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Study of Medico-Legal Cases of negligence admitted and judgement delivered under Consumer Forum in Sangli District

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ABSTRACT

In *Kautilya Arthashastra* it has been mentioned that doctor (*Vaidya*) should be punished for his negligence and now in our era we learn about this act under Medicolegal Ethics in Forensic Science and Medical Jurisprudence. In our country percentage of illiterate people is on higher side due to which they are cheated. Hence these people are unaware of rights and services provided by them by law. The aim of this study was to understand the concept of consumer protection act and its relation with medical sciences and correlation with ancient literature. And also to evaluate false or malpractices and to study the difference between civil and criminal negligence and also to find out preventive measures for it. The study of medicolegal cases was done from the cases registered in Sangli Consumer District Forum, Sangli district. Medicolegal cases between January 2001 to December 2010 were collected from Sangli district consumer forum. Total 12 medicolegal cases were sort out. Each case was studied in detail. The study shows that percentage of medicolegal cases in government hospitals and institutes is more than private hospitals. All medicolegal cases were found in allopathy system of medicine.

Key words: Medical Negligence, Medico legal, Consumer Protection Act, *Kautilya Arthashastra*.

INTRODUCTION

Ayurveda is an ancient medical science. Agad Tantra and Vyavhar Ayurveda is a special branch of Ayurveda having its own importance in Ayurveda.

In ancient period it is mentioned in the *Kautilya Arthashastra* that doctor (*Vaidya*) should be punished for his negligence^[1] and now in our era we learn about this act under Medicolegal Ethics in Forensic Science

and Medical Jurisprudence. In our country percentage of illiterate people is on higher side due to which they are cheated. Hence these people are unaware of rights and services provided by them by law.

In this modern age of India, there are loss of facilities and developed technology for production, sale, purchase and services though there is unfair trade practice and negligence occurring frequently.

The consumer protection act was brought into existence for the protection of interests of the consumer and for settlement of consumer disputes within limited time and with minimal expenses. This enables a consumer to make a complaint to a redressal forum in respect of defective service.

Consumer Protection Act, 1986 (C.P.A.) has been established at three different levels,^{[2],[3]}

1. District consumer forum
2. State consumer forum
3. National consumer forum

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The consumer protection act is valuable and the object act is providing better protection of interest of consumer.

There is misconception still today in the mind of medical faculty that CPA is anti doctor or anti medical profession. This fear will get right answer after the study which provides preventive hints. This study will throw light on reasonable care and optimum professional skill fullness and competence to be followed by medical man.

The Medicolegal case (MLC) means the case which is related with both medicine and law. Some of the complication occurs due to negligence, like malpractices, lack of knowledge in medical treatment.

So, the study highlights the consumer protection act related to practice of medicine. It will provide useful guidance and increase awareness to patients and doctors.

OBJECTIVES

To study the concept of the Consumer Protection Act and to evaluate its importance in medical science.

REVIEW OF LITERATURE

In India *Arthashastra* of *Kautilya* defined penal laws and regulation medical practice. He stated that if the severity of disease is increased although he is taking medicines under observation of doctor, then the doctor should be punished as by giving the double amount of the expenditure that the patient had spent.^[1]

Hippocrates (462-377 B.C.) the "Father of Western Medicine" discussed the lethality of wounds. His contribution to medical ethics is very important in medical field.^[4]

The code of *Hamurabi*, King of Babylon (about 2200 B.C.), is the oldest known medico legal code.^[5] In 4th century B.C. *Manu* (King and Law-giver) in his treatise, *Manusmriti*, laid down various laws including punishment for various sexual offenses and recognized mental incapacity due to intoxication, illness and age between 4th and 3rd century B.C.^[6]

The consumer protection act, 1986 and amendment published by the Government of India related with Medical Sciences. The various Sites on Internet related with this subject were studied as and when required. Also the ancient literature related to this topic is also referred.^[3]

Consumer protection act, 1986

The moment a person comes into this world, he starts consuming. He needs clothes, milk, food, medicine, water and many more things and these needs keep taking one form or the other all along his life. Thus we all are consumers in the literal sense of the term. When we approach the market as consumer, we expect value for money; i.e., right quality, right quantity, right prices, information about the mode of use etc. But there may be instances where a consumer is harassed or cheated.

The Government understood the need to protect consumers from unscrupulous suppliers and several laws have been made for this purpose. We have the Indian contract act, the sale of Goods act, the dangerous Drugs act, the Agricultural produce (grading and marketing) act, the Indian standards institution (certification marks) act, the prevention of food adulteration act, the standards of weights and measures act etc. which to some extent protect consumer interests. However, these laws require the consumer to initiate action by way of a civil suit involving lengthy legal process which is very expensive and time consuming.

The Consumer Protection Act was passed in 1986 and it came into force from 1 July 1987. It makes provisions for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith.

Salient features of consumer protection act 1986^[2]

The salient features of Consumer Protection Act (CPA) 1986 are as follows;

1. It applies to all goods, services and unfair trade practices unless specifically exempted by the Central Government.

2. It covers all sectors whether private, public or co-operative.
3. It provides for establishment of consumer protection councils at the central, state and district levels to promote and protect the rights of consumers and three tier quasi judicial machinery to deal with consumer grievances and disputes.
4. It provides a statutory recognition to the six rights of consumers.

Filing of Complaints

For redressal of consumer grievances a complaint must be filed with the appropriate forum. In this section we come to know;

- Who can file a complaint,
- What complaints can be filed,
- Where to file the complaint,
- How to file the complaint.

Who can file a complaint?

The following persons can file a complaint under Consumer Protection Act 1986,

- a. A consumer.
- b. Any recognised voluntary consumer association whether the consumer is a member of that association or not.
- c. One or more consumers where these are numerous consumers having same interest.
- d. Legal heir or representative in case of death of a consumer.

What complaints can be filed?

A consumer can file a complaint relating to any one or more of the following,

- a. An unfair trade practice or a restrictive trade practice adopted by any trader or service provider.
- b. Goods bought by him or agreed to be bought by him suffer from one or more defect.
- c. Services hired or availed of, or agreed to be hired or availed of, suffer from deficiency in any respect.

- d. Price charged in excess of the price,
 - Fixed by or under the law for the time being in force.
 - Displayed on the goods or the package.
 - Displayed in the price list.
 - Agreed between the parties.
- e. Goods or services which are hazardous or likely to be hazardous to life and safety when used.

Where to file a complaint?

If the value of goods, services and the compensation claimed does not exceed Rs. 20 lakh, then the complaint can be filed in the district consumer forum.

If the value of goods, services and the compensation claimed exceed Rs. 20 lakh but does not exceed Rs. One crore, then the complaint can be filed before the state consumer forum.

If the value of goods, services and the compensation claimed exceed Rs. 1 crore, then the complaint can be filed before the national consumer forum.

How to file a complaint?

A complaint can be made by person or by any authorized agent or by post. The complaint can be written on a plain paper duly supported by documentary evidence in support of the allegation contained in the complaint. The complaint should clearly specify the relief sought. It should also contain the nature, description and address of the complainant as well as the opposite party and so also the facts relating to the complaint and when and where it arose.

What are the reliefs available to consumers?

Depending on the nature of the complaint and relief sought by the consumer, and the facts of the case, the redressal forum may order one or more of the following reliefs,

- a. Removal of defects from the goods or deficiencies in services in question.
- b. Replacement of the defective goods.
- c. Refund of the price paid.

- d. Award of compensation for loss or injury suffered.
- e. Discontinuance of unfair trade practices or restrictive trade practice or not to repeat them.
- f. Withdrawal of hazardous or dangerous goods from being offered for sale.
- g. Provision of adequate costs to aggrieved parties.

Time limit for filing the case

The consumer can file the complaint within two years from the date on which the cause of action had arisen. However, it may be admitted even after the lapse of two years if sufficient cause is shown for the delay.

Time limit for deciding the case

Every complaint must be disposed off as speedily as possible within a period of three months from the date of notice received by the opposite party. Where the complaint requires laboratory testing of goods this period is extended to five months.

Difference between civil negligence and criminal negligence

1. The civil negligence does not amount to commission of an offence, but the criminal negligence amount to commission of an offence.
2. The civil negligence and criminal negligence tried in civil court and criminal court respectively.
3. In civil negligence sufferer party is the complainant and in criminal negligence the public prosecutor on behalf of the state is the complainant.
4. The civil negligence causes repairable damage or harm to the patient and the criminal negligence causes irreparable damage to the patient.
5. In civil negligence magnitude of the negligence does not indicate gross carelessness by the doctor and in criminal negligence magnitude of the negligence is gross, indicating total carelessness resulting in severe harm to the patient.
6. In civil negligence the doctor is not punishable. He may have to pay for or compensate the damage

by money and in criminal negligence the doctor is punishable with either imprisonment or fine or both.

Professional negligence

It is defined as the breach of a duty caused by the omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do.

Medical negligence

It is defined as absence of reasonable care and skill in a doctor in course of treating his patient, causing some damage, bodily injury or death of the patient. Some essential factors of medical negligence are a doctor must owe duty of care to patient, breach of the duty and suffered damage due to breach.

MATERIALS AND METHODS

Place of work - Sangli District Consumer Forum.

Study Design - Retrospective Observational Study

Methodology

- First review of literature is done
- Visit to Sangli District Consumer Forum.
- Collection of cases on the basis of inclusion criteria.
- Affidavit of each case done.
- Certified copies of cases will be studied.
- Review of MLC's admitted and judgement delivered in 1st Jan 2001 - 31st Dec 2010.
- Study of medicolegal cases selected and their procedures.
- Then study of remarks given by court.

Inclusion criteria

1. Collection of MLC'S under Consumer protection act.
2. The MLC'S which are admitted and delivered judgements under consumer forum between 1st Jan 2001 to 31st Dec 2010.

Exclusion criteria

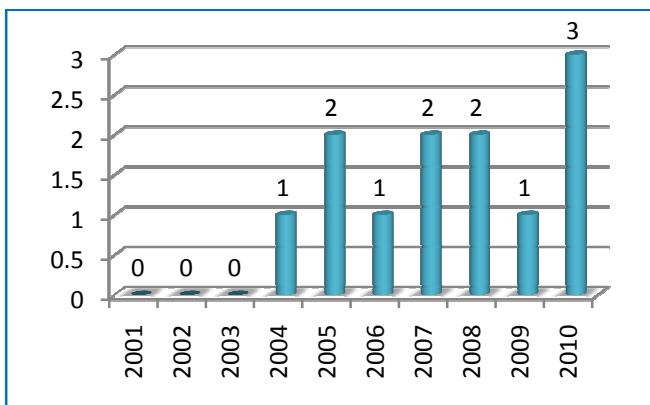
1. The MLC'S which are admitted and not delivered judgements under consumer forum between 1st Jan 2001 to 31st Dec 2010.

OBSERVATION AND RESULTS

Table 1: Number of cases between 1st Jan 2001 to 31st Dec 2010.

SN	Year	Cases
1.	2001	0
2.	2002	0
3.	2003	0
4.	2004	1
5.	2005	2
6.	2006	1
7.	2007	2
8.	2008	2
9.	2009	1
10.	2010	3

Figure 1: Medicolegal cases between 1st Jan 2001 to 31st Dec 2010.



In 1st three years no any medicolegal case admitted. The numbers of cases admitted yearly are shown in table 1.

Table 2: Cases of Negligence / Malpractice Cases during Year 1st Jan 2001 to 31st Dec 2010

SN	Types	Cases	Percentage (%)
1.	Malpractice	00	00%
2.	Negligence	12	100%
	Total	12	100%

In the duration of Jan 2001 to Dec 2010, all cases were admitted of negligence. No any single case was found to be malpractice. As shown in table 2.

Table 3: Cases in Urban Area and Rural Area between 1st Jan 2001 to 31st Dec 2010

SN	Place	Cases	Percentage (%)
1.	Rural	6	50 %
2.	Urban	6	50 %
	Total	12	100 %

The percentages of cases admitted in rural and urban area are same i.e. 50%. As shown in table no.3

Table 4: MLC'S In Government Hospitals/Institutes & Private Hospitals between 1st Jan 2001 To 31st Dec 2010

SN	Place	Cases	Percentage (%)
1.	Government Hospitals / Institutes	08	66.67 %
2.	Private Hospitals	04	33.33 %
	Total	12	100 %

Government hospital shows more percentage of MLC'S i.e. 66.67% than percentage of cases at private hospital i.e. 33.33%.

Table 5: MLC'S in various types of systems of medicine between 1st Jan 2001 to 31st Dec 2010

SN	System of Medicine	Cases	Percentage (%)
1.	Allopathy	12	100 %
2.	Ayurveda	00	00 %
3.	Homeopathy	00	00 %
4.	Unani	00	00 %
	Total	12	100%

MLC'S registered in various systems of medicine are shown in table 5. All of the cases registered in allopathy system of medicine as shown in table 5.

Table 6: Cases found in General Practice and Speciality Practice between 1st Jan 2001 to 31st Dec 2010

SN	Practice	Cases	Percentage (%)
1.	General practice	03	25 %
2.	Speciality practice	09	75 %
	Total	12	100 %

As per shown in table 6, the cases registered in speciality practice are 9 and only 3 case were registered in general practice that means percentage of MLC'S found in speciality practice is more than general practice.

Table 7: Cases in favour of Medical Practitioner / Victims and Compromised / Pursis between Years 2001 To 2010

SN	Favour of	Cases	Percentage (%)
1.	Medical practitioner	06	50 %
2.	Victim	03	25 %
3.	Compromised	01	08.33 %
4.	Pursis	02	16.67 %

	Total	12	100 %
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Table no.7 shows the cases in favour of Medical Practitioner / Victims and Compromised / Pursis. Most of the cases were in favour of medical practitioner i.e. 50%. 25% of the cases were in favour of victim. 08.33% of the cases were in favour of compromised and 16.67% of the cases were pursis.

Preventive measures for Doctors and Patient

1. Doctor should maintain a record of case papers of every patient.
2. Doctor should maintain reasonable care, reasonable skill and professional secrets of patient.
3. Doctor should take preoperative and postoperative care of patient.
4. Patient should follow the instructions given by doctor.
5. Patient should keep all documents related to treatment.
6. Patient should know their rights related to treatment.

CONCLUSION

Consumer protection act is very important and useful which provide better protection to consumer. The act enshrines certain right of consumer and provides speedy extensive redress of consumer's grievances. In ancient period it is mentioned in the *Kautilya Arthashastra* that *Vaidya* should be punished for his negligence and now in this era we learn this act under consumer protection act. But the doctors practicing ethically and honestly should not have any reason for fear. In this present study false or malpractice case was not found from Jan 2001 to Dec 2010 in Sangli district forum.

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