ABSTRACT:
A consumer is a user of goods and service, therefore, every producer is also a consumer. However, conflicting interests have categorised them, inevitably, into two different groups. The industrial revolution brought in the concept of standardisation and mass production and over the years, the type of goods and the nature of services available grew manifold. The doctrine of “Caveat Emptor” or “let the buyer be aware” which came into existence in the middle ages had been replaced by the principle of “Consumer Sovereignty” or “consumer is the king”. But, with tremendous increase in the world population, the growing markets were unable to meet the rising demand which created a gap between the general “demand and supply” levels in the market. This to some extent watered down the concept of “consumer sovereignty” with consumers being forced to accept whatever was offered to them. On the other hand, the expanding markets necessitated the introduction of various intermediaries between producer and ultimate consumer. Advertising, though ostensibly directed at informing potential consumers about the availability and uses of a product, began to be resorted to as a medium for exaggerating the uses of one’s product or disparaging others products so as to have an edge over competitors. Unfair and exhorbitant prices, misrepresenting the efficacy or usefulness of goods, negligence as to safety standards, etc. became rampant. It, therefore, became necessary to evolve statutory measures, even in developed countries to make producers/traders more accountable to consumers. It also became inevitable for consumers to unite on a common platform to deal with issues of common concern and having their grievances redressed satisfactorily.

KEYWORDS:
Consumer, Caveat Emptor, Consumer Sovereignty, Standardisation, Statutory measures.

INTRODUCTION:
It is the duty of the government to provide the fundamental right to life and personal liberty guaranteed by Article 21 of the Constitution of India. Therefore it is the duty of State to provide to all citizens adequate and proper medical services. The Consumer Protection Act, 1986 was enacted “to provide for better protection of the interests of the consumers” - the consumers of goods and services as defined under the Act. The legislation, no doubt, has the unique distinction of being the only one in the country made exclusively for consumers to protect their interests against defective goods and deficient services, even though a plethora of existing legislations do have provisions to deal with consumer rights in different degrees on specified matters. The Consumer Protection Act has been marginally amended in 1991 and substantially in 1993 and 2001, with a view to making it more effective in
bringing justice to the door steps of consumers. Consumer Protection tries to help consumer to participate actively in the market processes, not only when he goes to buy goods but also when he goes to medical practitioner for treatment.

**CONTRACT OF SERVICE AND CONTRACT FOR SERVICE:**
The Supreme Court in the case of *Indian Merchants Association v V.P Shanta* observed that a contract for service implies a contract whereby one party undertakes to render services e.g. professional or technical service to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion. A contract of service on the other hand implies relationship of master and servant and implies an obligation to obey orders in the work to be performed and as to its mode and manner of performance. The Parliamentary draftsman was well aware of this well accepted distinction between “contract of service” instead of the expression “contract for service” in the exclusionary part of the definition of, “service” the reason being that an employer could not be regarded as a consumer, in respect of services rendered by his employee in pursuance of contract of employment. By affixing the adjective “personal” to the word “service” the nature of the contracts which were excluded were not altered. The adjective only emphasised that what was sought to be excluded was personal services only. The expression contract of personal service in the exclusionary part of Section 2(1)(o) must, therefore, be construed as excluding the services rendered by an employee to his employer under the contract of personal service free from the ambit of the expression service.

**CONSUMER OF MEDICAL SERVICES AS UNDER CONSUMER PROTECTION ACT, 1986:**
Earlier, the patients aggrieved by medical negligence did not have any effective adjudicative body for getting their grievances redressed. The Indian Medical Council Act, 1956 as amended in 1964, provides that regulation made by the Council may specify conducts, whose violations shall constitute misconduct. Secondly, the Council was available only at the state headquarters, thereby making it hardly accessible to the majority of parties. Further, the Council has no power to award compensation to the patients for the injury sustained. There are of course provisions in the Civil and Criminal law offering remedies to aggrieved patients. But the Criminal law was pressed into services mostly in case of death as if bodily injury lesser than death has resulted from negligence, then charge would be either simple hurt or grievous hurt. What the law calls criminal negligence is largely a matter of degree, it is incapable of a precise definition. To prove is like chasing a mirage. Further, courts have been very careful not to hold qualified physicians criminally liable for patient’s deaths, resulting from a mere error of judgment in the selection and application of remedies.

1 Decided on 13th November 1995

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There has been no dispute with regard to the jurisdiction of Civil Court to
decide the case pertaining to medical negligence and award suitable damages
to the aggrieved person. There are many instances, whereby a Civil Court has
awarded damages in cases of proved medical negligence.
The National Consumer Disputes Redressal Commission (NCDRC) upheld a
decision of the Kerala State Commission which said that a patient is a
consumer and the medical assistance was service and therefore in the event of
any deficiency in the performance of medical service, consumer courts can
have jurisdiction. It was further observed that the medical officer’s service
was not a personal service so as to constitute an exception to the application
of the Consumer Protection Act2.
Justice V Bala Krishna Eradi, President, NCDRC, on April 21, 1992,
delivered a landmark judgment in Cosmopolitan Hospital and Anr. v.
Vasantha P. Nair3, where it was held that the activity of providing medical
services for payment carried on by the hospital and members of the medical
profession, falls within the scope of the expression ‘service’ as defined in
Section 2(1)(o) of Consumer Protection Act and in the event of any deficiency
in the performance of such service, the aggrieved party could invoke the
remedies provided under the Act by filing a complaint before the consumer
forum having jurisdiction.
A patient can seek redressal from a consumer court for medical services under
the following circumstances:
(i) the services should have been hired or availed of or agreed to be hired or
availed of by the patient
(ii) the services should have been rendered or agreed to be rendered by the
doctor to the patient
(iii) the services of the doctor should have been or availed of or agreed to
have been hired or availed of for consideration
(iv) the services of the doctor so hired or availed of or agreed to be hired or
availed of suffer from deficiency in any respect
(v). the services have not been rendered free of charge or under a contract of
personal service4
A patient who pays up for the treatment, or promises to do so with a
consideration can seek redressal in a consumer court. This has been settled by
the landmark judgment of the Supreme Court in the case of Indian Medical
Association vs. VP Shantha & others.5 The Madras High Court gave its
judgment that any patient seeking treatment under a government or private
hospital can seek redressal under a consumer forum. This judgment was over
ruled by the Supreme Court as:
(i) Service rendered to patient by a medical practitioner except where doctor
render service free of charge to every patient or under a contract of personal
service by way of consultation, diagnosis & treatment, both medicinal &
surgical would fall within the ambit of “service” as defined in Section 2(1)(o)

3 Cosmopolitan Hospital and Anr. v. Vasantha P. Nair (1992) CPJ 302 NC
4 Ibid 2 pg. 237-238
5 How to Survive As A Consumer by Pradeep S Mehta (Of Professionals and Medical Negligence, Page 35)

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of the Consumer Protection Act.
(ii) The fact that medical practitioners belong to medical profession and are subject to the disciplinary control of the Medical Council of India and state medical councils but this would not exclude the service rendered by them from the ambit of the Consumer Protection Act.
(iii) The service rendered by a doctor was under a contract for personal service and not covered by the exclusionary clause of the definition of service contained in the Consumer Protection Act.
(iv) Service rendered free of charge to everybody, would not be service as defined in the Act.
(v) The hospitals and doctors cannot claim it to be a free service if the expenses have been borne by an insurance company under medical care or by one’s employer under the service condition.

NEGLIGENCE: A TORT AND A CRIME AND DEFICIENCY IN MEDICAL SERVICES

In common parlance, negligence means carelessness, lack of proper care and attention. In law, negligence becomes actionable, when it results in injury or damage. Negligence is treated as a tort as well as a crime. As a tort, it is actionable under the civil law and as a crime under the criminal law. Actions for damages in tort are filed in civil courts and after coming into force of the Consumer Protection Act 1986, in consumer forums also. Criminal complaints are filed under the relevant provisions of the Indian Penal Code and Criminal Procedure Code alleging rashness or negligence on the part of the persons concerned. Negligence is also a deficiency in service and actionable, whether committed by an individual doctor, a hospital, a lawyer, an architect, a builder or any individual.

PATIENT HAS THE RIGHT TO QUALITY HEALTHCARE

In the case of Pravat Kumar Mukherjee vs. Ruby General Hospital & Ors, the patient was brought to Ruby General Hospital and it was an emergency case beyond any doubt. The doctors assisted the patient but as there was no guardian and a passerby admitted the patient, the doctors contended that as there was no consent for paying up the requisite fees for medical help so it was stopped hence forth. The patient was also in a condition to be moved to another hospital but no such action was taken. This led to the death of the young boy. At that moment, the passerby, who admitted the patient, was not in a position to pay Rs.15000. But as a doctor, the person is supposed to know his mission and on humanitarian grounds should have started providing the medical treatment. Further, when the treatment started, it would mean that the patient has hired the service and would have paid back the required sum in due course of time.

DUTIES AND LIABILITIES OF A DOCTOR

A doctor owes to his patient ‘to bring to his task a reasonable degree of skill and knowledge and to exercise a reasonable degree of care.’ And, he is not guilty of negligence ‘if he acted in accordance with the practice accepted as proper by a reasonable body of medical men skilled in that particular art.’ The

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6 Indian Medical Association vs. V.P. Shantha & others, AIR1996 S.C.550
7 Pravat Kumar Mukherjee vs. Ruby General Hospital & Ors, 2005(3) CPR 95 Pgs.- 109& 119 (DB) (NC)
skill of medical practitioners may differ from one doctor to another. There may be more than one course of treatment which may be given for treating a particular disease. Medical opinion may differ with regard to the course of action to be taken for treating a patient. As long as the doctor acts in a manner which is acceptable to the medical profession and he treats the patient with due care and skill, the doctor will not be guilty of negligence even if the patient does not survive or suffers a permanent ailment. Some of the important duties are to:

(a) exercise a reasonable degree of skill and knowledge and a reasonable degree of care;
(b) exercise reasonable care in deciding whether to undertake the case and also in deciding what treatment to give and how to administer that treatment;
(c) extend his service with due expertise for protecting the life of the patient and stabilise his condition in emergency situations;
(d) attend to his patient when required and not to withdraw his services without giving him sufficient notice;
(e) study symptoms and complaints of the patient carefully and administer standard treatment;
(f) carry out necessary investigations through appropriate laboratory tests wherever required to arrive at a proper diagnosis;
(g) advise and assist the patient to get a second opinion and call a specialist if necessary;
(h) obtain informed consent from the patient for procedures with inherent risks to life;
(i) take appropriate precautionary measures before administering injections and medicines and meet emergency situations;
(j) inform the patient or his relatives the relevant facts about his illness;
(k) keep secret the confidential information received from the patient in the course of his professional engagement; and
(l) notify the appropriate authorities of dangerous and communicable diseases.

The doctor, thus, has a discretion in deciding whether to undertake the case or not and has also a discretion in choosing the treatment which he proposes to give to the patient and such discretion is very wide in emergency situations. At the same time, he has a duty to stabilise the condition of the patient in emergency situation.

In Parmanand Katara v Union of India\(^8\), the Supreme Court declared that ‘every doctor whether at a government hospital or otherwise has the professional obligation to extend his service with due expertise for protecting life.’ The Court directed that the decision should be given wide publicity so that every doctor wherever he is within the territory of India should forthwith be aware of this position.

**TYPES OF LIABILITIES**

If the doctor is negligent in the performance of his duties, he is open to both criminal and civil liability. The liability may arise under the Indian Medical Council Act of 1956 (professional misconduct), under the Indian Penal Code (criminal liability) or under the Indian Contract Act of 1872 or under the Law...
of Tort (civil liability). Medical practitioners are accountable to their own colleagues in the profession in case of violations of the code of medical ethics, to the society for criminal negligence and to the victim for tort and breach of contract.

**LIABILITY FOR PROFESSIONAL MISCONDUCT**

The Indian Medical Council established under the Indian Medical Council Act, 1956 and the state medical councils established under the state acts deal with cases of professional misconduct of registered medical practitioners. They are empowered to take disciplinary actions against medical practitioners for misconduct and remove their names from the Medical Register if they are found guilty of professional misconduct. Similarly, the Dentists Act, 1948 empowers the Dental Council of India to prescribe standards of professional conduct and etiquette or code of ethics for dentists. The regulations made under the Act provides for taking action against professional misconduct including removal of names of such professionals from the Register. Section 20 of Indian Medical Council Act labelled “professional conduct” prescribes standards of professional conduct and etiquette and a code of ethics for medical practitioners.

The Council by virtue of powers conferred under Section 20A made regulations relating to the professional conduct, etiquette and ethics for registered medical practitioners. These are broadly categorised as:

A. Code of Medical Ethics
B. Duties of physicians to their patients
C. Duties of physicians in consultation
D. Responsibility of physicians to each other
E. Duties of Physician to the public and to the paramedical profession
F. Unethical acts
G. Misconduct
H. Punishment and disciplinary action

**CRIMINAL LIABILITY**

A criminal liability arises, when it is proved that the doctor has committed an act or made omission that is grossly rash or negligent, which is the proximate, direct or substantive cause of patient’s death. There are multiple sections in the Indian Penal Code, 1860 under which a person aggrieved due to any deficiency in service can file a case against the relevant person or authority. Section 304-A has come to the fore quite often in cases of medical negligence as the same deals with “causing death by negligence”. The Section reads as thus – **Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.** Apart from this, sections 319-338 speaks about causing hurt and grievous hurt, voluntarily or even accidentally for that matter. Sections 312-316 further lay down the punishments for miscarriage, which can be specifically brought under medical law.

In cases, where the intention to murder is clearly made out, then the doctor can even be held liable for murder under Section 302. IPC also speaks of certain defences that can be availed by the accused, one extremely important defence
in this regard is one of consent, sections 87, 88, 89, 90 and 92 explicitly mention that in cases where the act is done with the consent of the person, then that particular act would fall under the general exceptions thereby reducing the liability of the person. Similarly, Section 357 of the Code of Criminal Procedure 1973 provides for compensation that can be ordered in cases a doctor is held criminally liable for any offence.

Another law is Indian Evidence Act, 1872. The reason why this particular Act assumes importance in the present context is because of the requirement of expert opinions in cases of medical negligence, the reason why such an opinion is needed is mainly because sometimes the judges are to decide upon certain technical issues in the field of medicine in which no person except an expert has knowledge. But the problem with this is that there is no standard available so far in this particular area. Section 45 of the Indian Evidence Act is titled “opinion of experts” and reads as thus – When the Court has to form an opinion upon a point of foreign law, or of science, or are, or as to identify of handwriting (or finger impressions), the opinion upon that point of persons (experts), who are especially skilled in such issues are relevant facts.

In Jaggankhan vs. State of MP⁹, a homoeopathic doctor gave to his patient, who was suffering from guinea worms, 24 drops of stramonium and a leaf of datura without contemplating the reaction such a medicine could cause, resulting in the death of the patient. The doctor was held guilty of criminal negligence for committing the offence under this section. Recently the Supreme Court in Dr Suresh Gupta vs. Government of NCT¹⁰ has declared that for fixing criminal liability on a doctor or surgeon, the standard of negligence required to be proved should be so high that it can be described as ‘gross negligence’ or ‘recklessness’ and be made criminally liable for offence under Section 304-A IPC.

The medical services which are excluded from the purview of Consumer Protection Act are:

1. Under the contract of personal service, i.e. where a medical professional, in the capacity of an employee renders some professional service to his employer. In other words, wherever there is master and servant relationship between the recipient of the medical treatment and the doctor, the same would fall outside the purview of the definition of service under the Act.

2. At a government or non-government hospital/health centre/ dispensaries where no charge whatsoever is collected from any patients whether rich or poor would fall outside the purview of service under the Act.

VICARIOUS LIABILITY OF HOSPITALS

Hospitals and nursing homes are equally liable for the negligence of the paramedical staff and doctors working under them. In case of negligence by the doctor or the professional staff, the patient can claim damages either from the doctor or from the hospital under the doctrine of vicarious liability. Explaining the liability of the hospital, in one of the judgments, the court said that ‘whenever the hospital authorities accept a patient for treatment they must

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⁹ AIR 1965 SC 831
¹⁰ AIR 2004 SC 4091

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use reasonable care and skill to cure him of his ailment. The hospital authorities could not, of course, do it bythemselves; they have no ears to listen through the stethoscope and no hand to hold the surgeon’s knife. They must do it by the staff which they employ, and if their staff are negligent in giving the treatment, they are just as liable for that negligence as is anyone else, who employs others to do his duties for him.\

**STATUS OF GOVERNMENT HOSPITALS UNDER CONSUMER PROTECTION ACT**

As far as the settled law is concerned, the patients of the government hospitals cannot maintain a suit in the consumer forum under Consumer Protection Act, as such services do not have any considerations for the service rendered as those are free of cost. A patient cannot claim of availing of paid medical services in a government hospital just because of the tax he pays. The patients, who approach for treatment in a government hospital are not entirely treated free of cost. There is cost for the bed, medicines and the food that is being offered to the patient and all surgeries done on a patient are not always free of cost. Only the services that a doctor renders as regular visits and checkups may be regarded as free of cost. But that do not imply that a patient is being treated without any consideration. But all the patients, who seek treatment in government hospitals, are considered to have availed medical services free of cost. They are not consumers under the Consumer Protection Act as the service they are offered is not hired for consideration.

In the case of *Paramjit Kaur v State of Punjab*, the patient was operated upon in Punjab Government Hospital free of charge for family planning. Subsequently, she conceived and gave birth to a girl child. She filed a suit against State of Punjab and the doctor, who performed the operation, to claim compensation of Rs.2 lakh for negligence in performing the operation. The complaint was dismissed as she was treated free of cost.

In another case of *Additional Director, CGHS, Pune vs. Dr. R.L. Bhutani*, where the complainant was a retired government servant, who paid Rs 9 per month to Central Government Health Scheme (CGHS) and he and his family were beneficiary of the same. His wife suffered from some ailment for which she was treated upon and a surgery was conducted but as a result she got paralytic. The complainant claimed reimbursement of the amount paid for treatment in a private nursing home. The National Commission reversed the decision of the State Commission in this case saying that the service provided under CGHS is rendered free of cost and under a contract of service. Therefore, the complainant was not a consumer as defined under Section 2(1) (d) of the Consumer Protection Act.

The services provided by Employees’ State Insurance (ESI) hospitals cannot be regarded as free service and persons who get treated over there under an insurance scheme are rightly qualified as consumers under Consumer Protection Act as the issuer bears the charges. ESI scheme is an insurance scheme and contributes for the service rendered by the ESI hospitals/dispensaries, of medical care in its hospital/dispensaries, and as

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12 Additional Director, C.G.H.S , Pune vs. Dr. R.L. Bhutani, I (1996) C.P.J. 225

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such service given in the ESI hospital/dispensaries to a member of the scheme or his family cannot be treated as gratuitous.

Section 56 of ESI Act is a specific section, which has reference to the medical benefits available to an insured person or to his family member whose condition requires medical treatment and attendance and they shall be entitled to receive medical benefit.”

Section 59 of the same Act obligates the corporation to establish and maintain in a State such hospitals, dispensaries and other medical and surgical services as it may think fit for the benefit of the insured persons and their families. From the provisions of the ESI Act, it is clear that the corporation is required to maintain and establish the hospitals and dispensaries and provide medical and surgical services. Service rendered to the insured person or his family member in the hospital for medical treatment is not free, in the sense that the expense incurred for medical service rendered in the hospital would be borne from contributions made to the insurance scheme by the employer and the employee.”

It is a matter of common knowledge that the patients in a government hospital are regarded to be treated free of cost but as a matter of fact, the x-rays or other pathological tests that are required to be performed are not done in the government hospital but the patients get those done from outside/private clinics.

As has earlier been mentioned the medicines are not being provided free, which they need to buy from outside from dispensaries which is not free of cost. So, free of cost service is not actually free of cost.

**STATUS OF PRIVATE PRACTICE UNDER CONSUMER PROTECTION ACT**

The patients of private nursing homes, hospitals and private practitioners comes under the ambit of a consumer as explained in sub clause (ii) of clause (d) of sub Section (1) of Section 2 of Consumer Protection Act. As the hiring or availing of the service of the doctor by the patients is for consideration which has been paid or promised, or partly paid and partly promised or may be under any scheme of deferred payment, therefore they or any other consumer association can claim for compensation in case of any deficiency from a consumer court. Service has been defined in clause (o) of sub Section (1) of Section 2 of Consumer Protection Act, which means that ‘service of any description made available to potential users’. Services which do not come under the purview of service as explained in Consumer Protection Act are services, which are rendered free of cost and under a contract of personal service. The legislature did not want to restrict the ambit or the scope, so it has included insurance, purveying of news or other information within the scope of service as has been defined.

**LIABILITY OF MEDICAL OFFICER EMPLOYED BY A HOSPITAL RENDERING SERVICE FREE OF CHARGE:**

The medical officer who is employed in the hospital renders service on behalf of the hospital administration and if the services as rendered by the hospital do not fall within the ambit of section 2(1)(o), being free of charge, the same service cannot be treated as service under Section 2(1)(o), for the reason that it has been rendered by a medical officer in the hospital who

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receives salary for employment in the hospital. There can be no direct nexus between the payment of the salary to the medical officer by the hospital administration and the person to whom service is rendered. The salary paid by the hospital administration to the employee medical officer could not be regarded as payment made on behalf of the person availing the service as a consumer under Section 2(1)(d) in respect of the service rendered to him. The service rendered by the employee-medical officer to such person would, therefore, continue to be service rendered free of charge and would be outside the purview of Section 2(1)(o).

TAXES PAID BY CONSUMERS IF “CONSIDERATION FOR SERVICE” RENDERED FREE OF CHARGE IN GOVERNMENT HOSPITALS:

The tax paid by the person availing the service at a Government hospital can not be treated as a consideration or charge for the service rendered at the hospital and such service, though rendered free of charge would not cease to be so because the person availing the service happened to be a tax payer. The reason for this is plain. There are certain essential characteristics of a tax which are evolved by the courts. They are (i) it is imposed under statutory power without the taxpayer consent and the payment would be enforced by law;(ii) it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of tax, and (iii) it is part of the common burden, the quantum of imposition upon the tax payer depends generally upon his capacity to pay.

SERVICE RENDERED UNDER MEDICAL INSURANCE SCHEME:

Service rendered by a medical practitioner or hospital/nursing home cannot be regarded as service rendered free of charge, if the person availing the service has taken an insurance policy for medical care where under the charges for consultation, diagnosis and medical treatment are borne by the insurance company and such service would fall within the ambit of “service” as defined in section 2(1)(o). Similarly, where as a part of the conditions of service, the employer bears the expenses of medical treatment of the employee and his family members dependent on him, service rendered to such an employee and his family members would not be free of charge and would constitute “service” under section 2(1)(0) of the Act.

State of Haryana v Santra\textsuperscript{13}:

The Supreme Court held that in a country where the population has been increasing rapidly and the Government has taken up the family planning as an important programme, the medical officer as also the State Government must be held responsible in damages if the family planning operation is a failure on account of the medical officers negligence because this has created additional burden on the parents of the child.

Poonam Mangla v Pre Nath Hospital\textsuperscript{14}:

The Complainant gave birth to a premature child of seven months in the respondent hospital. The child’s condition was not improving. That is why the baby was shifted to another hospital. The complainant alleged negligence

\textsuperscript{13} 2000(3)SCALE 417
\textsuperscript{14} (2002)3CPJ 353(NC)
on the part of hospital that there was not even an incubator for maintaining the temperature so that her child had to be shifted to a better hospital. The State Commission rejected the complaint because the complainant was not regular in antenatal checkup and consulted for only one month before the actual delivery of the baby and she was admitted in the labour with high blood pressure, in such circumstances no negligence could be attributed to the opposite party.

The principle laid down in *Laxman Balakrishna Joshi v Trimbak Bapu Godbole*\(^\text{15}\) has been reiterated by Supreme Court in *A.S. Mittal v State of U.P.*\(^\text{16}\) wherein it was stated : “The approach of the court is to require that professional men should possess a certain degree of competence and that they should exercise a reasonable care in discharge of their duties. In general, a professional man owes to his client a duty in tort as well as in contract to exercise reasonable care in giving advice or performing services”.

*V. Krishna Rao v Nikhil Super Speciality Hospital*\(^\text{17}\): The doctrine of Res Ipsa Loquitur is applicable to cases of medical negligence as well. It applies to all cases where negligence is evident. The complainant in such a case is not required to prove anything as res proves itself. It is then for the respondent to prove that he took proper care in the performance of his duty.

*Martin F.D’Souza v Mohd Ishfaq*\(^\text{18}\): The Supreme Court reiterated the rules for protection of doctor which it framed in Jacob Mathew v State of Punjab\(^\text{19}\). The court further directed the criminal courts or consumer forums that they should first refer the matter to a competent doctor or a committee of doctors specialized in the relevant field and if the report shows that there is a prima facie case of medical negligence only then notice is to be issued to the doctor or hospital concerned. Judicial and quasi judicial bodies are not experts in medical sciences and therefore they should not substitute their own views over those of specialists.

*Poonam Verma v Ashwin Patel*\(^\text{20}\): A practitioner’s duty to use reasonable skill and competence in his profession is ex facie not satisfied when he is practicing in one profession but is qualified in some other. Accordingly, the Supreme Court held a person liable who is qualified in homeopathy but resorted to practice in allopathy and caused death which cost him three lakh rupees which he had to pay to the widow of the thirty five year old earning hand leaving behind also two children and dependant parents.

*Gurpeet Kaur V R.K Bhutani*\(^\text{21}\): Where a patient died because of the complications arising out of her disobedience of instructions as to post operation diet, the attending

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\(^{15}\) AIR 1969 SC 128  
\(^{16}\) AIR 1989 SC 1570  
\(^{17}\) (2010)5 SCC 513  
\(^{18}\) (2009) 3 SCC 1  
\(^{19}\) (2005)6 SCC  
\(^{20}\) AIR 1996 SC 2111  
\(^{21}\) (1993)3 CPR 659 (NC)
physicians and surgeons were held to be not guilty of negligence.

**M.D Aslam v Ideal Nursing Home** 22:
Where the cause of the complainant’s post-operation infection could not be known, no medical negligence could be attributed to the surgeon.

**Bhajan Lal Gupta v Mool Chand Kharati Ram Hospital** 23:
Complainant’s son who was admitted in a hospital for treatment of his lower back and upper limbs died subsequently of cardiac arrest, the complainant alleged medical negligence in the treatment, the National Commission awarded Rs. 2 lakhs in favour of complainants and 12 percent p.a. interest if the amount was not paid within four weeks.

**Prafulla Kumar Das v Appollo Hospitals** 24:
It was held that there was no negligence on the part of the doctors when the open heart surgery of the complainants’ son was performed in a hospital by a doctor assisted by a team of doctors and the child died after forty days of surgery, therefore no relief was allowed.

**N.T.Subrahmanyam v B. Krishna Rao** 25:
National Commission held “A doctor can be held guilty of negligence only when he falls short of standard of reasonable medical care. A doctor cannot be found negligent merely because in the matters of opinion he made an error of judgment”, held that there was no negligence on the part of the doctors according to the materials on record.

**Sham Lal v Saroj Rani** 26:
Due to negligence of the doctor, an intramuscular injection was administered intravenously to the complainant’s husband which caused combolism of heart and stopped blood circulation to his heart causing his death within a few minutes, it was held that as defendants could not produce any evidence to contradict expert professional opinion, they were liable to pay compensation with interest at 12 percent.

**Mohd Ishfaq v Martin D’Souza** 27:
Amikacin 500 mg was prescribed twice a day for 10 days without taking note of the fact that the patient had already taken this injection for four days and thus the dosage was not modulated on well established parameters and audiogram was not done before, during and after the treatment, all this resulting in complete deafness, the patient’s complaint was allowed. National Commission awarded compensation of rupees 4 lakhs at 12 percent interest from date of complaint, Rs 2 lakh for mental agony and Rs 5000 by way of costs.

**Rohini Pritam Kabadi v R.T Kulkarni** 28: The doctor who operated upon the complainant for cesarain operation left something foreign inside the operated area. That being a negligence in itself a compensation of Rs. 2,00,000 was...
awarded. The fact that no fee was taken for the operation and only the charges for the operation theatre and medicine were taken was held to be no defence. The complainant was a consumer because she paid for the services.

R.C. Sharma v Jage Ram\textsuperscript{29}:
Where a complainant alleged that no biopsy was carried out before his surgery and his prostate was removed without any proof of prostate cancer, it was held that biopsy would be done only when indication of cancer was there, as no such indication was recorded, there was no ground for doctor to get biopsy done before surgery. The doctor was not negligent in his service.

Indrani Bhattacharjee v Chief Medical Officer\textsuperscript{30}:
ECG condition of a patient was found to be not normal. Even so the doctor failed to advise him to consult a cardiologist and to reduce smoking and drinking. No medicine was prescribed for the gastric trouble. The National Commission held this to be deficiency in service.

CONCLUSION:
The Consumer Protection Act has been of immense help to all consumers of goods and services after it came into effect in 1986. This is because consumers can seek redressal from the consumer forums in an economical, speedy and just manner. Medical services also come under the purview of the services in the broader sense as formulated under the Act. The people are now confident enough while visiting doctors and getting treated and can rely on Consumer Forums to get fast redressal in case of any deficiency in service. The doctors also treat the patients with greater care and caution than they earlier used to because of existence of this law. The distinction between consumer of government hospitals and private hospitals is unjust though. If looked into carefully, the patients at a government hospital are also made to bear some costs of treatment and just because there is no implied consideration for service, they should not be denied to the social welfare for which this Act has been enacted. The issue needs to be looked into seriously. This Act, however, has got many positive aspects which have added to the social well being for which it was enacted.

\textsuperscript{29} (2003)1 CPJ 248

\textsuperscript{30} AIR 2008 NOC 101 (NC)