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REVIEW ARTICLE

The Consumer Protection Act: A Review of Legal Perspective

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ABSTRACT

The fast pace of commercialization and globalization is affecting all spheres of life, the medical profession is also affected by this socioeconomic phenomena. The consumer protection act (CPA) enacted in 1986 intended to provide effective and efficient safeguards to the consumers against various types of exploitations and unfair practices. This review article aims to augment awareness of medical practitioners regarding CPA and how to prevent litigations.

Keywords: Consumer protection act (CPA), Professional negligence, Complainant, Complaint, Consumer, Service.

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INTRODUCTION

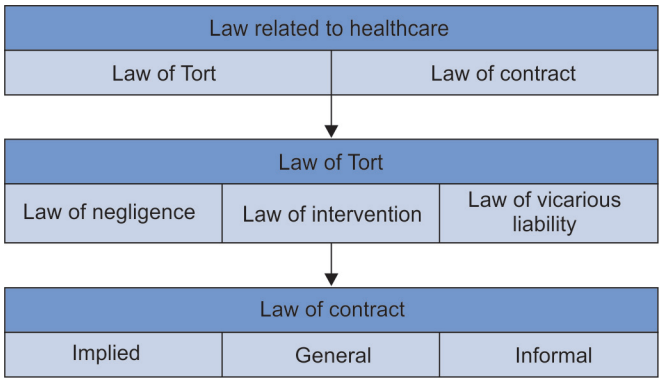
The Supreme court awarded an enormous ₹ 5.96 crore as compensation to be paid by Kolkata based AMRI Hospital and three doctors to a US-based Indian-origin doctor for medical negligence which led to the death of his wife in 1998, following faulty treatment administered at the hospital. A bench of justices CK Prasad and V Gopala Gowda raised the compensation amount of ₹ 1.73 crore, awarded by the National Consumer Dispute Redressal Commission (NCDRC) in 2011, to ₹ 5.96 crore to Kunal Saha, an AIDS researcher in Ohio, and asked the Advanced Medicare and Research Institute (AMRI) and the doctors to pay the amount within 8 weeks along with interest at the rate of 6% from the date of filing of the case in 1999.

In May 2009, the apex court awarded a record compensation of ₹ 1 crore to wheelchair-bound. Infosys engineer Prashant S Dhananka for medical negligence in a surgery by Hyderabad's Nizam Institute of Medical Sciences (NIMS) which damaged his spinal cord.

Such news have become a common occurrence which remind us of the changing scenario in healthcare delivery. The medical profession is one of the noblest professions in the world. Charak's Oath (1000 BC) and Hippocratic Oath (460 BC) illustrates the duties and responsibilities of the person who adopts the noble profession of medicine. The patient's faith and trust in doctors led to the doctors being equated to an 'Angel or Semigod'. However, corporatization and commercialization of medical profession is being guided by the profit motive rather than that of service which gives rise to unethical practices and negligence.

With inclusion of healthcare services under consumer protection act (CPA), a spurt in litigations challenging the credibility of medical profession is seen. Negligence is the conduct that falls below the standard of care. The standard of care is established by the law for the protection of consumers against unreasonable practices which create risk or harm.

Law Related to Healthcare



IMPORTANT LANDMARK CASES OF CPA 1986

Indian medical association *vs* VP Shantha 1995 (3) CPR 412: AIR 1996 SC 550: 1995 (3) CPJI: 1995 (6) SCC 651: JT 1995 (8) SC (Supreme Court decided on 13.11.1995).

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As a result of this judgment, medical profession has been brought under the section 2(1) (o) of CPA, 1986 and also, it has included the following categories of doctors/hospitals under this section:

a. All medical/dental practitioners doing independent medical/dental practice unless rendering only free service.
b. Private hospitals charging all patients.
c. All hospitals having free as well as paying patients and all the paying and free category patients receiving treatment in such hospitals.
d. Medical/dental practitioners and hospitals paid by an insurance firm for the treatment of a client or an employment for that of an employee.

It exempts only those hospitals and the medical/dental practitioners of such hospitals which offer free service to all patients.

Poonam Verma *vs* Ashwin Patel and Ors., (1996) 4 SCC 332, a doctor registered as medical practitioner and entitled to practice in homeopathy only, prescribed an allopathic medicine to the patient. The patient died. The doctor was held to be negligent and liable to compensate the wife of the deceased for the death of her husband on the ground that the doctor who was entitled to practice in homeopathy only, was under a statutory duty not to enter the field of any other system of medicine and since he trespassed into a prohibited field and prescribed the allopathic medicine to the patient causing the death, his conduct amounted to negligence per se actionable in civil law.

Subh Lata *vs* Christian Medical College (Punjab SCDRC OC No. 14 of 1994 decided on 15.6.1994; 1994 (2) CPR 691; 1995 (1) CPJ 365; 1995 CCJ 512.

The complainant alleged that her husband died due to the complications arising after kidney biopsy. The State Commission held that the complainant had suppressed the crucial facts in her complaint. Besides serious life-threatening diseases, the deceased was already suffering from tuberculosis and *Staphylococcus aureus septicaemia* (a serious infection of the blood by bacteria). These are very serious diseases with a very high mortality rate especially when the heart, lung and brain get infected. Hence, the complainant had not come with clean hands and thus disentitled herself to relief under this jurisdiction of the CP Act. Complaint dismissed with ₹ 1,500/- as costs.

Supreme Court of India Jacob Mathew *vs* State of Punjab and Anr on 5 August, 2005

The gist of the information is that on 15.2.1995, the informant's father, late Jiwan Lal Sharma was admitted as a patient in a private ward of CMC Hospital, Ludhiana. On 22.2.1995 at about 11 pm, Jiwan Lal felt difficulty in breathing. The complainant's elder brother, Vijay Sharma who was present in the room contacted the duty nurse, who in her turn called some doctor to attend to the patient. No doctor turned up for about minutes. Then, Dr Jacob Mathew, the appellant before us and Dr Allen Joseph came to the room of the patient. An oxygen cylinder was brought and connected to the mouth of the patient but the breathing problem increased further. The patient tried to get up but the medical staff asked him to remain in the bed. The oxygen cylinder was found to be empty. There was no other gas cylinder available in the room. Vijay Sharma went to the adjoining room and brought a gas cylinder therefrom. However, there was no arrangement to make the gas cylinder functional and in-between, 5 and 7 minutes were wasted. By this time, another doctor came who declared that the patient was dead. The Judicial Magistrate First Class, Ludhiana framed charges under section 304A, IPC against the two accused persons, both doctors. Both of them filed a revision in the Court of Sessions Judge submitting that there was no ground for framing charges against them. The revision was dismissed. The appellant filed a petition in the high court under section 482 of the code of criminal procedure praying for quashing of the FIR and all the subsequent proceedings. It was submitted before the high court that there was no specific allegation of any act of omission or commission against the accused persons in the entire plethora of documents comprising the challan papers filed by the police against them.

CIVIL APPEAL NO. 3541 OF 2002 (Martin F D'Souza Appellant *vs* Mohd Ishfaq Respondent)

On 17th February, 2009, a two Judges Bench in Martin F. D'Souza *vs* Mohd Ishfaq (Civil Appeal No. 3541 of 2002) held that 'the courts and consumer fora are not experts in medical science, and must not substitute their own views over that of specialists'. Observing that the 'medical profession has to an extent become commercialized and there are many doctors who depart from their Hippocratic Oath for their selfish ends of making money', the bench however held that 'the entire medical fraternity cannot be blamed or branded as lacking integrity or competence just because of some bad apples'.

'Sometimes despite their best efforts the treatment of a doctor fails. For instance, sometimes despite the best effort of a surgeon, the patient dies. This does not mean that the doctor or the surgeon must be held to be guilty of medical negligence, unless there is some strong evidence to suggest that he is', the bench said.

Guidelines Issued by Supreme Court

Whenever a complaint is received against a doctor or hospital by the Consumer Forum (whether District, State or National) or by the criminal court then before issuing notice to the

doctor or hospital the matter must be referred to a competent doctor or committee of doctors, and if prima facie a case of medical negligence is established, only then the notice be issued. The police officials were warned not to arrest or harass doctors except as per the criteria laid down in Jacob Mathew case, otherwise they will have to face legal action.

DISCUSSION

Rational and Legal Evidence Behind CPA

The CPA, 1986 (in short, 'the Act'), is a benevolent social legislation that lays down the rights of the consumers and provides their for promotion and protection of the rights of the consumers. The first and the only Act of its kind in India, it has enabled ordinary consumers to secure less expensive and often speedy redressal of their grievances. By spelling out the rights and remedies of the consumers in a market so far dominated by organized manufacturers and traders of goods and providers of various types of services, the act makes the dictum, *caveat emptor* ('buyer beware') a thing of the past. The 1986 was introduced to safeguard the interests of ordinary consumers in their daily transactions like the buying of goods or hiring of services.

It is a social welfare legislation which was enacted as a result of widespread consumer protection movement. The main object of the legislature in the enactment of this act is to provide for the better protection of the interests of the consumer and to make provisions for establishment of consumer councils and other authorities for settlement of consumer disputes and matter therewith connected.

WHAT A MEDICAL DOCTOR SHOULD KNOW ABOUT CPA?

Negligence is an act of commission (positive act) or an act of omission (failure to act) which a prudent man of average skill and objective standards should not perform. According to objective theory of negligence, there is carelessness in approach toward the patient and the act of commission results in injury whereas in subjective theory, the doctor is indifferent to the consequences of his act of omission and thus causing damage to the patient.

Medical negligence is defined as a tort which breaches of a legal duty to take care which results in damage undesired by the defendant to the plaintiff, it also include the injury or harm caused to the patient should be directly caused by act of negligence. It takes notice of:

a. Existence of legal duty to treat patient even by implication.
b. Breach of the legal duty, if any, as compared to expected performance of his peer group.
c. Presence of damage caused by the breach which results in injury which needs to be compensated.[1]

Failure of an operation and side effects are not negligence. The term negligence is defined as the absence or lack of care that a reasonable person should have taken in the circumstances of the case.

The degree of care is usually proportional to the duty undertaken. Negligence is many times difficult to prove. The burden of proof is on the patient or relatives except in cases where relatives have no access (e.g. operation theater, intensive care unit, nursery, etc. *res ipsa loquitur* is a situation of gross negligence where things speak for themselves and hence there is no need to prove. Contributory negligence, known complications, unexpected results, difference of opinion and emergency care are the usual defences in case of negligence.

The CPA 1986 as amended by the consumer protection (amendment) act 1993 and 1994 has currently been into action to provide for better protection of the interests of consumers with provisions for establishment of consumer councils and other authorities for the settlement of consumer disputes and other matters connected therewith, applicable to the whole of India minus Jammu and Kashmir. The act was amended in 2002 and the amendments came into force w.e.f. 15th March 2003. The provisions of the amendment were mainly aimed at facilitating quicker disposal of complaints, enhancing the capability of redressal agencies, strengthening them with more powers, streamlining the procedures and widening the scope of the act to make it more functional and effective and also to strengthen consumer movement at the grass root level. This act empowers the patient to file lawsuits (in case of perceived negligence) in consumer courts.[2]

There are 629 District Fora at district level, 35 state commissions at state level and one National Commission functioning in the country to render inexpensive and quick redressal to consumer grievances. Out of over 35 lakhs cases filed before the consumer disputes redressal agencies, 89.77% already stand disposed of. This act with 35 sections and 4 chapters is enacted for the promotion and protection of consumer right to safety, right to information, right to choose, right to be heard, right to redressal and right to consumer education.[3]

A study conducted by Dr Jagdish Singh showed that the maximum numbers of cases are from obstetrics and gynecology and surgery branches. The hospital covered under CPA include all private hospitals, ESIS, SAIL, corporate hospitals and even government hospitals where some facilities are on payment. Government and charitable hospitals where all the services are totally free, at present are not covered by CPA.

The outcome of about 202 cases was as follows: (i) negligence held 28.4%; (ii) negligence not held 62.3%; and (iii) no negligence compensation granted to doctors/hospitals 9.3%.[4]

In writ petition No. 3720/91 Mr R Raheja *vs* MMC the high court of Bombay has given a landmark decision that the patient or his legal heir has right to get copies of entire medical record on payment of reasonable charges.[5]

Earlier, the remedy for medical negligence was available only under the law of Tort. Now, it is possible to get speedy redressal under CPA for such negligence.[6,7]

The main thrust of the act is on the legal right and locus standi of the consumer to initiate action under the act against deficiency in relation to any goods bought and/or any services hired against consideration (payment). Under this act, deficiency means any fault, imperfection, shortcoming, or inadequacy in quality, nature and manner of performance which is required to be maintained under the law or has been undertaken by the opposite party to be performed under the contract or otherwise. In relation to doctors, this concept of deficiency of services takes the place of professional or medical negligence.

National Consumer Helpline

NCH is a project of the Union Ministry of Consumer Affairs. The project recognizes the need of consumers for a telephone helpline to deal with multitude of problems arising in their day-to-day dealings with business and service providers.

NCH provides a national toll free no-1800-11-4000, other users can dial- 011-23708391. SMS can also be sent to +918130009809 mentioning the name and city.

Consumer Dispute Redressal Agencies

Consumer disputes redressal agencies (popularly known as Consumer Forums or Consumer Courts) are set-up under the act at district, state and national level (Table 1). In India, the CPA 1986 envisages three-tier grievance redressal mechanisms:

1. District Consumer Disputes Redressal Commission
2. State Consumers Dispute Redressal Commission
3. National Consumers Dispute Redressal Commission

Within 30 days from the date of decision, appeal can be filed in the higher commission. Appeal against the decision of the district forum can be filed before the state commission.

The state and national level bodies also function as appellate authorities. Any verdict given by the National Commission can be challenged in the supreme court.

The definition of the expression 'service' in the act in very wide and comprehensive. In fact, it will take in service of any description rendered for consideration by any person or organization including public sector undertakings (PSUs) and government agencies. However, services rendered free of charge or under any contract of personal service, are excluded.

Thus, the following services do not fall within its ambit: (i) health services provided by government hospitals, (ii) Civic amenities provided by municipal authorities.

All suppliers of goods and services, both in the private and in the public sector and the cooperative sector, are covered by the act. The act allows filling of 'class action' complaints on behalf of groups of consumers having common interest. It is indeed a very unique and highly progressive piece of social welfare legislation and is acclaimed as the Magna Carta of Indian consumers. The act has made the consumer movement really going and more powerful, broad-based and effective and people oriented.[8]

TIME LIMIT

The permissible time limit to file a complaint is 2 years from the date of injury. The time starts from the date of injury and not from the date of disability certificate. However, if the injury is continuous then the time starts from the date of last treatment given.[9]

VICARIOUS LIABILITY

A hospital may be vicariously liable for the negligence of doctors who are independent contractors. To hold a hospital

Table 1: Different forum under CPA

	District consumer forum	*State consumer forum*	*National consumer forum*
President	District Judge	High Court Judge	Supreme Court Judge
Members	Two	Two	Five
Upper limit of compensation claimed	INR ≤ 20 lacs	INR ≥ 20 lacs to ≤ 1 crore	INR ≥ 1 crore
Appeal	State	National	Supreme court

Table 2: Total number of consumer complaints filed / disposed since inception under CPA

Sl. no.	*Name of agency*	*Cases filed since inception*	*Cases disposed of since inception*	*% of total disposal*
1	National commission	89495	77770	86.90
2	State commissions	645486	554341	85.88
3	District forums	3442730	3176518	92.27
	Total	4177711	3808629	91.17

Source: http://ncdrc.nic.in/

vicariously liable for the negligence or wrongful acts of an independent contractor physician, a plaintiff must show that

1. The hospital held itself out to the public as providing medical services.
2. The plaintiff looked to the hospital rather than to the individual physician to perform those services.
3. The patient accepted those services in the reasonable belief that the services were provided by the hospital or a hospital employee. Doctors are not liable for their services individually or vicariously if they do not charge fees. Thus, free treatment at a nongovernment hospital, governmental hospital, health center, dispensary or nursing home would not be considered a 'service' as defined in section 2 (1) (o) of the CPA, 1986.

It has been held by the National Consumer Disputes Redressal Commission (National Commission) on April 21,1992 in the case of Cosmopolitan Hospitals and Anr. v. Vasantha P Nair [1 (1992) CPJ 302 (NC)] that the medical treatment rendered to a patient by a private doctor or clinic for consideration is clearly a service falling within the ambit of section 2 (1) (o) of the CPA. It is not a contract of personal service but a contract to render professional service. It is now well settled that hospital authorities rendering service for consideration are liable to the patient for injury caused by the negligence or other fault of the doctors, surgeons, nurses, anesthetists and other members of the hospital in the course of their work (Table 2).

Who Can File a Complaint?

A consumer or any recognized consumer association, i.e. voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force, whether the consumer is a member of such association or not, or the central or state government.

Who is a Consumer?

A consumer is a person who hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any beneficiary of such services other than the person hires or avails of the services for consideration paid or promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person. This definition is wide enough to include a patient who merely promises to pay.

What is a Complaint?

A complaint is an allegation in writing made by a complainant, i.e. a consumer that he or she has suffered loss or damage as a result of any deficiency of service.

Who is Liable?

1. Doctors with independent practice.
2. Private hospitals.
3. All hospital having free as well as paying patients, they are liable to both.
4. Doctors/hospitals paid by an Insurance firm for treatment of a client or an employer for the treatment of an employee.

Who is not Liable?

1. Doctors in hospitals which do not charge their patients.
2. Hospitals offering free services to all patients. If any category is paying any fees for any service, that particular category will be liable under CPA.

How to File a Complaint?

Procedure for filing complaints and seeking redressal are simple. There is no prescribed performa for the submission of complaint. However, it must be written. It may be submitted directly or by post. A nominal amount of fees is also required to be deposited for making complaints before District Forum. A complaint should contain the following information:

1. Name and address of the complainant.
2. Name and address of the opposite party or parties.
3. Description of the fact of the complaint.
4. Documentary evidence regarding the complaint.
5. Relief expected as redressal of complaint.

The complaint can be filed within 2 years from the date on which cause of action has arisen. Complainant can plead his case/complaint on his own, this means that he is not under compulsion to hire the services of lawyer.

A complaint can be filed in (1) the District Forum if the value of services and compensation claimed is less than 20 lakh rupees, (2) before the State Commission, if the value of the goods or services and the compensation claimed does not exceed more than 1 crore rupees, or (3) in the National Commission, if the value of the goods or services and the compensation exceeds more than 1 crore rupees (Table 2).

Deficiency of service means any fault, imperfection, shortcoming, or inadequacy in the quality, nature, or manner of performance that is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

There is a minimal fee for filing a complaint before the district consumer redressal forums.

Frivolous Litigation

It is the practice of starting or carrying on lawsuits that, due to their lack of legal merit, have little to no chance of

being won. Frivolous litigation may be based on absurd legal theories, may involve a superabundance or repetition of motions or additional suits, may be uncivil or harassing to the court, or may claim extreme remedies. Frivolous lawsuits have been cited as major precipitants of increasing healthcare costs.

COMMON SOURCES OF NEGLIGENCE

In Nursing Care by Nursing and Paramedical Staffs

- Medication errors that result in injury to client.
- Intravenous therapy errors resulting is infiltration or phlebitis.
- Burn to clients caused by equipment, bathing, or spill of hot liquids and food.
- Falls resulting in injury to client.
- Failure to use aseptic technique where required.
- Errors in sponge, instruments, or needle count in surgical cases.
- Failure to give a report or giving an incomplete report, to an oncoming shift.
- Failure to adequately monitor a client's condition.
- Failure to notify a physician of a significant change in a client's status.

In Medical and Surgical Care by Doctors

- Intentional or unintentional instigation by other professional colleagues, occasionally rivals
- Communication failure with the patient like rudeness and nondisclosure of vital details of actions taken
- Poor and ineffective hospital facilities
- Substandard and defective equipment like nonworking oxygen, suction, etc.
- Absence of standard known and available treatment
- Poor medical record keeping and failure or refusal to hand over copies of the same to the consumer
- Indiscriminate use of high technology investigations without explanation leading to unexpected high costs to the consumer.

In Dental Care by Dentists and Staff:

- Poor fit of dentures[10,11]
- Disturbance of function including temporomandibular joint pain
- Unexpected complications (e.g. irreversible pulpitis)
- Fractured or retained instruments
- Pain following endodontic treatment
- Recurrent pathology
- Damage to adjacent teeth structures
- Foreign body left after treatment
- Failure of multiple fillings
- Composite fillings, particularly posterior composites
- Unexpected sequel (e.g. involvement of the antrum)
- Removal of wrong teeth
- Retained roots
- Damage to adjacent structures
- Unexpected relapse
- Damage to teeth and adjacent structures (e.g. loss of vitality and resorption)
- Specialist versus nonspecialist treatments
- Inappropriate treatment plans.

IMPACT OF CPA

1. Negative
   a. Defensive medicine
   b. Erosion of patient doctor relationship
   c. Increased cost of care
   d. Unnecessary litigation.
2. Positive
   a. Quick redressal of grievances
   b. Better quality of care increases
   c. Introspection by medical professional improved
   d. Training of medical practice.

SWOT ANALYSIS OF CPA

SWOT analysis is the situational analysis in terms of strengths, weakness, opportunities and threats.[12]

Strengths

1. The complainants can argue their case themselves in the consumer courts.
2. Free legal aid
3. Consumer Advice Centres (CAC)
4. Mediation Advisory Centre (MAC)
5. Online Disputes Redressal forum (ODR).

Weaknesses

1. Highly technical orientation of the Medical field
2. Limited definition of a 'consumer'.
3. Inadequate administrative support, shortage of manpower and insufficient infrastructure.
4. Lack of objectivity and empirical nature of several regimens.

Opportunities

1. Growing patient consciousness for quality care.
2. Successful application of the CPA to other services/ goods.
3. Possibility of introducing medical audit.

4. Use of information technology tools for improved governance.
5. Streamlining the legal provisions through appropriate changes in the CP Act.

Threats

1. Low level of awareness among patients.
2. Illiteracy and low socioeconomic status of patients.
3. Exaggerated claims.
4. Tendency of insurance companies to opt for out of court settlements.

Prevention of Malpractice Litigations

Primary Prevention

Good communication and informed consent: The concept of informed consent has come to the fore in recent years and many actions have been brought by patients who alleged that they did not understand the nature of the medical procedure to which they have given consent. Communicate with the patient and take proper consent after explaining the condition. All information must be explained in comprehensible non-medical terms, preferable in local languages about the

a. Diagnosis
b. Nature of treatment
c. Risks involved
d. Prospects of success
e. Prognosis if the procedure is not performed
f. Alternative methods of treatment.

Other measures: 1. Using checklists protocols and computerised decision aids for prescription writing.

2. Documents related to a particular case should be maintained properly.
3. Error proofing-use of forcing function in computer programs so that a physician cannot enter an overdose or prescribe a medication to which the patient is allergic.
4. Finances and bills should be properly explained and informed at the time of admission or even before admission.
5. Always give guarded prognosis.
6. Standardization of drug doses and time of administration, of information displays, equipment and supplies location in hospital.
7. Avoid use of a drug for unproved unlabelled indications especially where risk of drug use is higher than expected benefits.[13]

Defensive medicine: An off-shoot of protection against CPA is defensive medicine. Medical professionals of late, started practicing defensive medicine in order to protect themselves against overzealous patients complaints. In USA there is a system in which there are periodic checks to see if doctors are unnecessarily subjecting patients to a wide range of tests or keeping them in hospitals on flimsy minor grounds. In a country like India it becomes very difficult to go in for defensive medicine as the cost escalates.

The Doctrine of Estoppel, hitherto applicable to civil laws, turned out to be helpful to the medical sector. Estoppel means if an individual acts or deposes before an institution/ judicial forum about a particular fact, he cannot go against the same in a later date. In short, by obtaining 'informed consent' from the patient properly, the hospitals/medical professionals set a proper ground for defence before a court or forum.

The British Court during 1954 by its order in 'Bolam *vs* Frien Hospital Management' has decided that a medical professional would be absolved of any allegation of any negligence, if he practiced a sufficient care to select a procedure which is normally followed in that course of time and in that place. It also set three criteria for the safety of the medical professional:

i He must possess adequate skill in that area of medical practice.
ii He exercises reasonable care while performing his skill.
iii Mere negligence will not make out a case for compensation against doctor but that negligence should have a direct nexus with the injury caused to the complainant. The SC adopted the principles enunciated in the Bolam Test fully and followed in all their historical judgements in Dr Laxman Balakrishnan Joshi *vs* D Trimbak, Bopu Godbok and Anr (AIR 1969 SC 128), AS Mittal & Ors *vs* State of Uttar Pradesh and Ors. (AIR 1989 SC 550) Indian Medical Association of India *vs* VP Shantha & Ors (AIR 1996 SC 550, Spring Meadows Hospital *vs* Harijit Ahluwalia (AIR 1998 SC 1801).

Secondary Prevention

1. Accreditation of hospital
2. Quality assurance program
3. Proper medical records
4. Regular patient satisfaction surveys
5. Creation of medico legal cells and medical organizations.

Tertiary Prevention

The following innovative methods are being practiced in the Western world to counter the adverse outcome of the CPA, in India also these practices may be emulated.

Medical Indemnity Insurance

It covers in respect of errors and omission on the part of professional rendering their services.

RD Lele, 1992 opines that the doctors should be careful in not disclosing the medical indemnity insurance coverage

for the simple reason that, the patient may exploit it for litigation purposes.

Counter Suits

In order to prevent harassment from overzealous patients doctors initiate counter suits against patients for being sued without valued grounds. In a survey in USA counter suing of patients by doctors brought down the incidence of malpractice suits by almost 75%. This has encouraged many doctors to resort to a similar strategy and their lawyers who sue doctors without any rhyme or reason.[14]

Some Do's

- Mention your qualifications on the prescription[15]
- Always mention date and timing of the consultation
- Mention age, gender, weight (if child)
- In complicated cases record precisely history of illness and substantial physical findings
- If the patients/attendants are erring on any count (history not reliable, refusing investigations, refusing admission) make a note of it or seek written refusal preferably in local language with proper witness
- Mention the condition of patient in specific/objective terms
- Write name of drug clearly. Use correct dosages
- Mention additional precautions, e.g. food, rest, avoidance of certain drugs, allergens, alcohol and smoking, etc. if indicated
- Mention whether prognosis explained
- In case of any deviation from standard care, mention reasons
- Specifically, mention review, follow-up schedule
- Mention if patient/attendant is/are under the effect of alcohol/drugs
- In case a particular drug/equipment is not available, make a note
- Mention where the patient should contact in case of nonavailability/emergency of doctor.
- Establish standards of treatment of common pediatric disorders
- Train members in the art of simple yet transparent record keeping
- Train members in judicious use of high technology investigative procedure, laying reasonable protocols wherever possible.
- Establish grievance redressal cell or forum
- If there is a case in consumer court, take due cognizance of the case and attend personally with or without your lawyer.

Some Don'ts

- Whenever there is a case in CPA, do not ignore or disrespect court.
- Do not give unnecessary details and do not volunteer to hand over documents unless specifically asked for.
- Never get panicky or frightened of CPA.
- Do not hesitate to discuss the case with your colleagues
- Do not hesitate to discuss the case with patients/attendants
- Do not write ayurvedic/Homeopathic/Unaini formulations
- Do not allow substitutions
- Do not examine the patient if you are sick, exhausted, under effect of alcohol
- Never talk loose of your colleagues, despite intense professional rivalry
- Do not adopt experimental method in treatment.

CONCLUSION

The CPA is a consumer specific legislation designed to provide for speedy and inexpensive remedy to the consumers. The Act for the first time gives statutory recognition to the rights of the consumers. Three-tier redressal machinery at the District, State and the National level has been constituted. Patient's rights have always been a subject of debate around the world. Countries worldwide are legalising patient's rights. However, awareness among health professional about such laws is observed to be varied. There is a need to raise the awareness of health professional about such laws so that their increased professional concern and practice conforms to welfare of patients.

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