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COMMENTARY

Rethinking medical liability in India: Supreme Court's call for judicial review and ongoing uncertainty

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Abstract

The landmark 1995 judgment by the Supreme Court of India included doctors within the purview of the Consumer Protection Act (CPA) 1986, hinting that other professions, including legal services, could also fall under its ambit. However, in 2024, the apex court ruled in 'Bar of Indian Lawyers Through its President vs DK Gandhi PS National Institute of Communicable Diseases and Anr.', that lawyers are not liable for professional deficiencies under the CPA, emphasising the lack of universal standards for assessing dereliction of duty in legal services. Although this landmark verdict let advocates off the hook, it calls into question the Court's 30-year-old decision. This ruling has reignited the debate on whether doctors should be equated with other service providers under the CPA 2019, particularly in light of the rise in defensive medicine practices, which increase healthcare costs and erode doctor–patient trust. In this commentary, we will discuss the analysis and observations of the apex court in the DK Gandhi case, contributing to the ongoing discourse on medical liability under the CPA in India.

Keywords: *advocates, Consumer Protection Act, doctors, India, medical negligence, Supreme Court*

*Ba*ckground

A few decades ago, doctors were considered demigods, and the medical profession was considered noble. However, recent trends in litigation suggest otherwise [1–4]. To add insult to injury, over the years, legislation and judicial decisions have evolved more in favour of patients. Additionally, India could face severe consequences due to the malpractice crisis. Hence, it is crucial to look back and analyse the path we have taken and suggest accessible and sustainable healthcare plans for the future, securing patients' rights and avoiding the harassment of doctors through the misuse of medical negligence litigation. In this commentary, we discuss the analysis of the Supreme Court in *Bar of Indian Lawyers Through its President vs DK Gandhi PS National Institute of Communicable Diseases and Anr., 2024* — which excludes advocates from the ambit of the Consumer Protection Act (CPA) [5] — and assess the applicability of its reasoning to the medical profession, contributing to the ongoing discourse about medical liability under the CPA in India.

The perpetual debate: The first phase (pre-1995)

Prior to the enactment of the Special Act, the CPA 1986 [6], all civil suits concerning medical negligence were addressed by civil courts. However, after consumer dispute redressal forums were established under the CPA, many cases were also filed in consumer tribunals. This led to confusion among stakeholders about whether a patient can seek consumer redressal forums, considering healthcare a service within the scope of the CPA and file a complaint against healthcare professionals. This was complicated by the conflicting opinions of various high courts. While some of them opined that medical services could be included within the ambit of the CPA, others dissented from this viewpoint [7]. This initiated a nationwide debate about whether healthcare should also be excluded from the scope of the CPA.

Second phase (1995–May 2024)

The Indian Medical Association approached the Supreme Court to resolve the conflicting views and speculation. In 1995, the landmark case of *Indian Medical Association vs VP Shantha,* adjudicated by a three-judge bench of the Indian Supreme Court, established a pivotal precedent by confirming that doctors and hospitals are included under the CPA [8]. This ruling marked a dramatic shift in the interpretation of the Act, suggesting that its applicability could extend to other professions, including the legal profession. In evaluating whether medical professionals fall under the CPA, the apex court considered several key points.

Firstly, although medical practitioners are subject to the disciplinary oversight of the Medical Council of India and/or state medical councils, this regulatory framework does not exempt their services from the ambit of the Act. Secondly, the services provided by medical practitioners to patients should not be categorised as services rendered under a "contract of personal service". This distinction affirms that patient care is a service akin to other consumer transactions. Finally, the framework of the consumer disputes redressal forums, and the availability of appeal provisions, ensure that redressal mechanisms are well-equipped to handle the complexities associated with complaints of deficiencies in the medical services provided by doctors [7]. Surprisingly, in this ruling, there appears to be no deliberation about whether medical and legal professionals should be compared with other occupations, such as plumbers, carpenters, bankers, etc. Consequently, in the 2009 ruling in *Bar of Indian Lawyers vs DK Gandhi,* the National Consumer Dispute Redressal Commission (NCDRC) determined that legal professionals also fall under the ambit of the CPA, referencing the findings of the apex court in *VP Shantha's* case [5].

Third phase (since May 2024)

The Bar Council subsequently appealed this decision in the Supreme Court. During the hearing, the Supreme Court's division bench, comprising two judges, examined a moot question: Are lawyers providing legal services to clients covered by the CPA? Ultimately, the apex court overturned the NCDRC's ruling, determining that lawyers cannot be held liable under the CPA for alleged deficiencies in their professional services while representing their clients [5].

This case posed three critical questions before the court: One, does the CPA cover professionals? Two, is the legal profession *sui generis* (unique)? Finally, can the services provided by advocates be classified as a "contract of personal service"? In its analysis, the Supreme Court scrutinised the legislative intent behind the CPA and observed that the primary aim of the CPA 2019 [9], and its predecessor, enacted in 1986, is to protect consumers from unethical and unfair trade practices rather than to regulate professional services. The appellants contended that, unlike the medical profession, which has established scientific standards for determining standards of care, the legal profession lacks a universal standard or objective metric for assessing alleged negligence. They argued that the complexities inherent in the legal profession, due to the intricate framework and functioning of the legal system, the lack of precise answers, and the subjective nature of outcomes, present significant challenges. Consequently, the court concluded that the legal profession is indeed *sui generis,* given its regulated nature and integral role within the judiciary, distinguishing it from other professions, including medicine [5].

The court also deliberated on whether the services provided by advocates constitute a "contract of personal service" based on a legal precedent, suggesting that while a higher degree of client control implies a contract of service, greater independence indicates otherwise (contract for service). This ultimately led the court to affirm that legal services do not fall within the scope of the CPA [5,10]. One of the judges (Justice Pankaj Mithal) compared Indian consumer protection laws with those of other jurisdictions and advocated for the exclusion of legal services from the CPA. Meanwhile, Justice Bela M Trivedi, the other judge, emphasised the distinction between professionals and businesspeople or traders, asserting that clients and patients should not be classified as consumers and recommended that a larger bench should review the three-decade-old verdict [5].

The debate continues

This apex court's judgment has reignited the ongoing debate among doctors about the applicability of consumer protection laws to physicians. Despite the existence of standard treatment guidelines for various conditions, the complex and unpredictable nature of medical science presents challenges unique to each patient's case. Even with the highest standards of care, desired outcomes are not always guaranteed, as they often depend on factors beyond a physician's control, including patient-specific circumstances. Under the CPA, there has been a marked increase in litigation against doctors for alleged medical negligence in India, which may result in a malpractice crisis. However, this overwhelming burden on doctors has necessitated the widespread adoption of defensive medicine, which can negatively impact patient care and overall public health [11, 12].

Why should the medical profession be included under the CPA?

Many believe that due to the commercialisation of medical services, healthcare should fall within the jurisdiction of the CPA. This would provide an avenue for affected patients or their families to seek redressal in the form of compensation, acknowledging their status as consumers within the healthcare sector. Additionally, according to the legal mandate under Section 38(7) of the CPA 2019, redressal commissions are required to dispose of every admitted complaint within 90 days from the date of receipt of notice by the opposite party, if it does not require the analysis or testing of commodities [9]. For the aggrieved party, — patients and/or their families — this is certainly a cheaper and relatively quicker option than traditional civil courts.

The medical profession: "sui generis"?

It is an undisputed fact that medical science is not an exact science; cures cannot be guaranteed due to the complexities and variables involved. If we were to compare the argument put forth in the *DK Gandhi* case, particularly the Supreme Court's observation regarding the autonomy of clients, medical professionals also rely on the patient's consent for their treatment, thus giving patients control over their

decisions — except in emergencies, where doctors might act to save lives without consent. This understanding of the patient's autonomy may be enough to deem medical services a "contract of personal service" and place them outside the scope of the CPA.

Furthermore, the appellants in the *DK Gandhi* case argued that the Advocates Act of 1961, as a special Act, should take precedence over the CPA. They contended that applying the CPA to advocates would lead to a flood of unnecessary litigations and conflicting decisions on issues previously settled by the Supreme Court [5]. It is pertinent to note that a special Act — the National Medical Commission Act of 2019 (previously the Indian Medical Council Act, 1956) — already regulates the medical profession. Although doctors are governed by the regulatory frameworks established by the National Medical Commission (formerly by the Medical Council of India), which ensure accountability through state medical councils that effectively address patient grievances, consumer dispute redressal forums and the special provision in the newly enacted criminal law vis-à-vis Bharatiya Nyaya Sanhita, under Section 106(1), provide additional grievance resolution avenues to patients [13–15]. Doctors in India are already under immense pressure due to the litigious environment, prompting the widespread practice of defensive medicine, which could be detrimental to society in the long run.

Consumer protection laws of other jurisdictions

It is important to note that consumer protection laws concerning healthcare in various countries present differing views across the globe. A few jurisdictions, such as the European Union (EU), Taiwan, Maryland (USA), Québec (Canada), and Malaysia, explicitly exclude healthcare from their respective consumer protection laws due to its technical complexity, its critical role as a service of general interest, and the substantial public funding allocated to mitigate defensive medical practices; this necessitates specialised regulations. Additionally, professionals who are governed by a professional code are subject to distinct oversight, further distinguishing healthcare from typical consumer transactions [16–22]. However, civil law countries in the EU, like the Netherlands, Finland, Denmark, and Norway, have robust medical injury compensation systems outside of traditional litigation. The Healthcare Quality, Complaints and Disputes Act of 2015, which came into force in 2016 in the Netherlands, was established to ensure quick resolutions within six weeks via complaint procedures; appeals to dispute committees should be adjudicated within six months [23,24]. Finland's Patient Insurance Act, 2019, which replaced the Patient Injury Act, 1987, offers compensation within three months through the Patient Insurance Centre [23,25]. Denmark's Patient Compensation Programme, under the Danish Patient Insurance Scheme, 1991, requires proof that the injury was caused by the healthcare system and usually resolves claims within nine months [23,26]. The Norwegian System of Patient Injury Compensation, a public agency, emphasises efficiency and accessibility and handles claims free of charge, with decisions appealable to the Patient Injury Compensation Board [23,27]. Although in common-law countries like Ireland and the UK, medical professionals are considered traders under consumer protection laws, their clinical negligence cases are addressed by tort laws [28, 29].

Conclusion

The never-ending discussion on doctors' liability in alleged negligence cases requires thorough deliberation. While a judicial review potentially offers a pathway for progress, its outcomes remain uncertain. Whether the recommendation made by one judge requires the chief justice of India to convene a constitutional bench or is to be construed as an observation is a matter of technical inquiry. Given that the world is divided on this matter, and considering the evolving perspectives following the recent verdict of the apex court in the *DK Gandhi* case, we believe it is high time to reevaluate India's stance on including healthcare under the CPA. If the Supreme Court were to revisit its 30-year-old verdict, there is hope that the re-evaluation of medical liability will lead to a robust healthcare framework that upholds patients' rights, fosters trust, and alleviates the anxieties faced by medical professionals.

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