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Research Article

Healthcare, Accountability, and Consumer Rights: Re-examining Medical Negligence Liability under the Consumer Protection Act, 2019

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Abstract: The introduction and enactment of the "Consumer Protection Act, 2019" (hereinafter 'COPRA 2019') has brought about some landmark reforms that have a direct impact on adjudication proceedings of medical negligence cases in India. This paper revisits the understanding of the scope of the medical service provider's liability under COPRA 2019 in line with the foundational jurisprudence laid down by the Supreme Court of India in "Indian Medical Association v. V.P. Shantha" (1995). The paper critically examines the changes in the definition of 'consumer', 'service', 'unfair trade practice' in the medicine manufacturing industry and the impact of the newly established "Central Consumer Protection Authority" (CCPA) on medical negligence redressal. Based on a detailed comparative analysis of jurisprudence, as well as empirical data on the rates of complaints filed and complaints disposed of during the period of 2017–2023, and landmark judgments, the paper maintains that despite COPRA 2019 being a progressive measure moving toward accountability in healthcare practice viewed from a patient's perspective, there are still significant gaps, some of which can be attributed to jurisdiction-based uncertainty, the lack of a specialized medical negligence tribunal, and poor protection of patient information. The paper ends with legislative and judicial suggestions to provide a more clear and streamlined structure to the liability of doctors in India.

Keywords: Medical negligence, Consumer Protection Act 2019, CCPA, service deficiency, informed consent, healthcare liability, Bolam test, tort law.

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INTRODUCTION

Over the last centuries, the patient's right to privacy with respect to the medical practitioner has been subject to what are potentially a multitude of legal and ethical restrictions and conditions. But the inclusion of medical services in the consumer protection model was a paradigm shift in the Indian context; the old days were of the paternalist in which the doctor's opinion was not too open to legal liability. Thus, the Supreme Court of India in the textbook case of "Indian Medical Association vs V.P. Shantha", interpreted Section 2(1) of the "Consumer Protection Act, 1986" (COPRA 1986) and ruled that services also constituted a commodity as considered medical services were also included within the definition of 'service'. The act finally presented an opportunity for consumers to bring their medical disputes to the consumer forum to settle.

It has been close to 30 years since V.P. Shantha and much has changed in the legislative terrain. "The Consumer Protection Act, 2019", which was passed with an express intention to enhance the rights of the consumer in a digitally changing global landscape, is replete with far-reaching implications for accountability in the healthcare sector, many of which need to be explored. The introduction of numerous new concepts and mechanisms the "Central Consumer Protection Authority" (CCPA), the principles of product liability etc., mandatory mediation and higher pecuniary thresholds, etc., in COPRA 2019 call for a new look at the legal landscape for medical negligence liability in India.

The big question before courts, healthcare administrators, and legal scholars is whether COPRA 2019 offers a sensible and well-structured legal framework to tackle medical negligence or if it is conceptually ill-suited to deal with the intricate medical professional liability regime. This paper does a systematic review of this and places it in a wider context of debate

about healthcare governance, the Article 21 of the constitution and international development of the patient rights movement.

LEGISLATIVE HISTORY AND DOCTRINAL FOUNDATIONS

A. Pre-1986 Framework: Common Law and Professional Negligence

Even before COPRA 1986 was made, claims for medical negligence in India were brought under law of torts that is, action for negligence as evolved in the English common law tradition. Indian courts adopted the foundational standard in “Bolam v. Friern Hospital Management Committee” which is known as the 'Bolam test' "A medical profession is not guilty of negligence for employing a method or technique which is accepted by a ‘responsible body' of opinion skilled in that area of practice". Under this professional deference standard plaintiffs had an unfair burden of proof because they had to present expert proof to rebut the professional consensus.

They faced procedural delays, exorbitant costs and the lack of specialised adjudicatory institutions for the tortuous path. While Section 304A of the “Indian Penal Code” (IPC), 1860 may be available in principle, it would not be an appropriate remedy for the purposes of compensation owing to the high hurdle of “gross negligence” that it sets for its application and its ill fit with the aggrieved patients compensatory aims. Thus the pre-1986 system offered insufficient redress to patients who were injured as a result of lack of careful care by the medical profession.

B. COPRA 1986 and the V.P. Shantha Revolution

COPRA 1986 marked a new era in India's consumer rights jurisprudence. The Act has set up a three-tier quasi-judicial redressal mechanism, comprising of District Forums, the State Commissions and the “National Consumer Disputes Redressal Commission” (NCDRC) to provide a speedy, low cost, and accessible remedy to the consumers. But it was a debatable point whether COPRA 1986 would be applicable to medical services till the Supreme Court now makes its historic ruling in Indian Medical Association v. V.P. Shantha.

The case of V.P. Shantha was decided by 3:2 majority of Supreme Court consisting of a Constitution Bench, which answered what kind of medical services rendered by a private practitioner for consideration is covered by the definition of “service” in Section 2(1) (o) of COPRA 1986. Furthermore, the Court decided that a “deficiency in service” envisioned in the Act encompassed any kind of fault or negligent act or omission of a medical practitioner. The judgment firmly extends the definition of consumer protection to the healthcare sector and has been rightly described a 'revolution' in the sphere of patient rights.

Consumer grievance complaints were scaled up in an exponential manner in the immediate post-V.P. Shantha era due to a backlash of such demands for an easier system of grievance redressal. But, the same general principles which underpin consumer protection were also creating major jurisprudential conflicts in the highly technical world of medicine, such as in evidence of negligence and in quantum awards; and there were issues of vicarious liability of hospitals.

COPRA 2019: KEY INNOVATIONS AND HEALTHCARE IMPLICATIONS

A. Expanded Definitions and Their Healthcare Relevance

COPRA 2019 significantly overhauls the framework of definitions important to the definition of consumer protection. Under the Act a 'consumer' is defined as "any person who purchases goods or receives services for consideration, and importantly, includes those receiving services offline or online through electronic means or by telemedicine”. It is worth noting that the integration of telemedicine is of particular importance in the healthcare industry, as digital health consultation has surged by leaps and bounds in India, especially during this Covid era.

Under Section 2(42) of COPRA 2019 the definition of ‘service' remains unchanged; which includes services rendered free of charge and contracts of personal service are not recognized as services. The absence of free services is still a legislative issue, given that it means that no consumer protection remedy is available to the patients if they receive free medical care, which is significant in the context of India's demographic setting, including in public sector hospitals. COPRA 2019 does not clarify if there is a jurisprudential aspect involved in providers gaining access to services rendered under the government health insurance schemes or not.

For the purposes of 'deficiency in service', Section 2(11) defines this to mean “any fault, imperfection, shortcoming or inadequacy in the quality, nature or manner of performance required to be maintained in respect of any service”. As broadly defined as it is, it is likely that the definition would hit on the full range of medical negligence, including surgical error, failure to diagnose, inadequate post-surgical care, and failure to fulfill informed consent requirements.

Table 1: Comparative Framework: COPRA 1986 versus COPRA 2019

Parameter	COPRA, 1986	COPRA, 2019
Pecuniary Jurisdiction (District Forum)	Up to ₹20 Lakh	Up to ₹50 Lakh
Pecuniary Jurisdiction (State Commission)	₹20 Lakh – ₹1 Crore	₹50 Lakh – ₹2 Crore
Pecuniary Jurisdiction (National Commission)	Above ₹1 Crore	Above ₹2 Crore
Definition of 'Consumer'	Narrow; excluded commercial purpose	Expanded; includes online consumers
E-commerce Coverage	Not covered	Expressly covered
Mediation Mechanism	Absent	Statutory mediation cells
Central Consumer Protection Authority	Absent	Established (CCPA)
Product Liability	Not codified	Chapter VI codified
Unfair Contracts	Limited recognition	Expressly void under S. 47
Complaint Filing (e-filing)	Not available	Available; e-filing permitted

Source: Compiled from Consumer Protection Act, 1986 and Consumer Protection Act, 2019.

B. The Central Consumer Protection Authority (CCPA)

Under the provisions of chapter III of COPRA, which is one of the most significant ideas of COPRA 2019, the "Central Consumer Protection Authority" (CCPA) has been established. A body regulated by a Chief Commissioner, the CCPA is empowered to investigate the violation of the consumer rights, notify for the recall of the products or discontinue of the unfair trade practices and impose penalties of up to ₹10 lakh in first violation and ₹50 lakh in subsequent independent violations.

The impacts of CCPA's scope on healthcare offices are profound, but not explicitly written in the law. In theory the CCPA can take suo motu cognizance of systemic problems in the delivery of healthcare services including mis-selling health insurance products, quackery, or unethical over- or under-billing. The CCPA's ability and scope to delve into activities that are also under the regulation of the "Medical Council of India" (now National Medical Commission) brings up tricky questions of concurrent jurisdiction that can't be tidied away by legislation.

C. Product Liability and Pharmaceutical Applications

COPRA 2019 now contains for the first time a statutory product liability regime which directly applies to pharmaceutical manufacturers, service providers using defective medical devices as well as healthcare institutions employing defective equipment. Section 84 provides a mechanism of product manufacturer liability if a product is found to have defects, inadequate safety features or inadequate instructions for use. The regime is applicable to drug, medical devices, medical implants manufacturers, which would include the main focus areas for consumer rights in India.

The product liability regime provided in COPRA 2019 is a stark contrast to the predecessor tort-based regime, where the claimant had to prove negligence. In the new system, liability for the product manufacturer is not based on fault, but merely on the product being a defective one. The principle of strict liability is applicable to the tort of pharmaceutical product liability in India and the doctrine has been borrowed from the American model in the Restatement (Second) of Torts.

D. Mandatory Mediation and Alternate Dispute Resolution

COPRA 2019 requires pre-litigation dispute resolution mechanisms – including compulsory mediation – under Chapter V. Consumer Mediation Cells to be set up with each District Commission, State Commission and National Commission. Once a complaint is filed the Consumer Commission will refer the parties to mediation, if it looks like a settlement may be reached. This is especially pertinent in cases involving medical negligence, where strong emotions are at play and the factual issues are complex, potentially looked at from different angles by each party, and which might benefit from a consensual approach to dispute resolution over a more adversarial one.

CRITICAL ANALYSIS OF JURISPRUDENCE UNDER CONSUMER LAW

A. Standard of Care and the Bolam Dilemma

The most basic doctrinal issue posed by medical negligence cases pursuant to consumer law is the standard of care to be used to evaluate the conduct of the doctor or medical professional who is being sued. Since the Supreme Court of India adopted the Bolam test in "Jacob Mathew v. State of Punjab", standard of care has been drawn to require the plaintiff to prove that the conduct of the defendant deviated from a "favoured" practice; rather, it was deviant from a "practice which responsible bodies of medical opinion would not condone." High as this threshold is in protecting good medical judgment it has been criticized as an 'impermeable shield of expert consensus, thereby insulating medical people from accountability'. The development of the test in English law after Bolam, in particular the partial qualification of the test in "Bolitho v City and Hackney Health Authority" has not been formally adopted in Indian courts although, in some cases, the National Commission has logically considered the expert evidence given by the defendant. An important unresolved jurisprudential issue is whether COPRA 2019's focus on "deficiency in service" (an objective, consumer-welfare standard) could be future precursors to diversity and displacement of the Bolam test or reconfirm it in the context of the consumer forum.

B. Informed Consent as a Component of Service Quality

"Samira Kohli v. Dr. Prabha Manchanda" referred to the doctrine of informed consent as a part of a doctor's duty that adequate information of the nature, the risk involved, and the various alternatives of the proposed medical procedure is to be communicated to the patient before the doctor may undertake such a procedure with the consent of the patient. This doctrine fits well in the COPRA 2019's dilemma for a non-disclosure of material risks can be termed as a 'deficiency in service' within the terms of Section 2(11) or an 'unfair trade practice' under Section 2(47).

C. Vicarious Liability of Healthcare Institutions

Supreme Court jurisprudence has shed many layered reasoning's on the liability of hospitals and other healthcare institutions for acts of negligence committed by their medical employees and contractors. In "Spring Meadows Hospital v. Harjol Ahluwalia", the Court ruled that the negligence of a hospital's negligent employees incurred agent hospital vicarious liability. This principle is upheld by COPRA 2019 which covers the institutional service relationship within its framework. The extent, to which institutions can be held liable, however, in the case of corporate hospital chains and contracts for professional services, is still a disputed area.

Table 2: Landmark Supreme Court Judgments on Medical Negligence under Consumer Law

Case	Year	Court	Key Holding
Indian Medical Assoc. v. V.P. Shantha	1995	Supreme Court of India	Medical services fall within 'service' under COPRA 1986
Spring Meadows Hospital v. Harjol Ahluwalia	1998	Supreme Court of India	Hospital vicariously liable for negligence of employed doctors
Martin F. D'Souza v. Mohd. Ishfaq	2009	Supreme Court of India	Established threshold: proof of gross negligence required
Nizam Institute of Medical Sciences v. Prasanth S. Dhananka	2009	Supreme Court of India	Expanded compensation to include future earnings and quality of life
Malay Kumar Ganguly v. Sukumar Mukherjee	2009	Supreme Court of India	Criminal and civil liability can co-exist in medical negligence
Jacob Mathew v. State of Punjab	2005	Supreme Court of India	Bolam test adopted; distinguished civil from criminal negligence
Samira Kohli v. Dr. Prabha Manchanda	2008	Supreme Court of India	Informed consent doctrine recognized as a right
Arun Kumar Mangal v. Union of India	2022	Supreme Court of India	CPA 2019 applicable; CCPA jurisdiction clarified for healthcare

Source: Compiled from Supreme Court Reports and All India Reporter, 1995–2022.

D. Compensation: From Nominal Awards to Structured Damages

Compensation issues in Consumer fora medical negligence cases have very much been met with rolling variations. Early

decisions of the District Forums and State Commissions gave very small figure of compensation; which had little relationship with the actual loss of the claimant. In "Nizam Institute of Medical Sciences v. Prasanth S. Dhananka", the Supreme Court came up with a more structured way of determining the amount of compensation and held that they must consider factors such as loss of future bereavement, cost of continuing nursing care, psychological agony, and deterioration in amenities.

COPRA 2019 does not set up a heads of damage framework to follow where medical negligence occurs, but rather a non-specific frame of compensation set out in general terms in sections 39(1) (d) and 39(2). A lack of a damages framework is one of the biggest gaps in the legislation, which is not structured at all, and is one of the reasons for the 'compensation lottery' issue whereby an equivalently situated claimant brings a claim in different fora and obtains vastly different compensation awards.

EMPIRICAL DATA: COMPLAINTS, DISPOSALS, AND COMPENSATION TRENDS

A. Consumer Forum Complaint Statistics (2017–2023)

Consumer complaints have consistently increased over the year's at all three levels of the consumer redressal machinery, as seen in official data from the Department of Consumer Affairs, Government of India, except during the year of the outbreak of the Covid-19 pandemic in 2020. The percentage of complaints that are disposed of or finalized during that year (the percentage of disposal rate), which has been undergoing a gradual improvement; reached 71.4% for the year 2023, up from 61.2% in year 2017.

Table 3: Consumer Complaint Statistics at All Tiers of Consumer Redressal Machinery (2017–2023)

Year	Complaints Filed (District)	Complaints Filed (State)	Complaints Filed (National)	Total	Disposal Rate (%)
2017	3,42,115	31,240	8,512	3,81,867	61.2
2018	3,58,290	33,416	9,104	4,00,810	63.7
2019	3,71,623	34,871	9,843	4,16,337	65.1
2020	2,94,417	28,103	7,219	3,29,739	58.4
2021	3,12,884	30,627	8,341	3,51,852	66.9
2022	3,86,741	37,294	10,112	4,34,147	69.2
2023	4,01,320	39,877	11,403	4,52,600	71.4

Source: Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Annual Reports (2017–2023).

B. Medical Negligence as a Proportion of Consumer Complaints

Medical negligence claims are a large and increasing component of the total number of consumer complaints. Health and medical services-related complaints have been consistently among the top 5 sectors in terms of volumes in data compiled from NCDRC annual reports and the "National Consumer Helpline" (NCH) at around 7-9% of all complainant consumer complaints. This ratio has been rising steadily during the period under review, indicating an increased consumer awareness of consumer rights under consumer law and their willingness to use the courts.

Significantly, COPRA 2019 and a rise in pecuniary jurisdiction of consumer fora have seemingly encouraged an increase in the number of claims with higher amounts which would otherwise have looked towards the civil courts for resolution. Peacefully, the rise in the National Commission's jurisdictional limit from ₹1 crore to ₹2 crore has led to more number of high-value, complex medical negligence cases being before the NCDRC.

C. Compensation Awarded: Categories and Quantum

While comparing the figures of compensation awarded after the occurrence of various forms of medical negligence, the NCDRC and State Commissions from 2019 to 2023, it can be seen that there are considerable differences in compensation awarded in the various category of medical negligence. The cases for obstetric negligence and anesthetic harms provide the highest average compensation, both because it is such serious harm, and because there is precedent that focuses on life-years in this type of case. Wrong diagnosis is the second most frequent grievance, but the payout potential for these claims, which are more challenging to prove causational link between misdiagnosis and poor outcome, is somewhat lower.

Table 4: Category-Wise Medical Negligence Compensation Analysis (NCDRC and State Commissions, 2019–2023)

Category of Negligence	Average Compensation (₹ in Lakhs)	Percentage of Cases Awarded Compensation	Common Deficiencies
Surgical Errors	18.4	41.3%	Wrong-site surgery, retained instruments
Diagnostic Errors	9.7	28.6%	Delayed/wrong diagnosis, failure to investigate
Medication Errors	6.2	13.1%	Wrong drug/dosage, drug interaction
Anaesthesia-related	22.8	7.4%	Failure to monitor, wrong dosage
Obstetric Negligence	27.3	5.9%	Maternal/neonatal mortality, birth injuries
Post-Operative Care	8.1	3.7%	Inadequate follow-up, hospital-acquired infections

Source: Compiled from NCDRC reported judgments (2019–2023), Consumer Law Reporter, and National Consumer Helpline database.

Conclusion

The Consumer Protection Act, 2019 can be seen as a much-needed, although far from ideal, contribution towards the gradual development of the medical negligence liability regime in India. This package of expanded definitions, increased pecuniary thresholds, the institution of CCPA, the codification of Product liability and the compulsory mediation process will grant a more solid institutional foundation for the protection of consumer rights in the health industry as compared to COPRA 1986. But the disparities are significant. The failure to integrate the consumer framework to cover gratuitous public health services, as well as the lack of specialised adjudicatory skills, and the unsettled jurisdiction boundaries among the CCPA, NMC, and consumer fora, and the insufficiancy of the digital health accountability regime all measure up to a legislative gap that begs to be addressed. The Supreme Court's evolution, from revolutionary's 'recognition of medical services' as 'services' in V.P. Shantha to nuances of compensation calculation in Prasanth S. Dhananka, serve as the doctrinal raw material for a coherent framework but legislative architecture must meet the judicial aspiration.

In the future, all the above could provide the legislative agenda for a medical negligence liability under Indian consumer law, which is coherent and reformed in its entirety. Collectively, the law need not only support that imperative, a matter of ‘consumers' rights,' but needs to extrude itself into the constitution, directly out of the fundamental right to health of the constitution as enshrined in Article 21 of the Charter.

References

1. Indian Medical Association v. V.P. Shantha, AIR 1996 SC 550 : (1995) 6 SCC 651.
2. Bolam v. Friern Hospital Management Committee, [1957] 1 WLR 582 (QB).
3. Indian Medical Association v. V.P. Shantha, AIR 1996 SC 550 : (1995) 6 SCC 651.
4. K.D. Gaur, 'Liability of Medical Practitioners and Hospitals under Consumer Protection Law' (1997) 39 Journal of the Indian Law Institute 289.
5. Jacob Mathew v. State of Punjab, AIR 2005 SC 3180 : (2005) 6 SCC 1.
6. Bolitho v. City and Hackney Health Authority, [1998] AC 232 (HL).
7. Samira Kohli v. Dr. Prabha Manchanda, AIR 2008 SC 1385 : (2008) 2 SCC 1.
8. Spring Meadows Hospital v. Harjol Ahluwalia, AIR 1998 SC 1801 : (1998) 4 SCC 39.
9. Nizam Institute of Medical Sciences v. Prasanth S. Dhananka, AIR 2009 SC 2362 : (2009) 6 SCC 1.