have added/contributed towards this greatly. The primary objective of curative measures is removal of disease from the person affected by it. Thus it is an individualised approach measure. The curative aspect of medicine avails the diagnostic techniques and treatment of ailments. It is a specific and potential aspect of health care services. It is prevalent/existing in every system of medicine. Curative measures contain a vast body of scientific knowledge, technical skill, medicament and machinery highly organised - not merely to treat disease but to preserve life (and promote health) itself as far as it could be possible.

Curative medicine has gone through tremendous growth as a result of progress in medical technology and scientific inventions and interventions.

- d. Promotive measures : Health promotion is a concept belonging to the present century which took its shape from the realisation of the fact that the public health had neglected the citizens as an individual while the state/country had a direct responsibility for the health of the individuals. As a result of this realization of health promotion,

public health nursing came into the picture.

As a part of health promotion, various programmes are being introduced. Health promotion is "the science and art of preventing diseases, prolonging life and promoting health and efficiency through organized community effort." ⁵

Promotive aspect of health is intended to strengthen the host through variety of approaches/ interventions and not directly against any particular disease. Various approaches to the promotive aspect of health care/medical care are mainly through health education, environmental modifications, nutritional interventions as well as life style and behavioural changes. In short, health promotion is "the process of enabling people to increase control over, and to improve health." ⁶

- e. Rehabilitative measures : Rehabilitation is a recently emerged medical speciality which involves various disciplines such as physical medicine or physiotherapy, occupational therapy, speech therapy, audiology, psychology, education, social work, vocational guidance, placement, service, etc. Thus "rehabilitation is the combined and co-ordinated use of medical, social educational and vocational measures for training and re-training the individual to the highest possible



level of functional ability." ⁷

Rehabilitation aims at reducing the impact of disability and handicapping conditions and enabling the disabled and handicapped to achieve social integration or, in other words, the active participation of the disabled and handicapped people to the main stream of community life.

"In rehabilitation there are various areas of concern such as

- medical rehabilitation - restoration of function
- vocational rehabilitation - restoration of the capacity to earn a livelihood.
- social rehabilitation - restoration of family and social relationships.
- psychological rehabilitation - restoration of personal dignity and confidence." ⁸

Health personnel and medical services :

Health/medical care service is a team work, consisting of various types of services involving various categories of persons. It is rendered by doctors, nurses and allied health personnel/professionals. Everyone of them is equally important in the building up of the health of individuals and community. The degree of responsibility that is vested on each one of them by the society/ community varies.

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In the medical care service, the maximum responsibility is shouldered by the physician and then the nurses and then only the allied professional. Hence the doctors are more liable for the negligence that may/can happen during the process of medical care service.

Christian involvement :

Medical profession and the healing ministry by the Christians in India has been growing in variety and magnitude over the years. Many are the institutions and services being operated by the generous persons who have dedicated themselves to this area of christian work. The christians, particularly the catholic church, has responded to the health care needs of the country to a remarkable degree. Yet the fact remains that the health needs of this vast and poor country are not met adequately. The national health policy document of the Government of India depicts the (prevailing) existing picture of health care services and medical profession - a cause of serious and urgent concern.

C. LEGAL STATUS OF MEDICAL PROFESSION

According to the Directive Principles in the Indian Constitution, one of the primary duties of the State is to raise the standard of living of the people and improve their health status. In order to achieve this purpose, several laws have been formulated aiming to regulate the health care

X facilities. Some of these laws are meant to minimise the dangers often connected with these facilities themselves while the others regulate the quality of health care by attempting to keep a check on self-styled health specialists. Yet some others have been formulated to have control on movement, sale and distribution of toxic substances.

X Most of the existing laws are comprehensive, but unfortunately, they are not being enforced. Such neglect of legal provisions operates against the public to the benefit of the violators.

Doctors and Laws

✓ Under the Medical Council of India Act, 1956, every doctor after having acquired the necessary qualification, is expected to register himself/herself and get the licence before he/she can practise and collect fees for his advice or treatment. The Medical Council of India is empowered by the Act to ensure the enforcement of this Act and also to take the necessary disciplinary action in case of serious professional misconduct - even to cancel the registration of the doctor, if and when necessary. Adultery, improper association, negligence and advertising are some of the issues on which registration can be cancelled.

✓ The Act has made provisions to regulate the activities of the medical practioners especially those engage in unethical medical practices.

X "The Indian Medical Council Act (1956) and the Medical Degrees Act (1916), have been invoked to prevent doctors from advertising, deemed to be unethical practice by doctors, professional misconduct and use of unrecognised or fake degrees. The State Medical Council must be made to regulate and supervise the professional conduct of the doctors registered with the council and to ensure that adequate standards are maintained in medical practice." 9

X In all legal issues relating to health, the role of lobbying, the media and, where appropriate, recourse in law, cannot be underestimated. Otherwise, the producer will continue to dictate to the detriment of the consumer.

X According to the Act, the medical practitioners are forbidden to make/convert the profession into a business, trade, etc., which will degrade the nobility of the profession.

X "Nothing in the Act shall extend or be construed to extend, to prejudice or in anyway affect the lawful occupation, trade or business of chemists and druggists and dentists or the rights, privileges on employment of duly lincensed apothecaries so far as then extend to selling, compounding or dispensing medicines." 10

X

Under the law of tort the doctor is expected to possess the necessary knowledge and skill and also to exercise reasonable degree of care while managing/treating a patient. If he fails in these which result in harm or injury or loss to the patient, then the patient can demand the due compensation from the doctor for his negligence.

✓

"It is the duty of every ^{medical} registered practitioner to bring to bear upon all his professional activities that standard of skill and knowledge which is to be expected of a practitioner of his experience and status and of comparable standing to him. It is also his duty to exercise reasonable care in his treatment of a patient. If the failure to exercise the necessary degree of skill or care results in injury, to the patient, ^{the patient has} he will have a right of action for damages. Whether reasonable skill or care has been exercised in a particular case is a matter which has to be considered in relation to the facts of each case." 11

The law also demands of the doctors to explain the facts about the nature and the purpose of the treatment or procedures, to the patient ^d or to his family (if needed) and then obtain a fully informed consent, and ^o only after that the doctor is ~~expected to~~/permitted to carryout/perform the required treatment/procedure. In case of emergency, the doctor is expected to use his discretion and provide the

necessary emergency treatment and maintain the proper record.

X "A doctor has no right to do anything to a patient without his consent except in case of emergency where he must exercise his discretion. The securing of a signature to a consent should not be allowed to become an end in itself. The most important aspect in any procedure must always be the duty to explain to the patient or relative the nature and purpose of the proposed operation and thus to obtain a fully informed consent. In our country this should be even more important (though admittedly also more difficult) since there is so much illiteracy and lack of information." 12

Drugs are another entity subject to standards. The Drugs and Cosmetics Act, 1940 provides for the control as well as regulation of the drugs and cosmetics while they are being produced, distributed, and sold. It is upto the State Drug Controllers to see to the enforcement of the provisions of this Act, and the Drug Controller of India has all the powers to co-ordinate the activities of the various State Drug Controllers to ensure uniform application of the provisions of this Act throughout the country.

X "A drug which has been declared harmful or irrational by the technical bodies cannot (in theory) be purchased

X or prescribed by any Government authority; irrespective of the fact that the orders of the Government prohibiting the manufacture and sale of the drug might have been stayed by a court. This Act now extends to ayurvedic and unani products as well." 13

X The Act provides safety to the citizens (the people). But the link between the drug manufacturers, the medical practitioners and the chemists endanger the health and well-being of the individuals, although the defaulter can be imprisoned for upto three years and the goods confiscated under the Drug Control Act, 1956.

Health Service and the law

In the developed countries like the United States, the United Kingdom and the Scandinavian countries, there were adequate provisions for medical and nursing care for the entire people. But in India, the situation is quite different. Medical and health care is grossly inadequate. Adding to it, there was hardly any effort to redress injustice caused as litigation in India is time consuming, and very expensive. The strong nexus amongst the doctors who provide protection to each other inspite of the wrong doings, comes in the way of the cases in the court. Very often, proper documents are also not available to the patient who wants to file the case. Because of all these reasons, the patients seldom

come forward to sue the doctors/hospitals. The litigation does provide for the possibility of ensuring justice. But these are limited in content and form. As a result, the Government of India passed the Consumer Protection Act in 1986 in order to protect the consumers at large, ~~and at the same time~~ ensuring their rights as consumers.

On April 21st 1992, the judgement made by the National Commission stated that the medical profession and the health care institutions also come under the purview of the Consumer Protection Act and are liable for the negligence and substandard services rendered to the patients who are consumers of health care/medical care services and facilities. The Act defines 'service' as services of any kind and thus the Consumer Protection Act includes all services rendered or provided by the health care institutions and the medical profession for a consideration.

The aim of the Consumer Protection Act is to provide easier, quicker and cheaper redressal compared to the expensive, complicated and time-consuming one provided by the Civil Court and the Criminal Court. It also aims at quality services as well as holding the producers and providers of services accountable and responsible for their actions.

The services rendered by the voluntary and charitable health care institutions and persons are not commercial.

Still they are brought under the purview of Consumer Protection Act for the same purpose, i.e., to ensure quality service, accountability and responsibility.

X "The patients are becoming more and more aware of their rights and they are no longer going to be charitable in their accusations when they approach the consumer redressal form. A single case can be sufficient to destroy the image and reputation of the hospital and the medical professional ~~in~~ beyond repair." 14

D. DEMAND FOR SERVICE

Health is something unique. It is unique in the sense that the supplier controls the demand. In the past, on behalf of the patient, the doctor used to take the decisions regarding the type of service, quantity, quality and the cost of the service, etc., delivered to the patients. The doctor made/took these decisions in good faith and the patient accepted them too in good faith. The doctor-patient relationship was built on mutual trust. But to-day with the liberation of the market forces in health care many a time, there is an absence and a misuse of this trust. The patient who has lost his trust in the doctor and the hospital, can take them to the court if there/deficiency or defect in service. ^{As} Hence, there is a greater need for these institutions and

the medical professionals to be awake, alert and very, very conscientious.

X

The present situation certainly is a trying period for the voluntary, charitable and non-profit health care institutions and its personnel. Though faced with a tempting situation, we got to refrain from the entrepreneurial approach to medical care practices and the existing over-use of medical interventions. We need to refrain from entering into business arrangements with other physicians, private laboratories and pharmaceutical companies, etc., so that we do not trade on our patients' trust, in order to maintain our own security. Our services demand us to provide our doctors with all the necessary defence cover and other necessary support in order to retain them. The present situation demands (more than ever before) quality medical care at a reasonable cost on one hand and on the other hand, we have got to spend large sums on equipments and facilities to improve and also to be upto-date. We got to refrain from using defensive medicine inspite of the temptations to be on the safe side.

X

The present situation is likely to increase the cost of medical care which means only the rich will be able to avail our services and facilities and the poor who really needs our services will be neglected as their accessibility

will be diminished. If the poor ^{have} no access to these institutions and their health care facilities, is there any meaning in the existence of such charitable and voluntary institutions especially in a country like ours where the majority of the population are poor, ignorant and illiterate? In the present situation, the demand for our service is really great, but the possibility of providing them to those who deserve it is very little. How are we going to face this challenge???

"The Consumer Protection Act forces us to provide quality medical care ~~at a reasonable cost.~~ On the other hand, ^We may have to spend large sums to purchase new equipment and facilities to improve our diagnosis. We will be forced to protect ourselves with tests and investigations that are not needed in normal circumstances. In some cases, external consultants may have to be invited for a second ~~or third~~ opinion before taking a decision on the individual cases, which will, in turn, raise the cost of our services. ~~We will be forced to pass on this investment to the patients. Will only the rich and those who can pay, benefit from our services? Will the poor and needy be neglected?~~ Is it possible for us to refrain from the entrepreneurial approach to medical practice and the prevalent over use of medical interventions? Is it possible for us to refrain from entering into business arrangements with other physicians, private laboratories and pharmaceutical companies and thus trading our patients' trust for our own security?" 15



E. MEDICAL ETHICS

Every profession has its own codes of conduct to guide the members of the profession. This is true of the medical profession too. Medical ethics form apart of general ethics (which is founded on the public conscience). Although it does not have the legal force of law, at times it is even more forceful as violation of medical ethics can be viewed very seriously by the other members of the profession. Very often ethics is followed by legislation. Therefore, when we consider the legislation affecting medical practices, it is very important to understand the ethics of medical profession.

Medical ethics is not a ready made solution to the problems in the medical practice. But it certainly provides a practical guidance. It helps those engaged in healing to come to conscientious decisions in the best interest of the patients. It is with this spirit that we could approach the current ethical problems in medical practice.

The term 'Ethics' is derived from the Greek word 'Ethikos' and it stands for rules of conduct that govern the natural way in which human beings act.

"In modern connotation, ethics has come to be distinguished from morals. Where as morals are belief

sanctioned by mysterious powers, ethical levels are intellectually derived. The latter in contrast to the former, are also considered to be less profound and more amenable to change.

Any professional ethics can be considered only as a species of general ethics. Behind medical ethics, for instance must stand such cardinal virtues as wisdom, justice, temperance, courage and benevolence. This means that ethical principles to which it cannot run counter. Ethical issues require nothing but application of medical ethics in a more specialised field." ¹⁶

DEFINITIONS OF MEDICAL ETHICS :

"Medical ethics is a systematic effort to work within the ethics of medicine, which has traditionally been service to the sick. It is part of general ethics. It is the application of what is good and right derived from the values in health care. It deals with norms that govern the behaviours of medical profession. It is concerned with the obligations of the doctor to the patient; other doctors and health professionals and the society." ¹⁷

"Ethics is that science which studies the morality of human act through the medium of natural reasons. It is that science, which is directive of the moral acts of man's will according to the basic rational principles. In a word, ethics teaches us how to judge accurately the moral goodness

or badness of any human action. Therefore, medical ethics is a form of special ethics. It is concerned with the application of general principles to the moral problem of medical profession." ¹⁸

"Medical ethics is a systematic thinking on values that are at work in health care profession and formulation of norms to protect these values." ¹⁹

"Medical ethics is a systematic effort to elaborate the prospective and ethical norms of governing the medical profession. It is reflection on the human values implicit in medical care and hence is an indispensable guide to achieve the true good of the patients and the physicians themselves." ²⁰

The source of ethics are the various values; especially the concept of love for one's neighbour. Every scripture, thereby every religion upholds love - love for one's neighbour - as the most important of all principles. Ethics places greater value on human life; regardless of caste, creed, colour, sex and social status. Its main aim is respect for life and quality of life. In other words, ethics is an expression of this quality of life one maintains.

The fundamental values of medical profession are relief of suffering, care of persons, prevention of disease, cure of disease, promotion of health and preservation of life.



Combining the two principles, the medical ethics is formed which though does not provide a ready-made solution, it certainly enables the medical person with a valuable exercise in ethical reflection thereby provides the necessary guidelines before any medical undertakings.

ETHICAL CODE

Ethics enables one to think and act/do what is right and good for self and the other. An ethical code is a set of guidelines which enable the professionals to foster and maintain the ethos of the profession. On the whole, the ethical code is derived and influenced by humanism, religion and also the hippocratic oath. It needs to be revised and updated depending on time, place and people. It is an expression of conviction/principles/values that one gives importance to.

"An ethical code is a set of guidelines that guarantees and fosters the genuine ethos of the profession. Ideally it is formulated by members of the profession itself, though with the help of the specialists in ethics. It would also be good to involve the society at large.

Most such codes are more or less derived from the oath of hippocrates and strongly influenced by Christian humanism. An ethical code needs constant revision according to contemporary values and insights, but care must be



taken to preserve what is essential to human dignity and freedom." 21

Medical profession is one which deals with human beings - who are sick and helpless - One of the characteristics of the medical profession is that it handles life; life that are delicate. Hence ethical code of conduct are of vital importance to this profession more than any other profession, to guide the members of the profession. It (Ethical code) is not a parliament. made law. It is formulated by the members of the profession themselves with the help of experts in ethics and is approved by the profession. Hence, it is equally (if not more) forceful. It is the voice of conscience which calls the members of the profession (doctors in the medical field) to do what is right and good for others - namely the patients.

"Ethical code of conduct are important to any profession. It is all the more so for medical profession. The codes of conduct can succeed only if the profession, as a whole, feels responsible for its implimentation. If the doctors as members of the profession fails to be responsible and do not take action against those who do not observe the code, the code becomes ineffective.

Ethical code is not legislation. But it is equally forceful as it is approved by the profession. The final



court in all action is the conscience of the doctor (and of the patient). There appears a voice which summons the doctor to do what is good and avoid evil." ²²

CODE OF ETHICS OF THE MEDICAL COUNCIL OF INDIA

Although there is an international code of medical ethics, every country is privileged to have its own code of medical ethics for the doctors of that country. The Medical Council of India - a statutory body set up by the parliament - has set up its' own code of medical ethics which is to be observed by the doctors of this country. They are as follows: -

- A. "General Principles" - explains what is expected of of the doctors in India regarding
1. The character of the physician
 2. The physician's responsibility
 3. Advertising
 4. Payment of professional services
 5. Patent and copyrights
 6. Running an open shop (Dispensing drugs and appliances by physician)
 7. Rebates and commission
 8. Secret remedies and
 9. Evasion of legal restrictions.



B. Duties of physicians to their patients:- are described
in terms of :-

1. Obligation to the sick
2. Patience, delicacy and secrecy
3. Prognosis and
4. The patients must not be neglected

C. Duties of the physician to the profession at large
such as :

1. Upholding the honours of the profession
2. Membership in medical society
3. Safe-guarding the profession and
4. Exposure of unethical conduct

D. Professional service of physician to each other
namely:

1. Dependence of physicians on each other
2. Compensation for expense

E. Duties of physician in consultation includes :-

1. Consultation should be encouraged
2. Consultation for patients' benefit
3. Punctuality in consultation
4. Conduct in consultation
5. Statement to patient after consultation
6. Conduct in consultation



7. Treatment after consultation
8. Consultant not to take charge of the case and
9. Patients referred to specialists.

F. Duties of physician incase of interference comples :

1. Appointment of a substitute
2. Visiting another physician's case and
3. Engagement for an obstetric case

G. Duties of physician to the public such as :

1. Physician as citizen
2. Public health and
3. Pharmacists.

H. Disciplinary actions are also stated in the code of medical ethics by the Indian Medical Council through which the registered medical practioners are warned against professional misconduct which may be brought before the appropriate medical council which has the authority to punish the registered medical practitioners under the Indian Medical Council Act, 1956. The disciplinary action mainly are the temporary or permanent de-registration of the name of the doctor concerned, depending on the seriousness of the offence and professional misconduct. Disciplinary action is taken by the appropriate medical council, against violation of the

of the code in letter or spirit.

List of the infamous acts that may be punished by erasure from the Register and by that, by issuing this notice the medical councils are in no way precluded from considering and dealing with any form of professional misconduct on the part of the R.M.Ps.

The list is as follows:-

- a) Adultery or improper conduct or association with a patient.
- b) Conviction by court of law for offences involving moral turpitude.
- c) Issue of wrong professional certificates, reports and other documents.
- d) Contravening the provision of the Drugs Act and regulations made thereunder
- e) Selling scheduled poison to the public under cover of his own qualification except to his patients.
- f) Performing or enabling an unqualified person to perform an abortion or any illegal operation for which there is no medical, surgical or psychological indication.
- g) A physician should not issue certificates of efficiency in modern medicine to unqualified or non-medical persons.
- h) A physician should not contribute to the lay press articles and give interviews regarding diseases and



treatments which may have the effect of advertising himself or soliciting practice. (But he is allowed to write or give talks on radio broadcast on matters relating to public health, hygienic living, etc.).

- i) An institution run by a physician for particular purpose such as maternity home, sanatorium, etc., may be advertised in the lay press, but it should not contain anything that advertises himself.
- j) It is improper for a doctor to use unusually large sign board and write on it anything other than his name, qualifications obtained from a university or statutory body, titles and name of his speciality. The same should be the content of his prescription paper too.
- k) Disclosing the secret of a patient that have been learnt in the exercise of the profession. Those may be disclosed only in a court of law under orders of presiding judge.
- l) Refusing on religious ground alone to give assistance in or conduct sterility, birth control, craniotomies on living children, and theraputic abortions when there is medical indication; unless the medical practitioner feels himself/herself incompetent to do so.
- m) Not obtaining in writing the consent from the husband or wife, parent or guardian in the case of minor, or the patient himself as the case may be, before performing an operation. In an operation which may result in

sterility, the consent of both husband and wife is needed.

- n) Publishing photographs or case reports of the patients in any medical or other journal in a manner by which their identity could be made out without their permission; should the identity be not disclosed, consent is not needed.
- o) If you are running a nursing home and if you employ assistants to help you, the ultimate responsibility rests on you.
- p) No physician must exhibit publically the scale of fees. But there is no objection to the same being put in the physician's consulting or waiting room.
- q) Use of touts or agents for procuring patients.
- r) Claiming to be a specialist unless you have put in a good few years of study and experience or have a special qualification in that branch. Once you say you are one, do not undertake work outside your speciality even for your friends." ²³

INTERNATIONAL CODE OF MEDICAL ETHICS (World Medical Association - 1949).

"Adopted by the Third General Assembly of the World Medical Association at London in October 1949, the International Code of Medical Ethics states the most general

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principles of ethical medical practice. It was modeled after the declaration of Geneeva and the Codes of ethics of most modern countries. But unlike most national codes, the International Code omits reference to specific unethical practice as well as to judiciary procedures. The original draft included a statement on therapatic abortion, which, because of its contraversial nature, was deleted from the adopted version of the International Code of Medical Ethics.

I Duties of a doctors in general :

A doctor must always maintain the highest standards of professional conduct.

A doctor must practice his profession uninfluenced by motives of profit. The following practices are deemed unethical.

- a) Any self advertisement except such as is expressly authorised by the national code of medical ethics.
- b) Collaborate in any form of medical service in which the doctor does not have professional independence.
- c) Receiving any money in connection with services rendered to a patient other than a proper professional fee, even with the knowledge of the patient.

Any act, or advice which could weaken physical or mental resistance of a human being may be used only in his interest.



A doctor is advised to use great caution in divulging discoveries on new techniques of treatment.

A doctor should certify or testify only to that which he has personally verified.

i Duties of doctors to the sick :

A doctor must always bear in mind the obligation of preserving life from conception. Therapeutic abortion may only be performed if the conscience of the doctors and the national laws permit.

A doctor owes to his patient complete loyalty and all the resources of his science. Whenever an examination or treatment is beyond his capacity he should summon another doctor who has the necessary ability.

A doctor shall preserve absolute secrecy on all he knows about his patient because of the confidence entrusted in him.

A doctor must give emergency care as a humanitarian duty unless he is assured that others are willing and able to give such care.

ii Duties of doctors to each others :

A doctor ought to behave to his colleagues as he would have them behave to him.

A doctor must not entice patients from his colleagues.

A doctor must observe the principles of "The Declaration of Geneva" , approved by the World Medical Association.²⁴

INTERNATIONAL COUNCIL OF NURSES : (Code for Nurses 1973)

"The International Council of Nurses approved an international code of ethics in 1973, which includes several notable changes over its earlier 1965 code.

1. The 1973 code makes explicit the nurses responsibility and accountability for nursing care. It deletes the statement found in the 1965 code, "The nurse is under an obligation to carryout the physician's orders intelligently and loyally," which tended to abrogate the nurse's judgement and personal responsibility.
2. The 1965 code stated that "The nurse believes in the preservation of human life, adding: "The fundamental responsibility of the nurse is three fold; to conserve life, to alleviate suffering and to promote health." In its place, the 1973 code points to a four fold responsibility, "to promote health, to prevent illness, to restore health and to alleviate suffering", adding that "respect for life, dignity and rights of man are inherent in nursing."
3. The traditional concept of the virtuous nurse was expressed in the 1965 code: "In personal conduct nurse

should not knowingly disregard the accepted pattern of behaviour of the community in which they live and work." In its place the 1973 code incorporates a statement that places emphasis on the profession; "The nurse when acting in a professional capacity should at all times maintain standards of personal conduct that would reflect credit upon the profession." The text of the 1973 code for nurses follows:

The fundamental responsibility of the nurse is four fold: to promote health, to prevent illness, to restore health and to alleviate suffering.

The need for nursing is universal. Inherent in nursing is respect for life, dignity and rights of man. It is unrestricted by considerations of nationality, race, creed, colour, age, sex, politics or social status.

Nurses render health services to the individual, the family and community and co-ordinate their services with those of related groups.

I Nurses and people

The nurse's primary responsibility is to those people who require nursing care.

The nurse, in providing care, respects the beliefs, values and customs of the individual.

The nurse holds in confidence personal information and uses judgement in sharing this information.

II. Nurses and practice

The nurse carry personal responsibility for nursing practice and for maintaining competence by continual learning.

The nurse maintains the highest standards of nursing care possible within the reality of a specific situation.

The nurse uses judgement in relation to individual competence when accepting and delegating responsibilities.

CODES AND STATEMENT RELATED TO MEDICAL ETHICS :

The nurse when acting in a professional capacity should at all times maintain standards of personal conduct that would reflect credit upon the profession

I. Nurses and society :

The nurse shares with other citizens the responsibility of initiating and supporting action to meet the health and social needs of the public.

II. Nurses and Co-workers :

The nurses sustains a co-operative relationship with co-workers in nursing and other fields.

The nurse takes appropriate action to safeguard the individual when his care is endangered by a co-worker or any other person.

II. Nurses and the profession :

The nurse play the major role in determining and implementing desirable standards of nursing practice and nursing education.

The nurse is active in developing a core of professional knowledge.

The nurse acting through the professional organization, participates in establishing and maintaining equitable social and economic working conditions in nursing." 25

CHAPTER II

- A. PURPOSE OF THE PAPER
 - B. ORGANIZATION OF THE PAPER
 - C. ANALYSIS OF CURRENT SITUATION
 - D. REVIEW OF LITERATURE
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CHAPTER II

A. PURPOSE OF THE PAPER :

1. This term paper is prepared in partial fulfilment of the requirement of the course in Health Care Administration.
2. This study, i.e., legal aspects of medical negligence and Consumer Protection Act, is a very important subject. This is the latest and rapidly expanding movement in our country. Many developments are taking place at three levels, namely
 - a) Government : A number of governmental regulations are being framed and enforced regarding medical negligence and consumer protection.
 - b) public is becoming more and more aware of their new found rights and are becoming alert day by day especially in the literate areas.
 - c) Professionals are very much conscious about the impact of the Consumer Protection Act to their profession and so they react. Some are in favour of the movement and extend their support. Others feel it as a threat to them and their profession; So their reaction is a negative one.

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3. This subject is very much relevant to the health care services and medical profession, especially applicable to voluntary health care institutions. As a student of health care administration, I feel, it is very important to know about this subject and therefore I decided to do an indepth study on this subject.

B. ORGANIZATION OF THE PAPER

This study is divided into nine chapters.

Chapter I includes the following aspects.

- Introduction speaks about the topic of the legal aspects of medical negligence and its reference to Consumer Protection Act.
- The second part explains in brief about the medical care services, its purpose and people.
- The third part deals with the legal status of medical profession and the fourth part goes on to the demand for service.
- The fifth part is concerned with the medical ethics with special reference to Medical Council of India and the international code of medical and nursing ethics.



Chapter II explains the purpose of this paper and the reasons for selecting this topic. It analyses the current situation with special reference to the past situation. It also speaks about the legal remedies that were available in the past in case of medical negligence and the further remedy that is available today in the form of Consumer Protection Act, 1986. The literature is reviewed, concerning the topic to highlight current reactions.

Chapter III explains the objectives of this study and what is being aimed at by doing this study. The chapter gives the methodology adopted for this study as well as its scope.

Chapter IV deals with medical negligence in detail - in its first part-emphasising the responsibilities of the physicians and the health care institutions in relation to medical negligence. It also touches on the various liabilities concerning the medical profession as well as the institution under various circumstances. The chapter also deals with the various legal interpretations in brief. The second part of the chapter explains the litigations and defences in relation to medical negligence affecting the medical profession and the hospital services at home and abroad.



Chapter V tries to explain the Consumer Protection Act, the legal views related to the Act as well as the views of Indian Medical Association, the patients who are the Consumers of the medical care services - by the doctors and institutions - and also the views of the public at large.

Chapter VI deals with the result of the study carried out in different hospitals on the topic of medical negligence and Consumer Protection Act.

Chapter VII is an analysis of the findings and a discussion on it.

Chapter VIII speaks of the future as to how the health care institution is going to face this challenge; the precautions and protections required from the side of medical profession and the health care institutions.

Chapter IX summarises the study in brief and gives the conclusion.

Following the nine chapters are the references, bibliography and the appendices.

C. ANALYSIS OF CURRENT SITUATION

Man is a social being and not an island. He lives in society where he needs each other and owes a duty towards one another, so that, he does not injure the others - his neighbours and other members of the society - by acts of commission and omission, i.e., by doing what he should not have done and not doing what he should have done. Being human, he is prone to make mistakes. But if he deliberately or negligently causes an injury to the other, then he can be punished by law for breaking the natural law of his duty towards one another.

When we cause an injury to the other by failure of our duty negligently, we are liable. It is a branch of the law of torts/civil wrong. When a negligence occurs in the medical field by a medical person, it is called the medical negligence which again is a branch of negligence in general.

According to Charaka, every doctor should consider his patients as his own children, and care for them with the same sentiments and dedication, not allowing any harm to be suffered by them (the patients). The Indian Medical Council, a statutory body consisting of doctors, exhorts the doctors that the prime object of their medical pro-

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fession is to render service to humanity and not financial gains which should be a secondary consideration.

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In reality today, we see that both these recommendations are taken very lightly. We see and witness a certain amount of infidelity by the medical professional - to the sacred Hippocratic oath pronounced by every doctor and the Florence Nightingale's pledge pronounced by every nurse - at the time of their graduation. Medical negligence is so common and frequent these days.

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In such situations of medical negligences the patients had two options in the past, through which they could get the redressal of their grievances. One was by approaching the Medical Council of India and the other was the legal remedy.

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Legal remedy : From the legal point of view the doctors who were negligent were open to both criminal and civil liabilities.

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Criminal liability is "when it is proved that the doctor has committed an act or made an omission that is grossly rash or grossly negligent, which is proximate, direct or substantive cause of the patient's death, then the doctor is punishable under section 304 A of Indian Penal Code.

✓ Civil Liability arises in case of medical services rendered on payment of a fee which comes within the per-view of sections 73 and 74 of the Indian Contract Act".²⁶

✓ Law of torts : Apart from the Indian Contract Act, the Civil liability can also arise due to breach of contract under the law of torts. To this, every patient has accessibility, whether he/she pays for the treatment or not. It is not enough for the patient to prove that the doctor was negligent; he has to prove that the doctor owed a duty of care, but he deviated from the duty and as a result, the patient suffered harm. In this law of tort the emphasis is on the injury/harm suffered by the patient and the monetary compensation for the harm/injury suffered by the patient, provided the patient, is able to prove the breach of duty.

✓ These legal remedies were not really appreciated by the patients affected by the doctors' negligence as this legal remedy is a time consuming process; it may take the whole lifetime, sometimes even extending to the next generation where the legal heirs of the patient have to carry on with the case before justice is obtained. Secondly, it was a very complicated process as the complainant had to file a case and then go through all the formalities of inquiries, the trial with cross examination, re-examination, etc. Thirdly, the complainant had to pay a court fee (a certain percentage of the amount demanded as compen-

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sation). This was not enough; the patient/plaintiff had to employ a lawyer to plead his case which means trouble of searching for a good one and the cost involved in paying the lawyer's fee. For all these reasons the legal remedy was a costly affair and complicated and time consuming one, and after all these the plaintiff could never be sure that he/she was going to win the case; and even if he/she wins, he/she may not be alive to enjoy the fruits of legal battle. So very few availed of this legal facility; and the others remained at the back and suffered their problem in silence.

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The second option that was available for justice and remedy was by approaching the Indian Medical Council where the plaintiff could complain about the doctor and ask for justice. But here if the Medical Council found the doctor negligent, the maximum they could do was to punish the doctor by de-registering his name and removing his licence to practise as a doctor. This remedy was not beneficial to the patient. The damage is not compensated by the Medical Council. So very few came forward to avail of this option.

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In the meantime, the medical negligence kept on mounting. Numerous are the patients who suffered the damages

X and injuries, even death but very few could have access to justice. The remaining suffered in silence - especially the poor and the ignorant who considered it as their fault. Some knew it was injustice but could not afford the legal battle.

X Open any newspaper or any periodical; they bear witness to a number of medical negligences of doctors and institutions in the public sector as well as in the private sector of health care service. There may be a certain amount of exaggeration in those cases that comes up in the media, and one got to take them with a pinch of salt. But there will be a lot of truth too. Even here too only those who/afford will publish the cases in the media and /can the others remain in the dark.

X Let us have a look at one of the recent judgements made by the Madras High Court awarding Rupees 17.35 lakhs in damages to Mr.Chandrasekar, a former table tennis champion for serious consequences of a simple operation. (This case was brought out by the Indian Express - Bangalore on the 26th May 1993 in its front page). It certainly makes amends at personal level for grave medical lapses. But it also lays down a precedent setting principle that might apply to such cases in the future. No cash compen-

sation can repay or make up for the serious and permanent physical and mental disability. Mr.Chandrasekar, with a promising career, was virtually reduced to a cripple after an operation which was supposed to be a simple one. After a long battle, the court upheld the charge of negligence on the part of the doctors. The judgement was an encouraging one which makes the medical profession more accountable to the individual patients as well as the community and society at large.

Mr.Chandrasekar could perhaps afford such long legal battle. But majority of our patients and their relatives are not in a position to fight out their grievances in the law court, in a similar manner and gain justice. But what else can they do? Whom can they approach for help? How can they have access to justice?

In similar situations, the Consumer Protection Act can be a soothing balm for the individual patients and the public. Bringing the medical profession under the perview of Consumer Protection Act may bring a ray of hope into the lives of these poor and ignorant and less priveleged of our society. The Consumer Protection Act could be a means to make the doctors/medical professionnel and the health care institutions more accountable and responsible for their actions.

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In the past too, there were hundreds and thousands of patients and relatives who had been victims of doctor's negligence. But they were not in a position to have access to legal battle like Mr. Chandrasekar and few others. Some try to attempt legal battle selling all they have with a determination to have justice. I wonder how many really will have the patience to persevere till the end?

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Let us go over the case of Aswini Rane of Bombay who was more successful in giving birth to a sweet little baby. But she can neither play nor talk with it - after the caesarean operation on 23rd April 1990. Now all that she can do is a little more than open and shut her eyes and lie on her back..... After three years Aswini still has a feeding tube passing through her nose and into her stomach. Another tube helps her pass urine. Her three year old son Akshay sits near her and says, "God, please make my mummy talk to me." Aswini's husband Ashok Rane, who has a job in the distant suburbs, spends some hours everyday by her bed side. Rajaram S. Parah, Aswini's father, who owns a small photo studio near Dadar, has exhausted his savings and had a heart attack few months ago. He spent Rs.4.25 lakhs on Aswini's treatment and has sought a compensation of Rs.10 lakhs. "Her horoscope says she will be well but we do not know when," he says. 27

X These are cases just two out of hundreds, that is brought to the broad day light. What happens to the rest?

✓ Perhaps the Consumer protection Act can be an answer to the question as the Act aims or "seeks to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes and matters connected therewith.

It seeks to promote and protect the rights of consumers.

It seeks the rights to be promoted and protected by the Consumer Protection Councils to be established at the Centre and States. It seeks to provide speedy and simple redressal to consumer disputes. A quasi-judicial machinery is sought to be set up at the district, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give reliefs of a specific nature ~~and to award~~. Wherever appropriate, compensation is given to the consumer. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided." 28.

✓ Consumer Protection Act is the latest Act and the Consumer movement is the latest movement in the country and it is a rapidly expanding one. It is expanding rapidly because it provides a speedy redressal compared to the

never ending civil cases. The procedure is very simple and the process is very cheap compared to the complicated and expensive formalities in the law courts. There is no need of a lawyer to plead for you, nor is there need to pay the court fee. One need not go through the ordeal of cross-examination, re-examination, etc. All that is required is to write the petition/complaint on plain paper giving the details and the compensation expected as well as the address of the doctor or the Hospital that has caused the injury/damage. The complainant can either give it personally or send it by post to the appropriate forum, i.e., to the district forum if the compensation sought is less than one lakh rupees (recently revised to five lakhs); to the state forum or state commission if the compensation demanded is between five lakhs to twenty lakhs and to the national commission if the compensation goes above twenty lakhs. Once the petition is sent to the disputes redressal forum, the forum takes care of the rest and makes sure that the consumer is provided with justice.

A recent ruling in April 1992 has brought medical services and the doctors in the private sector under the ambit of the Consumer Protection Act. In the past the doctor in India was equivalent to God. "Vaidyo Narayano Hari". The Indian patient had immense confidence in the doctor.

But today that is not the case. Many doctors and health care institutions have drifted away from the original ethical aspect of the profession which has affected the trust the patient had in the doctor. Today the patients do not consider their doctor as a Hari or Narayana; they react to the impersonal; unethical and commercial dealings of the medical professional by demanding justice and their due right.

As the doctors and the medical profession are brought under the purview of the Consumer Protection Act, there is a very strong reaction by the Medical Community. They feel threatened (except for few who feel that the C.P.A. will not affect an upright medical person), and they protest strongly. They have challenged the C.P.A. by filing their petition in the Supreme Court asking the Supreme Court to exempt them from the Consumer Protection Act. The Supreme Court has accepted the petition but has not yet given a decision. There is a certain amount of uncertainty about the result of this case pending in the Supreme Court. We got to wait and see what the Supreme Court is going to say; how it is going to respond.

D. REVIEW OF LITERATURE :

P.H. Addison says, "Medical negligence is a complicated subject and the liability of the doctor will always depend upon the circumstances of the particular case." 29

Regan and Moritz says about medical negligence

✓ "A physician must treat his patient in a manner consistent with the standard of practice, utilizing accepted methods and procedures in diagnosis and in treatment. He must possess and exercise that degree of skill and care which is commonly and ordinarily possessed and exercised by the other reputable practitioners in the community in the case of similar cases. It is immaterial whether the patient is being treated gratuitously or for a fee." 30

✓ Bernard Knight says, "Medical negligence was formerly called 'malpractice'..... medical negligence is no different in law from any other type of negligence; apart from the fact that the courts adopt more sympathetic and lenient view towards the doctor than other types of defendant - a fact not appreciated by many doctors, who tend to believe that the reverse is true.

✓ Negligence, medical or otherwise, is a civil wrong known as a tort, a difficult concept to describe. In addition, a doctor may be held in breach of contract, if his professional behaviour falls short of the requirements of the contract between him and the patient. For negligence

of any kind to be proved, it must be shown that :

- (i) that the defendant (doctor) owed a duty of care to the plaintiff (patient)
- (ii) that the defendant was in breach of that duty.
- (iii) That the plaintiff suffered damages as a result." 31

Mihir Desai in his article 'Medical malpractice and law' says, "Medical negligence is a branch of the law of negligence which in turn is a branch of the law of torts. The tort law is not based on any act of Parliament. It is mainly a judge made law developing over the years through changing judicial decisions. It is not possible to define torts but broadly speaking tort is a wrong done by one person to another for which the law provides a remedy. The idea is to monetarily compensate the victim rather than punish the offender as would be the case in criminal law. It includes disparate events such as doctor's negligence causing death of a patient, defamation of a person etc. The motives of the offender are not very relevant. The focus is on the victim.

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A person is said to be negligent when she/he acts without due care in regard to harmful consequences of his/her action. When we say that a person has been negligent, we are saying that she/he acted in a way that she/he ought not to have acted. This assumes that we know how she/he ought to have acted. The way in which we consider that she/he ought to have acted is the norm or standard which entitles us to condemn the person for being negligent when she/he fails to comply with the standard." 32

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Dr.U.Brahma Reddy says about medical negligence, "A doctor is deemed negligent when it is established that: the doctor owed a duty of care to the patient; the doctor was in breach of the duty: and the patient suffered damages as a result. An error of judgement does not amount to negligence, had the doctor exhibited reasonable degree of care." 33

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As per the article in Health for the Millions, December 1992 - Vol. XVIII. No.:6, "Medical negligence is defined as want of reasonable degree of care and skill or willful negligence on the part of the medical practitioner in the treatment of a patient with whom a relationship of professional attendant is established so as to lead to his bodily injury or permanent disability or loss of life." 34

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Dr. Pritam Phatnani says, "(Medical) negligence is a legal concept and comes under the law of tort. When 'A' owes duty of care of 'B' and there is a breach in duty and 'B' suffers harm, 'A' is said to be negligent. Thus, there are three basic ingredients. (a) Duty of care to patient (b) dereliction of duty (c) patient suffers damage directly due to the dereliction of duty. Thus legally, if there is no damage, there is no dereliction of duty. For instance, if hands are not scrubbed and needle, syringe, forceps are not sterilised before giving injection, and if there is no harm coming to patient due to such 'malpractice' legally, the doctor is not negligent." 35

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? Mason J.R. and R.A. Mc Call Smith says, "in determining whether there has been negligence in medical treatment, the courts pursue the same line of inquiry as they pursue in any other similar claim: did the conduct of the defendant amount to a breach of duty of care which he owed to the injured plaintiff? Expressed somewhat differently, this amounts to asking whether the standard of treatment given by the defendant fell below the standard expected of him by the law and whether there was, therefore, any fault in the legal sense. Fault remains the theoretical underpinning of the law in this area until such time as strict liability may be imposed." 36

T. Chacko in his article on medical negligence says,
"A person who holds himself out as a medical practitioner impliedly undertakes that he is possessed of the requisite skill and knowledge for the purpose. Such a person owes the patient certain duties, namely,

- a) a duty of care in deciding whether to undertake a case or not;
- b) a duty of care in deciding what treatment to give;
- c) a duty of care in the administration of that treatment
- d) and a duty of care in answering questions put to him by the patient, in circumstances in which he knows that the patient intends to rely on his answer.

A breach of these duties will support an action for negligence by the patient." 37

An article by Fr. P.D. Mathew and P.M. Bakshi says,
"A person is said to be negligent when she/he acts without due care in regard to the harmful consequences of her/his action. A physician, surgeon or other member of the medical profession, if he has not exercised reasonable care in the

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treating of a patient, may be liable to a negligent suit. While the degree of care to be exercised depends on the facts of each case, it is generally presumed that the test is the standard of the ordinary skilled person, exercising and professing to have that special skill." 38

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Consumer Protection Act : The Act says, "Consumer Protection Act is an Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer's disputes and for matters connected therewith." 39

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It provides for better protection of the interests of consumers and for the purpose, makes provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith.

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"It seeks, inter alia, to promote and protect the right of consumers such as:-

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(a) the right to be informed about the quality, quantity, potency, purity, standard, and price of goods to protect the consumer against unfair trade practices;

- (b) the right to be protected against marketing of goods which are hazardous to life and property;
- (c) the right to be assured wherever possible, access to an authority of goods at competitive price;
- (d) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;
- (e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and right to consumer education.

These objects are sought to be promoted and protected by the Consumer Protection Council to be established at the Central and State level.

To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set-up at the District, State and Central levels. These quasi judicial bodies will observe the principles of natural justice and have been empowered to give reliefs of a specific nature and to award, wherever appropriate, compensation to consumer. Penalties for non-compliance of the orders given by quasi-judicial bodies have also been provided." ⁴⁰

Sudhir Vyas says in D.H. News service, "the decision (of the National Commission) has put Medical Practitioners in a quandray. " We are not worried simply because the

the decision will cause unnecessary harassment to doctors but because ultimately, society will have to suffer" says Dr. I.M.Modi of the Ahmedabad Medical Association." ⁴¹

Indian Express of 26/5/1992 says, "Intricacies of medical practices cannot be understood by the consumer forum or quasi-judicial bodies as there can be no standard to estimate a doctors' quality of service," said Dr. J.J.Sood, Chairman of Progressive Medicos Forum, who also warned that if the medical services were brought under the Act doctors might refuse to treat serious cases. To make the doctors accountable to their job, every death allegedly do to mishandling or negligence should be investigated by a special medical board. Medical treatment cannot be equated with commercial services like banking, finance, insurance or transport." ⁴²

"The medical profession cannot be held under a constant threat of legal action. Soliciting medical treatment is like hiring a persona-lised service and is at the patients risk. To describe a patient as a 'customer' or 'client' would prove detrimental to the interests of society in which doctors are held in high esteem." ⁴³

Hindustan times 17th March 1992 says, "According to Mr.Ravindra Naryan, a lawyer, the difference between the

Normal law and the Consumer Protection Act was that in C.P.A., the Consumer (patient) can directly go to the consumer court for compensation for negligence, if any, without engaging a counsel. He has to pay no court fee and can get an early decision." 44

The V.H.A.I, publication on medical negligence..... Issue before the public says, "The issue of consumer rights has become an important issue during the last couple of years. In 1989, for the first time in India, The Consumer Protection Act (C.P.A.), 1986 provided consumers a forum for speedy redressal of their grievances ranging from defective household appliances to medical services. The C.P.A. is a piece of comprehensive legislation and recognises six rights of the consumer, namely:

- Right to safety; Right to be informed; Right to choose; Right to be heard; Right to seek redressal; and Right to consumer education. The consumer with complaints can approach commissions at the district state and central levels. There are no court fees and the consumer does not have to go through lawyers." 45

Dr.C.M.Francis, in his editorial of Health Action of August 1992 asks, "By denying the cheaper and quicker redressal method to those going to Government hospitals,

are we not denying the right to redressal of grievance to the poorer sections of humanity?" 46

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Chandra Kannapiran, the information officer to VHAI says, "There is definitely a serious cause of concern with regard to consumer redressal forums. Public minded, competent people with integrity are already there, but politicization and infiltration of vested interest should be avoided. These forums could become a tool for exploitation against the medical profession. It is most essential that consumer organizations, while upholding the rights of consumers, should strongly condemn any frivolous and malicious complaints against medical practitioners." 47

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There is probably a need for incorporation of a provision in the Act for very strong action against the complainant where complaint is found to be frivolous or malicious. There is scope of misuse. Prudence should prevail in taking up issues to the consumer forums by the patient. It should be properly scrutinised before the consumer court takes up the cases. There should be accountability on the part of the medical profession. Society expects a certain degree of efficiency and certain norms of service to be established and maintained. Consumer courts could include medical persons with competence and

integrity. Medico-Legal forums and Indian penal codes which deal with medical cases should be streamlined, strengthened and simplified.

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Ganu Naik, Vice President of All India Radiology Association; Ex-president of I.M.A, Bombay says, "Medical profession is noble. We doctors are not here to kill but to cure, permanently or atleast temporarily. Because of the Act, we are portrayed as villains, unless proved otherwise. Accusations are hurled against us; the slightest mistake is politicized, publicized, highlighted to its sensational limit. And we are unjustly labelled..... we will have to use the so-called, seven-times-more-expensive, safer contrast dyes. The results? More expenses, more waiting time for the patient." 48

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S.C.Chakrabarty (Nagpur) says, "In the case of those doctors who become notorious while practising, causing a bad name due to their greed, the chances of being hauled up for negligence or malpractice cannot be ruled out, and they should be (hauled up) because they are the black sheep of the noble profession. The entire medical fraternity need have no fear just because a few will land themselves in trouble. The Indian Medical Association would do well

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to exhort its members to be as dedicated and sincere as in the past, rather than to fight a losing and prolonged legal battle prompted by an ego problem." 49

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Juliet Nathwani, a consultant psychiatrist, from Bombay says, "The inclusion of medical service under the C.P.A. will evidently create a sense of security and deep satisfaction in the fraternity of patients who will feel assured that all possible caution and care will be exercised in the delivery of medical services since doctors will be made more accountable.

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Medical personnel who are diligent, conscientious, straight-forward and ethical would be unaffected by this Act. However, on the acquisition of success and fame, there is a tendency to display, a certain degree of arrogance, abruptness, distance and non-communication towards patients. The Act would be a preventive measure to the development of such an attitude. Gross negligence would, of course, be avoided and there would be a distinct improvement in hospital services. The ultimate goal should be patient satisfaction and that itself is a very rewarding, litigation-free experience.

However, it is advisable, too, that patients do not turn very militant as that would be counter productive."⁵⁰

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K.B.Grant, Trustee, Ruby Hall Clinic, Pune, says, "I think it should be a mutual arrangement on both sides. In a consumer court, a consumer seeks compensation. However, if the doctor is proved not guilty, then he should given the same amount of compensation that the patient was claiming - to compensate for the slur on the doctor's reputation. Doctors should be judged, but superficial claims must be guarded against. It should not become a one sided affair." ⁵¹

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Sanjeev Mulekar, a Dermatologist, Bombay, says, "I am glad that the Consumer Protection Act will be applied to doctors. Unfortunately commercialisation has crept into our profession and a dissatisfied patient finds redressal time-consuming, expensive and frustrating. As long as doctors' conscience is clear, he should not be afraid. After all, the human body is not a machine that can be replaced, come what may." ⁵²

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"The Consumer Protection Act should be clear and concise. If it is left to the interpretation of the judge, then that might be dangerous because the personal

bias of the judge is bound to creep in.

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If the Act does not clearly state the subjects it covers and doctors feel they are in a tricky situation, then in order to play it safe, they will stop accepting all types of cases and this will harm the doctor-patient relationship.

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But if it is clearly stated that the consumer can take legal action if the doctor is negligent, dishonest, or unscrupulous, then I certainly feel the medical profession should come under the perview of this Act."⁵³

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Justice Alladi Kuppuswamy says, "Every doctor who is treating a patient is afraid that the next day he may see him in the court along with a lawyer. This is because of the possibility of taking medical negligence cases to consumer court. This makes him defensive and nervous. On the other hand, without consumer court, the patients injured through negligence may never get justice."⁵⁴

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Thus there is a variety of ppinions with respect to the Consumer Protection Act.

CHAPTER III

A. OBJECTIVES OF THE STUDY

B. METHODOLOGY

C. SCOPE OF THE STUDY

- STUDY OF DECISION OF COURTS

CHAPTER III

A. OBJECTIVES

1. To study the legal aspects of medical negligence as it affects the patients (the public) and the medical profession and health care institutions.

Medical negligence is an act of omission or commission by a medical person which is considered improper by a doctor of average prudence. If it results in harm or injury to the patient, the doctor (or the health care institution) may become liable for damages.

From the legal point of view, if doctors or the health care institutions are remiss in performing their duties or commit lapses, they are open to both criminal and civil liabilities.

When there has been injury or harm as a result of the negligence of the doctors / health care institutions the patient can avail the services of the criminal / civil court or can approach the Indian Medical Council or can approach the Consumer forum for the remedy / redressal (for pecuniary and non-pecuniary damages).

2. To study the Consumer Protection Act as it applies to medical services, when there is a defect or deficiency of service.

According to Consumer Protection Act the consumers are

- persons who buy goods for a consideration and consumption; and
- persons who hire services for a consideration.

Consumer forum assures the consumer that the goods that are defective will be corrected of its defect ~~are~~ *or* ~~being~~ replaced; as well as compensation for the damage or injury caused (by the producers of those goods). Services of any description made available to the user comes under the purview of the Consumer Protection Act. Any person who hires these services by paying a consideration (fully/ partly or promises to pay the charge) by fees, and even beneficiary is a consumer. If there is a defect in these services, the consumer can file a case to the consumer forum and claim compensation.

The act defines service as service of any description which includes the services rendered by the medical professional / health care institutions - who makes their services available to the public and are taking a remuneration. They

must, therefore, pay compensation if there is a deficiency in their services.

3. To study the impact of the Consumer Protection Act on medical negligence and the doctor - patient relationship.

Negligence by itself is not enough to establish liability. There must be an injury caused by the negligence. It is upto the consumer to prove that there is a direct cause-and-effect relationship between the negligence and the injury caused.

Medical profession and the health care institutions who consider the Consumer Protection Act as an opportunity (and not a threat) to maintain their values and improve their standard will be more careful and avoid negligence, to the extent they are avoidable.

The doctor-patient relationship was characterised by ethics of trust. To-day there is a certain amount of loss of trust between doctor and the patients. The ethics of trust is being replaced by the ethics of rights.

4. To examine the possibility of doctors resorting to "defensive medicine" and other measures for their protection against possible litigation.

While Consumer Courts are a great help to reduce the

odds that are heavily stacked against the Indian health consumer, it can lead to defensive / protective medicine by the doctors. The medical profession may shy away from those cases that are potential ones for litigations. In order to protect themselves, the doctors may order too many investigations. Potential medico legal cases have the chances of going unattended. Patients may/can be kept waiting before really being attended to. The doctors may also take up more insurance to provide for contingencies. All these lead to increase in the cost of medical care and the poor will be the ones whom it affects the most.

5. To consider changes in the Consumer Protection Act, to make it more acceptable to all parties concerned and to reduce pit-falls and drawbacks.

Always changes are susceptible to reactions. Certain changes may be necessary to improve the legislation, and make the Consumer Protection Act better and more acceptable to all parties.

The Consumer Protection Act must be a balancing point between the consumers and the providers, and be fair to all concerned. It should not be the licence for the consumers to be frivolous or vexations or even mischievous.

Services remain services and there can be no difference in its value, no matter who provides it/ renders it. Whether he pays for the services or not, the consumer is a consumer.

At present the Act applies only to doctors and health care institutions in the private (including voluntary) sector; it excludes services provided free of charges. Government doctors and Government hospitals are outside the purview of Consumer Protection Act as the services rendered are considered free. These and other provisions of the law need changes such as bringing the Government hospitals and its doctors also under the purview of the Consumer Protection Act.

B. METHODOLOGY

The methodology of this study is as follows :

1. Review of literature

Review of literature is essential for conceptual clarity and for an analytical reflection on the problem. Keeping this in view, an extensive review of the literature on the subject was done by reading and analysis the different books, journals, reviews related to medical negligence

and the views of various organizations and experts regarding the Consumer Protection Act. The theoretical framework has been formulated by reviewing literatures and having discussions with the experts in the field as well as people whom the topic affects the most, namely doctors and administrators of hospitals. Based on the conceptual and theoretical frame-work, a comprehensive questionnaire was prepared to gather the opinions and view of the administrators and doctors of different hospitals.

2. Questionnaires

Views and opinions were collected from administrators and senior doctors working in three hospitals in the voluntary sector, where services are provided mostly on payment, though there is a large amount of free case. (questionnaire follow).

The questionnaires were issued to each administrator and doctor personally at their own area of work. While waiting to introduce myself and the purpose, and then issue the questionnaire to the doctors, I had the opportunity for close observation of the doctors dealing with the patients. Sufficient time was given to answer the questionnaire. The questionnaire was collected personally. All the adminis-

trators and some of the doctors were interviewed to support the answers in the questionnaire - to see the co-relation between their answers in the paper and in person.

The administrators and doctors to whom these questionnaires were administered are working in three charitable and voluntary hospitals located in the same city. They have varying bed strengths (300 - 800 beds). Sixty samples were collected from the specialists, 30 from hospital A, 20 from hospital B and 10 from hospital C; this reflected the inpatient bed strengths.

3. Visit to the State Commission

In order to gather information regarding the number of cases filed in pursuance of the Consumer Protection Act, that would be current and accurate, the State Commission was visited. Discussions and interviews were held with reliable authorities. Statistical data were obtained from the Commission with respect to cases filed, disposed off and pending.

4. Study of medico-legal case files

To strengthen the understanding of medical negligence and the mode of action by the plaintiff as well as

respondents, I went through some medico-legal case files in a hospital where cases were on process.

C. SCOPE OF THE STUDY

Medical negligence is an ancient problem and a delicate one too. Consumer Protection Act (the latest mode of redressal of grievance to this ancient problem) is the most recent Act passed by the Parliament. Being the latest movement in the country, one of the limitations to this study was a certain lack of availability of material on the topic of medical negligence and the use of Consumer Protection Act to obtain relief.

This paper limits itself to the administration and analysis of responses to sixty questionnaires by specialists and three hospital administrators and two medico-legal cases.

The patients (and their relatives/dependents) represent an important part of those affected by medical negligence and Consumer Protection Act. No survey was conducted on their perceptions and responses due to constraints of time.

In spite of the above limitations, the study was wide enough to give information regarding the application

of the law for Consumer Protection as it affected medical negligence, a deficiency in the service provided by the medical profession and the health care institutions.

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CHAPTER IV

A. MEDICAL NEGLIGENCE

- DEFINITION OF MEDICAL NEGLIGENCE
- RESPONSIBILITIES OF THE PHYSICIAN
- RESPONSIBILITIES OF THE INSTITUTION
- LIABILITIES OF MEDICAL STAFF, OTHER
STAFF AND THE INSTITUTION
- VARIOUS LEGAL INTERPRETATIONS

B. LITIGATIONS AND DEFENCE

CHAPTER IV

A. MEDICAL NEGLIGENCE

Every doctor who proposes to practise medicine takes the 'Hippocratic' oath modified binding himself or herself to observe the code of ethics contained in it. This is how the ancients thought to ensure high standards from the medical practitioners. But, unlike the ancient days, these days we often come across doctors who do not follow the code. Some are negligent; a few are callous, greedy and unethical in the profession giving the impression that they have taken a 'hypocritical' oath instead of the hallowed 'Hippocratic' oath. Many are the victims of such medical practitioners. Vast majority of them are poor and ignorant who suffer in silence. Do they have any legal remedy against the negligence of a medical practitioner? What is the liability of a doctor who causes death, or serious mental or physical injury to the patient through his/her negligence? We shall examine them.

I. Medical negligence

"A branch of the civil wrong is known as negligence in general. A sub-branch of this is medical negligence, which deals with the situations, in which

a physician or surgeon or other member of medical profession may have to pay compensation, if he has not exercised reasonable care. The degree of care to be exercised depends on the facts of each case. However, in general, it may be stated that the test is the standard of the ordinary skilled man, exercising and professing to have that skill. If a medical man fails to measure up to that standard in any respect, he has been negligent and has to pay compensation to the person harmed by him." 55

1. Duties of Care

This principle becomes applicable when the doctor accepts a patient, whether the doctor accepts fee or not, whether he is a private practitioner or a public servant, general practitioner or a specialist. A person who offers medical advice or treatment, impliedly undertakes that he has the required skill and knowledge. Such a person owes to the patient certain duties of care.

- a. duty of care to decide whether to take in a patient;
- b. duty of care to decide what procedures to adopt in diagnosis and treatment;
- c. duty of care in administering the treatment; and
- d. duty of care in giving adequate information to the patient or, in the case of the incompetent patient to the close relations.

A breach of any of these duties makes the doctor liable to a suit by the patient.

✓ "A practitioner must possess a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. A doctor is not to be held negligent, simply because something went wrong. Sometimes, inspite of taking every reasonable precaution things go amis in surgical operation and medical treatment. He is liable only when he falls below the standard of a reasonably competent practitioner in the field." 56

2. Standard of Care

In India the standard of care expected of a doctor has been succinctly laid down by the Supreme Court as under:

✓ "..... A person who holds himself out to give medical advice and treatment, impliedly undertakes that he is possessed of the skill and knowledge for the purpose. Such a person, when consulted by a patient, owes him (to the patient) certain duties, viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and

knowledge and must exercise a reasonable degree of care." 57

The Supreme Court adds that neither the highest degree of care is required, nor is the lowest degree of care enough. What is required is a reasonable degree of care and competence, judged in the light of the circumstances of the case.

Depending upon the time, place, patient as well as the doctor himself, the standard of care to be exercised by the doctor differs. For example, in judging an event which took place in 1947, one cannot apply the medical knowledge of 1954, when the case is heard. Thus in 1947, a particular method of keeping ampoules of anaesthetic drug in phenol was in vogue. This cannot be held to be faulty merely because in 1954, medical knowledge favoured a different method. We must not look at the 1947 event with 1954 spectacles.

If a doctor has acted in accordance with the acceptable medical practice, and has exercised the reasonable care, he is not liable, even if he has made a mistake in his diagnosis or treatment. (It does not amount to negligence).

3. Onus of proof

If a doctor is sued for negligence, the patient has to prove that the doctor was negligent, except in those circumstances where the negligence is so evident that it does not require further proof. In such cases, the doctor, if he feels that he is not guilty, then it is up to him to prove it.

II. Types of medical negligence

Medical negligence may assume a variety of forms.

1. Negligence in diagnosis : A proper diagnosis of the illness is the first duty of a medical practitioner. A wrong diagnosis leading to any injury to the patient may invite liability in law.
2. Negligence in diagnostic aids : Adequate investigations using acceptable means of diagnostic aids *are* necessary for arriving at a proper diagnosis. It may be necessary to consult an expert in some cases. If there is negligence on the part of the practitioner to seek expert advice in a given case, (e.g.: interpretation of an x-ray film), the doctor may be held liable.

3. Administration of drugs : Doctors and nurses have been held liable for negligent administration of a drug leading to death or injury of a patient.
4. Failure to take precaution : Every medical practitioner is expected to take reasonable precaution in the treatment of his / her patients. There are certain drugs which are known to cause adverse reaction to certain patients. Such drugs are to be administered only after test dose has been administered. Otherwise, the doctor can be held liable for negligence.
5. Consent of the patients : In a surgical operation or any intervention on the body of a person, the written consent of the person concerned is necessary if she/he is capable of giving it. If she/he is unable to give such a consent, someone competent should be asked to do it on his/her behalf. If a surgeon operates upon a person without or against the consent, he/she can be held legally liable for negligence.

It may happen that a patient refuses to give consent to an urgent life saving operation. In that case, the doctor, to protect himself/herself, should place on record the fact that the patient had been requested to give consent but had refused to do so.

6. Failure to give advice : A doctor can be held legally liable if, due to lack of reasonable skill and care, he fails to give advice or undertake treatment which was necessary in the circumstances. An honest doctor must either personally consult or refer his/her patient to a more competent doctor if the practitioner cannot arrive at a reasonable degree of certainty with regard to proper diagnosis.
7. The operation theatre : A number of litigations emanate from the operation theatre. These cases mostly relate to negligence in respect of activities connected with the operation process such as : Unhygienic conditions of the theatre; negligence with regard to the sterilisation of instruments, gloves, linen, etc. Inadequate preparation of the patient for the operation; leaving sponges, forceps or other instruments inside the patient's body; burns or other injuries caused in the course of treatment / operation, etc.

Utmost care and precautions are to be taken in the operation theatre to safeguard the life and avoid injuries or harm to the patient. Any negligence of the doctor or the hospital management leading to death or injury will attract legal liability.

8. Post operative care : Hospital authorities are expected to take reasonable care of the post operative patient. Hospital will be held legally liable if anything happens to the patient due to lack of reasonable care.

Other forms of medical negligence are failure to listen / pay heed to a patient's complaints; negligent exposure of the patient to the risk of infection; negligence in advice about the risk of an operation or failure to warn the patient about such risks; inadequate staff, etc.

III. Responsibilities of the physicians

Medical profession is considered to be one of the most noble professions from time immemorial. It is also viewed as one of the most prestigious one. So everybody wants to be a doctor. The parents are frantic to see that their children become doctors. Most of the children too wish to become doctors. Everyone is striving towards that which is considered to bring fame and monetary rewards. In this mad race, some use their intellectual ability; others make use of their financial capacity and yet others avail the political influence. I wonder how many are really aware of the price that they have to pay in order to win the

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real prize - namely to be a 'medical-professional-doctor'!
The money paid in the form of capitation fee or the political influence or the intellectual capacity that is displayed during the entrance examination and interviews may provide an admission to the course. But to be worthy of this noble calling and to be a member of this noble profession one need something more than all these - namely a head, a heart and the hands - a head that is capable of thinking, reasoning and acquiring the necessary knowledge and skill; a heart that is capable of loving and feeling for the patient, his family and community; and the hands that are willing to be used for the benefit of the patients. Only then, one can be considered a doctor / a physician. What are the responsibilities of the physicians?

✓ "A physician who, though unacquainted with drugs and their effects or is ignorant of the nature of disease, yet takes money from the sick (for giving treatment), shall be punished like a thief." 58

✓ "A person who holds himself out to give medical advice and treatment, impliedly undertakes that he is possessed of the skill and knowledge for the purpose." 59

First and foremost the doctor must do all that is in his capacity to equip himself with the necessary knowledge and skill required in treating the patients. He must consider it as his prime responsibility and avail every opportunity to acquire knowledge and update himself for the benefit of his patients and to maintain the nobility of the profession.

The doctor is expected to attend to every patient who comes to him. He can refuse only if he is not competent enough to meet the patient or if he has not got the facility. A doctor is always expected to provide the first aid / emergency treatment and then refer the patient to more competent person / place.

Another responsibility of the physician is to diagnose the illness correctly, using the available and affordable diagnostic aids. A mistake in diagnosis inspite of measures taken, can happen for which the physician is not responsible. Sometimes a diagnostic procedure may be considered useful; but if the doctor anticipates any risk by that particular procedure / during the procedure he should avoid that particular diagnostic procedure after explaining the same to the patient or close relatives.

When a patient is treated by a particular doctor, it is his responsibility to provide the patient (and the relatives, if necessary) with all the necessary information regarding the condition of the patient, the treatment involved, the side effects of the procedures required and of the drugs, also about the need and the type of treatment required, the alternatives available, etc., and get the consent of the patient / relatives.

The doctor must make sure that the patients are instructed properly so that there will be no contributory negligence due to lack of instruction and information.

When a patient is taken for surgery, it is ultimately the surgeon's responsibility to make sure that the instruments are properly sterilised, the physical facilities are safe and also to see that no secondary damage is caused to the patient. In case an accident happens the doctor cannot blame anybody else for it.

In short, a physician cannot be careful enough. He cannot play with someone else's life. He must make sure that he has the reasonable degree of skill and knowledge and must exercise reasonable degree of care in all his undertakings. If things go wrong inspite of it, then he is not negligent.

IV. RESPONSIBILITIES OF THE INSTITUTIONS

✓ An institution; whether it is charitable /voluntary private / non-profit / profit-making / public, is responsible to see that the patients are safe and secure inside the hospital, and in the hospital premises. The hospital authority should ensure that the health needs of the patients are met adequately and promptly. The hospital owes duties to patients and others directly, such as proper maintenance of buildings and grounds, equipments and furnitures, as well as selection and supervision of employees, medical staff and the agents. When a person avails himself of hospital facilities he expects that the hospital will provide the necessary care. He does not expect the nurses and other employees to act on their own responsibility.

V. LIABILITIES OF MEDICAL STAFF, OTHER STAFF AND THE INSTITUTIONS:

✓ Liabilities are legal responsibilities. In the context of health care service it is something that a patient will hold the hospital and its staff (medical and non-medical staff) accountable, for a damage or injury or death due to negligence. Liability can be divided into :

- a. Personal liability or individual liability;
- b. Liability for employees and agents;
- c. Institutional liability; and
- d. Joint liability for negligence.

a. Personal liability :

Individual staff members are personally liable for the consequences of their acts. This liability is almost always based on the principle of fault. To be liable, the person must have done something wrong or must have failed to do something that should have been done.

b. Liability for employees and agents :

Employers can be liable for the consequences of the job-related acts of their employees or agents even if the employer is not at fault personally.

c. Institutional liability : Institutions can also be liable for the consequences of breaches of duties owed directly to the patients and others, such as the maintenance of buildings and grounds, maintenance of equipments and furnitures, and selection and supervision of employees and medical staff.

(1) Vicarious liability

As a general rule a man is responsible / liable only for his own act; but there are certain circumstances in which a person is liable for the wrong committed by others. This is called Vicarious liability, i.e., liability incurred for

another. The most common instance is the liability of the master for the wrong committed by his servants. In these cases, liability is joint as well as several.

The doctrine of vicarious liability can be summed up in the following maxims:

i) "Qui facit per alium facit per se" - which means he, who acts through another is deemed in law as doing it himself. The master's responsibility for the servant's act had also its origin in this principle. The reasoning is that a person who puts another person in his place to do a class of acts in his absence, he necessarily leaves to determine according to the circumstances arise, when an act of that class is to be done. Consequently, he is answerable for wrong of the person so entrusted either in the manner of doing such an act, or in doing such an act under circumstances in which it ought not have been done; provided what is done is not from any caprice of the servant but in the course of the employment.

ii) Respondeat Superior :- 'Let the master answer'.
Employers can be liable for the consequences of their employee's job-related acts' whether or not the employer

is at fault. Under this doctrine, the employer can be liable for any consequences of an employee's activities within the course of employment for which the employee could be liable. The employer need not have done anything wrong. For example, if a nurse employed by a hospital, injures a patient by giving the wrong medication, the hospital can be liable even if the nurse was properly selected, properly trained, and properly assigned the responsibility.

The superior may not be the employer. Since the superior is only an employee, respondeat superior does not impose liability on the superior. Superiors are liable only for the consequences of their own acts of omissions. The employer can also be liable for those acts of omissions under respondeat superior. The liability of the employer under respondeat superior is for the benefit of the person who is injured, not for the benefit of the employee.

The liability of the employer does not mean that the employer must provide the employee with liability protection. It means that the person who is injured can sue either the employee or the employer or both. If the employee is individually sued, and found liable, the employee must pay.

If the employee is not individually sued, the employer must pay. Technically, the employer can sue the employee to get the money back; but this is not done by the institutions, because it may affect the future recruitments.

- (2). Borrowed servant : If the hospital places some of the staff under direct control of the doctor and the staff does not receive instruction from the hospital, the hospital is not liable for the wrongs or negligence of such staff. Instead, the doctor is responsible. This is the doctrine of "borrowed servant".

In most of our hospitals we do not have this type of system where the doctrine of 'Borrowed Servant' applies.

- (3). Physician employees :

When the physician is an employee of the hospital, the hospital is liable under respondeat superior. In such cases, employer - employee relationship must be found. The criteria for employer - employee relationship is that the hospital must have the control over the physicians for time, manner and methods. In such conditions, the hospital is liable for the acts of the physician during the course of employment.

✓ The hospital liability can be based on the liability of the hospital for injuries caused by an employee's violation of the employer's duties / hospital's duties.

(4) Hospital's duties :

✓ Hospitals have duties to persons that are independent of respondeat superior. To establish liability for injuries caused by breaches of these duties it is not necessary to show that an individual staff member breached a duty. It is sufficient to show that the hospital's duty was breached. Areas in which the hospitals have an independent duty include:

i) Physical condition of the buildings and grounds :

The hospitals must exercise reasonable care in maintaining its buildings and grounds in a reasonably safe conditions for all types of patients and visitors.

ii) Selection and maintenance of equipments : ✓ A hospital

has an obligation to furnish reasonably adequate equipments for use in diagnosis and treatment of patients. Problems can arise when the hospital does not own necessary equipments, when the necessary equipment is not available or when the equipment has not been properly inspected or maintained.

iii) Selection and supervision of staff : A hospital can be liable for failing to exercise reasonable care in selecting and supervising the staff. This applies to both professional and non-professional staff. Credentials of applicants, therefore, must be carefully checked like:
a) licence and (b) qualification - must provide appropriate training, supervision and evaluation.

The hospital also has a responsibility to exercise reasonable care in selecting and monitoring members of the medical staff." 60

d. Joint liability for negligence : Usually in hospital practice, there is a tendency for the consultant to bear the largest portion of the responsibility and subsequent damages. But there is no written law regarding the apportionment of responsibility. This is frequently shared between consultant junior doctors and the hospital management.

"In general practice, the normal rule of civil law applies as between partners. By the Partnership Act, 1890, each partner is jointly and individually liable with his co-partners for all acts of negligence committed by the firm. Thus, if one partner in general practice commits a

negligent act, the patient may sue all partners equally and they may all be liable in damages, even though other partners may have no part whatsoever in the negligent act. It is a common practice when forming a partnership, for there to be a Deed of Indemnity, which provides that if any one partner causes such financial damage to his fellows, he must compensate them for their loss. This indemnity is quite separate from the original action for negligence." ⁶¹

At times the legal relationship between the principal^{al} in general practice and his assistant can be that of a master and servant. Hence the principal is responsible for any negligence of his assistant (even though the principal is responsible for any negligence of his assistant) even though the principal has not been professionally concerned.

"Where a principal in general practice employs an assistant, the usual legal relationship of master and servant applies. The principal is responsible for any negligence of his junior, though the assistant himself may be jointly liable. Both may be sued by an aggrieved patient, even though the principal has not been professionally concerned. It is upto the patient to choose whether he acts against the assistant, or the principal or both. The same applies

whether the principal employs non-medical servants, such as receptionists or dispenser." 62

✓ In hospital service the relationship between the consultant and his registrar or houseman is usually one of joint liability together with the hospital authority. Here the legal relationship of the consultant to the assistant is based upon the negligence of the consultant in delegating authority to a junior not sufficiently proficient to carryout the delegated duty.

✓ "In hospital service a doctor is not responsible for the negligence of a nurse, which is directly the burden of the hospital management. If however the nurse's injurious behaviour was a direct result of wrong direction by the doctor, he might find himself jointly liable. Outside hospital in either a nursing home run by a doctor or in general practice, the relationship of master and servant again holds good, the doctor being liable for the negligence of an employed nurse.

✓ The same principle applies to medical auxiliaries, such as radiographers, laboratory technicians, and to the students, where all these are employed in a hospital service.

Unless the wrongful act was a direct result of incorrect instruction by a doctor, the clinician incharge of the patient will not be liable. Action may be directed either at the administration or jointly with them and the non-medical person at fault." 63

VI. VARIOUS LEGAL INTERPRETATIONS :

2,300 years ago, Charaka in his immortal ayurvedic treatise says, "The physician should regard all his patients as if they were his own children and vigilantly guard them from all harm, considering this to be his highest religion." It is indeed a noble thought. And expressions of nobility have a tendency to assume epidemic proportions. In addition to the treatise of the ancient Indian seer, the Medical Council of India solemnly declares in its 'Code of Ethics' that the prime object of the medical profession is to render service to humanity and that the reward of financial gain which is a sub-ordinate consideration.

But in reality the professional successors of Charaka will confess that it is impossible to be good fathers when they have so many children to look after, and so many unreasonable hours to put in. On the other hand, their patients'

complaint is that to get a good doctor is like experiencing a snowstorm in the Sahara!

For the profession today, medical news is mostly bad news unfortunately - news of over stretched health system which cannot measure up to the expectations of burgeoning patient population; of hospitals bending under the weight of corruption and over-bureaucratisation; of negligent doctors insensitive to suffering; of doctors who have turned medicine into a big, bad business. Certainly the Indian Medical Community has had many achievements, but its bad news - the negative side of it occupies a lot of area - makes the big news.

Most of the good journals of today are full of facts about the medical mal-practice. It is indeed very important for the patients, infact, it is essential for them to know and to be aware of the medical wrong-doings. They must know what is going wrong, and where things are going wrong, and how they are going wrong and how to find the remedies for these wrong-doings.

"From the legal point of view, if doctors are remiss in performing their duties or commit lapses, they are open to both criminal and civil liabilities.

- a). Criminal liability arises when it is proved that a doctor has committed an act or made an omission that is grossly rash, or grossly negligent, which is the proximate, direct or substantiative cause of the patient's death. Then under section 304 of the Indian Penal Code, the doctor is punishable with imprisonment for a term that may extend upto two years, or with a fine or with both.
- b). Civil liability arises in case of medical service rendered on payment of a fee. These cases come within the perview of section 73 and 74 of the Indian Contract Act. In a suit for damages or compensation by a paying patient or his legal representative; the onus is on him to prove that the doctor has failed to exercise ordinary duty and reasonable care in the course of his examination and treatment, resulting in the damages for which compensation is claimed. And section 75 of the Contract Act states that a person who rightfully rescinds a Contract is entitled for any damage he has sustained through the non-fulfilment of the contract.

Civil liability can also arise, quite distinct from the liability due to breach of contract, under the law of torts, i.e., a wrong that is independent of contract - this liability is applicable to doctors of all catogories, that is,

whether they provide their service for free or for a fee." 64

There had been number of legal discussions - (treatises) trying to make a difference between "Contract" and "Tort". But what is of importance to the doctors and the medical profession - to appreciate - is that if they are careless / negligent in their duties and responsibilities, if they do something positively wrong, or if they are careless in managing their patients they are liable for compensation under the law of contract (for paying patients) and ~~to it~~ ^{tort} (for any patient). This is something that they cannot escape.

At the same time the law is very considerate to the doctors even in considering the liabilities. The law does not expect the doctor to be perfect and successful always in curing the patients and in treating him. An error of judgement is not a crime in criminal or civil law. All that the law expects from a doctor is to exercise reasonable skill and care. He got to guarantee care and not cure. "In order to establish a liability, the patient must prove that :

- There was/is a normal practice
- The defendant doctor has not adopted it.

- The course adopted by the doctor is one that no professional of ordinary skill would have taken if he had been acting with ordinary care.

The law never presumes the doctor to be infallible. In the words of eminent jurist, Lord Denning, "You must not therefore, find the doctor negligent simply because something happens to go wrong. If, for instance, one of the risks inherent in an operation actually takes place, or some complication ensues which lessens or takes away the benefits that were hoped for; or if in a matter of opinion he makes an error of judgement, you should find him guilty only when he falls short of the standard of a reasonably skillful medical man." ⁶⁵

The cry of so many medical practitioners today is that the law is very hard on them and is very lenient towards the patients. With the enactment of the Consumer Protection Act, most of them feel threatened. But in reality the law is rather sympathetic towards the medical persons.

*In a recent Supreme Court Judgement (A.S.Mittal and others Vs. State of Uttar Pradesh and others), it was observed: "But the law recognises the danger which are inherent in surgical operations. Mistakes will occur on occasion despite exercise of reasonable skill and care." ⁶⁶

Sometimes, there are more than one school of thought that are current on a given subject. The doctors are free to adopt any of these school's teaching. If a doctor who honestly adopts one to the exclusion of the others, and if the outcome / result happens to be a failure, he cannot be held to be negligent.

Then, what is really negligence? It is doing something that is prohibited to be done and not doing what should have been done. In other words, it is an act of omission or commission. One form of negligence is rashness, i.e., undertaking an assignment that is beyond one's competence or doing something which no sane or sober doctor in similar circumstance would ever do. Rashness is the result of the doctor's negligence in his duty to be careful about the patient's safety.

c). Contributory negligence :

Sometimes the doctor may be negligent; but the patient also has a share in the damage / harm and it is known as the contributory negligence. In the case of contributory negligence, it is upto the doctor to prove that the patient did contribute to the damage by not paying heed to the instructions given by the doctor. For example, in a fracture case, the patient is instructed to rest the part affected (and is

plastered) which quickens the reunion of the bones. But if the patient walks or uses the fractured part, and it results in malunion instead of re-union, then if the patient sues the doctor, it is upto the doctor to prove the contributory negligence of the patient.

✓ "A victim of negligence is entitled to damages, or monetary compensation, that are classified under two heads:

- (1) Pecuniary damages are amounts awarded for financial loss, past or future, whether precisely calculated or not. All medical expenses, including costs incurred on nursing and attendants and loss of earning capacity are included in the calculation of pecuniary damages. "For example, the case of T.D. Singh a Delhi based business executive, who left his body emaciated and his bank account empty. He had a second bypass operation six months ago in a leading hospital in Bombay where he had a similar operation seven years ago. The operation was successful but he fell ill with hepatitis B, possibly contracted through contaminated blood transfusion. Singh has been drained of all his savings, having spent Rs.1 lakh for the first operation and Rs.1.5 lakhs for the second." 67

(2) Non-pecuniary damages are amounts awarded for pain and suffering, past or future, as well as loss of enjoyment of life in respect of sports, married life and so on. Example the award of compensation in case of Chandrasekhar's case - the former national table tennis champion who suffered crippling disabilities after he went in for a simple knee surgery in 1984.

"The manner in which monetary compensation is worked out, however, is still a grey area. But what's clear is that the basis of all monetary claims against doctor is negligence - either by themselves or by their staff - provided the act of negligence is the direct or proximate cause of some injury caused to the patient. So in a suit for damages, the claimant has to establish that : he has suffered some harm or injury; and the same is the direct consequence of the negligence of the respondent doctor or his assistant. The relationship between the injury and the negligence must be direct and proximate, not remote." 68

While we consider the injury / harm it is equally important to consider the risks involved in undergoing the treatment. Sometimes there is a greater risk in the life of a patient who does not undergo the treatment, e.g., the coronary bypass surgery which is beneficial to those patients

✓ facing high risk of future coronary events. In the absence of aggressive treatment, there is a chance for myocardial infarction or even sudden death. In such patients, it is difficult to compute the life expectancy (with earning potential) curtailed by the failed surgery.

✓ While still on the subject of damages, it is relevant to recall Lord Denning's Comments in 1981:

✓ "Take heed of what happens in the United States. Medical malpractice cases there are very worrying especially as they are tried by juries who have sympathies for the patient and none for the doctor who is insured. The damages are colossal. The doctors insure themselves and premiums are very high, and these have to be passed on in fees to the patient. Experienced practitioners are known to have refused to treat patients for fear of being accused of negligence. Young men and women are even deterred from entering the profession because of the risk involved. Not only must we avoid excessive damages, we must say, and say firmly, that in a professional man an error of judgement is not negligence." ⁶⁹

8. LITIGATIONS AND DEFENCES

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The word litigation means the legal process where a law suit is carried on. It is applicable in every sphere and walk of life, i.e., wherever there is dissatisfaction in a person with anything that is provided by another person, especially when this provision is in exchange for something that is of value. When this litigation occurs in the medical profession involving a medical person, it is called medical litigation. That is when a dissatisfied patient files a case against treatment and care provided by a doctor or the hospital itself where the patient (the plaintiff) had suffered a loss or injury as a result of the treatment received.

X

These days people are becoming more and more compensation oriented everywhere (all over the world) and of late the claims for compensation sought for damages / for personal injuries are steadily rising.

✓

"The medical malpractice problem in America, where doctors are covered by commercial insurance, has become so acute Although doctors in Britain are only seldom charged with criminal negligence, the number of civil actions against doctors based upon an allegation of negligence has increased considerably during the past few decades. Throughout

the civilised world the public has become more and more compensation-minded and in recent years there has been a steady rise in the number of all classes of claims in which damages are sought for personal injuries whether they are sustained in the road accidents, at work or otherwise. A claim may involve some other party and the damages may be apportioned according to the proportional responsibilities agreed upon or decided by the court. There may, for example, be an apportionment of liability between a member of the hospital medical staff and a member of the nursing or laboratory staff." 70

In any litigation, first and foremost the court has to find out and make certain of the facts. Very often there will be a direct conflict of evidence and it is for the court to decide who is right and who is wrong; whose views and evidences to accept and whose to reject. It all depends on the party's ability to impress the court with regard to evidence and the court will weigh it with facts obtained and then decide/pass the judgement.

"In an action for negligence, the court has first of all to ascertain the facts. Often there is a direct conflict of evidence, for example, whether a particular examination was carried out. It is for the court to

determine whose evidence it will accept or reject.

If the court is not impressed by the evidence of the plaintiff or his witnesses. Only after it has ascertained the facts, can the court decide, whether there has been negligence and, in reaching its conclusions, it is guided by the views of the expert witnesses who have been called to give evidence. If one expert supports the defendant and the Court is satisfied that his views represent that of a reputable school of thought it can find in favour of the defendant notwithstanding the contrary view held by another expert representing another school of thought. Whilst the law concerning the doctor's liability has not changed, its application by the courts in recent individual cases has revealed a trend to the disadvantage of the practitioner." 71

In the United Kingdom there is an increase in the litigations involving doctors. It seems that this increase in litigation in U.K. is due to impersonal elements as a result of the introduction of National Health Service. The second reason is because of the operation of the Legal Aid and Advice Act which acts as a backbone for those who never dared to and could not afford to have recourse to legal remedy for negligence suffered. The people seem to

have developed the attitude that they are suing the State at the State's expense.

"Although there has been an increase in litigation involving doctors practising in the United Kingdom, this has not been on the same scale as in the United States. It is generally believed that the increase in litigation against doctors and the hospital authorities in the United Kingdom is due to two principal factors. ~~The first is the impersonal element resulting from the introduction of the National Health Service Act in 1948. The taking over of the hospitals under the Act has brought about a radical change in the attitude and respect which patients had for their local hospitals and their staff. A good deal of this respect has now gone and with it an inherent unwillingness on the part of the patients to institute proceedings against their local hospitals. The present attitude is that they are suing the 'State'~~² ~~The second factor arises from the operation of the Legal Aid and Advice Act 1949. This has made it possible for many members of the public who had hitherto not been able to afford to do so, to institute legal proceedings against a practitioner and/or a hospital authority for negligence. A person can hardly be blamed for instituting an action against a hospital authority in respect of personal injuries when he believes~~

believes that he is suing the State at the State's expense." 72

Is the legal aid scheme in U.K. an instigation for litigation? It is true to a certain extent, but not the case always. In fact, there are certain regulations and formalities to be followed by the litigant. First and foremost, the litigant must obtain the right to claim the legal aid service. This eligibility for legal aid certificate depends on the income of the applicant. 2. He must also submit the medical report from the doctor which will be screened by the legal professional and only if they are convinced of the need of litigation by the plaintiff, the legal aid certificates are issued to the complainant. When the legal aid is not available, the litigant can either use his own resources or get the financial aid from the place where he works.

"One of the features of the legal aid scheme is that there are limitations upon those who have the right to claim the legal aid services. Eligibility of a legal aid certificate depends upon the applicants' capital and income and of the possession of 'disposable capital' and 'disposable income'. Legal aid committee consider each application on its merits and they will turn down an application for legal aid certificate to sue a member

of the medical profession or a hospital authority if they do not consider that the applicant has a prima facie case for complaint.

When the legal aid is not available, the litigant is not necessarily forced to rely on his own resources. His trade union may feel disposed to give him financial support in respect of a personal injury claim and this may well involve a claim based upon an allegation of medical negligence." 73

While filing a case in an attempt to sue the doctor the plaintiff must prove that the doctor was negligent. The burden of proof for negligence, rests with the plaintiff except in circumstances where the proof is so obvious like the amputation of the wrong limb or the removal of the wrong organ or even leaving an instrument in the abdomen, etc. Where the legal maxim *res ipsa loquitur* applies, i.e., the thing speaks for itself. In all other circumstances the responsibility of proof remains with the plaintiff. He has to prove that: (a) The doctor owed a duty of care such as duty of care to decide whether to take in a patient; a duty of care to decide what procedure to adopt in diagnosis and treatment; a duty of care in administering the treatment; and a duty of care in equipping the

the patient with adequate explanation and information.

✓ (b) The plaintiff also has to prove that there is an accepted and approved / standard practice existing and a reasonable degree of skill, knowledge and care required during the time of action on treatment, but the doctor failed to adopt that standard practice and apply the reasonable skill, knowledge and care while treating the patient which resulted in the damage the patient suffers / suffered.

✓ (c) The plaintiff has to prove that there were facilities available to diagnose the case but the doctors failed to have recourse to them and so the patient had to suffer the loss or injury.

✓ (d) The patient required reference to other consultants or specialists who were available but the doctor did not refer the patient to the specialists resulting in the damage suffered by the patient due to the negligence of the treating doctor.

✓ (e) The plaintiff has to prove also that there was certain degree of risk involved in the treatment of the patient but the doctor failed to take the necessary precautions to avoid that risk.

(f) The plaintiff has to prove that the patient had not given a proper and fully informed consent and so the doctor is liable for the damage or loss suffered by the patient.

DEFENCES

Defence is the response of the defendant to the charge against him. So when a doctor is accused of negligence, he has the right to defend himself by proving that he was not negligent if he had fulfilled his duty of care while treating the patient. He has to prove that he had exercised reasonable degree of ^{knowledge and} skill and applied reasonable degree of ^{care} knowledge while attending to the patient. He also has to prove that ² he had informed the patient or his relatives of the risks, involved and had taken the necessary precautions to prevent the risks involved. ¹⁰ It is his duty to prove that ³ the accident was an inevitable one which he could not avoid inspite of the precautions taken. He can also prove if there was / is a contributory negligence. He can also prove that there are more than one school of thought and he had adopted one which ¹ ^{unfortunately} turned out to be a failure. He must also prove that the treatment given or the procedure on operation performed was with fully informed consent of the patient / his relatives.

1975. There are certain limitations to litigation under the ^LLimitation Act. This limitation act is precisely to protect the doctors (defendants) from ^{late}state claims and to encourage plaintiffs to institute proceedings within the ^areasonable period of time. And the plaintiff has to sue the doctor during this period. But there is an exception to this rule where the plaintiff can sue the defendant after the expiry of time, provided he/she gets the special permission for it from the Court who will obtain it on valid reasons.

X "The purpose of the limitation Act 1939 is to protect the defendant from ^{late}state claims and to encourage plaintiffs to institute proceedings within a reasonable period of time (Before 1963 the General position was that no action could be brought, where the damages claimed consisted of or included damages for personal injuries after the expiration of three years from the date on which the incident which gave rise to the action occurred). By virtue of the Limitation Act 1963 a plaintiff could sue for damages for personal injuries outside the normal three year limitation period in certain circumstances if he obtained the leave of the court to do so.

X The Limitation Act 1975 does away with the need to obtain leave from the Court. Under this period the three

year period run from the date on which the cause of action accrued or the date (if later) of the plaintiff's knowledge." If the injured person dies before the expiration of the three year limitation period, the period - as respects the cause of action surviving for the estate of the deceased runs from the date of death or, if later, the date of the personal representative's knowledge." 74

Special defences

There are circumstances in which the facts will speak for ~~itself~~ ^{themselves} and the defendant is automatically held negligent. Similarly there are circumstances in which the doctor (the defendant) will be defended too automatically as in the case of contributory negligence; statutes of limitations; proof obtained from investigations; valid release from the patients; and ^{where} institutions from which the patient is already awarded the compensations.

"In preparing the defence of malpractice action consideration will, of course, be given to the question of whether there was contributory negligence on the part of the patient; also as to whether or not the action may be barred by the statute of limitations.

There should, of course, also be investigations to determine whether some other special defence may be available.

X
Thus if the physician has secured a valid release from the patient, he cannot thereafter (to) be sued for alleged negligence in the transaction covered by the release.

X
..... Finally, it may be that the plaintiff, an industrially injured patient, has already accepted a compensation award. If so, the patient is precluded from maintaining a subsequent malpractice action against the physician who treated him. However, in other states, under similar circumstances, such an action is not barred." 75

An important
✓
Another weapon that can be easily used by the defendant to defend himself is the clinical notes; provided they are maintained adequately and properly. To be on the safe side, it is very important to maintain these records up-to-date and with all sincerity and accuracy as they are of inestimable value both for the patient as well as the doctor.

✓
"The importance of keeping accurate and contemporaneous clinical notes of findings on examination and all treatment administered cannot be overemphasised. Good notes are of inestimable value, not only when handing a patient over to another doctor but also in meeting any criticism that may arise. If a patient refuses to accept the advice of his doctor, this fact should be recorded in

✓ writing. In such circumstances the doctor would be well advised to withdraw from the case and to inform the patient that he is not prepared to accept any further responsibility for his treatment.

✓ In the course of legal proceedings case notes ^{are} disclosable to the other side. The omission of essential details from the notes may cast a doubt on the veracity of the witness. When there is a conflict of evidence the court will naturally attach importance to the notes written at the time. Good notes may, therefore, be of the greatest importance in supporting the doctor's evidence as against that of the plaintiff and his witnesses." 76

X In short, success and failure of every litigation against medical negligence depend upon the circumstances of the particular case. But one thing that should be kept in mind is the exercising of reasonable knowledge and skill and duty of care in the circumstances. If the doctor has exercised reasonable care and skill, he is safe.

CHAPTER V

CONSUMER PROTECTION ACT

- LEGAL VIEWS
 - VIEWS OF THE INDIAN MEDICAL ASSOCIATION
 - VIEWS OF THE CUSTOMER
 - VIEWS OF THE PUBLIC
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CHAPTER V

CONSUMER PROTECTION ACT

X "A peculiar feature of the Indian Constitution is that it combines social and economic rights along with political and justifiable legal rights." says Dr. Gurubax Singh in his book, 'The Law of Consumer Protection.'

✓ In this era of industrialisation, urbanisation and commercialisation, the consumers have become helpless spectators, as manufacturers and producers of goods and services utilize all the means possible (fair and foul) to promote the marketing of their products and services. Yet to the great surprise of these producers and providers, there are alert consumer organizations and consumer activists who persevered in their endeavour and kept on inspiring the consumers to action. In the early sixties, a global movement started in the United States and the United Kingdom, to protect the interests of the consumers. In both these developed countries, the ones responsible for activating the Government authorities to pass legislative measures to protect effectively the consumer's rights, were the voluntary organizations. Today, the consumers are not only awake, but they are alert to a certain extent to protect themselves

against the manipulations of traders and malpractices of providers of services.

Before the Independence of India, there were hardly any Parliamentary law to protect the consumer's rights. After Independence, there were a few of them formulated; but the implementation was not satisfactory. But today among all other movements in India, Consumer movement is in the fore-front. In fact, it is the latest and rapidly expanding movement in our country.

I. THE LEGAL VIEWS

The Consumer Protection Act, 1986, is an Act for the protection of the interests of the consumers. It does not provide any new right to the consumer. There were already other measures under the prevailing laws such as the C.P.C., I.P.C., G.P.C., the Laws of Contracts, the Sale of Goods Act, the Law of Torts, etc. The purpose of Consumer Protection Act, 1986, is to provide for a better and quicker remedy than the already existing ones. It also provides provision for establishment of Consumer forums and Councils for the education of consumers and other authorities so that the disputes between the consumers and providers / producers of services and goods can be settled easily.

✓ "Consumer Protection Act is "an Act to provide for better protection of the interests of Consumers and for that purpose to make provision for the establishment of Consumer councils and other authorities for the settlement of consumer's disputes and matters connected therewith." 77

X Consumer Protection Act is one of the most important developments in the law of torts which was approved by the then President K.Venkata Raman on 24th April 1987.

✓ In India, until the recent past, the concept of Consumer protection was not understood in its real and fullest sense. But gradually, the public came to the understanding that the consumer was deprived of so many of his rights. The Act specifies and defines the consumer and explains what consumerism implies.

✓ "Any person who is a buyer of any goods for a consideration or any person who hires any service for a consideration has been given the meaning of consumer' under the Act.

✓ Consumerism devotes a thorough safeguard for the consumers from all sorts of malpractices; and exploitative deed of market operations." 78 The Act also explains what service means. "Service means services of any description which is made available to the potential users but does not include the rendering of any service free of charge

or under contract of personal service." ⁷⁹

The characteristics of Consumer Protection Act :

✓ The act applies to all goods and services except the ones received free of charge and as gifts, etc.

✓ It covers both public and private sectors.

✓ It provides compensation for losses, injuries and harm suffered by the consumer.

✓ The act ensures the rights of the consumers and provides provisions for the establishment of consumer forums and councils at the state and national levels to promote and protect the rights of the consumers.

✓ The most attractive part of all is that it provides a simple, speedy and cheap redressal of the consumers grievances through its three-tier system.

✓ "The provisions of this Act are in addition to and not in derogation of the provisions of any other law for the time being in force." ⁸⁰

The purpose of the Consumer Protection Act :

✓ The main purpose of the Act is to protect the consumers - by strengthening his rights - against manipulations

as malpractices by manufacturers of goods and providers of services, by providing provisions for speedy, simple and cheap redressal of consumer disputes. It also aims at providing compensation to the consumer for the loss/harm/injury suffered by him while or as a result of the use of any goods/services for a consideration/price/cost.

"The Consumer Protection Bill, 1986 seeks to provide for better protection of the interests of consumers and, for that purpose, to make provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith. It seeks, interalia, to promote and protect the rights of consumers." 81

The reasons for the enactment of C.P.A. : In a country like India where majority of her people are poor, illiterate and ignorant and are exploited by the powerful, with no voice and no one to voice on their behalf. The prevailing remedial measures to protect their rights were neither readily available, nor accessible, nor affordable. Often they were not aware of these existing facilities; but even when the consumers were being violated by the unscrupulous persons, they were hesitating to come forward and assert their rights; because there were certain lapses in obtaining judicial relief, which discouraged them. These lapses

mainly were :

1) The never-ending civil cases : Often it took years together to dispose of even small cases, so much so, the person may even die before the final judgement, and in his place the case had to be continued by his heirs. For this reason the consumer preferred to suffer in silence rather than go to the court for justice.

2) Complication of the procedure : Seeking of legal remedy meant filing the case, which in turn demanded of the plaintiff to file number of documents, a number of petitions and inquiries followed by cross-examinations, re-examinations and so on.

3) Cost involvement : The court fee that had to be paid by the plaintiff was another disadvantage which held him back to keep quiet and suffer the loss in silence.

4) Service of an advocate : This was an added trouble and expenditure.

In short, the delay, the cost factor and the complication of the procedure, etc., discouraged the people to approach the court. At the end of all these, the plaintiff could never assure himself of a favourable judgement. Today, after years of silent sufferings, struggling by the people and the serious discussions and reflections have brought out an additional solution in the form of Consumer Protection Act

a christmas gift for the people of India on the eve of Christmas in 1986.

"The three factors of delay, complicated procedure and litigation cost make people afraid of approaching the courts. These problems made the Government of India pass the Consumer Protection Act, in 1986. The object is to dispense with the cumbersome technicalities of law and to provide speedy justice, simple procedure, and inexpensive justice." 82

Advantages of Consumer Protection Act :

"New brooms sweep well". Anything new when introduced will have its novelty. But if it has to be appreciated by people in the long run, then it must offer something better than what was already existing. When the Consumer Protection Act is compared to the previous remedial measures, the C.P.A. offers a better procedure to the public/consumers of goods and services.

1) Speedy justice : The Consumer Protection Act states that every case of consumer disputes must be decided within ninety days. There are exceptions to this rule which is extended upto hundred and fifty days.

2. Simple procedure : Filing a case in the civil or criminal court demands petitions, counter petitions, enquiries, examinations and re-examinations, etc., where as in the Consumer Courts none of these formalities are necessary. There is no particular procedure; the consumer courts follow natural justice. All that is required is a written complaint on a plain paper with the address of the one who has caused the damage / loss / injury. Only give four copies and the rest will be taken care of by the consumer court. This can be given either personally or by post.

3. In-expensive justice : Unlike the civil courts and the criminal courts, in the consumer court there is no court fee charged, nor is there any need of an advocate's service.

"The hall-mark of the consumer forums are quick decision, simple procedure and in-expensive justice." ⁸³

Consumer Protection Councils

There are two types of machinery constituted by the Consumer Protection Act. One is the Consumer Protection Councils and the other is the Consumer Courts, also known as the Consumer Redressal Agencies. There is a Central

Consumer Protection Council and one in each state. The Central Consumer Protection Council is known as the National Council and at the state level they are known as the State Consumer Protection Councils. These National and State Councils are composed of members from various walks of life as well as representatives from various organizations like public sector undertakings. These councils are meant mainly to give suggestions to the Government to implement the Act effectively.

"The Central Consumer Protection Council (referred to as the Central Council). The Central Council shall consist of the following members namely (a) The Minister-In charge of the department of Food and Civil supplies in the Central Government, who shall be its Chairman, and (b) such number of other official or non-official members representing such interests as may be prescribed." ⁸⁴

The Act says clearly about the members of the State Consumer Protection Council, "(1) The State Government may specify in such notification, a Council to be known as the Consumer Protection Council for referred to as the State Council. (2) The State Council shall consist of such number of members as may be specified by the State Government by notification from time to time." ⁸⁵

Consumer Redressal Forums (Consumer Courts)

The second type of machinery constituted by the Consumer Protection Act is the Consumer Courts at three levels, i.e., at District level, State level and National level. At the District level, they are known as the District Consumer Disputes Redressal Forums; at the State level they are known as the State Commission; and at the National level they are known as the National Commission. The main purpose of these forums and commissions are for the redressal of grievances of consumers generally.

(1) District Forums : Every district has a District Forum at its headquarters headed by a person who is, or has the qualifications to be, a judge as the President of the forum and two more members including a woman and a social worker. Every appointment of these members will be done by the State Government which will be on the recommendation of a selection committee consisting of the President of the State commission, Secretary of the law department of the State and the Secretary in charge of the department dealing with consumer affairs in the State. District Forums were to handle cases claiming upto Rs. one lakh. But now after the amendment of section 17 of (U) the C.P.A. passed on 18th June 1993, the District Court can handle cases claiming upto Rs. Five lakhs.

(2) State Commission : In each State there is a State Commission, headed by the President, who is a sitting or retired High Court Judge and is appointed by the State Government on the recommendations of the selection committee consisting of Chief Justice of the High Court, the Secretary of the law department of the State and Secretary, in charge of department dealing with Consumer affairs in the State. There are two other members, one of whom should be a woman. The State Commission can now handle those cases claiming upto Rs. ~~5-20~~ lakhs and the ones who appeal from the district forums. The State Commissions are now strengthened with administrative jurisdiction of the district forums after the amendment of the Act.

(3) The national commission : Consists of a President who is a sitting or retired (or qualified to be) judge of the Supreme Court and four other members who represent the field of economics, commerce, law, accountancy, industry and public affairs or administration. One of them shall be a woman. All the members of the National Commission are appointed by the Central Government after consultation with the Chief Justice of the Supreme Court and on the recommendation of the Selection Committee consisting of a judge from the Supreme Court nominated by the Chief Justice, Secretary of the department of the legal affairs

of India; Secretary of the department dealing with the Consumer affairs in the Government. The National Commission handles all cases where the claim for damages is more than Rupees twenty lakhs and appeals from the State Commission judgements, persons dissatisfied with the judgement of the National Commission can appeal to the Supreme Court.

Impact of C.P.A. on Medical Profession

✓ Till of late if any patient had a dispute regarding negligence from the side of the doctors/hospitals, he sought for the remedy by approaching the law courts. Here he had to file a case either under the law of torts to claim damages or under section No.304A, 336, 337 and 338 of the Indian Penal Code to get the negligent punished. However, there is drastic change to this way of approach by the patient, after the introduction of the Consumer Protection Act, 1986. Now the patient approaches the Consumer forum and the State and National Commissions, with his grievances against the doctors and/or hospital for various types of negligences. This new option is far more advantageous compared to the previous ones.

✓ "Under this Act, goods and services availed by the Consumers are covered services of all types and

nature are covered under this Act except free service and personal service (contract of service)..... Most important aspect of this Act is the time bound disposal of cases.

✓ The medical profession is a professional service offered by doctors and health care institutions and the beneficiary or the end user of any professional service is a consumer. Moreover, this profession has really become a health care industry with other sections like the pharmaceutical industry, equipment manufacturers, etc., actively participating in the health care delivery system." 86

✓ Every coin has two sides. So also the Consumer Protection Act. It has a Positive and Negative impact on the medical care service. By bringing the medical profession under the purview of the Consumer Protection Act, the patients who are the consumers of this service enjoy certain benefits which are counted as the positive impacts, namely:

✓ 1) It can be a means to check the quacks and the casual doctors who are careless and negligent in their dealings with the patients which in turn will help to improve the standards of medical practice and make the medical professionals more and more accountable.

✓ 2) It is more beneficial to the patients as it provides speedy, easy and cheap yet sure remedy to the patients who suffer because of the negligent doctor / hospital.

✓ "There are a few reasons for keeping medical services under the purview of Consumer Protection Act. These are :

- ✓ 1) There are cases of medical practitioners dealing casually with their patients because these doctors are negligent, and callous by nature. The act may serve as a deterrent to these doctors.
- 2) The Act provides speedy, easy and cheap remedy to aggrieved patients against negligent doctors, enabling them to claim compensation." ⁸⁷

✓ Just as the C.P.A. has these positive impact, it also has its negative effect on the medical profession.

- ✓ 1) The applicability of the C.P.A. to the medical profession can destroy the doctor-patient relationship which is built on trust.
- 2) Patients' inclination for unnecessary litigations, dragging the doctors and hospitals to court can encourage the use of defensive medicine (as no doctor will allow anything to come on his way and destroy his

professional reputation that is considered as a valuable asset) and patient selection.

Practice makes man expert . Today's experts were yesterdays students. The inclusion of the medical profession can deprive the students and junior doctors from trying and learning from their mistakes; there will be less chance for practice. After all he who has not made a mistake has made nothing. In the end, it can affect the future of the profession with less experts.

II. VIEWS OF THE INDIAN MEDICAL ASSOCIATION

In 1989, in an landmark judgement, the National Commission, in an appeal filed by a hospital and some doctors in Kerala, ruled that the medical services in private sector are covered by the Consumer Protection Act, 1986. The medical profession's reaction to this rule was prompt and sharp. The Indian Medical Association organised a nation wide campaign seeking exemption of medical services from the purview of Consumer Protection Act. Numerous meetings of doctors that were organised and the petitions that were filed in the Supreme Court by the Indian Medical Association are nothing but an expression of their anxiety in the matter.

But doctors are of divided opinion. Some of them who are ethical and progressive minded and also devoted to the cause of their patients and their profession, extend their support to the Consumer Protection Act and openly involve themselves with the consumer movement. Yet some others express their grudge and discontentment in the Consumer Protection Act and openly consider it as an evil and a threat. They fail to see the deficiency and malpractices that are prevailing in the medical profession. They argue strongly that the medical profession in India has, overall established a reputation for high standard of service, efficiency and concern for the patients.

"Doctors are divided even within themselves. Progressive and ethical doctors have come out openly in support of the COPRA and allied themselves with the Consumer movement. Some other mainstream doctors have grudgingly accepted the COPRA as a necessary evil or a fact of life without conceding that there may be something deeply wrong in the way medicine is practised in our country. The later view-point was expressed in an editorial of the National Medical Journal of India (May/June 1992) by H.D. Shourrie, who agreed that though there are always some black sheep in any profession, the medical profession in India has over-all established

a reputation for high standard of service, efficiency and concern for the patients." ⁸⁸

The I.M.A. consider the Medical Profession as noble, the doctor patient relationship as sacred and the treatment unpredictable. The socially conscious doctors accept the fact that the medical profession today, on the whole, is not patient oriented, but it is business oriented, a fact proved by these doctors themselves. The ethical and the progressive minded doctors are aware of the fact and they accept that the medical profession must come under the purview of the Consumer Protection Act, to discipline the black sheep within the profession. They are convinced, that the upright doctors and health care institutions do not get affected by implementation of the Consumer Protection Act. In fact, they consider it as a blessing and a necessity to improve the standard of medical profession and the quality of health care services.

"progressive and ethical doctors are fully aware that the excessive litigations could have counter-productive effects (due to defective medicine). But in the present market dominated medical care, they see no alternative to the disciplining of the black sheep by patients' litigation." ⁸⁹

X On one hand the I.M.A. (some of its members) support the C.P.A. and on the other hand they (the remaining members) are fighting tooth and nail to get the medical profession out of the purview of the Consumer Protection Act. These members who want the medical profession to be excluded from the Consumer Protection Act argue that claims of negligence can happen to even well-trained personnel and also due to the strain and tension under which they work. They also blame the whole system of medical education and its deficiency in educating for the negligence. This group of doctors find an excuse for being negligent, because there is no specified system to update themselves. They fail to accept the personal responsibility for updating themselves and for the ongoing medical professional education.

X "We are not Gods. We are human beings; and being human beings, anyone may commit a mistake. Similarly, a doctor make mistakes sometimes..... I do not think anybody would put an artery forceps in the abdomen of a patient intentionally and close it up..... The prevention of negligence should start right from the college level. Yes, medical jurisprudence is taught in medical colleges. But is taught only superficially without going in depth. A student is supposed to know the various legal aspects of our profession;

commissions, omissions, and negligence. And about the actions to be taken against you, if you are negligent. All these, including probably today's detail at the college level..... Unfortunately, there is no update of medical knowledge. There is no recurring or repeated assessment of a doctor." ⁹⁰

This particular group of doctors feel that it is better to correct the drawbacks of the Indian Medical Council and strengthen its powers than bringing the medical profession under the purview of the Consumer Protection Act. They consider the C.P.A. more of a menace than a help.

"With Consumer Protection Act, the doctor and you have to go to the Court and create a lot of problems further. If there are problems like a lacuna in the I.M.C. or delay in getting the judgement, why not we rectify them." ⁹¹

The I.M.A. argues that the doctors come under personal service and so they must be excluded from the Consumer Protection Act. They threaten to use the defensive medicine which in turn will increase the cost of medical care service, which ultimately becomes an added burden to the patient. They also demand, if the consumer, who has taken the doctor to court, loses the case, then the amount asked as compen-

sation must be paid to the doctor/health care institution.

"If a consumer goes to court and he loses the case, what is the right of the doctor to go against the patient? Suppose, he tried to malign me and unnecessarily went to court so that he might have a kick back, what is the remedy so that he may not go to court?"⁹²

The Indian Medical Association is unhappy over the decision of the National Consumer Disputes Redressal Commission to bring doctors under the purview of the Consumer Protection Act. And they are determined to gear up for a massive action plan to fight this decision of the National Commission.

"Giving three major reasons for being excluded from the Act, a spokesperson of I.M.A. said, "firstly we are doctors, and non-scientific members of the Consumer Forum have no right to try us. Doctors must be judged by qualified persons. Secondly, this will result in defensive practice and consumers will end up paying heavily for unnecessary investigations and expert consultations. Thirdly, the consumer will suffer even more heavily as doctors will refuse to co-operate in situations of medical emergencies." As a first plan of action, the I.M.A. will take the issue

to the Supreme Court and, if this fails, they will resort to a series of protest marches and even go on a nation wide hunger strike as a last resort." 93

The I.M.A., the largest Voluntary Medical body considers the Consumer Protection Act as a threat to them. They have challenged the National Commission ruling that brought the doctors under the purview of Consumer Protection Act. They aim at getting the decision of the National Commission set aside. They plan for various types of protests and hold strike as a mark of their disagreement and discontentment with the Consumer Protection Act.

"The Association is also planning various types of public protest. On August 11th 1993, its 90,000 members will wear black Arm-bands on their white-coats as a symbolic gesture. And in September they plan to hold a one-day national strike to demonstrate their anger over what Velayudhan Pillay, I.M.A. President, calls "the most serious threat the medical profession has faced in the country, both to its credibility as well as its ability to function without hindrance or fear." 94

Today the doctors are very unhappy that the pendulum has swung to the extreme. In the past, there was ample delay

X
in arriving at a decision on medical negligence, through the courts of law. Today the Consumer Forums are in a mighty haste to dispose of the cases, so much so it really does not avail the medical experts' opinion and weigh the matter properly.

X
The I.M.A. is troubled because the COPRA does not consider their profession as a unique and noble service. They point out the inherent disadvantages of consumer court as they define medicine "a science of uncertainty and the art of probability." They complain that the doctors' skill cannot be standardised by the I.S.I. and the Consumer Court is incapable to decide where exactly their services were found wanting. They are afraid that the Consumer Court may favour the consumer as the decisions are being taken by the non-medical experts,

X
"L.M.Kapur, President of the Association of Medical Consultants, a 2,000 strong Bombay based body, says, "Doctors are just 25 percent of the input for treatment. There are para-medical staff, blood bank, nurses, ward boys, poor infra-structure facilities, equipment and even patients themselves that could be responsible for poor results. Yet we are becoming the scapegoats for everybody's woes." 95

The I.M.A., in their enthusiasm to keep themselves and their profession out of the purview of Consumer Protection Act, are fighting their battle in the Supreme Court. The Supreme Court has admitted the I.M.A.'s writ petition but has not stayed the proceedings of the various consumer courts deciding medical cases. We still got to wait and see what the outcome is going to be, what the Supreme Court's decision is going to be regarding the I.M.A.'s petition to keep the doctors and the medical profession out of the purview of the Consumer Protection Act.

III. VIEWS OF THE CONSUMERS AND THE PUBLIC

The end of 20th Century is witnessing radical changes in the field of medical profession and health care services in India. The higher technology, commercialization and privatisation of medical education, etc., have contributed greatly towards these changes.

The recent changes in the law of the land has provided an outlet to the public who had been discontented with the medical care/profession/services. The main reason for this increased unhappiness and dissatisfaction of the public are the regrettable increase in negligence, incompetence and malpractices, within the profession on one hand and the

inappropriate expectation of victory in the battle against disease and death on the other hand. In the recent legislation of Consumer Protection Act, the powerless public has suddenly found a means for redressing their grievances. Thus for the first time in India, the doctor-patient relationship is openly acquiring an adversarial character on a national scale. The consumer and the public cherish their new found right and want to make the maximum use of it.

The scalpels are out for the doctors. The patients who had been trampled by the arrogant doctors who thought no end of themselves, who paid no attention to their negligence and callousness are now finding themselves in the dock faced by patients whom they least expected to react and retaliate in this manner. For the consumer and the public at large, the Consumer Protection Act is like a boon. Earlier the doctors were safe and secure, but today the negligent, the careless and greedy who fails to be upright, conscientious and turn the noble and sacred profession into a big bad business are very very unsafe in the hands of their patients / the consumers of their service and the public at large.

✓ "Across the country many state consumer dispute redressal commissions and district forums report a marked surge in such cases. In Kerala, an estimated 1,800 cases have been filed before the 14 district forums - almost 15% of the total cases. In Tamil Nadu and Maharashtra, an estimated 100 malpractice suits are pending in each state. And within a year the National Redressal Commission, which deals with compensation claims of over Rs.10 lakhs has over 30 such cases pending disposal. The largest being Rs.3 crore filed by an Amritsar - based petitioner whose son died after the surgeon allegedly performed several unnecessary operations.

✓ What more, with most of these consumer courts disposing of cases within a year - as compared to an average 10 years in regular ones - doctors suddenly find themselves forking out hefty compensations with numbing suddenness."⁹⁶

X The consumer and the public who were trampled and sedated by the arrogant medical professionals are beginning to wake up today. In fact they are already awake aided by the consumer groups and the voluntary organizations. Open any newspaper or periodicals, they are filled with the sensational news of consumers reactions and stories of their grievances turned into appropriate compensations.

Actually the consumers of health care / medical care services are not against the doctors or to their service rendered. The public is in need of them. What they fight for is their rights as consumers and what they demand is the duty of care owed to them.

Given below are some of the view points of the consumers of health care services and the public.

1. The consumers and the public are not after the honest and upright doctors. They are after the quacks and business minded greedy doctors who turn this noble and sacred profession into big business and exploit the public in the bargain. Defending the poor and vulnerable from such people is the job of the consumer activists and voluntary organizations.
2. The public do not want to indulge in unnecessary litigations; but they are not going to spare the black sheep either.
3. All that the public and the patients expect from the doctors and hospitals are their right as consumers.
4. Trust is very important and it is built only by exchanges between doctors and patients with mutual trust; there will then be few problems, if not none.

5. Corporate medical care is the main reason for today's impersonal care. Their concern is about the shady dealings in the profession aimed at making money. If doctors make their profession a business then patients will have to treat them as traders. The patients' and public's reaction is the reflection of the doctors' action.
6. Indifferent, lethargic attitude of the I.M.C. to the grievances of the patient and their inability to provide the aggrieved with due compensation encourage the patient to prefer the option made available through the Consumer Protection Act.
7. Since the doctors/hospitals are given an equal opportunity to defend themselves the consumers are convinced of the fairness of the Consumer Protection Act.
8. The public feel that the root cause of all the problems and the tension that exists between the patient and doctor are the present selection system for M.B.B.S. Those who pay the capitation fee are the ones who exploit the patients and the public.

9. If the Medical professionals and the health care institutions maintain the standard of the profession and quality of service then they can expect the patients and the public to come out strongly in support of the doctors and the hospitals.
10. The consumer groups are earnest not only in fighting for the patients but also in protecting doctors from false and frivolous complaints and litigations.
11. "Today the public no longer consider doctors so noble and high level of commercialisation of medicine has lowered the doctor's social prestige." 97

In short, all that the consumers of health care service and the public demand from the doctors and the health care institutions are accountability, honesty, uprightness, devotedness to the patient and safeguarding of their own right as consumers. In turn, they are willing to offer their loyalty and there will be no litigations against the doctors / hospitals. The litigations arise only when they (the consumers and public) are exploited and their rights are violated.

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CHAPTER VI

RESULTS

A. RESPONSES OBTAINED FROM THE ADMINISTRATOR
FROM

1. HOSPITAL 'A'
2. HOSPITAL 'B'
3. HOSPITAL 'C'

B. ANALYSIS OF THE RESPONSES OF THE ADMINISTRATORS
OF HOSPITAL 'A', HOSPITAL 'B' & HOSPITAL 'C'

C. RESPONSES OBTAINED FROM THE DOCTORS OF

1. HOSPITAL 'A'
2. HOSPITAL 'B'
3. HOSPITAL 'C'

D. COMPARATIVE STUDY OF THE RESPONSES OBTAINED
FROM THE DOCTORS OF HOSPITALS 'A', 'B' & 'C'

E. RESPONSES OBTAINED FROM VARIOUS CATEGORIES
OF DOCTORS

CHAPTER VI

R E S U L T S

ADMINISTRATOR'S RESPONSE.

HOSPITAL 'A'

1. The administrator of Hospital 'A' is aware of the legal aspects of medical negligence. He thinks that the medical negligence is a big problem in the country
2. He is also aware of the Consumer Protection Act, as it applies to health care institutions. He thinks it will affect the medical profession to a great extent.
3. The administrator stated that the hospital had **two** cases of alleged medical negligence, during the period between April 1992 and March 1993; they are pending still.
4. According to the administrator most of the health care personnel in hospital 'A' aware of the Consumer protection Act and its implications.
5. The administrator said that he has tried to protect his employees by providing indemnity insurance. The hospital is not yet insured but it is under consideration.

6. According to the administrator, the areas of services in his hospital that are more prone for medical negligence (ranked in order) are :

- (a) surgical
- (b) medical
- (c) anaesthesia
- (d) nursing
- (e) laboratory
- (f) x-ray
- (g) Out patient department (O.P.D.) & Casualty.

7. The categories of employees more likely to be involved in negligence cases / acts are : in rankings :

- (a) administrator and doctors
- (b) anaesthetists
- (c) nurses
- (d) lab technicians
- (e) x-ray technicians.

He also added the 'hospital' as a whole could also be sued.

8. In hospital 'A', there is no particular system for attending to patients' comments / complaints / sugges-

tions, etc. When the administrator was asked as to how he handles any complaint by the patients, the answer was that they are taken care of as and when they arise.

9. According to the administrator of hospital 'A' the Consumer Protection Act is somewhat baneficial to the hospital as the doctors and staff may become a little more careful and alert.
10. In his opinion, the Consumer Protection Act needs to be modified :
 - . by adding a doctor too in the panel;
 - . by imposing penalty on the complainant for false complaints and false (undue) claims;
 - . by bringing the Government hospitals and doctors also under the perview of the C.P.A.
11. When the administrator was asked as to what would be his attitude towards those patients who may sue the institution or the employees, he said that it depends upon the merits of the complaints.
12. The administrators's comments about the Consumer Protection Act :
 - a) It will improve the standard of medical profession and the quality of health care services.

- b) It is not a hindrance to the profession/service.
- c) It can be a means to check malpractice and quacks.
- d) It can destroy the image of the institution
- e) It will not dampen the spirit of service of the institution.

13. When the administrator was asked whether the Consumer Protection Act can cause closure of Voluntary Health Care institutions, his reply was 'No'.
14. He also said that the Consumer Protection Act will not deter more voluntary hospitals being opened in the future.
15. This administrator feels that Consumer Protection Act can increase the cost of medical care.

HOSPITAL 'B'

1. The administrator of hospital 'B' is aware of the legal aspects of medical negligence. He thinks that the medical negligence is not a big problem in the country.
2. He is aware of the Consumer Protection Act, as it applies to the Health Care Institutions. He thinks that it will affect the medical profession and the health care institutions to some extent.

3. The administrator informed that he had three cases of alleged medicals negligence during the period April 1992 to March 1993. The cases are pending still.
4. The administrator said that most of his health care personnel are aware of the Consumer Protection Act and its implications.
5. He did not respond when he was asked whether he has tried to protect his hospital and his employees. The hospital is not yet insured against medical negligence; it is under consideration.
6. The areas of services in the hospital that are more prone to medical negligence are the departments of surgery and anaesthesiology equally in the first place and then medical.
7. The categories of employees more likely to be involved in negligent acts are the doctors and the anaesthetists.
8. The administrator said that there is no particular system in his hospital for patient's comments / complaints / suggestions.
9. He thinks that the Consumer Protection Act is beneficial to the institution, to the extent that this law increases the sense of responsibility of the medical personnel in rendering care and treatment.

10. The administrator of this hospital thinks that the Consumer Protection Act needs to be modified; Modifications suggested : It needs to be so modified as to prevent 'speculative' litigation inspired by a motive of gain. The act has no provision for payment of compensation to doctors who have been subjected to unjustified and frivolous legal proceedings.
11. When asked about his attitude towards those patients who may sue his institution or his employees, he said that wherever the complaint happens to be prima facie true and justified, he sympathises with the patient concerned.
12. His comments about the Consumer Protection Act are as follows :
 - a) It will improve the standard of medical profession and the quality of health care services.
 - b) It is not a hindrance to the profession/service.
 - c) It cannot destroy the image of the institution.
 - d) It can be a means to check malpractice and the quacks.
 - e) It will not dampen the spirit of service of those institution.

can to avoid mistakes and negligence. Why keep them in acute worry and anxiety with huge claims? How much more careful do large claims make them than they would be if the claims were about Rs.1 lakh?

HOSPITAL 'C'

1. The administrator is aware of the legal aspect of medical negligence. He thinks that the medical negligence is a big problem in the country.
2. The administrator is aware of the Consumer Protection Act, as it applies to health care institution. He also thinks that it will affect the medical profession and the health care institution to some extent.
3. The hospital had faced cases of medical negligence. During the period April 1992 to March 1993 there were two cases. Now there is no case pending.
4. According to the administrator most of the health care personnel are aware of the Consumer Protection Act and its implications.
5. The administrator has tried to protect hospital and employees from being sued by the patients / consumers of the service by instructing them to take care of the

patient and not to cause such situations. The hospital is not covered by insurance against medical negligence.

6. The area of services in the hospital that are more prone to medical negligence are medical and surgical.
7. The categories of employees who are more likely to be involved in negligent act are doctors, administrators and nurses.
8. The administrator said that there was no particular system for patients' comments / complaints / suggestions to be attended to. But it is under consideration.
9. The administrator thinks that the Consumer Protection Act is not beneficial to the institution in any way. It may cause more anxiety; it involves a lot of money.
10. The administrator does not know if the Consumer Protection Act needs any modification or not.
11. When asked about the administrator's attitude towards those patients who may sue the institution and its employees, the answer was that it is an eye opener to all the doctors, nurses and administrators.

12. The administrator's comments about Consumer Protection Act.
 - a) It will improve the standard of medical profession and the quality of health care services.
 - b) It is not a hindrance to the institution.
 - c) It cannot destroy the image of the institution.
 - d) It can be a means to check malpractice and the quacks.
 - e) It will not dampen the spirit of service of those institutions.
13. This administrator feels that the Consumer Protection Act will not cause closure of voluntary health care institutions.
14. The Consumer Protection Act will not deter more voluntary hospitals being opened in future.
15. According to this administrator the Consumer Protection Act tends to increase the cost of medical care.
16. The administrator of hospital 'C' had no further comments or suggestions.

Analysis of Questionnaire - administered to the administrators of Hospital 'A' , 'B' and 'C'.

1. The administrators of hospitals 'A', 'B' and 'C' are aware of the legal aspects of medical negligence. While the administrators of 'A' and 'C' think that medical negligence is a major problem in the country the administrator of hospital 'B' differs in his thinking, for him, it is a 'No'.
2. All three administrators are aware of the Consumer Protection Act as it applies to the health care institutions. While the administrators of hospital 'B' and 'C' think that the Consumer Protection Act will affect the medical profession to some extent, the administrator of hospital 'A' thinks that it will affect the medical profession to a great extent.
3. All the three hospital administrators have faced cases of medical negligence in the past one year. Hospitals 'A' and 'C' had two cases (of medical negligence) each during the period of April 1992 to March 1993; Hospital 'B' had three cases. Hospital 'C' had managed to be cleared of both cases; the other two have got the cases pending still.

4. Administrators of all three hospitals feel that most of their hospital employees / the health care personnel are aware of the Consumer Protection Act and its implications.
5. Hospital 'A' has tried to protect the employees by providing indemnity insurance. Hospital 'C' tried to protect them by instructing the employees to take care of the patients and not to cause any situation of medical negligence.

None of the three hospital administrators have insured the hospital against medical negligence. While the hospitals 'A' and 'B' are considering the matter, hospital 'C' has not given a thought to it.

6. There is a difference in the opinion of three administrators with regard to the areas of services that are more prone to medical negligence. The administrator of Hospital 'A' has ranked Surgery as the most vulnerable area for medical negligence, then Medicine and Anaesthesia comes in the third place. The administrator of hospital 'B' feels that Surgery and Anaesthesiology are equally prone for medical negligence and has ranked both in the first place and then Medicine.

According to the administrator of hospital 'C', the areas that are most prone for medical negligence is Medicine. Nursing comes in the second place. This hospital 'C' does not seem to have faced any case of medical negligence in the areas of Surgery and Anaesthesia; they are not mentioned in the response given.

7. The administrators differ in their opinion regarding the categories of employees more likely to be involved in negligent act. Although all three of them agree that the doctors are the ones most likely to be involved in negligent act. The administrator of hospital 'A' includes himself too in the first place along with doctors; then the anaesthetists; and the nurses are ranked in the third place, whereas the administrator of hospital 'R' has left out the nurses altogether from the categories of employees more likely to be involved in negligent acts. According to him only two categories are likely to be involved in medical negligence: they are doctors first and then the anaesthetists. The administrator of hospital 'C' has not included the anaesthetists in his list. According to him the doctors and administrators are the most vulnerable categories and the nurses.

8. None of the three hospitals seem to have any particular system for patients' comments / complaints and suggestions. The administrator of hospital 'A' said that complaints are being taken care of as and when they arise. The other two administrators maintain silence on this point.
9. The administrators of hospital 'A' and 'B' seem to be on the same line of thoughts as both of them say that the C.P.A. is beneficial to the institution to the extent it increases the sense of responsibility of the medical personnel in rendering care and treatment and keeping them alert, whereas the administrator of hospital 'C' differs on this point. He views C.P.A. as a cause of anxiety and financial involvement.
10. There seems to have a certain degree of understanding in the responses of the administrators of hospital 'A' and hospital 'B' on the point that the C.P.A. needs to be modified. Both seem to suggest the same thing in different words, namely,
 - i) including the doctors in the panel of judges;
 - ii) including the Government hospitals and doctors under the purview of Consumer Protection Act; and

- iii) imposing penalty for false complaints and unjustified claims.

The administrator of hospital 'C' does not seem to be aware of/~~known~~ whether the Consumer Protection Act requires modifications or not.

- 11. The attitudes of the three administrators towards the patients who may sue their hospital / employees seem to vary from each other slightly. The attitude of the administrator of hospital 'A' is that it depends on the merit of the complaint while the administrator of hospital 'B' seems to be sympathetic towards the patients provided the complaint be prima facie true and justified. The administrator of hospital 'C' considers it as an eye opener for self and the medical professionals.
- 12. The administrator of the hospital 'C' seems to be rather positive as he feels that the Consumer Protection Act cannot destroy the image of the institution. Other than this, all three of them, have the same comments namely that:
 - i) the C.P.A. will improve the standard of medical profession and quality of services:

- ii) it is not a hindrance to the profession / service;
- iii) it can be a means to check malpractice and the quacks; and
- iv) it will not dampen the spirit of service of those institutions.

- 13. The administrators of all the three hospitals seem to be optimistic and of one mind when they say that the Consumer Protection Act will not cause closure of the Voluntary health care institutions.
- 14. They do not feel either, that the Consumer Protection Act will deter more voluntary hospitals from being opened in the future.
- 15. All the three administrators seem to be convinced (although in varying degree) that the Consumer Protection Act tends to increase the cost of medical care.
- 16. While the administrators of hospital 'A' and 'C' were not inclined to add any more comment / suggestion on the subject, the administrator of hospital 'B' seemed to be rather generous with them. They are :

- i) Compensation over Rs.1 lakh should not be legally admissible except in extra ordinary cases, the nature of which should be specified.
- ii) The consumer protection act should perform a protective function and induce a heightened sense of responsibility in medical personnel but should not provide a means to the litigious persons and legal professionals looking for an opportunity to make big money. Huge claims for Rs.10 lakhs or more, which are not particularly uncommon, show the strong interest of litigants and their legal advisors in making money. After all most doctors are careful in the way they work. They do what they can to avoid mistakes and escape negligence. Why keep them in acute worry and anxiety with huge claims? How much more careful do large claims make them, than they would be if the claims were about Rs.1 lakh?


The responses gathered from the questionnaire, filled in by the administrators of hospitals 'A', 'B' and 'C' give the impression that there is certain amount of awareness among the health care institutional authorities (in varying degree though) about the Consumer Protection Act and its implications to health care and medical profession as well as the legal aspects of medical negligence. Some have already taken steps to protect themselves and their employees while others are on the process of it.

RESPONSES OBTAINED FROM THE ADMINISTRATORS

		Hospital 'A'	Hospital 'B'	Hospital 'C'
1.a.	Aware of the legal aspects of medical negligences	Yes	Yes	Yes
b.	Medical negligence is a big problem in the country	Yes	Yes	Yes
2.a.	Aware of the Consumer Protection Act as it applies to health care institutions	Yes	Yes	Yes
b.	C.P.A. Will affect the medical profession and the health care institutions	To a great extent	To some extent	To some extent
3.a.	Have faced cases of medical negligence in the (this) hospital	Yes	Yes	Yes
b.	How many ? From April 1992 to March 1993 (no: cases)	Two	Three	Two
c.	Cases pending now	Two	Three	Nil
4.	Health care personnel in the hospital are aware of the C.P.A. and its implications	Most	Most	Most
5.a.	Have tried to protect the hospital and employees from being sued by patients	Yes	-	Yes
b.	By	Providing the indemnity insurance	-	By instruction to take care of the patients and not to cause such situations.
c.	Hospital is covered by insurance against medical negligence	No	No	No
d.	Insurance coverage of the hospital is being considered	Yes	Yes	No

		Hospital 'A'	Hospital 'B'	Hospital 'C'
6.	The areas of services in the hospital that are more prone to medical negligence	1.Surgical 2.Medical 3.Anaesthesia	1.Surgical & Anaesthesia 2.Medical	1.Medical 2.Nursing
7.	Categories of employees more likely to be involved in negligent acts	1.Doctors & Administrator 2.Anaesthetists 3.Nurses	1.Doctors 2.Anaesthetists	1.Doctors 2.Administrators 3.Nurses
8.a.	Have (a) particular system for patients' comments/complaints/suggestions	No.	No	Under consideration
b.	Patients comments/complaints suggestions are treated	They are taken care off as and when they come.	-	-
9.a.	Consumer Protection Act is beneficial to the institution	Somewhat	Yes	No
b.	Beneficial (by) (if yes)	Doctors and staff can be more alert	To the extent this law increases the sense of responsibility of the medical personnel in rendering care and treatment	-
c.	Not beneficial (because) (If no)	-	-	This is going to cause more anxiety & financial involvement
10.a.	Consumer Protection Act needs to be modified	Yes	Yes	Don't Know

		Hospital 'A'	Hospital 'B'	Hospital 'C'
b.	Suggestions for modification of C.P.A.	1. A doctor to be in the panel 2. Penalty for false complaints and false claims 3. Government hospitals & doctors to be included	1. Prevent speculative litigation inspired by a motive to gain 2. Provision for payment of compensation to the doctors for false & unjustified complaints	
11.	Attitude towards those patients who may sue the institute or employees	Depends on the merit of the complaints	When the complaint happens to be prima facie true & justified sympathises with the patient concerned.	It is an eye opener to all the doctors, Nurses and Administrators.
12.	Comments about C.P.A.			
a.	Will improve the standard of medical profession & the quality of health care services	Yes	Yes	Yes
b.	It is a hindrance to the medical profession/ service	No	No	No
c.	It can destroy the image of the institution	Yes	Yes	No
d.	It can be a means to check malpractice and the quacks	Yes	Yes	Yes
e.	It will dampen the spirit of services of those institutions	No	No	No

		Hospital 'A'	Hospital 'B'	Hospital 'C'
13.	C.P.A. Causes closure of voluntary health care institutions	No	No	No
14.	C.P.A. will deter more voluntary hospitals being opened in future	No	No	No
15.	C.P.A. will tend to increase the cost of medical care	Yes	To a small extent	No
16.	Other comments/suggestions Hospital B :	 <p>- Compensation in excess of Rs. 1 lakh should not be legally admissible except in extraordinary cases, the nature of which should be specified.</p> <p>- The C.P.A. should perform a protective function and induce heightened sense of responsibility in medical personnel. but should not provide a means to litigious persons and legal professionals who are looking for a chance to make big money.</p> <p>Most doctors are careful in the way they work and with the C.P.A. hanging over their heads even if the amount that might have to be paid is less than Rs. 1 lakh they do what they can to avoid negligence. Why keep them in acute worry and anxiety with huge claims ? How much more careful do large claims make them than they would be if the claims were about Rs. 1 lakh ?</p>		

RESPONSES OBTAINED FROM DOCTORS

Questionnaires were prepared for doctors and distributed in three different hospitals. The distribution was planned in such a way that it could be answered by various categories of doctors. Total sample size was 60 (sixty). 30 questionnaires were answered by the doctors in Hospital 'A', 20 in Hospital 'B' and 10 in Hospital 'C'.

It was also divided in such a way so that 20 questionnaires were answered by General Surgeons; 10 by General Medicine (Physicians); and the remaining 10 by Anaesthetists 10 by the Obstetricians and gynaecologists and 10 by other specialists. All of them having experience of 10 years and more.

The distribution done was as below:

HOSPITAL 'A' : with bed strength - 800

Sample size - 30

- | | | |
|-------------------------------------|---|----|
| 1. General Surgeons | - | 10 |
| 2. Physicians | - | 5 |
| 3. Other Specialists | - | 5 |
| 4. Anaesthetists | - | 5 |
| 5. Obstetricians and Gynaecologists | - | 5 |

30

HOSPITAL 'B' : with bed strength - 600

Sample size 20

1. General Surgeons	-	7
2. Physicians	-	3
3. Other Specialists	-	3
4. Anaesthetists	-	4
5. Obstetricians and Gynaecologists	-	3
		<hr/>
		20
		<hr/>

HOSPITAL 'C' : with bed strength - 300

Sample size - 10

1. General Surgeons	-	3
2. physicians	-	2
3. Other Specialists	-	2
4. Anaesthetists	-	1
5. Obstetricians and Gynaecologists	-	2
		<hr/>
		10
		<hr/>

Responses obtained from the doctors

HOSPITAL 'A'

Sample Size - 30

1. a) <u>Medical negligence is a major problem in the country</u>		
Yes	16	53.3%
No	14	46.7%

53.3 per cent of the doctors considered medical negligence is a major problem in the country. But the remaining 46.7% were not very much aware of this problem.

b) Awareness of legal provisions in case of medical negligence

To great extent	8	26.7%
Somewhat	18	60.0%
Not much	4	13.3%

Only 26.7% of the doctors who responded to the questionnaire were well aware of the legal provisions in case of medical negligence. Sixty percentage had some idea about it but 13.5% were not at all aware of this fact.

2. Provisions of C.P.A. as it affects the medical profession

To great extent	12	40%
Somewhat	15	50%
Not much	3	10%

Fourty percent of the doctors seem to be aware of the provisions of C.P.A. to the medical profession a great extent and fifty percentage had some idea and ten percentage of them were not much aware of it.

3. The impact of C.P.A. on medical profession

Good	6	20%
Fair	17	56.7%
Bad	7	23.3%

Twenty percent of the doctors think of the impact of C.P.A. on the medical profession as good and 56.7% of them think it is fair. But 23.3% do think that the impact of C.P.A. on medical profession as bad.

4. a) C.P.A. will affect the doctor-patient relationship:

Yes	17	56.7%
No	13	43.3%

Around fifty seven percent of the doctors feel that the C.P.A. will affect their relationship with their patients and the other 43 percentage of them feel that these things will not come in their way where patients are concerned.

b) According to the response obtained from the doctors of hospital 'A', if C.P.A. affects the doctor-patient relationship then they will have resort to defensive medicine. They will be reluctant to take risk. They will be suspicious about patients; as a result, their relationship with the patients will be an unnatural one.

5. a) Membership in I.M.A.

Yes	13	43.3%
No	17	56.7%

About fortythree percent of the doctors are members of Indian Medical Association where as majority of them in this hospital do not belong to this association.

b) Application of C.P.A. to the medical profession :

Yes	17	56.7%
No	13	43.3%

Almost fiftyseven percent of the doctors are in favour of the application of C.P.A. to the service rendered by the medical profession whereas the rest of them about fortythree percent are not in favour.

6. a) Individual-Professional indemnity insurance :

Yes	9	30%
No	21	70%

Among the doctors who responded to the questionnaire only thirty percent have the individual

indemnity insurance against medical negligence;
the other seventy percent have not yet insured
themselves.

b) Professional indemnity insurance through the
institution :

Yes	30	100%
No	0	0

Hospital 'A' has provided all the (its)
doctors with professional indemnity insurance.

c) Feel the need to be insured :

Yes	12	40%
No	1	3.3%

While forty percent of its doctors feel the
need to protect themselves through indemnity insurance
only a very small percentage of them express that
they do not feel the need for it. The rest of the
doctors have abstained from expressing an opinion.

d) Insurance premium against medical negligence :

Very high	6	20%
Reasonable	18	60%

One fifth, i.e., twenty percent of the doctors
feel that the insurance premium is very high. Sixty

percent find it reasonable. Twenty percent have not expressed their feelings on the matter.

7. C.P.A. affects the professional freedom :

Yes	18	60%
No	12	40%

Sixty percent of the doctors think that the C.P.A. has an influence on their professional freedom. The other forty percent do not think in that way.

8. a) C.P.A. needs modifications:

Yes	24	80%
No	1	3.3%

Eighty percent of the doctors think that if C.P.A. continues to be applicable to the service rendered by the doctors, it needs to be modified. A small minority (3.3%) of doctors feel it does not require any modification. About seventeen percent of the doctors have not expressed their views regarding this modification.

b) Modifications suggested by some of the doctors to make C.P.A. more applicable to their services:

- To include doctors also in the panel;
- To protect the reputation of the concerned doctors

- To bring the Government hospitals and its doctors under the purview of the Consumer Protection Act.
- To make provisions for payments to be made to the doctors by the patient for baseless and false complaints.

9. a) I.M.C. can handle the problem of medical negligence efficiently:

Yes	13	43.3%
No	16	53.3%

Majority of the doctors (53.3%) feel that the Indian Medical Council is not able although it has the authority, to handle the problems of medical negligence, efficiently. Less than half (43.3%) feel that it is capable of handling them. A very small percentage (3.3%) of the doctors have not voiced their opinion.

b) Modification of the I.M.C. Act will make it adequate

Yes	8	26.6%
No	8	26.6%

A small percentage (26.6%) of the doctors who responded to the questionnaire is of the opinion that modifications will make the I.M.C. Act adequate. An equal number (26.6%) feel that modification will not make it adequate. Almost half of the doctors have not made any comment on the subject.

c) Some of the suggestions for modification of the I.M.C. Act:

- Power to fine the doctor and award damages to the patient.
- Power to monitor the C.P.A. instead of the C.P.A. monitoring the I.M.C.
- Power to monitor the professional competence of the doctors.
- I.M.C. should ensure quality doctors and not the rotten ones of today.
- Maintain the standard and quality in the private clinics and nursing homes.

10. Have faced problem in managing patients because of C.P.A.

Yes	1	3.3%
No	29	96.7%

Grand majority [96.7%] of the doctors agree that they have not faced any problem in managing patients

because of C.P.A. It is only a very small percent of 3.3 of the doctors that has faced such problems.

11. Measures taken towards self protection

Some of the measures that are taken by the doctors to protect themselves in the above mentioned situations are that :

- By explaining everything in detail to the patients and when necessary to the relatives regarding the patients condition, the treatment involved and the prognosis.
- By communicating to the patient in writing.
- By increasing the professional fee, to meet the insurance cost.

12. In view of C.P.A., the steps that can help to avoid litigation and its effects are as below:

- a) A large majority of the doctors in hospital 'A' i.e., 93.3% of them, agree that they need to provide proper explanation to the patients before and after each procedure / treatment.
- b) Around sixtyseven percent of the doctors here feel that regular visit to the patient to make sure that the patient is comfortable and gets all care is important.

- c) Almost eightyseven percent of the doctors are convinced that they have to get the patient's consent before every procedure/treatment.
- d) About sixtythree percent of the doctors want to avoid taking any risk. They prefer to consult others and refer the patients to other specialists.
- e) In this hospital 33.3% of the doctors feel safer by providing the emergency treatment and then refer the patient to more competent persons.
- f) One doctor (3.3%) suggests that proper medical records should be maintained. Importance should be given to audit and self assessment.

13. C.P.A. will improve the standard of medical profession and quality of care :

Yes	6	20%
No	5	16.7%
To an extent	17	56.7%

Twenty percent of the doctors are sure that C.P.A. will improve the standard of medical profession and the quality of health care services. Majority of them (56.7%) feel that to an extent it will improve the

standard and the quality of service. A small percentage of 17.7% feel the contrary.

b) Those, who are positive about the improvement in the standard of profession and quality of services, say that the C.P.A. will make the doctors more careful vigilant, responsible, accountable and will inspire them to exercise better judgement use reasonable care in their decision and treatment of the patient. They feel that the C.P.A. is an ideal means to check the quacks and stop the unethical and poor quality of medical care services.

c) Those who differ give their reasons :

- C.P.A. makes the medical professionals to be ruled by fear always.
- It has no control over the Government hospitals and doctors
- It encourages defensive medicine.

14. C.P.A. will make doctors resort to defensive medicine:

Yes	24	80%
No	5	16.7%

Eighty percent of the doctors in hospital 'A' feel that C.P.A. will make them resort to defensive medicine. A minority of 16.7% do not feel thus. 3.3% of the doctors have not expressed their opinion on this matter.

15. C.P.A. increases the cost of medical care :

Very much	14	46.7%
To some extent	15	50%
Not at all	0	0%

Exactly half of the doctors - fifty percentage of them feel that the C.P.A. will increase the cost of medical care to some extent. A slightly smaller percentage (46.7%) of them feel that it will increase very much. 3.3% of the doctors have not said anything about it.

16. Responses obtained from some of the doctors in hospital 'A' regarding their honest reaction to the patient who may sue them are as follows:

- If I am wrong I will accept my fault. If I am not at fault, then I will counter sue the patient in the law court.
- I do my best for the patient. I am not going to be bothered with these complaints.
- I will be polite, but I will defend myself

- I will use defensive medicine
- I will be outrageous
- I will react legally
- I will have nothing more to do with that patient

17. Other comments and suggestions

- Out of court settlement is always better.
- Do not let the lawyers be involved in it.
- C.P.A. is good; but must include in the Government hospitals and doctors
- Awareness has to be increased among the doctors
- Medical personnel must be included in the panel
- Doctors and patients need to be educated on C.P.A.

RESPONSES OBTAINED FROM DOCTORS OF HOSPITAL 'B'

Sample size. 20

1. a. Medical negligence is a major problem in the country

Yes	10	50%
No	10	50%

Fifty percent of the doctors in hospital 'B' feel that medical negligence is a major problem in the country. But the other half of them do not feel so.

b. Awareness of legal provision in case of medical negligence

To great extent	7	35%
Somewhat	11	55%
Not much	2	10%

Thirty five percent of the doctors are aware of the legal provisions in case of medical negligence to great extent. The majority of them that is fifty five percent of them have some ideas about it. Ten percent of the doctors are not very much aware of them.

2. Provisions of C.P.A. as it affects the medical profession

To great extent	9	45%
Somewhat	8	40%
Not much	3	15%

45% of the doctors are aware of the provisions of C.P.A. as it affects the medical profession to great extent. Forty percent are aware of it to a certain extent making a total of 85%. 15% are not very much aware of it.

3. The impact of C.P.A. on medical profession

Good	4	20%
Fair	8	40%
Bad	8	40 %

Only twenty percentage of doctors in hospital 'B' think that the impact of C.P.A. on medical profession is good. While forty percent of them think that its impact is fair, the other forty percent view it as bad,

4.a.C.P.A. will affect the doctor-patient relationship

Yes	15	75%
No	5	25%

While seventyfive percent of the doctors think that the C.P.A. will affect their relationship with their patients, twenty five percent of them think the other way.

- b. As per the response obtained, C.P.A. will affect them in such a way that they will be forced to use defensive medicine, avoid taking any risk and finally end up in problem for the patient. They feel that with the C.P.A. in action they will have an unnatural relationship with their patients.

b. Professional indemnity insurance through the institution

Yes	0	0
No	10	100%

None of the doctors are insured by the institution.

c. Feel the need to be insured

Yes	18	90%
No	2	10%

Ninety percent of the doctors feel the need to be insured against professional/medical negligence while the remaining ten percent do not feel the need for it.

d. Insurance premium against medical negligence

Very high	2	10%
Reasonable	11	55%

Majority (55%) of the doctors feel that the insurance premium is reasonable while ten percent of them feel that it is very high. Thirty five percent of the doctors have not voiced their opinion on this matter.

7. C.P.A. affects the professional freedom

Yes	19	95%
No	1	5%

The smallest possible percentage of doctors (5%) among the respondents feel that the C.P.A. will not affect their professional freedom. All the rest which makes 95% of the doctors feel very strongly that the C.P.A. will affect their professional freedom.

8. a. C.P.A. needs modification

Yes	19	95%
No	0	..

Ninety five percent of the doctors responded feel that the C.P.A. needs to be modified, if it is to continue to be applicable to the service rendered by them. The remaining five percent have not said anything about the need for modification.

b. In order to modify the C.P.A., some of their suggestions:

- . Include the doctors in the panel of judges.
- . Bring the government hospitals and doctors also under the purview of C.P.A.

- . Compensation must be awarded to the doctors falsely accused.
- . Protect the reputation of the doctors.

9. a. I.M.C. can handle the problem of medical negligence efficiently

Yes	8	40%
No	12	60%

Majority of the doctors (sixty percent) feel that the Indian Medical Council is not able to handle the problems of medical negligence efficiently. Only forty percent are for the I.M.C. handling them.

b. Modification is required to make the I.M.C. Act (more) adequate.

Yes	11	55%
No	3	15%

Fifty five percent of the doctors feel that the I.M.C. Act must be modified so that it will become capable of handling the problems of medical negligence efficiently. Only 15% do not feel the need for modification of the act. 30% of the doctors have not responded.

c. Some of the suggestions brought out by these doctors towards the modification of the I.M.C. Act :

- . Power to raise the standard of the medical profession and quality of services especially in the private clinics and nursing homes.
- . Power to monitor the professional competence of the doctor.
- . Power to punish the negligent doctors and award the damages.
- . Power to monitor the C.P.A.

10. Have faced problem in managing patients because of C.P.A.

Yes	0	0
No	19	95%

Ninety five percent of the doctors seem not to have faced any problem because of C.P.A. The remaining five percent has not given any response to this question.

11. Measures taken towards self protection

In order to protect self some of the measures taken as per the responses are :

- . Proper explanation and information provided to patients and relatives, regarding their illness, treatment and the expected outcome.

- . Communicating to the patient in writing
- . Personal indemnity insurance, the cost of which is charged to the patients.
- . Defensive medicine

12. Some of the steps that the doctors are in favour which will help to avoid litigation and its effects in view of C.P.A.:

- a. Eighty five percent of the doctors feel that proper explanation before and after treatment is helpful.
- b. Eighty percent of the doctors are convinced that consent before any treatment is a must.
- c. Seventy percent of the doctors agree that regular visits, ensuring the comforts and care to the patients will avoid litigations.
- d. Sixty five percent of the doctors prefer to avoid taking any risk.
- e. Forty five percent of the doctors are for giving the emergency treatment and then refer the patient to a more competent person.
- f. Two doctors (ten percent) suggest proper treatment and good rapport with the patients and their relatives to avoid litigation and its effects.

13. a. C.P.A. will improve the standard of medical pro-
feession and quality of medical services

Yes	3	15%
No	3	15%
To an extent, Yes	13	65%

While fifteen percent of the doctors are convinced that C.P.A. will improve the standard of medical profession and quality of medical service, sixty five percent of the doctors agree that to an extent it will improve the standard and quality of the medical profession. This makes a total of 80%. Only 15% disagree completely.

- b. These doctors who are optimistic about the C.P.A. improving the standard of the profession and quality of service strengthen this statement by adding their views.
- . C.P.A. is the weapon to weed out the quacks, to straighten the unethical doctors and their poor quality services.
- . It will enable the doctors to be accountable, prompt them to be careful and vigilant and enable them also to accept responsibility for their own words and deeds.

- c. Those who entertain the negative feelings state that it is like the rod against the doctors. It makes discrimination as the Government hospitals are excluded from it.

14. C.P.A. will make doctors resort to defensive medicine

Yes	20	100%
No	0	0

All the doctors to whom the questionnaire were distributed unanimously agree that C.P.A. will make them resort to defensive medicine.

15. C.P.A. will increase the cost of medical care

Very much	15	75%
To some extent	5	25%
Not at all	0	0

Seventy five percent of doctors responded are very sure that the C.P.A. will increase the cost of medical care. Twenty five percentage of them feel that it will increase the cost to some extent. This makes it that all the doctors think that the cost of medical care will increase due to C.P.A.

16. The responses of some of the doctors in the hospital 'B' regarding their reaction towards the patient who may sue the doctors are as follows:

- . If I am sued and if negligence is not proved, then I will sue him in the court.
- . I will be indifferent to such patient thereafter
- . I will use defensive measures.
- . I will teach him a lesson,
- . I will warn him to be careful

17. Other comments and suggestions

- . Include the doctors in the panel of judges.
- . Include the Government sector.
- . Discourage the involvement of lawyers who make it a means to earn easy money.
- . Create awareness among the doctors and patients.
- . Strengthen the I.M.A. and the I.M.C.

RESPONSES OBTAINED FROM THE DOCTORS OF HOSPITAL 'C'

Sample size 10

1. a. Medical negligence is a major problem in the country

Yes	7	70%
No	3	30%

Seventy percent of the doctors in this hospital think that medical negligence is a major problem, in the country, whereas the remaining thirty percent do not think this to be a major problem.

b. Awareness of legal provision in case of medical negligence

To great extent	2	20%
Somewhat	5	50%
Not much	3	30%

Twenty percent of the doctors seem to be aware of the legal provisions in case of medical negligence, to a great extent while fifty percent of the doctors are somewhat aware of it. Thirty percent of them are not much aware of this fact.

2. Provision of C.P.A. as it affects the medical profession

To great extent	3	30%
Somewhat	5	50%
Not much	2	20%

Thirty percent of the doctors who responded are aware of the provisions of C.P.A. as it affects the medical profession. Fifty percent of them have some idea about it while the remaining twenty percent has very little of it.

3. The impact of C.P.A. on the medical profession

Good	3	30%
Fair	6	60%
Bad	1	10%

Thirty percent of the doctors responded consider the C.P.A. to be having good impact on the medical profession, whereas majority of them, i.e., sixty percent think its impact is fair and the remaining ten percent consider it as bad.

4. a. C.P.A. will affect the doctor-patient relationship

Yes	5	50%
No	5	50%

Fifty percent of the doctors who responded feel that the C.P.A. will affect their relationship with their patients whereas the remaining fifty percentage of them do not think so.

- b. Those who feel that the C.P.A. will affect their relationship with their patients remark that the C.P.A. will make them have resort to defensive medicine. They will be always suspicious about every patient who goes to the doctor and also they will be very reluctant to take any risk.

5. a. Member of I.M.A.

Yes	5	50%
No	5	50%

Fifty percent of the doctors who responded are members of the Indian Medical Association while the remaining fifty percent are not.

b. Application of C.P.A. to the medical profession

Yes	4	40%
No	6	60%

Majority consisting of sixty percent of the doctors are not in favour of the C.P.A. being applied to the medical profession and the service rendered by the doctors. The other forty percent of them have no objection.

6. a. Individual professional indemnity insurance

Yes	3	30%
No	7	70%

While a smaller 30% of the doctors who responded have the professional indemnity insurance individually the majority of seventy percent of them do not have it.

b. Professional indemnity insurance through the institution

Yes	0	0
No	10	100%

None of these doctors are insured by the institution in which they work.

c. Feel the need to be insured

Yes	5	50%
No	1	10%

Fifty percent of these doctors feel the need to be insured whereas only ten percent have said that they do not feel the need to be insured. Forty percent of the doctors have not given their response to this question.

d. Insurance premium against medical negligence

Very high	2	20%
Reasonable	5	50%

Among the seventy percent of the doctors who responded to this question twenty percent feel that it is very high. Fifty percent feel that the insurance premium against medical negligence is reasonable.

7. C.P.A. affects the professional freedom

Yes	5	50%
No	5	50%

Fifty percent of the doctors feel that the C.P.A. affects their professional freedom while the other fifty do not feel that the C.P.A. comes on their way.

8. a. C.P.A. needs modification

Yes	7	70%
No	2	20%

The majority (seventy percent) of the doctors are convinced that the C.P.A. needs to be modified whereas twenty percent of the doctors do not think so. Ten percent remained silent on this matter.

b. Some of the suggestions that were brought out by the doctors of hospital 'C'.

- Protect the reputation of the concerned doctors
- Include the doctors in the panel.
- Bring the Government hospitals and the government doctors also within the purview of the Act.
- Provision for the compensation of the doctors and hospitals that were falsely found fault with.

9.a. I.M.C. can handle the problem of medical negligence efficiently

Yes	5	50%
No	5	50%

The doctors who responded to this question are of divided opinion. While the fifty percent of them are convinced of the efficiency of the I.M.C. in the matter an equally strong fifty percentage feel the other way.

b. Modification of the I.M.C. Act will make it adequate

Yes	5	50%
No	1	10%

Fifty percentage of the doctors feel that the modification of the I.M.C. Act will make it adequate; ten percent disagree on this point; forty percent remained silent.

c. The suggestions brought out by the doctors towards the modification of the I.M.C. Act:

- . Power to fine and awarded damages.
- . power to monitor the professional competence of the doctors.
- . Power to have more control over the private clinics and nursing homes where standard and quality need to be ensured.
- . Power to monitor the C.P.A. instead of C.P.A. monitoring the I.M.C.

10. Have faced problem in managing patients because of C.P.A.

Yes	0	0
No	10	100%

None of the doctors who responded seem to have faced any problem in managing patients because of C.P.A.

11. Measures taken towards self protection

- . Proper explanation to the patient, providing the patient with all the necessary information and secure informed consent.
- . Communicate to the patient in writing
- . Maintain the proper and essential medical records
- . Having the professional indemnity insurance.
- . Meeting the insurance cost by passing it on to the patient.

12. Main steps to avoid litigation and its effects in view of C.P.A.

- a. Provide proper explanation to the patient before and after every treatment / procedure. Hundred percent of the doctors agree on this point.

- b. Make the patient consent before every procedure / treatment. Ninety percent of the doctors are convinced of this need.
 - c. Seventy percent of the doctors feel sincerity and honesty with the patient is the step that will really lead you away from litigation and its effects.
 - d. Regular visits to the patient to ensure that he is comfortable and gets all care. Sixty percent of the doctors think in this way.
 - e. Provide emergency treatment and then refer the patient to more competent persons. Sixty percent of the doctors think it is a good step to be taken.
 - f. Avoid taking risks, consult other doctors and refer the patients to the other specialists. Only forty percent of the doctors favour this idea.
13. a. C.P.A. will improve the standard of medical profession and the quality of service
- | | | |
|------------------|---|-----|
| Yes | 3 | 30% |
| No | 5 | 50% |
| To an extent yes | 2 | 20% |

Thirty percent of the doctors are of the opinion that C.P.A. will improve the standard of medical profession and the quality of services. Twenty percent feel that it will improve the standard and the quality in the field to an extent while fifty percent strongly disagree.

- b. Those who are of the opinion that it will improve the standard of the medical profession and the quality of service, support the statement by saying that,
 - . C.P.A. will make the doctors alert, careful, vigilant, responsible, accountable; they will exercise better judgement and reasonable degree of care in their decisions and treatment of the patient.
 - . They are convinced that it is an ideal means to check the quacks and stop malpractice.
- c. Those who differ on the point give their reasons:
 - . C.P.A. will be the rod and the doctor will be always ruled by fear.
 - . It has no control over the health care and the medical profession in the Government sector.

- . It makes doctors to resort to defensive medicine.

14. C.P.A. will make doctors resort to defensive medicine

Yes	7	70%
No	3	30%

While seventy percent of the doctors are convinced that C.P.A. will make them resort to defensive medicine, thirty percent of them do not think so. The remaining ten percent have not voiced their opinion.

15. C.P.A. will increase the cost of medical care.

Very much	6	60%
To some extent	2	20%
Not at all	1	10%

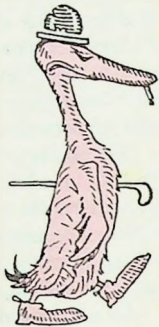
Sixty percent of the doctors strongly feel that the C.P.A. will increase the cost of medical care. Twenty percent of them feel that it will increase the cost only to some extent while ten percent do not think that C.P.A. will make any difference in the medical care where cost is concerned. Ten percent of the doctors have not given their view on the matter.

Types of medical negligence

Medical negligence may assume a variety of forms.

1. Negligence in diagnosis : A proper diagnosis of the illness is the first duty of a medical practitioner. A wrong diagnosis leading to any injury to the patient may invite liability in law.
2. Negligence in diagnostic aids : Adequate investigations using acceptable means of diagnostic aids ~~are~~ necessary for arriving at a proper diagnosis. It may be necessary to consult an expert in some cases. If there is negligence on the part of the practitioner to seek expert advice in a given case, (e.g.: interpretation of an x-ray film), the doctor may be held liable.
3. Administration of drugs : Doctors and nurses have been held liable for negligent administration of a drug leading to death or injury of a patient.
4. Failure to take precaution : Every medical practitioner is expected to take reasonable precaution in the treatment of his / her patients. There are certain drugs which are known to cause adverse reaction to certain patients. Such drugs are to be administered only after test dose has been administered. Otherwise, the doctor can be held liable for negligence.
5. Consent of the patients : In a surgical operation or any intervention on the body of a person, the written consent of the person concerned is necessary if she/he is capable of giving it. If she/he is unable to give such a consent, someone competent should be asked to do it on his/her behalf. If a surgeon operates upon a person without or against the consent, he/she can be held legally liable for negligence.

6. Failure to give advice : A doctor can be held legally liable if, due to lack of reasonable skill and care, he fails to give advice or undertake treatment which was necessary in the circumstances. An honest doctor must either personally consult or refer his/her patient to a more competent doctor if the practitioner cannot arrive at a reasonable degree of certainty with regard to proper diagnosis.



7. The operation theatre : A number of litigations emanate from the operation theatre. These cases mostly relate to negligence in respect of activities connected with the operation process such as : Unhygienic conditions of the theatre; negligence with regard to the sterilisation of instruments, gloves, linen, etc. Inadequate preparation of the patient for the operation; leaving sponges, forceps or other instruments inside the patient's body; burns or other injuries caused in the course of treatment / operation, etc.

A person who holds himself out as a medical practitioner impliedly undertakes that he is possessed of the requisite skill and knowledge for the purpose. Such a person owes the patient certain duties, namely,

- a) a duty of care in deciding whether to undertake a case or not;
- b) a duty of care in deciding what treatment to give;
- c) a duty of care in the administration of that treatment
- d) and a duty of care in answering questions put to him by the patient, in circumstances in which he knows that the patient intends to rely on his answer.



A breach of these duties will support an action for negligence by the patient.

a. Personal liability :

Individual staff members are personally liable for the consequences of their acts. This liability is almost always based on the principle of fault. To be liable, the person must have done something wrong or must have failed to do something that should have been done.

b. Liability for employees and agents :

Employers can be liable for the consequences of the job-related acts of their employees or agents even if the employer is not at fault personally.

c. Institutional liability : Institutions can also be liable for the consequences of breaches of duties owed directly to the patients and others, such as the maintenance of buildings and grounds, maintenance of equipments and furnitures, and selection and supervision of employees and medical staff.



Vicarious liability

As a general rule a man is responsible / liable only for his own act; but there are certain circumstances in which a person is liable for the wrong committed by others. This is called Vicarious liability.

Consumer Protection Act : The Act says, "Consumer Protection Act is an Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer's disputes and for matters connected therewith." 39

It provides for better protection of the interests of consumers and for the purpose, makes provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith.

"It seeks, inter alia, to promote and protect the right of consumers such as:-

- (a) the right to be informed about the quality, quantity, potency, purity, standard, and price of goods to protect the consumer against unfair trade practices;
- (b) the right to be protected against marketing of goods which are hazardous to life and property;
- (c) the right to be assured wherever possible, access to an authority of goods at competitive price;
- (d) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;
- (e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and right to consumer education.

These objects are sought to be promoted and protected by the Consumer Protection Council to be established at the Central and State level.

Medical Negligence

Legal remedy

Criminal liability: (section 304A, IPC): Grossly rash or grossly negligent act, which is proximate, direct or substantive cause of patient's death.

Civil liability: (sections 73 and 74 of Indian Contract Act): Medical services rendered on payment of a fee.

Law of torts: Breach of contract, whether patient pays or not.

Consumer Protection Act.

Types of negligence

1. Negligence in diagnosis
2. Administration of drugs
adverse drug reactions; test dose
side effects: failure to warn patient
3. Failure to consult expert
4. Incidents in operation theatre
 - i. wrong operation
 - ii. negligent administration of anaesthetic
 - iii. unhygienic condition of operation theatre
 - iv. use of non-sterile instruments/materials
 - v. use of non-sterile fluids
 - vi. inadequate preparation of the patient
 - vii. injuries caused during operation (eg; burns)
 - viii. leaving items inside the body
5. Failure to listen to patients' complaints
of pain and discomfort resulting
from treatment.
6. Negligent exposure to infection
7. Inadequate supervision
8. Inadequate or incompetent staff.

16. Sincere reaction to the patients who may sue the doctor

Some of the doctors who expressed their reaction to the patient who may sue them stated :

- . I will accept the fault if I am guilty. If not, I will counter sue him in the civil court.
- . I will teach him a lesson by not attending to him thereafter.
- . This is not going to bother my life. I will carry on with my work.
- . Why should I worry if I carry a clear conscience?
- . I will be polite but will react legally.
- . I will defend myself in the court.

17. Other comments and suggestions

- . A "Legal Cell" of medical professionals must be formed to fight the lawyers who support the C.P.A. for whom it is a good source of income.
- . More discussions before legislation.
- . C.P.A. in itself is good. But the discrimination makes it bad.
- . Include doctors in the panel.
- . C.P.A. is good if properly used.

COMPARATIVE ANALYSIS OF THE RESPONSES OBTAINED FROM THE
DOCTORS OF HOSPITAL 'A' , 'B' AND 'C'.

1: a. Medical negligence is a major problem in the country

	Hospital A		Hospital B		Hospital C		Total Responses obtained	
<u>Sample Size</u>	30		20		10		60	
Yes	16	53.3%	10	50%	7	70%	33	55%
No	14	46.7%	10	50%	3	30%	27	45%

While comparing the opinions of the doctors from the three hospitals, it is evident that the doctors in hospital 'C' seem to consider that medical negligence is a major problem in the country, much more than the doctors in hospitals 'A' and 'B' which are more or less on the same level. On the whole majority of the doctors (fifty five percent) think that the medical negligence is a major problem in the country.

b. Aware of the legal provisions in case of medical negligence

	Hospital A		Hospital B		Hospital C		Total Responses obtained	
<u>Sample size</u>	30		20		10		60	
To great extent	8	26.7%	7	35%	2	20%	17	28.3%
Somewhat	18	60%	11	55%	5	50%	34	56.7%
Not much	4	13.3%	2	10%	3	30%	9	15%

Majority of the doctors are somewhat aware of the legal provisions in case of medical negligence. About fifty seven percent of them in total have some idea about it. Twenty eight percent of them are aware of it, to a great extent. Fifteen percent of them do not seem to know much about it.

2. Aware of the provisions of C.P.A. as it affects the medical profession.

	Hospital A		Hospital B		Hospital C		Total Responses	
<u>Sample size</u>	30		20		10			
To great extent	12	40%	9	45%	3	30%	24	40%
Somewhat	15	50%	8	40%	5	50%	28	46.7%
Not much	3	10%	3	15%	2	20%	8	13.3%

Comparison of the doctors' awareness of the provision of C.P.A. as it affects the medical profession shows that about half of them (46.7%) are somewhat aware only. Forty percent are aware of it to a great extent; 13.3% do not know much about it.

3. Impact of C.P.A. on medical profession

	Hospital A		Hospital B		Hospital C		Total Responses	
<u>Sample size</u>	30		20		10		60	
Good	6	20%	4	20%	3	30%	13	21.6%
Fair	17	56.7%	8	40%	6	60%	31	51.7%
Bad	7	23.3%	8	40%	1	10%	16	26.7%

Majority of the doctors in all three hospitals consider the impact of C.P.A. on the medical profession to be fair. 21.6% of them view it as good; 26.7% considers it as bad. On the whole, the impact of C.P.A. on the medical profession seems to be rather encouraging.

4. C.P.A. will affect the doctor-patient relationship

	Hospital A		Hospital B		Hospital C		Total Responses	
<u>Sample size</u>	30		20		10		60	
Yes	17	56.7%	15	75%	5	50%	37	61.7%
No	13	43.3%	5	25%	5	50%	23	38.3%

A majority of doctors in total think that C.P.A. will affect their relationship with their patients. In hospital 'B' seventy five percentage of them are convinced that it is going to affect their relationship with their patients. While in Hospital 'A', smaller majority feels in the same way, in Hospital 'C', there is an equal division in the way they think about C.P.A. On the whole, majority of them reveal concern.

b. Those who thought that C.P.A. is going to affect their relationship with their patients, said that because of C.P.A., they will be forced to resort to defensive medicine, avoid taking risks and they will have an unnatural relationship with their patients.

5. a. Membership in I.M.A.

	Hospital A	Hospital B	Hospital C	Total Responses
Sample Size	30	20	10	60
Yes	13 43.3%	17 85%	5 50%	35 58.3%
No	17 56.7%	3 15%	5 50%	25 41.7%

Comparative responses of the doctors from the three hospitals indicates that 58.3% of the doctors in total are members of the Indian Medical Association while 41.7% do not belong to this association.

b. In favour of the application of C.P.A. to the medical profession

	Hospital A	Hospital B	Hospital C	Total Responses
Sample size	30	20	10	60
Yes	17 56.7%	13 65%	4 40%	34 56.7%
No	13 43.3%	7 35%	6 60%	26 43.3%

This question was answered by every doctor to whom the questionnaires were administered. Majority of them (56.7%) are in favour of the application of C.P.A. to the medical profession. There is still a rather big opposition to it by the doctors as 43.3% of them are against the application of C.P.A. to the medical profession.

6 a. Professional indemnity insurance individually

	Hospital A		Hospital B		Hospital C		Total Responses
<u>Sample size</u>	30		20		10		
Yes	9	30%	4	20%	3	30%	16 26.7%
No	21	70%	16	80%	7	70%	44 73.3%

On the whole, there is a very small percent of the doctors ^{who} are insured individually and have the professional indemnity insurance against medical negligence. 26.7% of them have professional indemnity insurance while 73.3% are without it.

b. Professional indemnity insurance through the institution

	Hospital A		Hospital B		Hospital C		Total Responses
<u>Sample size</u>	30		20		10		60
Yes	30	100%	0	..	0	..	30 50%
No	0	..	20	100%	10	100%	30 50%

The comparative study of the responses revealed that only hospital 'A' has provided its doctors with professional indemnity insurance while hospitals 'B' and 'C' have not covered their doctors with professional indemnity insurance.

c. Feel the need to be insured

	Hospital A		Hospital B		Hospital C		Total responses
Sample size	30		20		10		60
Yes	12	40%	18	90%	5	50%	35 58.3%
No	1	3.3%	2	10%	1	10%	4 6.7%

Only sixty five percent of the doctors responded; majority of them feel the need to have the professional indemnity insurance. Only 6.7% have expressed that they do not feel the need for it.

d. Insurance premium against medical negligence :

	Hospital A		Hospital B		Hospital C		Total Responses
Sample size	30		20		10		60
Very high	6	20%	2	10%	2	20%	10 16.7%
Reasonable	18	60%	11	55%	5	50%	34 56.7%

Almost 27% of the doctors have not responded as to how they feel about the insurance premium against medical negligence. 16.7% of doctors feel it is very high; 56.7% of the doctors feel it is reasonable.

7. C.P.A. affects the professional freedom

	Hospital A		Hospital B		Hospital C		Total response	
<u>Sample size</u>	30		20		10		60	
Yes	18	60%	19	95%	5	50%	42	70%
No	12	40%	1	5%	5	50%	18	30%

Every doctor has responded to this question. On the whole, grand majority of them (seventy percent) of them think that C.P.A. affects their professional freedom; the remaining thirty percent feel that C.P.A. does not come on their way. Since such a big majority of them feel that it affects their professional freedom, it seems to be something that they are sensitive.

8. a. C.P.A. needs modification

	Hospital A		Hospital B		Hospital C		Total responses	
<u>Sample size</u>	30		20		10		60	
Yes	24	80%	19	95%	7	70%	50	83.3%
No	1	3.3%	0	..	2	20%	3	5%

The doctors of these three hospitals feel that C.P.A. needs modification. On the whole, 83.3% of the doctors feel that modification of C.P.A. is a must while only five percentage of them do not feel the need for it. 11.7% of the doctors have not responded to the question. Since such a big majority of them are so convinced of the need for modification of the C.P.A., it will be good to look into the matter and thus ensure the co-operation of the medical professionals.

b. There were many suggestions with regard to the modification of C.P.A.

- . To include the medical professionals in the panel.
- . To include the Government hospitals and its doctors also within the boundaries of the C.P.A.
- . To protect the reputation of the doctor concerned.
- . To make provisions for the compensation of doctors by the patient if the doctor is not proved to be negligent.

9. a. I.M.C. can handle the problem of medical negligence efficiently

	Hospital A		Hospital B		Hospital C		Total Responses
Sample size	30		20		10		60
Yes	13	43.3%	8	40%	5	50%	26 43.3%
No	16	53.3%	12	60%	5	50%	33 55%

When looked at the responses together, it is evident that majority (55%) of the doctors feel that the I.M.C. is not able to handle the problems of medical negligence efficiently. 43.3% of the doctors in total are convinced that the I.M.C. can handle them well. A small percent of 1.7% remains silent on the subject.

b. Modification will make the I.M.C. Act adequate

	Hospital A		Hospital B		Hospital C		Total responses	
<u>Sample size</u>	30		20		10		60	
Yes	8	26.7%	11	55%	5	50%	24	40%
No	8	26.7%	3	15%	1	10%	12	20%

Forty percent of the doctors feel that modification will make the I.M.C. Act adequate. There are only twenty percent to contradict this statement. Forty percent of the doctors abstained.

c. Those who felt that the modification of the I.M.C. Act will make it efficient to handle the problem of medical negligence adequately have made a few suggestions. IMC must have power to :

- . Fine and also award damages;
- . Monitor the professional competence of the doctors;

- . monitor and maintain the standard and quality especially in the private clinics and nursing homes;
- . control and provide admissions only on merit and never on capitation fee which is the root cause of the tragedy in the medical profession; and
- . control and handle the quacks who spoil the medical profession.

10. Have faced problems in managing patients because of C.P.B.

	Hospital A		Hospital B		Hospital C		Total responses
Sample size	30		20		10		60
Yes	1	3.3%	0	..	0	..	1 1.7%
No	29	96.7%	19	95%	10	100%	58 96.7%

A very small percentage of the doctors seem to have faced problem in managing patients because of C.P.A. 96.7% of the doctors never seem to have faced any problem in managing patient because of C.P.A. against just 1.7% of doctors who have faced the problem.

11. The doctors responded that the measures that they have taken to protect themselves from facing problem in managing patients because of C.P.A. are :

- . Explaining everything required and providing the patients with all the necessary information regarding the disease, the treatment required and also about the expected prognosis.

- . By communicating to the patient in writing.
- . By raising the professional fee to meet the insurance cost.

12. In view of the Consumer Protection Act, some of the steps that can help in avoiding litigations and its effects in the order of preference by the doctors of the three hospitals are as follows :

	Hospital A	Hospital B	Hospital C	Total responses
Sample size	30	20	10	60
1) Provide proper explanation to the patient before and after each treatment/ procedure.	28 93.3%	17 85%	10 100%	55 91.7%
2) Make the patient consent before any treatment/procedure	26 86.7%	16 80%	9 90%	45 75%
3) Regular visits to the patient to make sure that he is comfortable and gets all the care	20 66.7%	14 70%	6 60%	40 66.7%
4) Avoid taking any risk..... consult others and refer to the specialists	19 63.3%	13 65%	4 40%	36 60%
5) provide the emergency treatment and then refer the patient to other specialists	10 53.3%	9 45%	6 60%	25 41.7%

b) Suggestions added by the doctors are :

- . maintain proper medical records, audit and self assessment;
- . provide good treatment;
- . maintain good rapport with the patients and their relatives; and
- . be sincere and honest with the patients always.

13. a. C.P.A. will improve the standard of medical profession and quality of services

	Hospital A		Hospital B		Hospital C		Total Responses	
Sample size	30		20		10		60	
Yes	6	20%	3	15%	3	30%	12	20%
No	5	16.7%	3	15%	5	50%	13	21.7%
To an extent, yes	17	56.7%	13	65%	2	20%	32	53.3%

The comparative study of the responses indicates that C.P.A. will improve the standard of medical profession and the quality of services to some extent. while the majority of doctors (53.3%) say that C.P.A. will improve the standard and quality to an extent only, 20% of them are convinced and are positive that C.P.A. will help in the improvement of medical care. 21.7% of the doctors do not seem to agree with the statement. There are also another 5% of the doctors who

maintained their silence on the matter. On the whole, a good majority of these doctors seem to be positive about the C.P.A. as a means to raise the standard of the medical profession and improve the quality.

b. Those who said that it will improve the standard of medical profession and the quality of service strengthen their opinion by the following suggestions.

- . C.P.A. will make the doctors more careful, vigilant, responsible, accountable and prompt them to exercise better judgement and use reasonable care in their decisions as well as treatment of the patients.
- . It will raise the standard by checking the quacks.
- . It will put a halt to the malpractices going on in the medical field today.
- . Above all, it will ensure the safety of the patients.

c. Those who were not convinced that C.P.A. will improve the standard of medical profession and quality of service give their reasons:

- . C.P.A. is one sided. It leaves the Government sector out of its purview and is hard on the private sector providing licence to the Government sector and its doctors to do what they want.
- . It encourages the use of defensive medicine indirectly.

- . It is a source of big money for lawyers.
- . It makes the doctors to live in fear.

14. C.P.A. will make doctors resort to defensive medicines

	Hospital A		Hospital B		Hospital C		Total responses	
<u>Sample size</u>								
Yes	24	80%	20	100%	7	70%	51	85%
No	5	16.7%	0	..	3	30%	8	13.3%

In total eighty five percentage of the doctors are very strong on the point that C.P.A. will make them resort to defensive medicine. It is only 13.3% who think the other way; 1.7% of the doctors do not say anything.

15. C.P.A. will increase the cost of medical care.

	Hospital A		Hospital B		Hospital C		Total Responses	
<u>Sample size</u>	30		20		10		60	
Verymuch	14	46.7%	15	75%	6	60%	35	58.3%
To some extent	15	50%	5	25%	2	20%	32	36.7%
Not at all	0		0		1	10%	1	1.7%

The responses of the doctors show that a majority of them are of the opinion that C.P.A. will increase the cost of medical care. While 58.3% of them feel that it will be increased very much, a smaller percentage of them feel that it will increase the cost of medical care to some extent, making a total of 95%. There is only 1.7% to oppose the

two groups above and 3.3% of the doctors have not responded.

16. When the doctors were asked as to what would be their sincere reaction to those patients who may sue the doctor, the responses obtained from most of them are:

- . If I am wrong, I will accept the punishment. But if I am not wrong, then I will counter sue the patient in the civil court.
- . I will first examine myself and see as to where I had gone wrong.
- . I will be polite but will defend myself.
- . I will have nothing more to do with the patient.
- . My reaction will be legal.
- . The law of the land is good enough unless I have really made a blunder.
- . My reaction will be one of anger and disappointment.
- . I will use defensive medicine.

17. Other comments and suggestions: The most representative ones are :

- . Formation of a legal cell of medical professionals to fight the lawyers who make money out of C.P.A.
- . Include doctors in the panel.

- . Increase the awareness among doctors.
- . Out of court settlement without involving the lawyers.
- . More discussion before legislation.
- . C.P.A. in itself is good, provided it is not one sided as it is at present. Keeping the Government hospitals and doctors out of it, while including private doctors and hospitals is not correct.
- . C.P.A. encourages defensive medicine.

RESPONSES OBTAINED FROM VARIOUS CATEGORIES OF DOCTORS

1.a) Medical negligence is a major problem in the country.

	General Surgery	General Medicine	Specia- lities	Anaesthe- siology	O.B.Gyn.
	(1)	(2)	(3)	(4)	(5)
Sample size	20	10	10	10	10
Yes	12 (60%)	8 (80%)	5 (50%)	10 (100%)	6 (60%)
No	8 (40%)	2 (20%)	5 (50%)	0	4 (40%)
No response	0				

b) Aware of the legal provisions in case of medical negligence.

To great extent	6 (30%)	5 (50%)	2 (20%)	1 (10%)	3 (30%)
Somewhat	13 (65%)	5 (50%)	6 (60%)	8 (80%)	4 (40%)
Not much	1 (5%)	0	2 (20%)	1 (10%)	2 (20%)
No response	0	0	0	0	1 (10%)

2. Aware of the provisions of C.P.A as it affects the medical profession

To great extent	12 (60%)	6 (60%)	3 (30%)	6 (60%)	3 (30%)
Some what	7 (35%)	4 (40%)	6 (60%)	4 (40%)	5 (50%)
Not much	1 (5%)	0	1 (10%)	0	2 (20%)
No response	0	0	0	0	0

3. The impact of C.P.A on medical profession

	(1)	(2)	(3)	(4)	(5)
Sample size	20	10	10	10	10
Good	5 (25%)	2 (20%)	4 (40%)	2 (20%)	0
Fair	8 (40%)	6 (60%)	2 (20%)	5 (50%)	8 (80%)
Bad	7 (35%)	2 (20%)	4 (40%)	3 (30%)	2 (20%)
No response	0	0	0	0	0

4.a) The C.P.A will affect the doctor's relationship with his patients

Yes	15 (75%)	6 (60%)	5 (50%)	7 (70%)	5 (50%)
No	5 (25%)	4 (40%)	5 (50%)	3 (30%)	5 (50%)
No response	0	0	0	0	0

b) If yes then how?

Resort to defensive medicine. It makes the doctor over conscious; Self protection; the doctor may lose his human touch for the patient; Suspicion of every patient; will be relectant to take risk; Result in unnatural doctor patient relationship; Doctor may use negative medicine; Profession will be made into a trade and business; will become more meticulous about the details.

5. a) A member of Indian Medical Association

	(1)	(2)	(3)	(4)	(5)
Sample size	20	10	10	10	10
Yes	14 (70%)	8 (80%)	5 (50%)	5 (50%)	3 (30%)
No	6 (30%)	2 (20%)	5 (50%)	5 (50%)	6 (60%)
No response	0	0	0	0	0

b) In favour of the application of C.P.A to the service rendered by the medical profession

Yes	10 (50%)	6 (60%)	2 (20%)	7 (70%)	6 (60%)
No	10 (50%)	4 (40%)	8 (80%)	3 (30%)	2 (20%)
No response	0	0	0	0	0

6. a) Have professional indemnity insurance individually

Yes	5 (25%)	3 (30%)	5 (50%)	1 (10%)	3 (30%)
No	15 (75%)	7 (70%)	5 (50%)	9 (90%)	7 (70%)
No response	0	0	0	0	0

b) Have professional indemnity insurance through the Institution

	(1)	(2)	(3)	(4)	(5)
Sample size	20	10	10	10	10
Yes	12 (60%)	6 (60%)	10 (100%)	7 (70%)	6 (60%)
No	6 (30%)	4 (40%)	0	3 (30%)	3 (30%)
No response	2 (10%)	0	0	0	1 (10%)

c) Feel the need to be insured

Yes	11 (55%)	7 (70%)	4 (40%)	3 (30%)	3 (30%)
No	9 (45%)	0	0	0	1 (10%)
No response	0	3 (30%)	6 (60%)	7 (70%)	6 (60%)

d) Insurance premium against medical negligence is

Very high	5 (25%)	3 (30%)	2 (20%)	1 (10%)	1 (10%)
Reasonable	15 (75%)	7 (70%)	8 (80%)	4 (40%)	6 (60%)
No response	0	0	0	5 (50%)	3 (30%)

7. C.P.A affect the professional freedom

	(1)	(2)	(3)	(4)	(5)
Sample size	20	10	10	10	10
Yes	16 (80%)	7 (70%)	5 (50%)	9 (90%)	6 (60%)
No	4 (20%)	3 (30%)	5 (50%)	1 (10%)	4 (40%)
No response	0	0	0	0	0

8.a) C.P.A needs modification (if applicable to medical profession)

Yes	19 (95%)	10 (100%)	8 (80%)	3 (30%)	10 (100%)
No	1 (5%)	0	2	0	0
No response	0	0	0	7 (70%)	0

b) Modifications to the C.P.A suggested by the doctors for C.P.A

- Include doctors in the panel - Maintain anonymity till the judgement to protect the reputation of the concerned doctor. Include the Government hospitals and doctors also under the purview of C.P.A. If patient loses the case, then doctor must be paid the compensation. Penalty must be imposed on frivolous complaints. Final verdict for the medical negligence must be by the medio-legal experts.

9. a) I.M.C. has the ability and authority to handle the problems of medical negligence upto the expectations of the patients and doctors (adequately)

	(1)	(2)	(3)	(4)	(5)
Sample size	20	10	10	10	10
Yes	9 (45%)	4 (40%)	4 (40%)	6 (60%)	5 (50%)
No	11 (55%)	6 (60%)	6 (60%)	4 (40%)	4 (40%)
No response	0	0	0	0	1 (10%)

- b) Modification to the Act will make it adequate (the Medical Council Act)

Yes	9 (45%)	6 (60%)	5 (50%)	3 (30%)	3 (30%)
No	4 (20%)	2 (20%)	4 (40%)	1 (10%)	2 (20%)
No response	7 (35%)	2 (20%)	1 (10%)	6 (60%)	5 (50%)

- c) The modification suggested by the doctors to the Medical Council Act.

- Power to fine and award the damages - C.P.A should be monitored by the I.M.C. Medical Council should monitor

the professional competency of the doctors. Should ensure quality doctors by abolishing capitation fee and ensuring admissions to M.B.B.S. purely on merit. The present system in the country guarantees rotten doctors. More supervision to ensure proper standard and quality in the private clinics and nursing homes. Check the quacks from time to time and punish them properly.

10. Have faced problems in managing patients because of C.P.A.

	(1)	(2)	(3)	(4)	(5)
Sample size	20	10	10	10	10
Yes	1 (5%)	0	1 (10%)	0	0
No	19 (95%)	10 (100%)	9 (90%)	10 (100%)	9 (90%)
No response	0	0	0	0	1 (10%)

11. The measures taken by the doctor to protect himself:

Lot of trouble is taken to explain everything to the patient and relatives regarding the treatment, the future and the prognosis. To err on the side of conservatism. Communicate to the patient in writing. Raising the professional fee to meet the insurance cost.

12. In view of C.P.A possible steps is avoid litigations and its effects:

	(1)	(2)	(3)	(4)	(5)
Sample size	20	10	10	10	10
a. Provide proper explanation to the patient/ relatives	20(100%)	9(90%)	9(90%)	9(90%)	8(80%)
b. Make sure that the patient is comfortable	10(50%)	9(90%)	6(60%)	6(60%)	6(60%)
c. Consent of the patient before treatment	20(100%)	9(90%)	6(60%)	9(90%)	7(70%)
d. Avoid taking any risk	14(70%)	5(50%)	5(50%)	7(70%)	5(50%)
e. Meet the emergency and then refer to the specialists	10(50%)	6(60%)	4(40%)	5(50%)	1(10%)

f. Suggestions added:- Maintain proper medical records and regular self assessment. Excellent patient rapport is the single most important factor to prevent patient resorting to the C.P.A. Be sincere and honest with the patients. Provide proper treatment; everything else will be covered by it.

13. a) C.P.A will improve the standard of medical profession and quality of health care services.

	(1)	(2)	(3)	(4)	(5)
Sample size	20	10	10	10	10
Yes	5 (25%)	0	4 (40%)	2 (20%)	1 (10%)
No	4 (20%)	2 (20%)	2 (20%)	2 (20%)	0
To an extent yes	11 (55%)	8 (80%)	4 (40%)	6 (60%)	7 (70%)
No response	0	0	0	0	2 (20%)

- b) If yes how?

Doctors will be more careful, vigilant, responsible and accountable and exercise better judgement in their decisions and treatments.

Fear of the 'rod' will make the doctors more reasonable. It will be a means to check the unethical and poor quality of medical care/services provided in the private clinics and nursing homes. It is an ideal means to check the quacks. It will help to improve the quality of care given to the patients. C.P.A will enable quality control in the field of medical profession and in the lives of medical persons and health care service as a whole.

c. If no, Why?

The medical persons will be ruled by fear. It does not have any control over the Government hospitals and Government docotrs. Most of the problems and malpractices are at the primary health care system which mainly is composed of quacks. Check them first and malpractices will go down significantly. C.P.A does nothing to improve the standard of medical profession. It encourages defensive medicine.

14. C.P.A will make doctors resort to defensive madicine.

	(1)	(2)	(3)	(4)	(5)
Sample size	20	10	10	10	10
Yes	18 (90%)	9 (90%)	8 (80%)	8 (80%)	8 (80%)
No	2 (10%)	1 (10%)	2 (20%)	2 (20%)	1 (10%)
No response	0	0	0	0	1 (10%)

15. C.P.A will increase the cost of medical care.

	(1)	(2)	(3)	(4)	(5)
Sample	20	10	10	10	10
Very much	12(60%)	6(60%)	6(60%)	7(70%)	4(40%)
To some extent	7(35%)	4(40%)	3(30%)	3(30%)	6(60%)
No at all	1(5%)	0	0	0	0
No response	0	0	1(10%)	0	0

16. Sincere reaction of doctor to a patient who may sue him for professional negligence.

- If I am wrong I will accept the punishment, If I am not at fault I will counter sue the patient in the law court. My attitude will be "think before you sue; Is it really negligence?" I have done my best and I will not bother myself further; I will defend myself and resort to defensive medicines. The law in the country is good enough to protect me unless I am really at fault. I will examine myself and see where I really went wrong. I will be polite. My reaction will be legal. My reaction will be anger and disappointment.

17. Other comments and suggestions on the topic:

Out of court settlement by the I.M.A without going

to the court and involving a lawyer.

More discussions before legislation

C.P.A in itself is good, but it must be extended
to the Government hospitals and Government doctors also.

Awareness among the doctors should be increased.

Include doctors/medical experts in the panel.

C.P.A is good if properly used.

C.P.A encourages use of defensive medicine.

A "Legal Cell" of medical professionals must be
formed to fight the lawyers who support the C.P.A for whom
it is a good source of income.

CHAPTER VII

DISCUSSION.

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DISCUSSION

X

Man's wants are unlimited, the means are very limited. If we analyse our every day life and the present situation, it becomes evidence that there is a limit to man's NEEDS but not for his GREED. This greed is the root cause of most of the malpractices that are going on today. A close observation of the present time realities gives an impression that everyone in every walk of life is competing with each other, aiming not necessarily at excellence, but often in some or the other kind of malpractice. As a result people get cheated by somebody or the other. Malpractice affects both the good and the bad. It looks as though malpractice has become part of life and routine of the day with its roots reaching deep into almost all professions.

X

"The deterioration of standards in the medical profession is but a reflection of the deterioration of standards in other professions and in the all-pervading public life of our country. Excessive greed, and the pursuit of money rather than the pursuit of excellence, alone appears to be operating as a motivating force in all our walks of life. Independence, achieved in 1947 as a result of sacrifices in the long-drawn-out freedom struggle, is misconstrued to mean licence to pursue utterly selfish ends in disregard of any limitations thereon."

The sense of accountability is rapidly on the wane in the performance not only of the medical and legal professions, but judicial, engineering, architectural, constructional and business fields also. The rampant unaccountability displayed by the politicians who are otherwise supposed to be the leaders of society, appears to be mainly responsible for this deterioration." (1)

There is no profession under creation that is not noble, although the degree of nobility varies from profession to profession depending on the amount of dedication put into it by the professionals. Every profession is a calling or a vocation and its upgradation/degradation depends on its professionals; by the way they go about with and within the profession. Where medical profession is concerned, it is not only a calling, but it is also a real challenge. Certainly it is a junction where opportunities, responsibilities, obligations and devotions meet together. In fact all these are the necessary characteristics of a medical professional who profess himself/herself by the sacred Hippocratic oath whereby he/she proclaims to the world that the object of his/her calling is to make health and not merely money.

"If Physician lives upto the professional ideals and strictly observes the code of ethics embodied in the Hippocratic oath he may well conclude his days in poverty. If he

acts like a businessman, he can acquire a big bank account and a large estate within a few years but will furnish ample ammunition for complaints about commercialization in the medical practice." (2)

Unlike any other profession, medical profession is a demanding one. One needs tremendous courage, determination and also dedication to live upto its demands. It is a unique profession in which the professional gives himself/herself, his time, energy and entertainment. It is a profession in which the professional cannot own time as his own. Yet as Dr. Lele says those who belong to this profession are doubly blessed because, they earn good money as in any other profession and even more important they earn the everlasting gratitude of those whom they are privileged to serve and care for.

"Doctors have several ethical, moral and legal obligations in the performance of their duties. It is very important, therefore, that every doctor understands the nature of these obligations and then fulfil these obligations to the best of their ability. Further, all doctors should know about medico-legal cases and the procedures to be adopted in them." (3)

1. Negligence

Apart from the malpractices/arising out of greed, there are many problems due to negligence. The doctor or the health care

institution fails in discharging the duty of care. They then become liable to be sued for negligence and damages, if harm has been caused by the negligence.

a) Awareness: The findings from the survey of the opinions of doctors and administrators show that the majority of doctors and all the hospital authorities are aware of it which is a good sign because only where there is awareness there is chance to be more careful.

b) It is a major problem: There is difference of opinion as to whether medical negligence is a major problem in the country. The number of cases in the courts show that it is a major problem (all cases of negligence do not come to the court). Yet only 50% of the specialists consider medical negligence as a major problem.

c) Legal provisions: Awareness of the legal provisions varied between the doctors of the three hospitals. Most of them (85%) were either somewhat or well aware of the legal provisions. It is necessary that all the doctors should be fully aware of the legal implications. Probably seminars/workshops on medical negligence and legal provisions might help to create awareness of the legal provisions.

2. a) Consumer Protection Act

According to Consumer Protection Act, consumers are persons who buy goods or hire services for a consideration. As far as medical profession and health care institutions are

concerned, consumers are the patients who avail the services of the medical professionals and hospitals/clinics/nursing homes, etc. Services of any description made available to the user, except the exempted categories, come under the purview of the Consumer Protection Act. Thus the Act includes services rendered by the medical professionals and the health care institutions who make their services available to the public and are taking a remuneration. They are therefore liable to pay compensation if there is deficiency in their services and harm results.

"The Consumer Protection Act (1986) opened up more avenues for ordinary citizens wishing to take legal action. This Act gave the Consumers the sanction to directly take up issues in order that their grievances might be redressed. The Act guarantees certain rights to the citizens such as right to seek redressal or the right to be heard before a court of Law. This Act covers goods as well as services and has even made government services answerable before law."(4)

The information gathered from the questionnaires answered by the doctors and hospital administrators gives a clear indication that both these categories of people are very much aware of the provisions of the Consumer Protection Act as it affects the medical profession. While 48% of the doctors are only somewhat aware of it, 40% of them are aware of it to a great extent. Both hospital wise as well as category wise the

doctors' response show that a great majority are aware of the provisions of C.P.A. as it affects the medical profession and health care institutions. All the administrators and 87% of the doctors seem to be aware of it in varying extent which is a sign that the medical profession is alert to the problem.

b) Impact on the profession : In general about 80% of the doctors view the impact of C.P.A. on the medical profession to be fairly good which indicates that there is certain amount of appreciation of the C.P.A. by the doctors/medical profession.

The medical professionals and the health care institutions who consider C.P.A. as an opportunity to maintain their values and improve their standard, will be more careful and avoid negligence to the extent they are avoidable.

3. Prevalence of medical negligence

Medical negligence is very much prevalent today. All the administrators have faced cases of medical negligence in the past. Two of them had two cases each and the third one had three cases within the past one year itself which is a proof to this fact that the medical negligence is a major problem in the country. There is a contradiction on this aspect as the doctors' responses show that only the smallest possible percent of the doctors (1.7%) have faced problem in managing patients because of C.P.A. This shows that the responders never had any cases of medical negligence. Though there is no separate data

available regarding the medical negligence cases in the State Commission, the available data of negligence in general indicates that negligence is on the increase which certainly gives reasons for great concern.

Information obtained at my visit to the Karnataka State Consumer Disputed Redressal Commission, Basava Bhavan, Bangalore and the discussion held with a reliable authority there was very much enlightening regarding the present situation. In the State of Karnataka four district forums and the State Commission started functioning in September 1989. By 1991 every district in Karnataka has its own Consumer Forum.

KARNATAKA STATE CONSUMER DISPUTES REDRESSAL COMMISSION
BASAVA BHAVAN, BANGALORE

COMPLAINTS			
YEAR	NO. OF COMPLAINTS FILED	NO. OF COMPLAINTS DISPOSED	NO. OF COMPLAINTS PENDING
1990	133	123	10
1991	230	175	55
1992	340	63	177
1993 (June)	172	33	139
Totals	875	394	481

APPEALS

YEAR	NO.OF APPEALS FILED	NO. OF APPEALS DISPOSED	NO. OF APPEALS PENDING
1990	68	67	1
1991	165	139	26
1992	421	194	227
1993 (June)	322	45	277
TOTAL	976	445	531

As per the statistics available, it is clear that on an average, about 218.75 complaints and 244 appeals are filed per year with the State Commission, which shows that there were comparatively less number of claims above Rs. One lakh in the State. The Commission was able to dispose of, on an average, 98.5 i.e. 45% of complaints and 111.25 i.e., 46% of appeals every year. 55% of complaints and 54% of appeals are pending now. This does not give a good picture of the C.P.A. in its implementation and functioning.

Statement showing the details of complaints filed in the District Consumers Redressal Forums and disposed off by them during the month of May 1993.

SL. NO.	NAME OF THE DCDRFs	O.B.	RECEIPTS	TOTAL DISPOSAL	PENDING
01.	Bangalore (U)*		---- Not available ----		
02.	Bangalore (R)	33	6	29	1 28
03.	Kolar	137	18	155	16 139

SL NO.	NAME OF THE DCDRFs	O.B.	RECEIPTS	TOTAL	DISPOSAL	PENDING
04.	Tumkur	199	45	244	25	219
05.	Chitradurga	-----	Not available	-----		
06.	Shimoga	89	14	103	12	91
07.	Mandya	72	11	83	25	58
08.	D.Kannada	433	33	466	36	430
09.	Kodagu	40	10	50	-	50
10.	Hassan	333	6	339	5	334
11.	Chickmagalur	144	7	151	9	142
12.	Dharwad	146	39	185	23	162
13.	U.Kannada	95	7	102	23	79
14.	Raichur	98	7	105	4	101
15.	Bellary	61	7	68	5	63
16.	Bidar	-----	Not available	-----		
17.	Mysore	677	24	701	11	690
18.	Gulbarga	69	9	78	17	61
19.	Belgaum	-----	Not available	-----		
20.	Bijapur	113	15	128	5	123
TOTAL		2729	258	2987	217	2770

* The number of pending and new cases are so many in the Bangalore Urban Forum that it has been decided to have one more district forum (Deccan Herald, August 1, 1993).

✓ The statistics of May 1993 shows that in the beginning of the month, there were already 2729 complaints in total that were pending from the previous time and 258 new complaints, totalling 2987 complaints to be attended to. Out of these, only 217, i.e., 7.3% complaints were disposed of in total, during the month; and 2770, i.e., 92.7% were pending for the next month.

✓ C.P.A. was passed by the Parliament to provide easy, speedy and cheap redressal to the Consumer. But the study on the findings (the statistics) and the information regarding the implementation of C.P.A. (District forums and State Commissions) in Karnataka at least, seem to belie the purpose. It seems that this deficiency is due to lack of personnel. During the course of discussion, one could learn that there are vacancies, but the posts are not filled in; as a result, the work suffers, the outcome of which is evident in the statistics.

✓ According to the information received from a reliable authority in the State Commission, at present there are 6-7 thousand cases pending in the district forum (Kaveri Bhavan), but not enough personnel to attend to all of them in time.

✓ This again proves that the purpose of the Consumer Courts are being defeated. If it moves with this speed, then it will not be able to prove to be any better or different from the Civil Courts and Criminal Courts.

After the amendment of the Consumer Protection Act was passed on the 18th June 1993, the State Commissions are given the power of administrative control of the district forums, which should improve the efficiency of district forums. If not, C.P.A. will be just another piece or ineffective laws in our Country.

Under the amended rule, now the Consumers have to file the complaints within one year from the date on which the cause of Action has arisen (given in the Consumer Protection (amendment) Ordinance 1993. pg:10). This may reduce the number of complaints to a certain extent. The same amendment ordinance 1993 says that the amount of compensation upto Rs. Five lakhs is to be handled by the district forum and Rs.50,0001 to 2,00,000 is to be handled by the State Commission and above Rs.20,00000/- by the National Commission. This is going to increase the work load of the district forum as well as the State Commission. Yet another amended rule on page 11 of the same ordinance says that the complaints that are frivolous or vexations will be dismissed and the complainant will be penalised by paying to the opposite party the cost incurred but not more than Rs.10,000/-.

It was not possible to get specific information regarding cases of medical negligence that were filed in the Consumer courts as they are not maintained separately. A sizeable number may be on medical negligence.

The survey conducted also gives the impression that although there are some among the medical professionals who consider the Consumer Protection Act as a threat to them and so certain amount of resistance can be expected from them. But a good majority of them consider C.P.A. as an opportunity. Some of them, who seem to be open minded, upright and patient oriented, welcome C.P.A. as a blessing to the medical profession to retrieve and retain their original values and standard. Most of the doctors and hospital authorities seem to belong here which is a good sign.

4. Doctor-Patient relationship.

In the past doctor-patient relationship was characterised by the ethics of trust. But it seems to have been lost on the wayside with passing of time. The survey indicates that over 60% of the doctors are positive that C.P.A. will affect their relationship. Among the doctors 75% of the General Surgeons and 70% of the Anaesthetists (are who) feel this way. Anyway, it is not a good attitude from the part of the doctors to consider Consumer Protection Act in this manner. Yet when such a big majority of them feel thus, there is need to take this into earnest consideration.

There are four ways of maintaining this doctor-patient relationship.

- 1) Where the doctor provides the patients the necessary information which will encourage the patient to give his consent

so that the doctor can do for him whatever he thinks best. It is known as the paternalistic model.

✓ 2) Interpretative model is where the doctor is like a counsellor. The doctor assists the patient to select the kind of treatment he wants and it is the patient who really determines or decides as to which treatment is to be given.

✓ 3) Informative model, wherein^{the} doctor provides the patient all the relevant information and available facts and the patient then decides as to what treatment is to be given.

✓ 4) Deliberative model^{1.4}, where the doctor is like a teacher/guide, who indicates what the patient should do, but the patient has their right to consider the type of treatment he/she wants after weighing the pros and cons.

✓ In the study conducted, a majority of doctors i.e. 62% of them think that C.P.A. will affect their relationship with their patients and will curtail their professional freedom and so on. Certainly there is no peace for the wicked. It is something rather difficult to understand. These very same doctors who had expressed that they have not faced any problem in managing patients because of C.P.A. and that C.P.A. will improve the standard of medical profession and the quality of services, etc., now say that C.P.A. will affect their relationship with their patients. There is a certain amount of contradiction here. Perhaps those doctors who think it is going to affect their

relationship fail to realise that this loss of trust is because the ethics of trust is being replaced by the ethics of right.

5. Defensive Medicine

Self defence is the very nature and characteristic of life. Whether it is human/animal/plants, whenever there is a threat to safety, one always tend to use defensive mechanism/measures. The study conducted reveals that as far as the opinions of the medical professionals are concerned, 85% of the doctors are very positive that C.P.A. is going to make them (the doctors) resort to defensive medicine. 90% of the General Surgeons and Physicians and 80% of the other three categories of doctors are of this opinion. If the doctors are certain to have recourse to defensive medicine, then certainly it is going to increase the cost of medical care. There may be unnecessary, costly investigations. The doctors may be reluctant to take up complicated cases. This means the very purpose of the Consumer Protection Act is going to be defeated.

Indian Medical Association

I.M.A. is an association of the doctors, for the doctors and is also by the doctors. From the survey conducted one cannot help but come to the understanding that though majority of them have the membership in I.M.A., it is only a small majority of 58%. Nearly an equal strength of them (56.7%), unlike the I.M.A., are in favour of the application of C.P.A. to the medical profession. This indicates that all the members of I.M.A. themselves are not of the same mind.

6. Amendments to C.P.A.

X The means to increase or to improve the quality of the consumer Protection Act will be by making changes to the existing Act. Actually 83.3% of the doctors from the three different hospitals are of the opinion that the C.P.A. needs modification, as one is made to understand from the survey carried out in these three hospitals. They are of the opinion that modification of the C.P.A. will make it more acceptable to medical professionals and this in turn is likely to be beneficial to the patients.

Suggestions

- ✓ a) Include the representatives of the medical professionals in the panel who will be able to judge the negligence of the doctors in a better way. This seems to be a just suggestion that needs consideration.
- ✓ b) They (the medical professionals) also request that the Consumer Protection Act should not make any discrimination, by holding private doctors and the health care institutions liable for negligence on one side, and leaving the government hospitals and its doctors free from this liability on the other side. As far as I understand, what the doctors resist is not the Consumer Protection Act, but the discrimination that it makes. The sun shines on the rich and the poor, on the good and the bad, on the big and the small. The wind blows against the trees and the plants. The rain falls over the rocks and the plains. Why

✓ should the same law be different in its application on the private and public sector ? Why should the Consumer Protection Act leave the Government hospitals and its doctors out of its purview ? Services remain services always and everywhere and for everyone; and there can be no difference in its value no matter who provides it or who benefits from it. Whether one pays for the services or not, the Consumer is a Consumer.

✓ The explanation given for this discrimination is that the patient does not pay for the services he receives in the Government hospitals. Can this explanation and excuse be justified ? Do the doctors in the Government Sector really provide free services ? Are they not being paid from the tax collected from the public ? In fact they (the doctors who are in the Government Service) receive a much bigger salary and render much less service compared to those doctors working in the private sector. Therefore, inclusion of the Government health care services, provided by the Government sector, also under the purview of consumer Protection Act will release much of the tension that is prevailing among the medical professionals in the private sector, and make it more acceptable to them which will automatically turn out to be beneficial to the patients.

✓ In fact, the inclusion of the Government hospitals and its doctors also under the purview of C.P.A. will help to raise the the standard and improve the quality of services in the Government sector as the public involvement will help to deter the corruption

that is going on there. The public whose eyes and ears are wide open (now) will have a strong voice too with which they will be able to check the corruption and those involved in this corruption.

✓ Actually the Consumer Protection Act was enacted to make justice available to the poor who suffered loss and injuries in the hands of the negligent doctors and institutions but could not afford the expensive, complicated and time consuming justice through the courts of law. But by keeping the Government doctors and hospitals out of the purview of C.P.A., these poor are denied justice. It is the poor who cannot afford the cost of private medical care who go to the Government hospitals and avail the services there. Those who can afford go to the private hospitals, clinics or nursing homes. And the rich who can afford is availing the benefit of C.P.A. In reality the justice is snatched away from the poor and is offered to the rich. That is exactly what is happening by bringing the private sector under the purview of C.P.A. and keeping the Government sector out of it. This is like giving with one hand and taking away with the other. What a paradox ! C.P.A. is actually giving more to the ones who already have plenty; and those who haven't any are denied.

✓ c) Another modification suggested by the doctors who answered the questionnaire is to make some provision for the compensation of those doctors who are falsely accused. It is a good suggestion and it will have a check on those consumers who take advantage of

the situation and run with any and every reasonable as well as baseless complaints against the doctors and hospitals trying to make money out of it. What is it to them? If they lose the case they lose nothing. But if they gain, they gain what they ask for. This is not fair. Anyway the doctors who suggested this modification will be happy to know that the amendment of C.P.A. (dated 18th June 1993), has already considered this and has made some provision for it. If the case is found to be frivolous or vexatious, the complaint will be dismissed and the complainant will be made to pay to the opposite party the cost but not exceeding Rs. 10,000/-.

7. a) Indemnity

Another fact that this study has revealed is the insecurity that the medical professionals are feeling in the face of the Consumer Protection Act. Actually, the Act was passed to safeguard the rights of the Consumers and to make sure that they are safe and secure. In the medical field, it has hit the providers of health services. They are not very sure when they will be dragged into the court, and which patient is going to charge against them and which of their action is going to be weighed in the court. So to be on the safe side, they feel the need to maintain their own security through the professional indemnity insurance coverage.

7. b) Is the insurance premium reasonable ?

✓ The study conducted indicates that majority of the doctors (56.7%) and hospitals authorities feel that the insurance premium is reasonable. Yet, very few of them have the professional indemnity insurance coverage individually. Is it because they are not able to afford this reasonable insurance premium or is it because they are so sure that they will never be negligent and their patients will never sue them ? Dr. R.D. Lele says that the best insurance against litigation is to maintain a good doctor-patient relationship. If these doctors who have not had the insurance coverage yet, if they have maintained such an excellent relationship with their patients, then certainly it is a very good sign and is the ideal way to be insured. If not, then they are inviting trouble for themselves.

✓ Some of the doctors seem to provide for payment of insurance premiums by increasing the professional fees. On the other hand some (very few) hospitals have provided the professional indemnity. In the survey, one out of three has insurance coverage for their doctors, which is a good thing. Atleast the doctors in those institutions are safe. But is it because of the generosity of the hospital that they have made this provision for their doctors ? Or is it because they want to retain their doctors for whom this insurance coverage will be an incentive to stay back and work for the institution ? Those two out of three institutions that have not provided this professional indemnity insurance coverage for their employees and thier institution itself, may not be very safe especially under the presentsituation. The hospitals cannot

beso sure that their doctors and other employees are so good that they will never be negligent, and the patients will never sue their employees or the hospital for negligence of any sort. They have already been taken to the Consumer Courts. They should try to protect themselves and their employees as soon as possible by insurance against claims of damages.

8. Medical Council of India

During the course of the study, one is made to understand the doctors' impression about the I.M.C. Less than half of the doctors (43.3%) believe in the efficiency of the I.M.C. which is the statutory body for regulating doctors. Even with regard to the modification required by the I.M.C. Act, less than half i.e., only 40% of them feel that modification will make the I.M.C. Act efficient and adequate while 40% of them abstained from making their comments. Are these 40% of the doctors indifferent to the I.M.C. itself. That will be a sad thing.

Those suggestions made by the doctors regarding the modification of the I.M.C. Act and the consumer protection act, seem to be rather genuine and practical and so it will be worth considering them.

Modifications suggested:

- Power to fine and award damages
- Power to monitor the C.P.A. instead of C.P.A. monitoring the I.M.C.

- Power to ensure "quality doctors" and not "quantity doctors" by providing admission on merit alone and abolishing capitation related admissions. They feel this alone will ensure standard of the medical profession and quality of their service;
- Power to check the quacks and malpractices;
- Power to monitor the competence of the doctors;

9. Steps to avoid litigation

It is rather interesting to learn the preferences of the doctors in the steps that would help them avoid litigations and its effects. Maximum number of them (91.7%) preferred to provide proper explanation to the patient before and after each procedure and treatment so that the patient will be aware of what is wrong with him, what is going to be done and what is the expected outcome etc., and then obtain a fully informed consent. The least preferred step was to provide emergency treatment, and then wash the hands off by referring the patient to other specialists or more competent persons, where-by risk can be avoided. Many of the doctors reacted to it and responded that, medicine is one that involves risk; by avoiding risk one cannot practise medicine. This way of treatment is possible only if the patient happens to be an enemy of the doctor. All these are indications that although the doctors are "afraid" of C.P.A., they are not in favour of using defensive medicine. They are still patient-oriented and patient-centered which is encouraging. On the whole the medical professionals are committed to their cause except for the black sheep of the profession.

Some of the doctors seem to take the steps to protect themselves by providing proper information to the patients. Some of them go to the extent of communicating to them even in writing which is a safe practise. Dr. R.D. Lele says that lack of adequate communication is the single most important cause of litigation. Other causes are rudeness and callousness.

10. Areas of service more prone to medical negligence

There is certain amount of difference in the opinion of the three administrators regarding areas of services that are more prone to medical negligence. Two out of the three feel that the surgical department/sector is the one that is most prone to medical negligence whereas the third one feels it is the medical department that is most vulnerable one (perhaps this may be the fact in their respective hospitals). All three of them seem to differ in their second and third opinions. While they are 'medical' second and 'anaesthesia' third for hospital 'A'; for hospital 'B' it is 'medical' in second place and 'anaesthesia' comes on No.1 along with surgery. In hospital 'C' the second most vulnerable area seems to be the nursing department/area and has not mentioned a third area in their response. From this study, what I gather is, despite the order of preference/vulnerability, two out of three mentions the surgical, anaesthesia and medical areas and the third one mentions only the medical and nursing areas. When we relate to the reality, I feel that the administrator of hospital 'B' seems to be more close to the real. But for the

other two of them their reality may be what they have mentioned, although it indicates that the surgeons and the anaesthetists need special protection than the other categories of doctors.

11. Categories of employees more likely to be involved in negligent Acts.

The study conducted on this aspect reveals that the doctors are the most vulnerable groups of employees in the hospital that are likely to be involved in the negligent acts as all three hospital authorities are of the same mind. Two out of three feel that the administrators are the next group to be attacked by the patients on negligence (I suppose on behalf of the hospital) whereas according to the administrator of hospital 'B' he seems to be very safe and not likely to be involved in the negligent act, I too feel he is rather right as he may be held responsible on behalf of the hospital and not for his action. Both administrators of 'A' and 'C' feel that their nurses come in the next category of vulnerable employees. The three seem to agree at the first time and differ in their next opinions. But that may be the reality/experience/situation in their hospitals. But one thing is clear that the doctors are the most vulnerable group and they need more protection by the hospital than the others.

12. System for patients' comments/complaints/suggestions

Actually the pulse of the public can be measured/assessed through the patients and their relatives. They will be the ideal groups to say how exactly the hospital is fairing in the community/

society/ the locality. They will be the ones who will be able to tell the strengths and weaknesses of the hospital through a system for patients' comments/complaints/suggestions.

From the survey carried out, it is very clear that none of the three hospitals have got a particular system to measure the patients satisfaction level. Out of the three hospitals only one is giving a thought to consider the possibility of such a system while the other two donot seem to feel the need for it or to realise the importance of it. The hospitals should take action to put into effect a system to deal with complaintsand comments on a regular basis.

13. The effect of C.P.A. on closure of hospitals and opening of new hospitals.

The study conducted makes it very clear that all three administrators are very sure that C.P.A. will niether result in closure of the existing voluntary hospitals, nor it will be a hindrance to the opening of new ones in the future. This shows that the C.P.A. does not come on the way of the medical/health care services; something very consoling and a reason to rejoice.

Study of medicolegal cases that are on process

I went through two of the cases that are on process wherein the hospital and doctors were accused of gross negligence.

In the first case a 56 year old lady died after the operation of "multiple organ failure." A case was filed in the High Court.

by the patient's daughter against the doctors and the hospital, one month after the death of the patient.

In the second case, a 13 year old girl was having a solid retroperitoneal mass. After various investigations the patient was taken for operation. Patient developed bradycardia and cardiac arrest soon after the induction of anaesthesia. The patient was immediately resuscitated and surgery cancelled. Even though the vital parameters improved, the girl manifested features of cerebral anoxia. With nursing care and medication she improved from a state of opisthotonus and total unresponsiveness, to a remarkable extent. She was able to walk at the time of her discharge. The hospital and the doctors were accused of gross negligence.

In the first case, the hospital was called by the court just once and after that there has been complete silence. In the second case, the hospital was called to the court a few times but after three years too, the case is not completed and no judgement is passed.

If cases take so long to be settled by the court, what is the use of filing a case in the Law courts ? Are the Courts over-burdened with too many cases and few judges ? Whether positive or negative, everybody would appreciate having quick decision - lest the plaintiff and defendant may reach their eternal reward leaving their cases behind in the courts of law.

A final word

Medical negligence is with us and it has to be dealt with. The patient (and close relatives) must get redressal of their grievances. For medical negligence to be proved, there is need to prove that there has been deficiency in the duty of care. Mishap or misadventure may happen in any medical intervention; there is no guarantee that every procedure has led to harm or injury, then damages will have to be paid. All people are agreed on this. The difference is only on the mechanisms for redressal of grievances.

CHAPTER VIII

THE FUTURE

- HOW THE HEALTH CARE INSTITUTION
IS GOING TO FACE THIS NEW CHALLENGE?
 - PRECAUTIONS AND PROTECTIONS REQUIRED BY
THE MEDICAL PROFESSION AND HEALTH CARE
INSTITUTIONS.
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CHAPTER VIII

THE FUTURE

Future is something that is a time yet to come. Future is a prospective condition, something remote yet so near. Future can be something which depends on the present and built on it. It can be either a continuation of the present or something that is entirely new. It is something which depends very much on the plan that we make for the future. The actualization and concreteness of tomorrow will depend to a certain extent on the efficiency of our plan of today. The future is a challenge.

- I. It is a challenge, particularly for the medical profession and the health care institutions. This present era of consumer Protection Act and the rapidly expanding consumer movement, presents the health care institution and the medical professionals with a challenge with force. It is upto the medical profession and the health care institution to plan and decide as to how it is going to face this challenge. The hospital authorities have to think of ways and means of facing it. Quality is the answer, the solution and the weapon that I can suggest best to the present situation.

Quality is better than quantity. For a health care institution and the medical profession the quality of services provided can be an advertisement and an asset that can be used to face this challenge.

1. Criteria for assessing quality of care

Whether Governmental or non-Governmental, Voluntary/charitable or corporate, quality of care is equally applicable to all sectors.

This quality of care is of greatest importance to the patients who are the recipients of the services offered by the medical profession and the health care institutions. It is their(patients') interest to which the institution should attach priority. In order to provide the patients, the consumers of health care/medical profession, their interests and preferences must be considered. Certainly, it is not going to be easy to satisfy every patient, as wants, needs, hopes and desires differ from patient to patient. Therefore we must plan something that will be materialised, that can be made available, something that will be concrete and something that will be appreciated by the patients for whose sake the health care institutions and the medical profession exist.

✓ a) Personnel: No health care institution can function without the personnel. Actions always speak louder than words. The personnel who work/render services in the institution and the kind of services they render are the main factors that contribute to the fame and name of the institution. Just as face is the mirror of the mind, the employees are the mirror of the institution. The health care institution has no visible products or tangible goods to exhibit to the world to prove its efficiency and quality. This job has to be done by the employees by the kind of service they render to the patient and the public. It is the patient centeredness that is counted and appreciated by the patients and it is the patients who make/do the advertisement on behalf of the institution.

✓ Therefore it is very important and a vital necessity to have people/professionals who are well trained, legally recognised and

professionally competent enough to provide/render service. As far as possible, the hospital must take care not to employ personnel with no proper professional qualification to provide professional services. This has to be taken care of to make sure of the safety of the patient, the hospital as well as the person himself/herself.

✓ Having proper personnel is of vital importance to the health care institutions. But it is equally important to provide the patients with an environment that is safe, secure, pleasant and conducive to healing.

✓ The institution (the authorities) should make sure that it has professionals who are interested not only in a patient who responds dramatically to a new antibiotics, but also is equally interested in situations that require monotonous long time care of patients as in the case of a child with cerebral palsy.

✓ The hospital authorities should ensure personnel (especially medical professionals) who will treat their patients without making any discrimination because of caste, creed, colour, status, political and financial capacity, nationality etc. - doctors who will consider their patients as one of their family member and treat him accordingly. It is not going to be easy; but it is a need.

✓ It is the duty of the hospital authorities to make sure that patients do not have to wait for too long to see a doctor or to get the tests done or to pay a bill. In case the patient is not satisfied with a doctor, or feel the need to consult another doctor, the patient must be allowed and even helped to have his need met.

The institution will greatly reduce problems of negligence or incompetence, if it can provide facilities for on going education of the medical professionals and the facilities to up-date themselves which in turn will be beneficial to the patient they treat.

In order to make things easy for the patients and their relatives and the public at large, an efficient reception is a must in every hospital which will provide the patients and the public with necessary information.

- b) Facilities: Every health care institution must provide or should have the facilities to provide care that is of a recognised standard of performance. Certainly no patient will ever like to go to a hospital that provides substandard care and treatment.
- c) Treatment: The treatment provided by the health care institution must be such that it is open to all categories and types of people without any sort of bars and distinction.

Sometimes the treatment may be very costly, especially in an unusual case or situation(as in case of patient with cancer and needs radiotherapy, chemotherapy etc.); but no patient must be turned back (sent away) because he has no money. Even if the patient has no money, as far as possible, the hospital should consider the patient and provide the essential treatment. After all the hospitals are meant to save lives and preserve and protect them and also to prevent what can be prevented especially from further damages and losses.

Science and technology are advancing day by day and sophisticated facilities are becoming more and more common these days. The hospital authorities and the medical professional must try to keep pace with them and be practical minded to equip themselves with the latest knowledge and moderately sophisticated ones. It is very important to be uptodate with the time and place and the need of the people. Today most of our people cannot afford the sophisticated treatment; but they certainly need the care due to them.

Opposition is a must for a proper democracy. So also in a hospital situation, a feedback system by the patients and the public is a must to assess the efficiency of the hospital and also to see how beneficial it is for the community and the public. A feed back system enable the hospital authorities to be aware of its SWOTs.

2. ACCOUNTABILITY

Health care institutions are an asset of the community to which it belongs. The institutions, whether they are public or private, are responsible to the community.

The health care institutions exist in the society; they exist also because of the community/the society; and they exist also for these communities and societies. Hence, they owe a duty to the society not to injure anyone individually or as a group, as the health care institutions are accoubtable to the society at large.

The institution has to take the responsibility for what is done for the patient. As far as medical negligence is concerned, the ordinary duty of the health care institution and the medical professional

is to exercise the reasonable care and provide the standard treatment. If not, the health care institution as well as the medical professions can be held liable for negligence. The hospital authorities have to make sure that its personnel are properly trained, sufficiently competent and possess the licence to practice. The hospital authorities must make sure that the physical condition of its buildings and grounds are safe enough for the patients, the visitors and the public to move around freely. If anything happens to any of them due to the negligence of the hospital, in providing proper facilities, then the institution has to take the responsibility and pay the compensation. "Hospital has an obligation to furnish reasonably adequate equipment for use in diagnosis and treatment of patients; problem can arise, when the hospital does not own the necessary equipments, when these equipment is not available, or when the equipment has not been properly inspected or maintained." (102)

3. PROTECTION OF THE CONSUMERS INTERESTS

The patients are the consumers as they avail the facilities and services of the health care institutions and the medical care professionals. "One of the reasons is that the patient places his entire trust in the doctor. He is to have immense confidence in the doctor. In the law of Hindus, we have a saying, "Vaidyo Narayan Hari." This means a doctor is equivalent to Narayana or Hari. The same holds good with other countries also. The greater the trust you have in a person, the greater the duty to take care." (103)

The hospital and its personnel have got a grave responsibility to provide care and treatment according to the standards relevant today. The method needs to be up-dated and modern means must be adopted in the diagnosis, treatment, even in the prescription of drugs and so on. The hospital and its doctors have certain responsibilities to maintain and follow certain standard of care and treatment that is widely accepted. This standard has to be maintained both individually by the medical professionals and by the institution as a whole.

4. OUR MISSION TO SERVE THE COMMUNITY

The health care institutions exist, not for themselves, but for the community. The medical man exists, not to make himself richer, but to serve the sick and the suffering of the community/society and if the needs of the community are not met by the doctors and the health care institutions then they have no right to exit.

II. PRECAUTIONS

As the saying goes, prevention is better than cure. And there is no use crying over the spilt milk.

The medical professionals and the health care institutions as a whole, have to take certain precautionary measures to prevent incidents/occasions that are unwanted and unpleasant. At times accidents or unforeseen incidents can happen. But nobody will blame the hospital for it provided the hospital/doctor had taken the

necessary precautions to prevent them. We are expected to take measures to prevent only what can be prevented.

1. Limits of medical care: We should know the limits of medical care both as an individual and as an institution. The medical professionals and the health care institution as a whole deal with human beings. They handle life and death of these human beings. Therefore, care must be taken to preserve and promote life, and health by exercising reasonable skill, care and knowledge. If a doctor feels it is a case beyond his capacity and specialisation, certainly he should not play with it. While providing the emergency treatment, arrangement must be made so that the patient may be taken care by a competent and qualified person. In all simplicity and humility, the doctor must realise his limitation which should prompt him/her to refer the patient to those who will be able to manage the case efficiently. For example, if a patient with serious head injury comes to a doctor who happens to be a gynecologist, while attending to the patient and providing the emergency care, she should make arrangements so that the patient may be taken over by a neurologist/neurosurgeon. If such patients come to a dispensary which has no facility to care for such patients, the patients must be referred to a better hospital. If necessary, the doctor from the dispensary must accompany the patient to the bigger hospital.

In the absence of these two measures, if something happens to the patient, the patient or his/relatives can sue the

doctor for not exercising his duty of care and for being negligent, and for not taking steps to prevent further damage and the possibility of shortening the expectation of life.

2. Quality assurance: "A spoonful of honey can catch much more flies than a barrellful of vinegar" says St. Francis de sales.

Quality is the distinguishing character. It is the characteristic trait; the degree of excellence; the high rank of social standing or the quality of proposition; its being either affirmative or negative.

Quality of service is an important parameter for the hospital which is accountable to the community as well as to provider of the resources. Quality assurance has become a major concern in the delivery of medical care. The demands of the community, economics of medical practice specially due to technological developments, increasing legal action in malpractice cases and concern to protect the interests of the client have focussed the attention on quality of assurance programme for all hospitals.

In the past, though there was so much of dedication put into the services, especially by the voluntary charitable hospitals, the health care institutions were very slow to respond to the concern for quality and ensure quality. But today this quality assurance programme has become a vital necessity, to ensure efficiency of health care service everywhere.

"Quality is not assured by chance but it has to be planned. Quality assurance is a concept which strives to provide the evidence required to establish confidence of all concerned, that quality function is being adequately performed. Quality assurance has been defined as "sum total of the organised arrangements made with the object of ensuring that product will be of the best quality."(104)

To measure the quality of service in absolute terms in health care services is a rather difficult task. All that can be demonstrated is the improvements in the outcome of care and this care/service rendered in an acceptable manner maintaining the professional standard. A hospital can be held liable for negligence and want of care which may result in injury/damage or lose to the patient only when it fails to apply that aesthetic touch of quality in services rendered. This quality can be projected and portrayed primarily, only if the personnel rendering the service, has an inherent quality which is automatically expressed in his/her action or services rendered, and secondly it depends on the policy and objectives of the institution which lays emphasis on the quality of services rendered to the patients. This requires constant supervision, checking and dedicated and conscientious guidance by those in authority.

"According to the American Society of Internal Medicine -
*Quality medical care embodies a scientific approach to the establishment of a diagnosis and institutions of appropriate therapy and management, designed to satisfy the overall needs of the patient.

It should be readily available, efficiently rendered and properly documented." It is an on going process. Its goals are to measure and to evaluate the professional services rendered to patient in the hospital. Services in a proper quality assurance programme is measured against a prevailing and accepted standard of professional care. The end and product of quality assurance is the improvement of care; it is supposed to change the behaviour of physicians and health team members and there by improve the quality of care." (105)

The hospital or medical personnel is not likely to be sued by patient, if the patient was assured and provided quality care and treatment by the medical professionals and the health care institutions. Even if the patient did sue, inspite of the quality of care provided, the law in our country is such, it will not abandon the medical man. Here again it is important to remember that quality care/treatment can be provided only by a quality person.

3. Efficient management: Efficiency is the effective power to bring to pass on fitness to do a job well. In a way it is a kind of exhibition of one's capacity or competence to manage things well. It is the ability to bring out the maximum out-put or benefit with the minimum input. Efficiency is proved by the ability of the person to allocate the scarce resources to achieve certain objectives.

The objectives of the medical profession and the health care institutions are to preserve life by promoting life and health

as well as preventing and controlling diseases. If these objectives can be projected to the patients and the public at large and if the medical profession really make an effort to achieve it by providing and assuring quality care, then certainly the health care institution is safe and no patient will ever think of suing a doctor or the hospital.

4. Insurance Coverage: No hospital or no medical professional can be so sure of its being safe and free from being negligent, however careful the doctor may be. There is always a chance/risk and the doctor and the hospital must be prepared to meet it at any time. This is possible only by having the professional indemnity coverage. It is a safty measure to face those times of problems and emergency. Especially today when the consumer movements are so active and the consumer forums are so much consumer centered, the hospital and the doctors cannot afford to take risk. Today this professional indemnity insurance coverage is a vital necessity for self protection on the part of the medical professionals himself and to protect its employees from the part of the institution.

The insurance premium is gone up so much that the doctors find it difficult to pay it by themselves. Hence the doctors will not be so willing to work in an institution which is not willing to assure him/her the necessary medical defence cover and the support. On the other hand the hospitals, especially the Voluntary/Charitable ones will also find it rather difficult to shoulder this burden of

providing professional indemnity insurance coverage to all its medical professionals. So for both the parties it is going to be a difficult time and choice for both the hospital and the doctor. This is only one side of the story. On the other side the patient, who has become suddenly aware of and alert about his newly recognised rights as consumer, is not going to spare the hospitals or the doctor.

X
leave out the rest

CHAPTER IX

SUMMARY AND CONCLUSIONS

CHAPTER IX

SUMMARY AND CONCLUSION

Where there is law - both in letter and in spirit - there is discipline. In order to bring about this discipline, in any sphere of life, in any field of activity, there has to have some sort of control.

In the medical profession we have the law that is related to medical negligence which is not anyway different from the negligence in general except that it is a negligence by the medical professionals - which result or cause damages that is suffered by a patient or his legal heirs and dependents.

Although the medical profession is one of the most responsible callings / vocation in our community and country at large, it reflects the rot that seems to have set into our system. The medical professionals seem to have forgotten the very purpose of their vocation, namely prevention and control of disease, caring and curing of the sick, promotion of health as well as rehabilitation of the handicapped - finally leading to promotion of life itself. What we witness and experience today is corruption and malpractice that has set unto the profession giving way to commercialization, indifference, inhuman behaviour and lack of devotion to duty and to the profession itself. Standard of profession and quality of services seem to have lost its meaning and value, and these seem to have been replaced by commercialisation which has turned this noble profession into a big bad business.

Under the Medical Council of India Act, every doctor who wishes to practise is expected to have the minimum standard of qualification and registration for a licence to practise the profession. The Medical Council of India is empowered to maintain this standard and ethics of the profession as well as the professionals.

Under the law of torts the medical professionals are expected to possess the standard/reasonable/necessary knowledge and skill and exercise reasonable degree of care while managing the patients.

Drugs are another entity subjected to standard and it is upto the State Drug Controllers and the Drug Controller of India to maintain this standard of drugs manufactured, distributed and used in our country. Though this Act is to ensure the safety of the people, the link between the manufacturers and the medical practitioners as well as the chemists endangers the health and well being of the individuals.

Unlike the developed countries, in India, the medical care is grossly inadequate on one hand and there is an increase in the malpractice on the other hand. But there was hardly any effort to redress injustice caused as litigation in India is very expensive, time consuming and complicated. All these are factors that discourages the patients from coming forward and seeking justice for themselves. As a result, the Government of India, passed the Consumer Protection Act in 1986 in order to protect the consumers at large and at the same time ensuring their rights as consumers. On April 21st 1992,

the judgement made by the National Commission, brought the medical profession under the purview of C.P.A.

Health is something that is unique, in the sense, that the supplier controls the demand. The doctors made the decisions on behalf of the patients: and the patients in turn accepted them in good faith. But today, the entire health system is facing a trying period, as the medical profession is getting linked with the commercialization which increases the cost of medical care and decreases its quality.

Every profession has its own code of conduct. The same is the case with medical profession too which is known as medical ethics- a branch or species of general ethics. Medical ethics is not a ready made solution to the problems in the medical profession, but provides a practical guidance to the medical professionals. It is "A systematic thinking on values that are at work in health care profession and formulation of norms to protect these values."(106)

Ethical code is a set of guidelines which enables the professionals to foster and maintain the ethos of the profession. It helps the professionals to think and do what is right and good for oneself and others. For the medical profession there is an international code of ethics and each country has its own code of ethics. In India, we have the code of ethics of the Medical Council of India to guide our doctors.

Every doctor who proposes to practise medicine takes the Hippocratic oath binding himself to observe the code of ethics contained in it. Today many are the victims of medical practitioners who are often negligent, callous and greedy. Vast majority of these victims are poor, illiterate and ignorant who suffer in silence.

Negligence by itself is not enough to establish liability. There must be an injury caused by this negligence. In other words, to establish liability in the medical profession, the medical professionals/the doctor should owe a duty of care to the patient, and the doctor has deviated from this duty and as a result of this deviation from the duty an injury is caused to the patient. Only then the doctor can be said to be negligent. An error of judgement by a doctor cannot be considered to be negligence, provided he applied his knowledge, exercised reasonable care and used the necessary/standard skill and used means available to treat the patient, that were of standard practice of the place and time and took all the available precautions to avoid harm.

Every patient is assured of his rights as a patient, namely, the right to safety, right to be informed, right to choose, right to be heard, right to seek redressal and right to patient education. These are not anything new. They were always there.

Where there is a right, there is a remedy. In the past there were two options available for the patients to seek remedy in

case of medical negligence. The first one was to approach the courts of law. Now there were two courts, i.e., the criminal court and the civil court.

Criminal Court: In case where the plaintiff is able to prove that the doctor was grossly negligent, which is the proximate, substantive or direct cause of the patient's death, under the Indian Penal Code the doctor will be punished by imprisonment, fine or both.

Civil Court: A patient who is rendered service on payment can file a suit if the doctor was negligent in his treatment of the patient and seek compensation provided, he proves that the doctor was negligent; and action will be taken and the patient will be compensated by the doctor under the Indian Contract Act.

Under the law of torts, if it is proved that the patient has suffered harm due to the negligence of the doctor who owed a duty of care and has deviated from his duty of care due to which the injury was caused. Here also the responsibility rests with the plaintiff to prove that there was a duty owed by the doctor and has deviated from this duty which is the cause of injury. Then the patient will be awarded a compensation whether the patient pays for the treatment or not.

These were possibilities for the patient to seek justice, but they were not very practical especially for an Indian patient who often happens to be an uneducated, illiterate and poor, as it

was very expensive, complicated and never ending process. So there was a second option open to the patient namely to seek justice by approaching the Indian Medical Council. Even this was not very much appreciated by the patient; because, if the I.M.C finds the doctor concerned negligent, the maximum they could do was to punish the doctor by temporary or permanent de-registration of his name and removing his licence. But that did not compensate the patient. For all these reasons, very few availed these available facilities..... the patients preferred to suffer the injustice in silence rather than appeal for justice.

In India the standard of care expected of a doctor is the duty which the doctor owes to his patient which have been succinctly or briefly laid down by the Supreme Court which states that neither the highest degree of care is required, nor the lowest degree of care is enough, What is required is a reasonable degree of care and competence judged in the light of the circumstances of the cases.

If a doctor is sued for negligence, the patient has to prove that the doctor was negligent, except in those circumstances, where the negligence is so evident.

Medical negligence may assume variety of forms such as negligence in diagnosis, negligence in diagnostic aids, negligence in administration of drugs, failure to take precautions, failure to take proper consent, negligence in the operation theatre and during the post operative care, failure to give guidance etc.

The doctor who undertakes to treat a patient must make sure that he has the necessary knowledge and skill to handle the case efficiently before he accepts the patient . If he feels that he is not competent enough to handle the patient, then the wise thing is to provide the patient with emergency care (if needed) and then refer to a person who is competent enough to handle him/her. A doctor handles the life and death of another person and so he cannot be careful enough while dealing with the patient. He cannot play with someone else's life.

An institution, whether charitable, voluntary private or public, non-profit or profit making, is responsible to see that every patient who avails the service of the hospital is safe and secure inside the hospital building and within the hospital premises. The institution is also responsible for the negligence of its employees resulting in damage, harm or loss to the patient or his/her legal representatives, apart from the personal liabilities of the individual employee himself/herself.

From the legal point of view, if the doctors are careless in performing their duties, or commit lapses, they are open to both criminal and civil liabilities as well as the tort liability. Here what is important for the doctors to appreciate is that if they are careless/negligent in their duties and responsibilities, if they are careless in managing their patients, the law of contract the law of torts and the Indian Penal Code will apply. This is something they cannot escape.

At the same time law is very considerate to the doctor in considering the liabilities. The law does not expect the doctor to be perfect and successful always or infallible. An error of judgment is not a crime. All that is expected of a doctor is to maintain the standard of the profession, assure quality in his service, exercise reasonable care and use standard measure/precautions. He is expected to guarantee care and not cure.

Sometimes there are more than one school of thought that are current on a given subject. The doctors are free to accept any of these school's teaching. If a doctor honestly adopts one to the exclusion of the other, and if the outcome happens to be a failure, he cannot be held to be negligent.

The doctor is on the safe side if he can prove, though there was negligence, the damage is the result of a contribution by the patient, which is known as the contributory negligence.

When the negligence is proved and the amounts awarded for financial loss of the past or future is known as pecuniary damages; the amounts awarded for pain and suffering of the past or future as well as loss of enjoyment of life in respects of sports, married life etc., are known as non-pecuniary damage.

These days the people are becoming more and more compensation oriented everywhere/all over world and claims or compensation sought for damages are steadily rising. In any litigation first and foremost the court has to find out and make certain of the facts.

It is up to the court to decide who is right and who is wrong. And this depends on the parties' ability to impress the court with regard to evidence; and the court will weigh it with facts, obtained and then decide/pass judgement.

Unlike in developed countries, there was hardly any effort to redress justice for damage caused, as litigation in India is very costly, complicated and a never ending process. Loyalty of the doctors inspite of their wrong doings is another barrier for obtaining justice through the Medical Council of India. Therefore to ensure and provide easier, quicker and cheaper redressal for the patients, the Consumer Protection Act was passed on the 24th December, 1986. On the 21st April 1992, a judgement made by the National Commission brought the services rendered by the medical profession also under the purview of the Consumer Protection Act. This C.P.A. aims at quality service and accountability by the providers and producers of services and goods. This is the very reason why voluntary, charitable and non-profit health care institutions also were brought under its jurisdiction.

Consumer Protection Act was very much accepted and appreciated by the people of India: like the dry land yearning for rain fall, the public was waiting for an easy, cheap and speedy way of justice, to escape the malpractices and corruption and commercialisation that had crept into the medical profession.

The Consumer Protection Act called for setting up of Consumer Protection Councils, both at the centre as well as in every state which is meant to give suggestions to the Government to effectively implement the Act. It consists of representatives from all walks of life. The redressal machinery is considered under this Act as the three tier system which has been established at the national (national commission), state (state commission), and district (district forums) level. Each of these forums are presided by a retired or working judge of the Supreme Court, High Court and District Court respectively. After the amendment of the C.P.A on the 18th June, 1993, the district forums handle complaints claiming upto five lakh rupees, and the state commission upto twenty lakh rupees as well as all the appeals from the district courts. The National Commission handles all the complaints claiming above twenty lakhs of rupees and the appeals from the state commissions. In all these forums the services are free of charge and the clearance of the complaint is supposed to be within ninety days. There is no complication in the procedure. All that the aggrieved person has to do is to write the complaints on plain paper, giving all the details and then give it to the forum/commission either in person or by post. All the rest will be seen to by the forum/commission and the case is to be decided within ninety days.

All the provisions of the Consumer Protection Act, 1986 came into force on the 1st July 1987 throughout the country. Jammu and Kashmir enacted its own legislation in this field. All the

States and Union Territories constituted the State level consumer protection councils. Some district forums are yet to be constituted by the state Governments. The Central Consumer Protection Council was formed on 1st June, 1987. The Council was reconstituted w.e.f 23rd August, 1990.

The National Commission started functioning on 27th December, 1988. Justice Mr. V.B. Eradi is President.

The Consumer Protection Act has an amendment passed on the 18th June 1993, which deals with a number of changes.

The application of C.P.A in the medical profession is aimed at the protection of the patients, raising at the same time, the standard of the profession and improving the quality of services.

On the whole most of the medical professionals and the hospital authorities are aware of the legal aspects of medical negligence as well as the application of C.P.A to the medical/health care services. It is being appreciated by them. They seem to have accepted most of the implications of the Consumer Protection Act. A great majority of them consider the C.P.A as an opportunity to improve the standard of profession and the quality of services. In most of the cases, the medical professionals are not against the Consumer Protection Act. But what they are against is the discrimination made by the Act wherein the application to the Government hospitals and its doctors are left out, whereas the private sector

is brought within the boundaries of the C.P.A. They are also sore that the consumer court does not have their (medical professional's) representation. Once these two grievances are taken into consideration, then more of their support can be achieved. After all their (the medical professional's) requests/demands are not something that is too difficult to be achieved. These requests/demands when taken into consideration, the C.P.A may prove to be more successful. The future of the medical profession and the health care services will be greatly influenced by this consideration. If not, C.P.A may remain another piece of ineffective law in our country.

CHAPTER X

- A. REFERENCES
 - B. BIBLIOGRAPHY
 - C. APPENDICES
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APPENDIX - I

QUESTIONNAIRE - No. I. (For the administrators)

TOPIC : Legal aspects of medical negligence with special
reference to Consumer Protection Act. (C.P.A.)

This study is conducted purely for academic purpose.
All the informations will be treated as confidential.
You are free not to answer if you wish so. But I will
be grateful if you co-operate with me and give me these
informations.

PLEASE TICK THE APPROPRIATE BOX

Your designation.....

1. a) Are you aware of the legal aspect of medical
negligence ? Yes ☐ ; To some extent ☐ ; No ☐
b) Do you think that the medical negligence is a big
problem in the country ? Yes ☐ ; No ☐
2. a) Are you aware of the Consumer Protection Act, as
it applies to health care institutions?
Yes ☐ ; To some extent ☐ ; No ☐
b) Do you think that it will affect the medical profession
and the health care institutions ?
To a great extent ☐ ; To some extent ☐ ; not much ☐
3. a) Have you ever faced any case of medical negligence
in your hospital ?
Yes ☐ ; No ☐
b) If yes, how many during the period April 1992 to March
1993 ?

c) Do you have any case pending now ? Yes ☐ ; No ☐

4. Are your health care personnel aware of the Consumer Protection Act and its implications ?

All ☐ ; Most ☐ ; Some ☐ ; None ☐

5. a) Have you tried to protect your hospital and your employees from being sued by the patients/consumer of your service ? Yes ☐ ; No ☐

b) If yes, how ?

c) Is the hospital covered by insurance against medical negligence ? Yes ☐ ; No ☐

d) If no, are you considering such coverage ?

Yes ☐ ; No ☐

6. Which are the areas of services in your hospital that are more prone to medical negligence ?

Medical ☐ ; Surgical ☐ ; Anaesthesia ☐ ;

Nursing ☐ ; O.P.D. ☐ ; Lab ☐ ;

X-Ray ☐ ; Any other? ☐

7. Which are the categories of employees more likely to be involved in negligent acts ?

Doctors ☐ ; Nurses ☐ ; Anaesthetists ☐ ;

Lab-technicians ☐ ; Xray technicians ☐ ;

Administrators ☐ ; Any other ? ☐

.....

8. a) Have you any particular system for patient's comments/
complaints/suggestions ?

Yes ☐ ; No ☐ ; Underconsideration ☐

b) If yes, then how do you treat these complaints/
complaints/suggestions ?

.....
.....

9. a) Do you think that the Consumer Protection Act is
beneficial to the institution in anyway ?

Yes ☐ ; No ☐ ; ☐

b) If yes, how ?

.....

c) If no why ?

.....

10. a) Do you think that the Consumer Protection Act needs
to be modified ?

Yes ☐ ; No ☐ ; Don't know ☐

b) If yes, then what modifications do you suggest ?

1.

2.

3.

4.

11. What is your attitude towards those patients who
may sue your institution or your employees?

.....
.....
.....

12. What is your comment about Consumer Protection Act?

a) Will it improve the standard of medical profession
and the quality of health care services ?

Yes ☐ ; No ☐

b) Is it a hindrance to the profession/service ?

Yes ☐ ; No ☐

c) Can it destroy the image of the institution?

Yes ☐ ; No ☐

d) Can it be a means to check malpractice and the
quacks?

Yes ☐ ; No ☐

e) Will it dampen the spirit of service of those
institutions ?

Yes ☐ ; No ☐

13. Will consumer protection act cause closure of voluntary
health care institutions ?

Yes ☐ ; No ☐

14. Will consumer protection act deter more voluntary
hospitals being opened in future ?

Yes ☐ ; No ☐

15. Will Consumer Protection Act tend to increase the cost
of medical care ?

Yes ☐ ; No ☐ ; To a small extent ☐

16. Other comments/suggestions?

.....
.....
.....
.....

Thank you for your co-operation.

SR. SUMA
S.J.M.C.H., BANGALORE

APPENDIX - II

QUESTIONNAIRE - NO. II (For the Doctors)

TOPIC : Legal aspects of medical - negligence with special
reference to Consumer Protection Act (C.P.A.)

This study is conducted purely for academic purpose. All the information will be kept confidential. You are free not to answer any question if you so wish. But I will be grateful if you co-operate with me and give these informations.

PLEASE TICK THE APPROPRIATE BOX

Your speciality

1. a) Do you think that medical negligence is a major problem in the country ? Yes ☐ No ☐
b) Are you aware of the legal provisions in case of medical negligence ?
To great extent ☐ Somewhat ☐ not much ☐
2. Are you aware of the provisions of Consumer Protection Act (CPA) as it affects the medical profession ?
To great extent ☐ Somewhat ☐ not much ☐
3. What do you think of the impact of C.P.A. on medical profession ? Good ☐ ; Fair ☐ ; Bad ☐
4. a) Do you think that the C.P.A. will affect your relationship with your patients Yes ☐ ; No ☐
b) If it does, how ?
.....

5. a) Are you a member of I.M.A. ? Yes ; No

b) I.M.A. is not in favour of the application of
C.P.A to the service rendered by the medical
profession.

Do you agree ? Yes ☐ ; No ☐

6. a) Do you have the professional indemnity insurance
individually ? Yes ☐ ; No ☐

b) Do you have the professional indemnity insurance
through the institution ? Yes ☐ No ☐

c) If not, do you feel the need to be insured ?
Yes ☐ ; No ☐

d) If you have insurance against claims for medical
negligence, do you consider the premium ?
Very high ☐ ; Reasonable ☐

7. Do you feel that the C.P.A. affects your professional
freedom ? Yes ☐ ; No ☐

8. a) If C.P.A. continues to be applicable to the services
rendered by the doctor, do you think that it needs to
be modified ? Yes ☐ ; No ☐

b) If yes, then what would be your suggestions ? Please
list three important modifications.

1
2
3

9. a) Do you think that the Medical Council of India
and State Medical Councils have the authority
and the ability to handle the problem of medical
negligence to the satisfaction of the patients
(Public) and the medical profession ?Yes ☐ ; No ☐

b) If it is not adequate, would modifications to the
Act make it adequate ? Yes ☐ ; No ☐

c) If yes, what modifications would you suggest ?
Please list three.

1.
2.
3.

10. Have you ever faced a problem in managing the patients
because of C.P.A.? Yes ☐ No ☐

11. If yes, then what measures have you taken to protect
yourself ? Please list three

1.
2.
3.

12. In view of C.P.A. what steps can help to avoid litigation
and its effects ? (Please tick one or more)

a) Provide proper explanation to the patient before and
after each procedure/treatment.

- b) Regular visits to the patient to make sure that he is comfortable and gets all care.
- c) Make the patient consent before every procedure/ treatment
- d) Avoid taking any risk..... consult others and refer the patient to other specialists
- e) Provide the emergency treatment and then refer the patient to more competent persons
- f) Any other ? (Please specify).....
.....
.....

13. a) Do you think that the C.P.A. will improve the standard of medical profession and the quality of health care services ?

Yes ☐ ; No ☐ ; to an extent Yes ☐

b) If yes, how ?

.....

.....

c) If no, why ?

.....

.....

14. Do you think that C.P.A. will make doctors resort to 'defensive medicine'? Yes ☐ ; No ☐

15. In your opinion, will C.P.A. increase the cost
of medical care ? very much ☐ ; to some extent ☐ ;
not at all

16. What would be your sincere re-action to a patient
who may sue you for professional negligence ?

.....
.....
.....

17. What other comments/suggestions do you have on this
topic ?

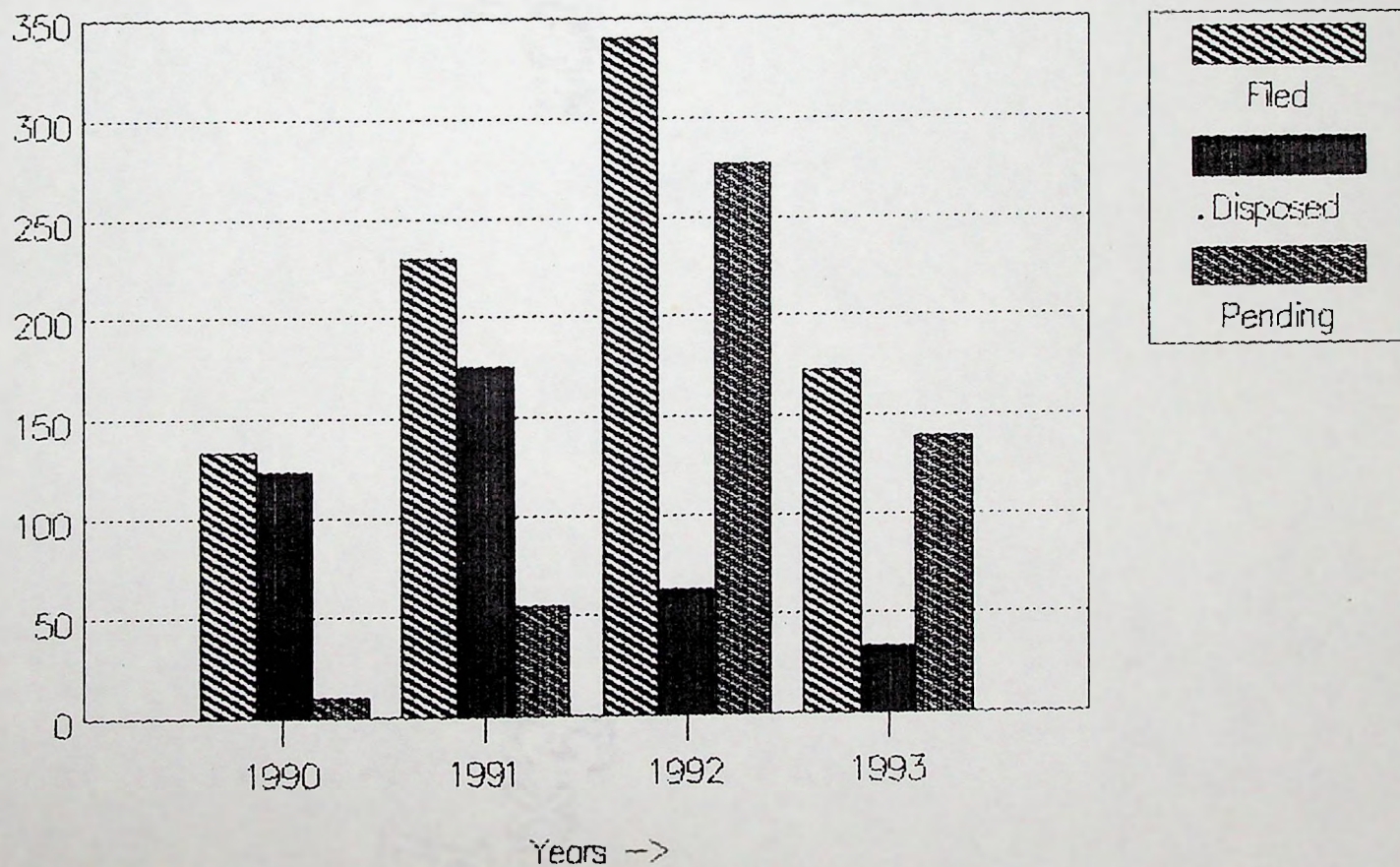
1.
2.
3.
4.
5.

Thank you for your kind co-operation.

Sr. Suma
D.H.C.A. Student
S.J.M.C.H. BANGALORE 34

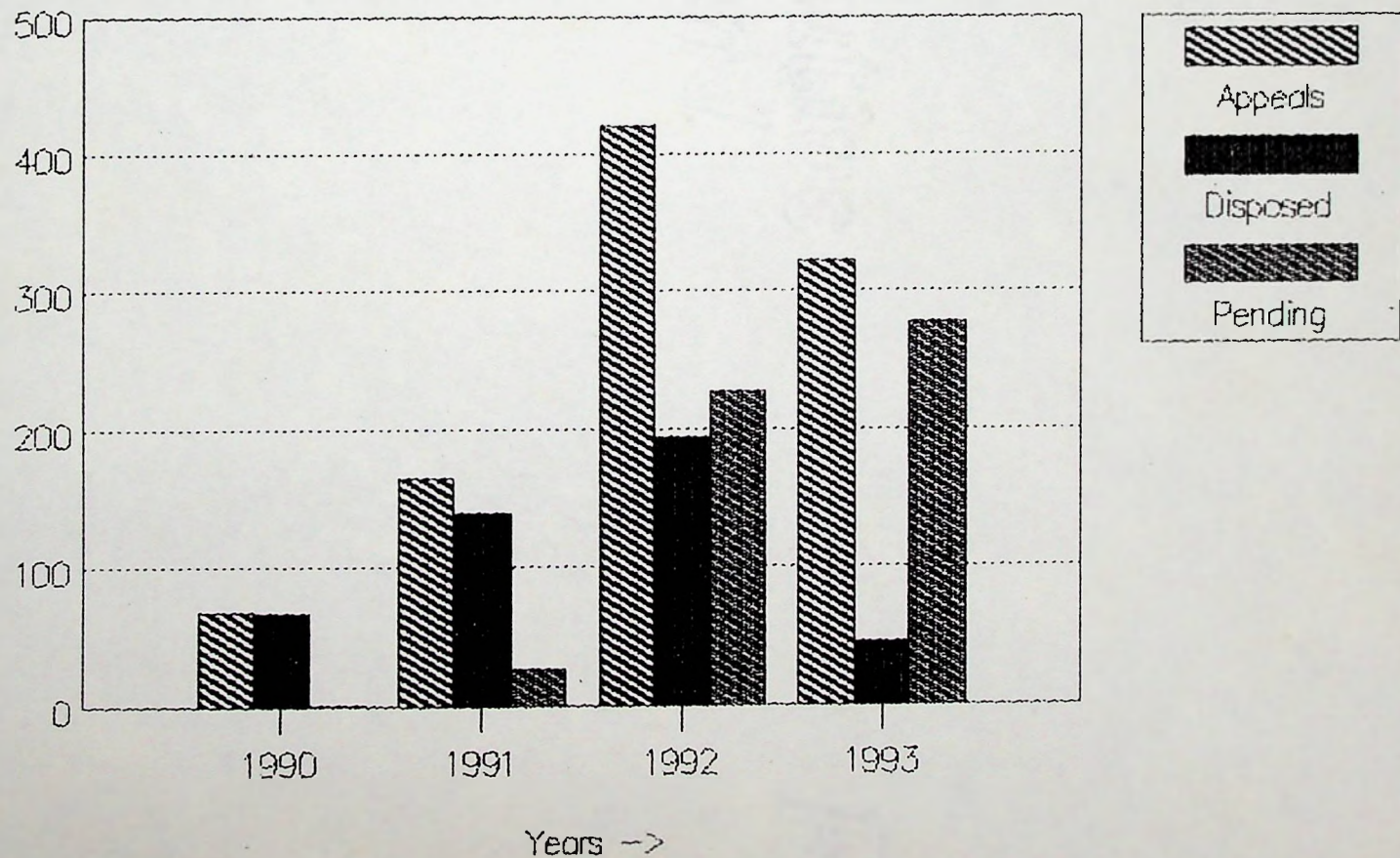
Karnataka State Commission

No. of Complaints



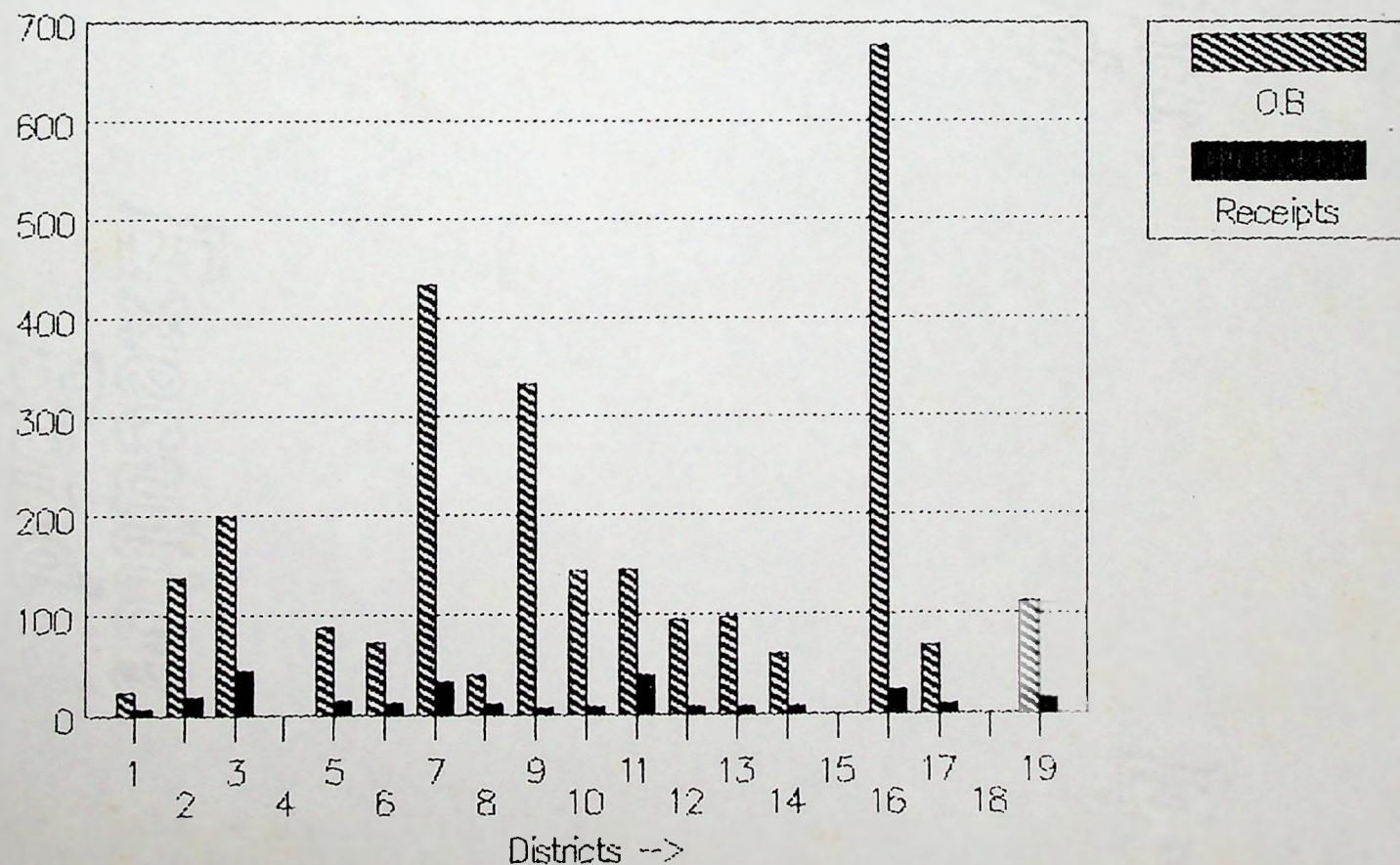
Karnataka State Commission

No.of Appeals



Pending cases-O.B against Receipts

For the month of May 1993.



Total, Disposed and Pending Cases For the month of May 1993

