

PREFACE

Healthcare error is amongst the 8th leading cause of deaths in the world. A study conducted by Supreme Court Advocate Mahendra Kumar Bajpai, indicated 110% rise in the number of medical negligence in India every year. 90% of all the cases involve hospitals and 12% of all cases decided by Consumer Courts are on medical negligence. The cases involve hospital taking improper consent from relatives prior to performing medical procedures or switching hospitals or improper documentation through the course of diagnosis, treatment, and reporting. (Yadav and Rastogi, 2015)

The incidences of medical negligence or malpractice results in the injury, harm, or loss to the patient. At times, the damage is irrevocable. Until the health was declared as a human right, the victim had no other option but to tolerate the injustice/negligence and had no scope for restoration of the loss suffered in any form. The legal framework to deal with the complaints of medical negligence included Civil Law, the Indian Penal Code, 1860 and the Indian Medical Council Act, 1956. These redressal machineries, although having power to take punitive measures against the medical practitioner, did not have any provision for the award of damages to the victims. The Consumer Protection Act, 1986 is the latest additional remedy that a victim could use, and which expressly provides for restoration with a provision to award compensation for the damages. The Consumer Protection Act, 1986, a relatively recent instrument, developed to protect the rights of consumers and empower them to seek justice and redressal of the consumer disputes. Since inception, the law seeks not only to protect the rights in case of purchase of goods, but also encompasses services. However, because of the socio-cultural environment prevailing while enacting the legislation, the medical profession was considered noble and hence, kept out of the purview of the Consumer Protection Act, 1986. The landmark judgement provided by the Supreme Court in the year 1995 in the case of *Indian Medical Association v. V P Shantha and Ors. III (1995) CPJ 1 (SC)* in which medical field was brought under the purview of the Consumer Protection Act, 1986. This was the first time when the patients were promised justice to seek remedy under the COPRA. Also, for the first time, medical service providers had to defend themselves on the allegations by providing appropriate evidence. This opened the door not only to empowering the direct users of the health services, but also their immediate caregivers.

Since the year 1995, i.e. 30 years, a reasonable period has passed where many arguments must have encompassed with respect to the law and inclusion of medical sector in the law. At this

junction, it becomes important to take a stock and see the impact of consumer protection laws on patient, restoration of the damages and understand the onus on the medical service providers. With the increased assertiveness and awareness, the relationship between doctors and patients are changing. With the changing relationship between doctors and patients due to increased assertiveness and awareness, researcher, in consultation of her research guide, thought that this area was worth exploring. The researcher tried to search literature in this field especially from social work perspective but could not find much research. and hence, was keen to satisfy the quest of this research gap. With the emergence of newer challenges, it becomes the duty of the social workers to bring it under the social work intervention umbrella.

To reduce/prevent the occurrence of such cases and restore the justice to the victims of medical malpractices/negligence, this is one area of social work intervention which is less explored. It has been sufficient time to take a stock and work out the role of social work profession and what we can do to prevent such occurrences and to protect the rights of concerned stakeholders.

Hence, this research was carried out with the hope that its results will contribute towards fair and just medical practices.