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Rising Consumer Disputes against Medical Professionals and its impact on Doctor-Patient relationship with Special reference to Consumer Protection Act-1986

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Abstract-

Preservation of life and health of people and curing them has always been the object of Medical Profession. To live the life with dignity good health is must. Perhaps because of this reason doctors are treated like God in our society. However nowadays rising litigations against doctors tarnished Godly image of medical professionals and lots of issues have propped up with respect to unethical medical practices, malpractices, rights of patients, vandalism against medical professionals and legal solutions for these problems. Importantly all the stakeholders complaints about their problems and blame each other. Patients are not satisfied with the medical services provided by doctors and they criticize doctors for not doing their work in the interest of patient. On the other hand, doctors do not appreciate active involvement of patients in medical decision making as it is done with half knowledge. While writing this article one incident took place in West Bengal where Doctor is brutally attacked by patient's relatives and the life of doctor is at stake. Violence against doctors has become common phenomena. This research paper aims to analyze these issues in holistic manner to provide legal and appropriate solutions to lessen the gravity of these problems.

Introduction-

In modern times, relationship between doctor & patient has undergone a tremendous change. The father of medicine Hippocrates said one and half millennia before "medicine despite being noblest of all arts is trailing behind the others for the ignorance of those who practice it and the inconsiderate assessment of those who judge the people of medical fraternity"¹ Nowadays medical negligence cases against doctors, hospitals and nursing home in the consumer forum have increased enormously. The Constitution of India declared Right to health of a citizen is a fundamental right guaranteed under Art.21 of the Indian Constitution. All Government hospitals, nursing homes, private doctors, polyclinics & super specialty hospitals shall make available suitable treatment to the best of their capacity to all patients. The Doctors, hospitals or any health care establishment are to be dealt strictly if they fail to perform their duties & services with utmost care.

Hence these research paper aims at finding solutions for following research questions-

- a) Whether increasing litigations against medical professionals is a result of disturbed doctor-patient relationship?

¹ Madhubanti Sadhya, "Medical Negligence and Misonduct through the Lense of Consumer Laws", Eastern Law House (ed.), THE REFLECTION OF MEDICAL LAW AND ETHICES IN India, 1st ed.2016, p. 236.

- b) Whether commercialization & corporatization of healthcare sector is one of the reasons for medical negligence cases by medical professionals?
- c) Whether vandalism against doctors led to restricted services by medical professional as they prefer to work in protective mode?
- d) Does insufficiency of technical procedures under Consumer Protection Act- 1986 makes it easy to hold the doctors responsible for medical negligence?

In medical profession it is implied rule that all patients irrespective of their social, cultural and economic background shall be treated equally and with dignity which not only forms their fundamental right but also their human right. "The human right to health care means that hospital, clinics, medicines and doctor's services must be accessible, available, acceptable, and of good quality for everyone, on an equitable basis, where and when needed."²

However nowadays due to changing attitude of the patients and commercialization and corporatization of medical practice have resulted into increasing medical malpractice litigations which ultimately resulted into violence against medical professionals. Due to this changing trend ethical medical practitioners are unhappy with the present legal regulations of the profession when they are unable to catch a black sheep in the profession.

On the other hand aggrieved patients feels that the law does not impart justice as it is prone towards the doctors. Nowadays with modern technology information is easily available to the grass root level due to easy accesses to internet. Hence people are aware and concerned with the standard of services offered by medical professionals and at the same time they are able to choose the best one from the variety of options. All these things changed the attitude of patient towards doctors & medical profession. The patient is more conscious about his ailment and they don't take things as it is & wish to cross verify the healthcare advice or treatment with the other literature available on internet or with the experts' advice available from some other part of the world.

Due to this changed scenario, patient's proactive role in medical decision making is one of the major reason for conflict between Doctor-patient relationship as these practices are against the practices of physicians but patient insist upon his autonomy in medical decision making process. This struggle changes the approach of doctors and patients towards each other as well as the ethical and legal standards for the physician's duties, informed consent and medical malpractice. Till now the practice in medical profession regarded physician as a guardian of the patient and have belief that the medical decision exclusively taken by the doctor alone will be in the best interest of the patient even though he has not understood or agreed with it. The changing approach towards the profession by both the stakeholders has almost denied this paternalistic model and adopted an informative model.

In entire process patient is a key factor; hence his interest should be protected with utmost care. Up till now the legislative and judicial trend in India imposes duty upon the healthcare professionals. However increasing concerns towards consumer protection results into various instances calling for

² Dr. Jyoti Bhakre, AN INTRODUCTION TO HEALTH LAW, 1st Ed. 2015, pp 64.

litigations and medical negligence cases. Though there are many people in society who are desperately waiting for their rights to be recognized and enforced, perhaps none is as vulnerable as the desperately ill patient. This vulnerability of patients resulted into potential abuse of doctors and has led to affect the doctor-patient relationship which needs to be made more equitable and reasonable.

A corporate culture has emerged as a new trend in healthcare industry which brings with it all the corporate norms which are followed to maintain the rapport in the market. e. g. Product/ Service Quality, Efficiency, marketing gimmicks etc. The corporate hospitals, their chains are more and more accessible and popular these days. But the small players in this race find it difficult to survive.

The traditional doctor patient relationship has undergone tremendous changes with emerging technologies making online medical consultancy and online prescription possible giving rise to legal issues of confidentiality and data protection and the fiduciary relationship between doctor-patient does not arise. These technologies make impact on the practice of healthcare industries therefore, it is essential to recognize the extent and nature of the ethical and social impact at professional level. Ethical, legal and social Issues in medical technology present a fundamental compendium of research in the healthcare industry.

As medical practice have assumes the character of industry, more ethical norms emerge to be the legal rights and duties enforceable through courts. We can see this change in the fields of organ transplantation, clinical trials of drugs and devices & artificial assisted reproductive technologies. There is a chance that today's ethical principles may come tomorrow in the form of guidelines and further in the form of statutes. We are aware about the fact that Medicine, law, ethical and social values are not static and they keep on changing as society progress. Medical ethics contains the system of moral principles that applies values and judgments to the practice of medicine. Reexamining the ethical tenets of medicine and their application in new circumstances is a necessary exercise. Medicine, law and ethics are inextricably intertwined and have great impact upon each other. It is important for the clinicians to recognize that the medical law has not emerged from a vacuum and does not operate in isolation and that cases that raise the issues of legal significance invariably raise issues of philosophical, moral, sociological issues as well.

Therefore now it is need of an hour to sensitize and create awareness about duties that may arise in the healthcare sectors, hospitals, doctors and nurses and consequently with the Government which ultimately controls the operations of hospitals and dispensaries. The extent & nature of these duties has to be searched in health related statutes, rules, regulations and guidelines. When the laws in the world have recognized 'Patients Rights' charters; our Indian legal system nowhere provides any extraordinary special rights to the patients in the form of a special law. Unfortunately in India patients' rights are indirect rights, which arise from the duties of a physician under the code of ethics laid down by their regulators. Even under the Constitution of India, right to health is recognized at various places but it comes as an interpretation of right to life or as a corollary to the duties of the state under Directive Principles of state policy. Laws on the paper and the reality in existence show glaring differences many a times.

The healthcare professionals cannot afford to disregard law and ethics to meet the upcoming challenges. Unfortunately in India, the health care professionals are not much aware about the nuance of legal regime. The non compliance of some of these laws can lead to penal consequences like payment of fine, imprisonment or cancellation of licenses. The legal professionals need to be updated with this developing branch of law and then ever ready to face the challenges posed by the issues in this area. Unfortunately neither the curriculum of medical education nor the legal education has taken the serious cognizance of this to cater to the demand of the healthcare sector when the leading universities in the developed countries have already developed their curriculum in order to fulfill this need. This also is one of the reasons why Indian law is lagging behind the developing International trend in the subject.

Healthcare System in India-

The relationship between Law & Medicine is complex and it consists Medical Professionals, Hospitals, Nursing Homes, and Private Practitioners. It pass through various phenomena's like duty to care, ethics, infamous conduct collateral with Right to Health, accesses to healthcare, duty to provide healthcare everything that encompasses the rights & interest of the people involved in the Healthcare delivery including patients. The Healthcare system in India is the result of federal character of the Indian Constitution and distribution of power between Union & State. Today's Healthcare system in India is influenced by corporate culture, services & advertisement for promotion of business though it is subject to out of pocket expenses & souring costs. The impact of external factors like globalization, technological advance, economic factor are leading to commercialization of Healthcare system in India.

Regularization of Healthcare services is one of the neglected aspect and area of concern. In India we have complex structure of healthcare services which are confronted by a set of challenges related to regulations for the service providers, professionals, Para medical personnel's

Vandalism in Medical Profession-

Medical Profession is no free from work pressure on the service providers which eventually may face the threat of danger to the lives and property of the medical professionals. Vandalism is persistent problem and combating with it took so much time and energy of an enormous people. Recently there have been numerous reports by the media on incidents of such turmoil at hospitals, where organized groups unrelated to the patients, are at work and purposely tried to take compensation form hospitals on behalf of relatives by creating chaos in hospitals.

Due to frequent incidences of attacks, medical professionals have started dealing with patient in protective mode. Medical professionals avoid talking freely with patients about their ailment to avoid future complications or dispute. They do not want to get caught by patients for advice rendered by them in the interest of patient. The outbreak of such vandalism, often results in the Doctors and staff restoring

to strike. These strikes directly make impact on the functioning of entire hospital, emergency wards & OPD's. All these things again affect the Patients because they left unattended in emergency cases and it causes harassment to them.

Destruction of the property is one of the popular medium for airing the news to the people by vandalers. Without going into truth the news gets spread by media and naturally patients and relatives gets the benefit of sympathy from the people. Due to all these things reputation of doctors gets torn and it becomes difficult for them to do future practice. Damage to the property of hospital is another side of coin.

Vandalism in Medical profession became serious problem which resulted into depletion in services by medical professionals. To avoid any legal disputes, damage to the property and loss of profession medical professionals always tends to do their work in writing. Therefore before they take any decision consent of the patient's relative is taken which is also a point for debate as far as interest of patient is concerned. Many times relatives and patients are unaware about the subject matter for which their consent is obtained by doctors in writing. Ordinarily patient or relatives considering emergency of the situation sign the consent form and later in case if there is any problem with the patient in medical treatment then they flaunt their anger to the doctors. At this point, they are unable to understand that they have consented for the treatment in writing.

Up till now, medical profession has witnessed an unfortunate rise in the number of vandalism cases, affecting the hospitals & medical professionals. There is dire need of amicable solution to restore the trustworthy relationship between doctors & patients to control the problem of vandalism in medical profession.

Role of Consent and Doctor-Patient relationship-

Consent plays a vital role in the doctor-patient relationship. The medical ethics also states the importance of 'consent' which encompasses in it the principle of respect for patient autonomy. "The term "Patient autonomy" conveys the right of every person to have a say in medical decision making in terms of what is to be done to him medically and to be actively involved in medical decision making."³ In medical ethics principle of beneficence is based on the concern for the patient's welfare. Consent of patient for medical treatment displays respect for the wishes and welfare of the patient. In medical profession patients consent finds its basis in the principle of respect for persons, which is an integral part to build healthy doctor-patient relationship.

In traditional system of medical profession, doctors were in paternalistic in attitude. In Ayurveda doctor-patient relationship is treated as fiduciary in nature. Doctors would perform their duties in the best interest of patient. However while treating patients, if they feel any danger or possibility of death then consent of their relatives, community or even the Head of the state use to give their consent. In Sushruta Samhita, in treaties on surgery states that "if surgical intervention is not done then the patient will die

³ Dr. Ishita Chaterjee, HEALTH LAW, 1st ed. 2019, pp-173.

and after surgery it is not certain if surgery will be beneficial"⁴ in such situation permission of the King will be sought to perform the surgery. These things show that consent of patient plays pivotal role.

Doctors easily stick needle and draw blood, even they are allowed to amputate human organs which otherwise would be considered illegal if done except medical professionals. All medical treatments and surgical procedures necessitate interference with human body. As per law of the country these acts of a person amount to offence of battery, assault or sometimes homicide too. In tort "Battery is defined as the application of force to the person of another without lawful justification" and "Assault is an act of the defendant which causes to the plaintiff reasonable apprehension of the infliction of the battery on him by the defendant".⁵ However if it is done by registered medical practitioner and the consent for the same is obtained by the patient for the procedure and if it is carried out in a therapeutic manner then it will not amount to battery or assault.

Here it is important to note that in medical profession consent is not an option but it is compulsory. In the words of Justice Cardozo "every human being of adult years and sound mind has a right to determine what should be done with his body; and a surgeon who perform operation without his patients consent commits an assault for which he is liable to pay damages"⁶ From doctors point of view consent is necessary to prevent any legal action & medical negligence. It is legal duty of a doctor to inform & advice patient exhaustively to obtain valid consent from the patient. Patient should be informed in "broad-terms" about the treatment, medical procedures and purpose of the medical treatment. Doctor must make patient aware about the real risk of adversity in the procedures to be undertaken. Patient must be informed about common risks involved in treatment.

In case of medical negligence or professional misconduct by doctors generally defense of consent by the patient will be claimed by medical professionals. However one has to remember that though doctors before starting any treatment or before performing surgery explain in detailed consequences of treatment or surgery, still patient being layman cannot understand complexities of medical profession. However in the interest of patient generally relatives give their consent for the treatment. After obtaining consent, it is professional as well as moral obligation of the medical professionals to provide best available treatment with utmost care and diligence. If Medical professionals fail in their duties then consent given by patient will no longer be a defense.

Types of consent-

Consent must be a valid consent if at all doctors wants to establish the truth against patient. Consent may be in writing, oral or implied. Obtaining consent from the patient is not mere formality but consent form should be signed by patient then it is a proof of valid documentation process.

- By words- Express oral/ written

⁴ Dr. Jyoti Bhakre, AN INTRODUCTION TO HEALTH LAW, 1st Ed. 2015, pp 183.

⁵ R. K. Bagh, LAW OF MEDICAL NEGLIGENCE AND COMPENSATION, 2nd ed.2014, p-4.

⁶ Schloendorff v. Society of New York Hospital (1914)103 NE92.

- By action- implied/indirect
- Informed-patient id informed, then understands and then consents

Implied Consent- it is not necessary to have all consent in written or documented fully. When patient is taking medical help from doctor to relives his suffering or pain then consent is implied consent. Implied consent can be drawn by the actions of the patient like patient stretching out his hand to give blood samples or taking off his clothes for physical examination by the doctors. In implied consent patient should be provided information about what is to be done to him and he should also be provided opportunity for refusal.

Informed Consent- when patient is being informed in broader way by the doctor about his ailment, procedure and risk involved in health care center and consent is sought by him is known as informed consent. It should be in writing. According to encyclopedia of health services research "informed consent is the process by which a provider and patient discuss the merits of proposed therapeutic intervention, and it serves as a significant component of the provider patient relationship."⁷ We can term informed consent as a communication process between doctor-patient regarding proposed therapeutic intervention. It is not merely signing the document or filling consent form by the patient but exhaustive communication by the doctor to the patient is essential element of informed consent.

Following information is expected to be disclosed in informed consent-

- a) Procedure & nature of the procedure
- b) Benefits of the procedure
- c) consequences of the procedures
- d) Risk associated with the procedure
- e) Alternative treatment which includes its benefit, risk and consequences
- f) To resolve all queries raised by the patient to their satisfaction.
- g) Formal consent by the patient

Consent in Emergency-

Generally consent is taken in initial stage before the treatment start by the Doctor. However there is one an exception to this rule that in emergency situation prior consent is not necessary to start the treatment. In emergency situations, substitute decision maker, if available will be contacted and with his permission treatment will begin. However if such person is not available then doctor is duty bound to start the treatment on priority basis to save the life of patient. To term the situation as medical emergency there must be imminent threat to the health and life of person.

Lord Donaldson observed that "A patients interest consist of his right to self determination. Society's interest is in upholding the concept that all human life is sacred and should be preserved if

⁷ <http://www.amazon.com/Encyclopedia-Health-Services-Research-Mullner>.

possible. In a situation where these two interest conflicts, the right of the individual is paramount. But where there is doubt, doubt falls to be resolved in favour of the preservation of life"⁸

Capacity to consent-

Generally patient himself will give consent voluntarily to the doctor for the treatment. However there are certain situations where patient is incapable of giving consent like mental incapacity, minor person, and if patient is in coma etc. in all such situations, consent of his relatives, guardian, custodian or attendant will be sought.

If we observe minutely then in medical profession tremendous civil litigations emerged over "the consent for the treatment" in short span of time. These litigations have made adverse impact on doctor-patient relationship. Doctors to avoid litigations began to disclose basic information without necessarily outlining all potential risks. Here it is difficult to identify actual wrong doer.

Canterbury v. Spence⁹ is a landmark case where the United States Court of Appeal laid down guidelines regarding informed consent to avoid litigations between doctor & patient. It states that-

- a. "Every human being of adult years and of sound mind has a right to determine what shall be done with his own body.
- b. The consent is the informed exercise of a choice, which entails an opportunity to evaluate knowledgeably the option available and the risk attended on each such procedure.
- c. The Doctor must disclose all material risk to which a reasonable man would attach significance in deciding whether or not to forgo the proposed therapy."

This particular privilege enabled doctor to decide whether to withhold from the patient the information regarding risk if doctors are of the opinion that disclosure of such information will disturb psychological condition of the patient.

In Bolam v. Friern Barnet Management Committee¹⁰ laid down principle relating to duty of a doctor to properly inform about the treatment and later how to establish whether this duty was properly fulfilled. This principle is popularly known as 'Bolam Test.'

In Samira Kohli v. Dr. Prabha Manchanda & Anr.¹¹ Supreme Court of India held that "we are of the view that to nurture the Doctor -patient relationship on the basis of trust, extent and nature of information required to be given by doctors should continue to be governed by Bolam test rather than the 'reasonably prudent test' evolved in Canterbury. It is for the doctors to decide, with reference to the conditions of the patient, the nature of illness and prevailing established practices, how much information regarding risks & consequences should be given to the patients, and how they should be couched, having

⁸ R. K. Bagh, LAW OF MEDICAL NEGLIGENCE AND COMPENSATION, 2nd ed.2014, pp-118.

⁹ (1972) 464 F (2d) pp-772.

¹⁰ (1957)2 All ER 118, (1957) 1WLR 582.

¹¹ 1(2008) CPJ 56(SC), (2008) 2 SSC 1.

the best interest of the patient. A doctor cannot be held negligent either in regard to diagnosis or treatment or in disclosing the risk involved in a particular surgical procedures or treatment, if doctor has acted with normal care”

As mentioned earlier, here it is difficult to define the role of doctor in water tight compartment. However medical professionals are expected to provide special care, urgent attention, extra-ordinary skills & knowledge in view of providing relief to their patients. Doctors are always worshipped like God and they deserve high regards for their services. A person submits himself to the Doctor undoubtedly with the hope that he will get better & healthy life after the treatment. On this background doctors cannot afford to overlook any minute detail concerned with the health & treatment of the patient. Unfortunately if treatment provided is not successful, if there is any loss to the patient or loss of life of the patient, then before we initiate any action against the doctor we will have to check whether treatment provided by doctor is correct & reasonable? Whether doctor provided all information about the treatment & involved risk? Whether prior consent was obtained by the doctor? Whether treatment provided was in the best interest of the patient and doctor took reasonable required care to protect the health of patient? If answer to any one question is negative then we can hold doctor liable for the negligence.

Medical Negligence and Doctor –patient relationship-

In post-independence period for many years cases of medical negligence were unheard. Till 1990 awareness about patients’ right was less. However after enactment of the Consumer Protection Act in the year 1986 which brought services rendered by doctors under the purview of Act and can be challenged on the ground of medical negligence made huge impact. Litigations against doctors on the ground of medical negligence increased tremendously. One more reason for this could be association of Doctors & commercialization of medical profession.

Since ancient period, societal place of Doctors is like God. It is a belief that Doctor is like a God and God is flawless. However in reality doctors are human beings & to err is human. Now it is allegory that doctors are like God. If we see number of cases pending against doctors for medical negligence under CPA then reality of medical profession comes in forefront. If Doctor commits mistake or doctor is negligent or supporting staff of doctor committed mistake, in all these circumstances sufferer is patient. Additionally commercialization of medical profession & unethical medical practices by some doctors lowered the image of medical profession in the eyes of society. Critical analysis of various orders and judgments of the court shows that most of the time there is negligence by doctors either in treatment or in services rendered by the hospital.

In these circumstances aggrieved patient resort to legal remedy against the doctor. However burden of proof lies with the patient to prove medical negligence of doctor. Unfortunately Patients do not have all confidential medical records of his case based on which treatment was rendered to him. Many times hospital authorities tamper with the record because they are exclusively in their custody about which patient is not aware. Other expert doctors refuse to give expert-opinion against their fellow doctors. All in all for patient to prove negligence by doctor is like more suffering than the disease.

Other side of the coin is that many times frivolous complaints are lodge against doctors to extort money. Many times fake people indulge with doctors & hospital authorities on behalf of patient or their relatives. These people actually do not have any relation with patient or their relatives; their job is just to create chaos in hospital & to pressurize doctors & staff. It is needless to say that, medical profession and doctors are most vulnerable because they are touching and handling life of a people. If doctor's negligence result into death or permanent loss to the patient then monitory compensation cannot fill that loss. Due to all these circumstances medical practitioners have undertook defensive practice because many times they find patient as potential litigant.

Therefore concept of medical negligence should be looked at from patient as well as doctors point of view. Generally term Negligence is defined as "not to do something that reasonable and prudent person guided by the considerations that ordinarily regulate human affairs would do or doing something that a prudent and reasonable person guided by similar considerations would not do"¹² it is careless conduct by the defendant though there may not be any duty to take care on the part of defendant. Lord Wright stated that "negligence means more than needless or careless conduct whether in omission or commission, it properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing"¹³

In Short for negligence to prove following things needs to be established

- a) A Duty of care towards the patient.
- b) Breach of such duty
- c) Injury & proof of that injury suffered by the complainant

A doctor recommending medicines having dangerous side effects without informing to the patient and without conducting necessary test is a negligent behavior of the doctor. Negligent exercise of duty by the doctor attracts civil as well as criminal liability. Liability depends on nature of act, degree of negligent behavior of the doctor and damages suffered by plaintiff. Following cases will throw light on what constitutes negligence by doctors

When we say that act of negligence is committed by Doctor then we have to analyze the act of doctor from all perspectives like whether there is failure to attain the standard of care prescribed by the Law thus committing a breach of such duty to take care, whether there is duty of doctor towards patient and what is the expected degree of care by doctor towards patient etc. one of the important doctrine is laid down in Bolam test to constitute the liability of doctor for negligence.

The test of reasonable man or man of ordinary prudence (Bolam Test)

"The law imposes on all men a duty to exercise care, skill and foresight of an average man of ordinary prudence. The standard by which to determine whether a person had been guilty of negligence is

¹² Brijmohan Kher v. Dr. N.B. Banka 1994 (3) CPR, 140 (NC).

¹³ Lochgelly Iron and Coal Co v. M. Mullan (1934) AC 1.

the conduct of a prudent man in a particular situation. The amount of care may vary to the greatest extent while the standard itself remains the same. The prudent man is the man who has acquired the skill however careful he may be, however great may his skill in other things. The question to be raised with regard to a man's conduct is, whether a prudent or careful or diligent man of his calling or business or skill would have undertaken to do the things in question, supposing the party to have exercised due care in executing the work undertaken."¹⁴

Basically "medical negligence is the breach of duty owed by doctor towards his patient to exercise reasonable care and skill that results in some physical, mental and financial disability"¹⁵ In *A.S. Mittal v. state of U.P.*¹⁶ the Supreme Court of India held that, "a mistake that no reasonably competent and careful practitioner would have committed is a Negligence".

To sum up the discussion related to medical negligence and responsibility of doctors, some issues needs urgent attention to lessen the gravity of these problems. If we look at the problem in holistic manner, there are complaints from both the side i.e. doctors & patients. In recent time's medical profession developed by leaps and bounds. Introduction of advanced technology in the profession, dealing with variety of patients & their ailments, patient's role in medical decision making with the help of information available on the internet caused unrest in doctor-patient relationship. Somewhere medical professionals & doctors failed in retaining their image of God in the eyes of society.

Many times patient complaint that doctors have not examined their case carefully, doctor could not understood the root cause of disease and different treatment was provided etc. On the other hand Doctors complaint that patients with their limited knowledge from the internet try to interfere with their treatment. Sometimes the actions of doctors & their team might have gone wrong which ultimately caused damage to the health of patient and doctors deserve such mass ridicule but sometimes doctors in spite of providing best available treatment with due care patient suffers a loss. In such situation relatives of patient to vent out their frustration alleges doctors for medical negligence and doctors gets trapped in litigations. Aggrieved by loss, many times relatives of patient cause damage to the property of hospital. All these things tarnish image of doctor and his future medical practice gets suffered which ultimately result into permanent financial loss to the doctor.

Basically heap of medical negligence cases is product of disturbed doctor-patient relationship. If there are good efforts from both the sides like, doctors performing their duties with utmost care and providing best available treatment to the patient then they will be able to regain their Godly image in the eyes of Patient. On the other hand patient must show some patience when treatment by doctor is in process. Patient must understand that distasteful outcome of the treatment is not always because of doctors. In case patient suffers loss then one must investigate what went wrong and they initiate the action against doctors if they found guilty. Nowadays it is found that patients or relatives to vent out their

¹⁴ *Bolam v. Friern hospital Management Committee* (1975) 2 ALL ER 118.

¹⁵ P.C. Dixit, *HWV Cox medical Jurisprudence and toxicology*, 7th edition (2002) pg.90.

¹⁶ AIR 1989 SC 1570, 1989 SCR (341).

frustration cause damage to the doctors. In short smooth and peaceful relationship between doctor-patient will reduce the cases of medical negligence.

Consumer Protection Act-1986-remedy for patients-

Although there are various remedies available under different laws to initiate action against doctors, enactment of Consumer Protection Act in the year 1986 proved to be easiest way to hold the doctors responsible. Like other professionals doctors are also liable to pay damages for their negligence. The liability for the act of negligence may arise under civil & criminal law. There is always a contractual relationship between doctor-patient. Implied relation between doctor and patient imposes continuing duty on the medical practitioners requiring his advice and treatment if a professional fee is paid to the doctor by patient.

Law of tort is also relevant for medical negligence cases. "Tortious liability arises from a breach of a duty primarily fixed by the law; this duty is towards person generally and its breach is redressible by an action for unliquidated damages"¹⁷ There are three essential ingredient to initiate action for negligence under the Law of Tort

- a) There must be duty towards person
- b) Breach of that duty
- c) Consequential damages

Most of the patients prefer to file case under law of tort or contract for recovering compensation. However growing anger against doctors in the society for their incompetence is evident from the rising number of criminal cases filed against them by the patients and their relatives. The following sections of IPC provide descriptions of the kind of various offences and the punishment for which doctor may be held liable like Sec. 304-A (death resulting from medical negligence), 336 (Act endangering the personal safety of others), 337 (causing hurt by an act endangering life or personal safety of others) and 338 (Causing grievous hurt by an act endangering life or personal safety of others) of IPC. Apart of these sections there are many other sections under which criminal action against doctors can be initiated like Sec. 268, 269, 270 & 287 of IPC.¹⁸

Any doctor during his medical practice can come across certain cases which may lead to prosecution of doctor or case for compensation. However dealing with police officials, long waiting hours in the court, exorbitant court fees, corruption and unending court procedures demoralize any person to file complaint against doctors. On this background, enactment of the Consumer Protection Act-1986 proved to be ray of hope for getting quick justice. Consumer protection Act-1986 provides special forums at National, state & district level to deal with complaints filed by consumers. The procedure to file complaint is less technical and consumer friendly. Moreover CPA does not provide any mandate or long

¹⁷ W.V.H. Rogers, WINFIELD AND JALOWICZ ON TORT, 15th ed. P-4.

¹⁸ Indian Penal Code-1860.

list as prerequisite to be qualified as consumer under the Act. Consumers are allowed to represent their own case in Consumer forum. There is no need of hiring lawyer to represent case.

Any purchaser or user of good can be a consumer. Further Act provided comprehensive definition of 'service' under sec. 2 (1) (o) "service means service of any description which is made available to potential users". Word service includes more or less all the facilities which person avails in his day to day life like insurance, banking, transport, telephonic services etc. The scope of services provided is exhaustive under CPA-1986.

However after enactment of CPA there was hue and cry for bringing medical services under purview of the Act. Doctor's community in entire nation expressed their strong reservations about applicability of the CPA to medical services. The responsibility of doctors under the law of professional negligence became debatable issue among the medical fraternity after the enactment of CP Act. Medical professionals argued that they are not traders and their profession is based on mutual trust & faith. Bringing medical profession under CPA will degrade the nobleness and sanctity of medical profession. One more fear is expressed during this debate that sometimes doctors may face multiplicity of the cases under various laws.

To initiate action against doctors under CP Act it is necessary that services are rendered by doctors on payment by patient, it may be in form of consultation, treatment, diagnosis would fall within the ambit of 'service' as defined in Sec. 2 (1) (o) of CP Act. In IMA v. V.P. Shantha¹⁹ Apex court clearly mentioned that services rendered by a medical practitioner in a government hospital or non-governmental hospital rendering free service is totally excluded from the application of the Act. This Landmark judgment by the Apex court gave new dimension to the law of medical negligence and compensation and resolved almost all controversies regarding applicability of CP Act to medical professionals. Court Held that "in order to devise a rational approach to professional liability which would ensure that the interest of consumers are protected while taking into account the factors mentioned above" in this case the Supreme Court was keen on emphasizing certain minimum degree of competence and the exercise of reasonable care by doctors while discharging their duties. In this judgment Apex court made it clear that doctors do not enjoy any immunity in this regard.

In CP Act term Medical negligence or misconduct is not specifically mentioned. Hence the question arise what recourse does a patient have if wrong treatment is provided to him due to negligence of doctors? Answer to this question lies in the ss 2 (1) c and 2 (1) g of the CP Act. Sec: 2 (1) c defines complaint as a written allegation and enlists situations when complaint can be filed. One such situation is "when the services hired or availed of or agreed to be hired or availed by a person suffers from deficiency". Further Sec 2 (1) g defines "deficiency as any fault, imperfection, shortcomings or inadequacy in the quality, nature and manner of the performance of service". Thus CP Act provides wide range of ambit to consumer in order to initiate actions against doctors.

¹⁹ AIR 1996 SC, 550.

Consumer Protection Act-1986 provides inexpensive, less technical, speedy procedure for consumers in order to provide compensation for damages. However enactment of this Act created adverse impact on traditional Doctor-patient relationship. Patients have always feeling of distrust & look at doctors with suspicion.

Conclusion & suggestions-

“There is no smoke without Fire.” It is true that medical profession is stigmatized due to unethical & illegal practices like overcharging patients, taking undue advantage of diagnostic techniques, conducting unnecessary expensive medical examinations of the patient, admitting patients when it is not required etc. However it would not be correct to label entire medical fraternity as unethical. “There is not an iota of doubt over the fact that the two basic tenets of the relationship between medical practitioners and patients, that is, reliance and conviction, have witnessed a major convulsion over the recent times”²⁰ Providing appropriate treatment with utmost care and health of patient is prime object of the medical profession. Quite for long time medical profession survived due to trust and cordial relation between doctor & Patient.

However advance technology, commercialization & corporatization of medical profession changed this profession into business industry providing medical services to the people. With the development of technology, many diseases which were incurable are now subject to appropriate treatments. There have been rampant change & progress in medical treatments in areas of organs transplantation, infertility, robotic surgeries etc. however development in technology in medical field brought some ethico-legal considerations. It is observed that medical education itself is very expensive and beyond the limit of common man. Expenses for medical education to establishment of medical practice needs huge finance which at later stage recovered from patients. There are two sides of coin, one commercialization of medical profession which gives rise to unethical medical practices and other is medical negligence by doctors. In both the situation patients' interest is sacrificed. One must remember that doctors are responsible for the life of patient which cannot be restored later on at any cost. Hence Medical professionals should have different approach while treating patients.

The traditional concept of Doctor-patient relationship has undergone radical change due to technological advancement, availability of sophisticated advanced systems & new diagnostic techniques. With the huge stride in technology health care sector emerged as profitable sector. Investors having different background invested money in this sector and started huge multi-super specialty chains of hospitals. Doctors are hired and paid for their job. Earlier in medical profession doctors would prefer private practice. But now to build hospital with latest technology is not possible for one individual person. Further after completing medical education doctors get immediate job with good financial package. Hence super- specialty hospitals became preferred choice of doctors as well as patients also.

²⁰ Monalisa Saha, “Medical Negligence and Malpractice –Common Errors by Doctors and Hospitals”, B. Sandipa Bhat (ed), REFLECTIONS ON MEDICAL LAW AND ETHICS IN INDIA, 1st Ed, 2016, p. 206

Due to commercial nature of super-specialty hospitals the approach towards patient is different. Regular flow of patients, variety in problems of patients and most importantly, as doctors' work in shifts many doctors deal with one patient. All these things create hurdles in establishing trustworthy relationship between doctors & patients. Owing to lack of time doctors communicate less to the patients and from this point of time displeasure of patient begins. Naturally in case of any loss to the health of patient, disgruntled patients take recourse to legal remedies.

Frequent reports of vandalism and persecution of doctors at the hands of patients, is became matter of concern. Not only personal safety of the doctors is at stake but safety of other admitted patients in the hospital is also at risk because entire atmosphere in the hospital gets disturbed and due to this doctor cannot provide treatment to other patients also. We may call problem of vandalism as law and order problem of the hospital. Many times patient complaint about one major issue which affects their relationship with doctor is miscommunication by doctor and insufficient time spent by doctor. However doctors always opined that after providing necessary treatment it is not necessary and possible as well to spend time with each and every patient.

Now the time has come to take necessary action by all stake holders to take corrective actions & to prevent the situation from worsening further. Involvement of doctors, political representatives, medical academicians, citizens & NGOS is necessary to minimize the gravity of this issue and to restore the dignity of medical profession in the eyes of people. The immediate measure includes upgraded dialogue between doctor and patient, counseling of patients. Further regularizing working hours of the doctors & providing special training to doctors to deal with patient amicably. As pointed out by Health Ministry, there is need to improve doctor-patient ratio so that measure grievance against doctors will be minimized. Further existing laws should be strengthen to protect the interest of patients as well as doctors. Most importantly outlook & approach towards medical profession should be changed by medical professionals themselves. Medical profession cannot be treated as commercial profession to earn money at par with other business industries. Working in this profession is like service to the society. However in near future we can hope appropriate actions by all stakeholders to restore the image of medical profession in the eyes of society.

Bibliography-

- i. R. K. Bag, MEDICAL NEGLIGENCE AND COMPENSATION, 2nd ed. 2014, Eastern Law House, New Delhi.
- ii. B. Sandeepa Bhat, (ed.) REFLECTIONS ON MEDICAL LAW AND ETHICS IN India, 1st ed. 2016, Esatern Law House, New Delhi
- iii. Dr. Jyoti Bhakare, AN INTRODUCTION TO HEALTH LAW, 1st ed. 2015, Sanwad Trade Prints, Pune
- iv. Dr. Ishita Chaterjee, HEALTH LAW, 2st ed. 2019, Central Law Publication
- v. George D. Pozgar, PATIENT CARE CASE LAW ETHICS, REGULATIONS AND COMPLIANCE, 1st ed. 2013, Jones and Bartlett Learning