

Original Research Paper

Awareness about Consumer Protection Act and Medical Negligence among Private and Government Medical College & Hospital Faculty Members

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Abstract

The Consumer Protection Act 1986 provides protection to the rights of consumers and redressal of consumer disputes. Medical profession was included within its ambit in 1995. Since then large number of patients and consumer organizations are approaching the consumer courts for the redressal of their grievances against doctors and hospitals. The current study was conducted to know awareness about CPA and medical negligence among medical and surgical specialists working in Private and Govt. Medical Colleges. It was found that the awareness about CPA and medical negligence among the medical as well as surgical specialists was unsatisfactory.

A total of 75% of medical specialists working in Private Medical College scored very poor to poor and 25% scored moderate to good. 80% of medical specialists working in Govt. Medical College scored very poor to poor and 20% scored moderate. 60% of surgical specialists working in Private Medical College scored very poor to poor and 25% scored moderate to good and 50% of surgical specialists working in Govt. Medical College scored very poor to poor and 50% scored moderate to excellent.

Key Words: CPA, Medical Negligence, Awareness among Practitioners

Introduction:

In the history of Indian legislation, enactment of Consumer Protection Act (CPA) 1986 clearly reveals the recognition and growth of consumer jurisprudence. The Consumer Protection Act is a compassionate social legislation that provides for protection of rights of the consumers and redressal of consumer disputes. CPA has provided for three tier quasi-judicial consumer dispute redressal mechanism at district, state and national level.

The Act applies to all goods and services, excluding goods for resale or for commercial purpose, services rendered free of charge and under a contract for personal service. After about a decade of its enactment, in 1995, medical profession was also included within the ambit of CPA by the Supreme Court of India in a landmark case of Indian Medical Association vs. VP Shantha. [1]

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Initially there was a hue and cry amongst the medical fraternity. But now plenty of water has passed under the bridge. Willingly or unwillingly, the medical fraternity has accepted the truth. Large number of patients and consumer organizations are approaching the consumer courts for the redressal of their grievances against doctors and hospitals. It is essential on the part of medical professionals to have adequate knowledge and awareness about CPA and its implication on their profession.

Aims and Objectives:

1. To study an awareness about Consumer Protection Act (CPA) and medical negligence among the faculty of medical and surgical specialties of Dayanand Medical College & Hospital, Ludhiana and Govt. Medical College & Hospital, Patiala.
2. To compare the awareness about CPA and medical negligence among the faculty members of medical and surgical specialties of Govt. and Private institution.

Material and Methods:

The present study was conducted on 80 faculty members of Dayanand Medical College & Hospital, Ludhiana, and Govt. Medical College & Hospital, Patiala (20 faculty members from medical specialties and 20 faculty members from surgical specialties each from Dayanand

Medical College and Hospital and Govt. Medical College and Hospital, Patiala).

Written informed consent was obtained from the participants after providing them the information sheet that explained the purpose of the study. A self-administered questionnaire having 15 questions related to various aspects of Consumer Protection Act (CPA) and medical negligence will be provided to the participants.

Each question had four options; out of which participant had to mark the most appropriate one. The participants were asked to respond to these 15 questions in half an hour and once the participants replied the queries the questionnaires were taken back.

Confidentiality was maintained throughout the whole process of collection of data and its analysis. Those who refused to participate or were not available on third visit were excluded from the study.

For the purpose of analysis each correct answer is given score 'one' and wrong answer/un-attempted question is given score 'zero'. The individual scores were summed up to yield a total score. Scores were converted into percentage.

Scope of Consumer Protection Act:

CPA has provided for three tier quasi-judicial consumer dispute redressal mechanism:

1. **District Consumer Dispute Redressal Forum**
 - Pecuniary jurisdiction: up to Rs. 20 Lakhs
 - Appeal lies to the State commission within 30 days of receipt of the order.
2. **State Consumer Dispute Redressal Commission**
 - Pecuniary jurisdiction: Rs. 20 Lakhs to 1 Crores.
 - Appeal lies to the National commission within 30 days of receipt of the order.
3. **National Consumer Dispute Redressal Commission**
 - Pecuniary jurisdiction: Rs.20 Lakhs to 1 Crores.
 - Appeal lies to the Supreme Court within 30 days of receipt of the order.

Important Definitions, Relevant to Medical Profession: [2]

• **Who is a Consumer?**

Consumer is a person who buys any goods for a considerationSec 2(1) (d) (i) or hires or avails of any services for a consideration which has been paid or promised or partly paid and part by promised, or under any system of deferred payment and includes any beneficiary of such services other than the

person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person. Sec 2(1) (d) (ii)

What is a Defect?

Any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods. Sec 2(1) (f)

What is Deficiency?

Any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which 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. [Sec 2(1) (g)]

What is Service?

Service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. [Sec 2 (1) (O)]

Medical Services Covered by Sec 2(1) (o) of the Act:

In IMA v. V.P. Shantha [1] and others, the Supreme Court of India observed that the medical services rendered by the medical practitioners are covered by Sec. 2 (1) (o) of the Act. It excludes free services or services under a contract of personal service.

While construing the words 'free of charge' the Apex Court observed that the medical practitioners, govt. hospitals/nursing homes and private doctors/nursing homes (hereinafter called doctors and hospitals) broadly fall in three categories namely,

1. Where services are rendered free of charge to everybody availing of said services;
2. Where the charges are required to be paid by everybody availing the services; and
3. Where charges are required to be paid by persons availing services but certain category of persons who cannot afford to pay are rendered services free of charge.

- In case of first category where medical services are rendered free of charge whatsoever to every person availing the service would not come within the ambit of 'service' as defined under Sec. 2 (1) (o) of the Act. Payment of token amount for registration purposes would not alter the position in respect of such doctors or hospitals.
- In case of second category where services are rendered on payment basis to all persons will clearly come within the ambit of Sec. 2 (1) (o) of the Act.
- So far the third category is concerned, where free services are rendered to poor patients by doctors/hospitals whether private or Govt., but fee is charged for services rendered to other patients would come within the purview of Sec. 2 (1) (o) of the Act, even in cases where services are rendered free of charge.

Contract of Personal Service and Contract for Personal Service—Distinction: [3]

Sec. 2 (1) (o) of the Act excludes a 'contract of personal service' from the ambit of the term 'service'. The expression 'contract of personal service' means services rendered by an employee to his employer under the contract of personal service.

It is true that the relationship between a medical practitioner and a patient carries within it certain degree of mutual confidence and trust and, therefore services rendered by the medical practitioner can be regarded as services of personal nature but since there is no relationship of master and servant between the doctor and the patient, the contract between the medical practitioner and his patient cannot be treated as a contract of personal service but is a contract for services.

A 'contract for service' means a contract, in which one party undertake to render services e.g. professional or technical services to or for another party. In performance of such service he is not subject to detailed direction and control, but exercise professional or technical skill and uses his own knowledge and discretion.

A 'contract of service' implies relationship of master and servant and involves obligation to obey orders in the work to be performed and to its mode and manner of performance.

What is Medical Negligence?

Medical Negligence may be defined as the "act of omission which a reasonably competent medical practitioner, guided by such

medical knowledge and practice as is commonly known at the time and at the place where he practices and further guided by such other considerations which ordinarily regulate the conduct of a reasonably competent medical practitioners, would do, or doing something which a reasonably competent medical practitioners would not do".

It is the failure on the part of a doctor to exercise his skill and diligence, which are required of a medical professional resulting in harm to the patient. However deviation from common practice is not necessarily an evidence of negligence. Similarly a mere accident or error of judgment is also not evidence of negligence. To label any act or omission by the doctor as negligence, all the essential ingredients of medical negligence must be present.

The essential constituents of negligence include four "D"s namely:

1. Duty of Care towards Patient (Doctor Patient Relationship)
2. Dereliction or Breach in Duty of Care
3. Damage that results to the patient must be Reasonably Foreseeable
4. Direct Causation (Direct relation between the Breach in Duty of Care and the Damage)

Observation and Discussion:

In the present study total 80 faculty members of DMC & Hospital, Ludhiana and GMC & Hospital, Patiala participated.

Data related to distribution of study subjects according to their specialty and institute and the questions related to Consumer Protection Act and their replies given by the faculty members were depicted in tabular forms. (Table 1 & 2) The correct replies are shaded grey and marked with asterisk.

Similarly the questions related to Medical Negligence and their replies given by the faculty members and the awareness scores achieved by each faculty were also produced in tabular form. (Table 3 & 4)

One mark was awarded for each correct answer and wrong answer/un-attempted question was given score 'zero'. The individual scores were summed up to yield a total score.

Scores were converted into percentage and based on the marks secured grading of faculty members was done as very poor (<35%), poor (35-50%), moderate (51-60%), good (61-75%), excellent (>75%). (Table 5)

Out of total faculties, 75% of medical specialists working in Private Medical College scored very poor to poor and 25 % scored moderate to good. 80% of medical specialists

working in Govt. Medical College scored very poor to poor and 20% scored moderate.

Whereas 60% of surgical specialists working in Private Medical College scored very poor to poor and 25% scored moderate to good. 50% of surgical specialists working in Govt. Medical College scored very poor to poor and 50% scored moderate to excellent.

Present study showed that there is no significant difference in the marks scored by the faculty members of the medical specialties of the Private and Government Medical College. (Table 5) Similarly, the scores of the faculty members of the surgical specialties of the Government and Private Medical College were also not significantly different.

However, the awareness score of the faculty members of the surgical specialties was significantly higher than the members of the medical specialties of both Private and Government Medical College.

This difference could be due to the fact that surgical specialists encounter more medical negligence cases as compared to medical specialists. In a study carried out on 464 dental and medical specialists showed that awareness about CPA was higher among the medical professionals than dental professionals. [4]

In a survey carried out on 120 faculty members from clinical departments of KIMS, Bhubaneswar, Orissa it was found that in spite of an increasing trend of litigations and compensation suits against the practitioners, only 35% of the participants had insured themselves and 16% of them were ignorant about the self-insurance in practice. [5]

Conclusion:

Public awareness about CPA and medical negligence has increased in the last decade. Malpractice lawsuits have become a major concern in patient care. The current study

is an effort to present information about CPA and medical negligence among medical and surgical specialists working in Private Medical and Govt. Medical Colleges.

Awareness about CPA and medical negligence among the medical as well as surgical specialists is unsatisfactory.

Lack of updating knowledge by professionals (medical and surgical), there is increased risk of litigation especially in cases with poor outcomes.

It is recommended that doctors must update their understanding on Consumer Protection Act and medical negligence so as to be legally safe.

References:

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Table 1: Distribution of Study Subjects According to their Specialty and Institute

Faculty Specialty	No. of Faculty members participated	
	DMCH, Ludhiana	GMCH, Patiala
SURGICAL	(20)	(20)
General Surgery	8	7
Orthopedics	7	7
Obs & Gynae	3	4
Plastic Surgery	1	1
Urology	1	1
MEDICAL	(20)	(20)
General Medicine	10	9
Pediatrics	5	5
Neurology	2	2
Endocrinology	1	1
Dermatology	2	3

**Table 5
Grading of Faculty Members as per Marks Secured**

Specialty	Marks Secured				
	<35 % (Very poor)	35-50% (Poor)	51-60% (Moderate)	61-75% (Good)	>75% (Excellent)
Medical (Pvt.)	10(50%)	5(25%)	4(20%)	1(5%)	--
Medical (Govt.)	9(45%)	7(35%)	4(20%)	--	--
Surgical (Pvt.)	8(40%)	4(20%)	2(10%)	3(15%)	3(15%)
Surgical (Govt.)	7(35%)	3(15%)	9(45%)	1(5%)	--

Table 2: Responses to the Queries on CPA, by Faculty Members of DMC&H, Ludhiana (Pvt.) and Clinicians of GMC&H, Patiala (Govt.)

Questions	Reply	M-Pvt.(20)	S-Pvt.(20)	M-Govt. (20)	S-Govt. (20)
1. Supreme Court of India included medical services under the ambit of CPA in	a. 1986	10	10	10	03
	b. 1988	03	01	03	01
	c. 1995*	05	07	03	08
	d. 2002	02	02	04	08
2. In CPA a complaint is to be filled within _ yrs from date on which a case of action has arisen.	a. 01 yrs.	13	02	04	02
	b. 02 yrs. *	03	16	11	14
	c. 04 yrs	00	01	02	02
	d. Any time.	04	01	03	02
3. The time limit for appeal at various levels is	a. 30 Days*	11	06	06	12
	b. 45 Days	02	00	06	02
	c. 60 Days	02	01	02	04
	d. 90 Days	05	13	06	04
4. For false complaint under CPA the complainant shall pay as penalty to opposite party, not exceeding--	a. Rs, 10,000/- *	08	12	06	11
	b. Rs, 25,000/-	07	00	07	02
	c. Rs, 50,000/-	03	07	02	01
	d. Not liable to pay	02	01	05	06
5. In a compensation case, if the party is not satisfied with the decision of National Commission, appeal may lie at	a. No appeal possible	03	00	04	10
	b. Session Court	05	02	09	00
	c. High Court	06	05	01	00
	d. Supreme Court*	06	13	06	10
6. If a doctor fails to comply in a compensation case under CPA then punishment is	a. Imprisonment	05	00	02	08
	b. Fine up to 10,000/-	02	01	08	00
	c. Both a & b.	13	19	10	09
	d. None of above	00	00	00	03
7. The power of Consumer Courts is like	a. Civil Court*	07	08	09	09
	b. Criminal Court	03	00	04	00
	c. Both Civil & Criminal	08	04	03	03
	d. Special power	02	08	04	08
8. Which is not correct about Consumer Court?	a. No advocate required	07	03	04	05
	b. Court fees to be paid	05	12	07	05
	c. Accused has to be present*	05	02	03	05
	d. Decision given within 90 days	03	03	06	05
9. State Commission has pecuniary jurisdiction of	a. up to 20 lakh	06	10	04	06
	b. 20 lakh – 1 Crore*	09	08	13	09
	c. More than 1 Crore	02	01	02	01
	d. No Limit	03	01	01	04
10. District Forum has same power as are vested in a Civil Court by	a. I - Class Magistrate*	08	18	07	09
	b. II-Class Magistrate	08	01	08	08
	c. Tehsildar	02	00	04	02
	d. Collector	02	01	01	02

Table 3: Responses to the Queries on Medical Negligence by Faculty Members of DMCH, Ludhiana (Pvt.) and Clinicians of GMCH, Patiala (Govt.)

Questions	Reply	M-Pvt.(20)	S-Pvt. (20)	M-Govt.(20)	S-Govt. (20)
A patient got treatment from a Govt. hospital where no fee is charged. There is allegation of negligence against the treating doctor. The complainant can approach the :	a. Civil Court only	03	02	08	08
	b. Civil & Criminal Court*	07	14	04	04
	c. Civil Court and Consumer Court	08	02	05	03
	d. Civil, Consumer and Criminal Court	02	02	03	04
In a Civil negligence case against the doctor, onus of proof lies on	a. Doctor	09	08	02	01
	b. Patient*	08	09	13	19
	c. Public Prosecutor	01	01	03	00
	d. Judicial Magistrate	02	02	02	00
Contributory Negligence is a defense in:	a. Civil Negligence*	05	10	11	06
	b. Criminal Negligence	05	05	04	01
	c. Civil & Criminal Negligence Both	09	04	02	06
	d. None of the above	01	01	03	07
Which of the following is not a defense available to a doctor against allegation of negligence?	a. Limitation Period	05	02	05	03
	b. No fees accepted*	13	12	10	03
	c. Therapeutic Misadventure	00	03	02	02
	d. Res Judicata	02	03	03	12
A doctor while treating the patient without consent in an emergency is protected under	a. Sec. 87 IPC	04	01	02	03
	b. Sec. 89 IPC	10	05	09	06
	c. Sec. 92 IPC*	03	06	06	05
	d. Sec. 90 IPC	03	08	03	06

Table 4
Awareness Scores Achieved by Each Faculty (1 mark for correct answer; Max score 15)

Medical Specialty (Pvt.)		Surgical Specialty (Pvt.)		Medical Specialty (Govt.)		Surgical Specialty (Govt.)	
Faculty No.	Score	Faculty No.	Score	Faculty No.	Score	Faculty No.	Score
1.	05	1.	05	1.	06	1.	09
2	08	2	00	2	06	2	09
3	04	3	07	3	08	3	09
4	04	4	10	4	04	4	08
5	05	5	08	5	08	5	09
6	08	6	12	6	07	6	08
7	05	7	11	7	07	7	08
8	06	8	12	8	08	8	03
9	04	9	12	9	08	9	06
10	11	10	10	10	07	10	03
11	03	11	05	11	07	11	04
12	07	12	08	12	04	12	03
13	08	13	06	13	05	13	05
14	08	14	05	14	03	14	09
15	05	15	06	15	04	15	10
16	06	16	03	16	05	16	04
17	07	17	05	17	04	17	06
18	03	18	05	18	04	18	05
19	04	19	06	19	03	19	06
20	07	20	05	20	02	20	08