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**"COUNTER PRODUCTIVE ASPECTS OF CONSUMER PROTECTION LAWS IN INDIAN MEDICAL
SCENARIO AND ITS CONSEQUENCES: A BRIEF OVERVIEW."**

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I. ABSTRACT:

"Every Nation depends on its population's medical health condition for survival, development and growth. It is of utmost importance that the two pillars of this sphere are based on a concrete foundation. The patients should have their Consumer Rights to protect themselves from the malpractices of the medical community and the medical community should have its unique position in the eyes of law through laws that protect them and facilitate their functions.

The problem arises when the scales of laws and rights are disbalanced. Currently, in India, the former's rights are stronger than the later giving rise to a subtle but rapid phenomenon that has the potential to plunge our country in a state of anarchy.

The doctors are adopting a defensive mechanism to save themselves which creates certain consequences which are extremely detrimental for the entire country, but, yet are justified. The origin of this phenomenon has been traced to the faulty and ineffective provisions of the Consumer Protection Act, 1986 which is linked to the predictions and extrapolations of the current scenario. The Causes and consequences that arise from the current status of consumer protection have been critically analysed to understand the fallacies and provide solutions for the same in order to protect the country's collapsing healthcare and medical service system."

II. LOOKING INTO THE PAST:

The judicial structure of India is unique in many ways when seen through different perspectives, but the most beautiful aspect is that it is a dynamic body, i.e., it keeps on changing according to the needs of its citizens. Various acts are daily debated upon in the Parliament but only a few of them are passed and implemented upon us. When such measures of social control and justice are implemented on a large scale even after careful studies and scrutinies, a minor fraction remains who rather than benefitting from it are harmed due to which if we analyse realistically, is the natural path of a process, i.e., for the greater good, minor collateral damage may be excused.

The basic understanding of this philosophy of implementation is extremely relevant for our topic. In Indian society, it can be historically observed that the lifesavers or doctors were always given a demi-god status and were looked upon with awe and respect. During the evolution of our great country, many changes came through, which were good as well as harmful for the public at large. Such a phenomenon is the implementation of the Consumer Protection Act, 1986, (hereinafter referred to as the CPA)¹. We have travelled a long path since its implementation and now it's high time that we analyse and understand its consequences upon the medical sector.

III. DEMANDING THE SPOTLIGHT:

This topic needs attention from the legal sector because it may appear to be insignificant when compared to the volume of mainstream cases but it is not so. The statistics would show that there has been a steep rise in the number of cases registered against medical practitioners after the implementation of the CPA i.e., a rise of 400% in the number of cases against various constituents of our medical sector². The number of cases was 10000 in 2014 which if extrapolated to 2018 gives us a significant portion of the total number of cases. Also by 2020 cases related to the medical sector will comprise 10% of all court cases thus 1 in every 10

¹ Consumer Protection Act, 1986(India).

² Editorial, *Medical litigation cases go up by 400%, show stats*, ETHealthworld The Economic Times (Nov.09, 2018, 05:50 PM), <https://health.economicstimes.indiatimes.com/news/industry/medical-litigation-cases-go-up-by-400-show-stats/50062328>.

cases will pertain to our topic of interest³. Thus, this vital piece of information is adequate to draw the focus of the legal fraternity as well as the judicial administration to rectify the mistakes at the bud to avoid structural collapse.

IV. UNDERSTANDING THE MEDICAL ECOSYSTEM:

The medical sector has three pillars which are the administrative organizations i.e., the hospitals, private practitioners and the often avoided but not ignored “Quacks” or person with medical knowledge but no formal qualifications who practice on the same footings as those of a registered medical practitioner. It is very important to note that in our study we shall be considering the consequences of the CPA on private independent registered medical practitioners exclusively. They are the weakest parties as compared to corporates as they have no legal or financial backing, thereby giving the court process a detrimental characteristic from their perspective.

V. THE PROBLEM: A RISING TIDE:

It should be acknowledged that the protection of the patient’s rights is now far better protected after the implementation of this Act but it is very unfortunate to note that it has also given birth to a very subtle global response from the medical community. What is meant here is that when there was no such concept in our society which restricted the relationship between a doctor and his/her patient to mere consumer and service provider, there existed a human factor.

This Act by bringing the medical profession specifically the private practitioners have brought an elementary change in their attitude towards treating patients and vice-versa. Private independent practitioners don’t have large corporations to help them with legal aid neither do they have such huge capitals to participate in legal wars with their patients. So they have been slowly but gradually adopting a method which can potentially plunge the government into anarchy if not checked. The doctors of modern times have adopted a legal perspective towards their treatment of the patients which if traced properly points towards the

³*Id.*

bad implementation and inclusive nature of the CPA which has a blanket effect on the entire medical community.

They now practice with a focus to not get caught in the legal haywire of their practice, i.e., they only treat conventional and potentially risk free patients and avoid the risky ones owing to the fact that if a process goes wrong they have to face an unnecessary legal battle which will not only defame and ruin their legacy which they have established through decades of diligent hard work but also suffer from severe mental and social agony.

What we fail to notice is that such risky cases are referred to private hospitals which with equal cunningness refer these to the government hospitals which have no option but to treat them. Thus, the government gets adversely affected by the implementation of its own policy.

Essentially, it is the shifting of the burden to the government to deal with its own vices. When patients will be unsatisfied with such treatment they can potentially lead to the anarchy of the medical sector owing to the very obvious and natural fear for their health.

Thus, if the medical and health sector of a country faces structural and moral collapse it would consequentially lead to the fall of the social as well as the administrative structure of the country. Thus, this shift in responsibility should be carefully understood and remedied in order to ensure the stability of the health sector in our country.

VI. THE BASIC CAUSE OF THE MEDICAL COMMUNITY'S DEFENSIVE REACTION EXPLAINED:

Various factors are present which are not visible to the lawmakers and their implementers that a medical practitioner faces on a daily basis. This disparity arises because an Act is legislated by the lawmakers and administrators, who base their opinion on certain generalized assumptions but what occurs on the grass root level remains out of the circle of their consideration and thus resulting in injustice towards those factors which are considered insignificant by the lawmakers but largely significant by the doctors who are intrinsically involved in this process.

Following are the factors which lay open to debates and interpretations which play a significant role for the cause of the behaviour which the medical community is showing towards their patients:

1. The CPA says that if a parent brings a child for consultation with a physician, not only the child is the beneficiary of the doctor's service but also the parent comes under the umbrella of this concept⁴. The same has been stated in this article about M/s Spring Meadows Hospital vs. Harjot Ahluwalia⁵. It may appear that this is a concept of justice and consumer rights but when analysed how the Indian public abuses this loophole, an interesting consequence surface.

For example, there are three individuals who are related to each other, one of them pays the doctor's consultation fees but on the pretext of that, the other two individuals also get themselves checked. This practice is absolutely right and just according to the above principle of beneficiary laid down by the interpretations of the CPA but from the doctor's point of view advice is given to three individuals for their separate problems but technically at the fees of one person as well as taking three unnecessary risks simultaneously where he had the option to deny them but didn't due to compassion and care.

To generate income now he has to check a large number of such groups due to which very less time is dedicated for clinical observation which is known to be a fairly long process.

After the doctor performs this generous and noble task the consequence is not a desirable one when articles are published in the newspapers about how Indian doctors give less than 2 minutes to their patients and portrays them in a bad light by analysing this situation from the economic gain's point of view of the doctor and completely ignore that he has limited time or even his hard work in the due process.⁶ After such social betrayals we must not expect them to act in a noble way but rather they should take natural defensive mechanisms in order to

⁴Consumer Protection Act, 1986, Sec. 2 d (ii) (India).

⁵S.S.Kadu, *Applicability to doctors under Consumer Protection Act, 1986 ant the rules 2(1) IJFMP 2 (2009) M/s Spring Meadows v. Harjot Ahluwalia (1998) 4 S.C.C. 39 (India).*

⁶Malathy Iyer, *Doctors in India see patients for barely 2 minutes: Study T.O.I*, November 9, 2017, <https://timesofindia.indiatimes.com/india/doctors-in-india-see-patients-for-barely-2-minutes-study/articleshow/61570077.cms>.

minimise his/her risks and maximise their gains, which has already happened in all other industries due to the advent of globalisation, commercialisation as well as mechanization.

2. Historically, from the Indian society's perspective, doctors were treated like demi-gods where the patients were held responsible on the basis of *caveat emptor* (buyer alone is responsible for the quality of the product he buys). This sudden change to *caveat venditor* (let the seller beware) gave a jolt to the medical community which came during the dawn of commercialization and globalization of this sector.

Thus, adequate time should be provided for settling of this Act rather than tying a legal noose around their neck. This paradigm shift should have been coupled by adequate awareness both in the patients as well as the medical community; rather, it happened rapidly pushing the doctors in a disadvantageous pedestal.

3. *Misbalanced Approach For Consumer Awareness:*

We often hear initiatives by the government towards consumer awareness through slogans like 'Jago Grahak Jago'⁷ but very little towards the simultaneous education of the service providers who also have the equal right to know about the laws to prevent any legal hassle that they unwillingly commit due to lack of intricate legal knowledge. The service providers often commit a mistake which violates the CPA and brings them under increased probabilities of prosecution, awareness in this sphere is also required.

It has been very unfairly portrayed in our society that sellers are always in an attempt to fool the buyers, it has to be noted that such biased generalisation causes harm to the entire community of service providers. This has caused increased sympathy towards the buyer and simultaneous awareness drives to apparently protect them.

No such catchphrase comes to mind when we talk about service providers' protection. Thus, steps should be taken to equally spread the knowledge of Consumer Law and should not be restricted to a certain community.

⁷Jago Grahak Jago, National Consumer Helpline (Apr. 15, 2019, 10:30 PM)
<https://consumerhelpline.gov.in/jago-grahak-jago.php>.

4. ISI⁸ Branding of Medical Service:

When a buyer buys a product from a seller he ensures that there is an ISI (Indian Standard Institute) mark which guarantees that the product has the standard features which ensures its quality. Similar branding has been imposed upon the medical service sector. Marking standards for a practice which largely depends on the doctor's discretion which in turn requires nerve of steel to make life-preserving decisions at the blink of an eye under immense mental pressure cannot be considered at an equal pedestal with other service sectors.

Medical attention requires rapid decision which is characterized by the application of medical knowledge, consideration of the exceptions, analysis of cost-benefit ratio, potential drugs that can reduce the pain of the patient along with other factors like the patient's financial background in order to prescribe drugs which he/she can afford without having financial strain. All these decisions are made in minutes and implemented with exceptional accuracy. Let's consider our very own judiciary, which takes decades to decide cases, and essentially the process to reach the outcome remains the same as above, this is not intended to defame or portray the judiciary in a bad light but just to show how the doctors are treated with unfairness and unequal opportunity.

5. Contributory Negligence of Dr. Google⁹:

It is often that when we have some minor ailment we Google the symptoms and follow self-treatment¹⁰ which is completely unethical. But, what we fail to see is that when we can no more control the disease the patient decides to pay a visit to the doctor which he was supposed to do at the very inception of the disease. The doctors try to control the disaster caused by the patient during self-treatment with utmost care and precaution. But if he fails at this noble gesture the blame of the consequences are heaped upon him where the patient and his superficial knowledge from Dr. Google nowhere features in the picture to share the

⁸Product Certification Overview, Bureau of Indian Standards (Apr.15, 2019, 10:30 AM)
https://bis.gov.in/?page_id=1655.

⁹Dr. Purvish M P , *Consumer Protection Act: What doctors need to be cognizant of* 68 (1) IJMS 2 (Nov.09, 2018, 10:30 PM),<http://dx.doi.org/10.18203/issn.0019-5359.IndianJMedSci20163521>

¹⁰ M.E. Ruiz, *Risks of Self Medication Practices*, *Curr Drug Saf.* (4):315-23, (Apr. 15, 2019, 10: 30AM),
<https://www.ncbi.nlm.nih.gov/pubmed/20615179>.

J.J. Mira, S. Lorenzo, et.al, *A systematic review of patient medication error on self-administering medication at home**Expert Opin Drug Saf.* (6):815-38, (Apr.15, 2019, 08:50 AM),
<https://www.ncbi.nlm.nih.gov/pubmed/25774444>.

blame. The patients observe that a diagnosis can be made in only a few minutes and wonder, why they should pay large amounts of money for a such short service. What they don't understand is that in order to diagnose diseases such rapidly the doctor had to undergo a rigorous learning process of a minimum half a decade or longer. The patient believes that he/she can perform the same diagnosis in a few minutes by using Dr. Google. This delusion bursts when the diseases are aggravated and out of control and ultimately they have to resort to the medical attention provided by the doctors. Awareness should be spread regarding the faulty information¹¹ provided by Dr. Google in order to prevent the avoidable¹².

An interesting doubt surfaces regarding the liability of the fault, i.e., who is to be blamed the patient or Dr. Google, since it mentions in the disclaimer that the information provided by it is not actual medical attention but secondary suggestions? The patient ignores it and continues in the oath of risk and ignorance only to blame the doctors in a later period of time.

6. Lack of Deterrent Actions and Provisions in the CPA to Prevent False or Frivolous Cases:

An elementary analysis of the provisions of some specific parts of the CPA shows how the scales of justice are tilted towards the victim in a much larger portion than it was supposed to be while administering justice to but the parties. Section 12(2) of the CPA provides that to claim a compensation whose amount ranges between Rs.10 lakh to 20 lakh from the medical practitioner the patient party needs only Rs. 500 as court fee and to file a claim greater than 1 crore the court fee is Rs.5,000¹³.

If such proceedings are initiated and the case is proved false the doctor loses large amounts of the sum in the legal battle to prove his innocence as compared to the patient party which results in a gross miscarriage of justice. If such cases are proved to be frivolous the patient party has to pay a maximum of Rs.10,000 to the doctor. According to my opinion, this should be amended judiciously to make it a balanced because there is no provision for the doctor to

¹¹Brian Dolan, *10 Reasons why Google Health Failed* Mobihealthnews, (Apr. 15, 2019, 10:20 PM) , <https://www.mobihealthnews.com/11480/10-reasons-why-google-health-failed>.

¹²Kelly Crowe, *Think twice before consulting Dr. Google, researchers say* CBC News ,2018, <https://www.cbc.ca/news/health/second-opinion-online-medical180407-1.4608410>.

¹³Consumer Protection Act, 1986, Sec. 12 2(India).

claim the amount lost due to the absence of practice during court wars or the mental agony caused thereby. Such lack of provisions encourages the patients to initiate proceedings with malicious motive.

7. Payment of Heavy Medical Insurance Premia as Legal Backup:

Since doctors who independently practice have no legal backup they pay or are rather forced to pay heavy medical insurance to medico-legal law firms due to which large scale resentment arises in the community who earn money through hard work and immense knowledge gained over decades.

8. Social Consequences:

The most unfortunate outcome of this process is that when a complaint is filed against any doctor the law says that that the charges have to be proven by the complainant because the doctor is held innocent until proven guilty but in the society the opposite happens when the doctor is assumed to be guilty until proven innocent just by the virtue that a case has been filed. This leads to the tarnishing of reputation, social ostracization and most importantly loss of clientele which the court cannot reverse if the doctor is found innocent.

VII. CHARTING THE POTENTIAL AFTERMATH AND THE IMMEDIATE OBSERVATIONS:

It is natural for every action to have its required and compensating reaction. The same applies to the medical community as well. Thus, these are the factors which initiate certain defence mechanisms in the medical community which are critically dissected as follows¹⁴:

VII.I OVER INVESTIGATION TO PLAY SAFE WHICH INCREASES THE COST OF THE SERVICE¹⁵:

Minimum investigations along with high accuracy cause a minimum burden on the patients. Doctors accumulate rich experience over their years of practice and possess the ability to distinguish the bare minimum and the superfluous diagnostic tests. They use this knowledge to save the patient's money. But, recently due to increase of doubt on the doctors medical

¹⁴J. Debbarma , N. Gupta, et.al.,*Consumer Protection Act-Blessing or curse to medical profession?* 12(2) DPJ 302 (2009)

¹⁵*Medical Profession and the Consumer Protection Act* 41(3&4) ILI 460

knowledge and the Court of law demanding an explanation from them about the tests that were not carried out according to the books, doctors have been forced to ignore the benefit of the patient and are now prescribing blanket investigations as mentioned in the books irrespective of its financial feasibility by the patients. Though, it can be argued that it's the ethical and ideal way, the patients have to shell out larger amounts of money to carry out allegedly futile tests. The point that has to be noted here is that here too doctors are being accused of prescribing unnecessary tests for their own benefit¹⁶. This appears to be a dilemma with no apparent solutions.

VII.II MORE FORMAL APPROACH WHICH REDUCES THE HUMAN FACTOR FROM THE DOCTOR-PATIENT RELATIONSHIP¹⁷:

The relationship between Doctor and patient is one of trust and goodwill. But due to the recent increase in suits against doctors which pinpoint their every fallacy without considering their motive, has brought fear in the medical sector. The fear of getting prosecuted, due to this, a formal approach has been adopted to prioritize the legal aspects before the medical conditions of the patient. Thus, the goodwill and trust are replaced by rigid relationships in which the doctors try to be as legally correct as possible, putting the patient in a secondary pedestal, thereby eroding the ancient relationship of trust, goodwill and hope.

VII.III UNWILLINGNESS TO TREAT HIGH-RISK PATIENT FOR FEAR OF LEGAL CONSEQUENCES¹⁸:

This can be predominantly observed in the private sector where the physicians refer high-risk patients to corporate and government hospitals in order to avoid complications. Studies show that patients are not satisfied with the medical services that they receive at the government hospitals, thus, the patients lose out quality treatment from doctors who are rightfully afraid to put their career on risk due to legal haywires and blames of the patient parties. If

¹⁶Liz Szabo, *How unnecessary tests, scans, procedures and surgeries are affecting your patients* Kaise Health News, 2017, <https://www.healthcarefinancenews.com/news/how-unnecessary-tests-scans-procedures-and-surgeries-are-affecting-your-patients>.

¹⁷Dr. C Prakash, et.al, *Consumer Protection Act (CPA/COPRA) related to medical profession* 29(3) JIAFM 39 (2007).

¹⁸Haroon Siddique, *Doctors avoiding risky operations due to prosecution threat, survey finds* The Guardian Jan. 30, 2016, <https://www.theguardian.com/society/2016/jan/29/doctors-avoiding-risky-operations-due-to-prosecution-threat-survey-finds>.

extrapolated this has the potential to disbalance and cause fall in the governmental healthcare system¹⁹.

VII. IV MIGRATION IN COUNTRIES WHICH HAVE STRICTER LAWS²⁰:

India is currently facing a severe shortfall of doctors as compared to the rising population. The recent trends in lofty consumer laws have left the medical practitioners, no choice but to migrate to foreign countries which have strict laws to protect them. Both factors are contributing to the degrading status of India's health care system. India is not being able to retain the talents due to the various loopholes in the laws that the patients exploit and victimise the physicians.

VII.V RISE OF CORPORATE MODEL BASED MEDICAL HEALTHCARE SYSTEMS BACKED BY HEAVY LEGAL SUPPORT TEAMS WHICH CAN MONOPOLISE THE ENTIRE MEDICAL ECOSYSTEM²¹:

A private practitioner has limited financial means, due to which his/her legal power to defend also becomes limited. On the other hand corporate hospitals have large resources and dedicated legal teams which defend the entire hospital. Thus, there is a decrease in private practitioners and increase in the no.of doctors joining corporate and private hospitals as a refuge from the harsh legal provisions and patient behaviour.

VII.VI RISE OF THE MEDICO-LEGAL SECTOR²²:

There is increased awareness of laws amongst the medical students who are being prepared from an early stage to combat the legal harshness that they would be facing once they enter into the field of work. This has also increased the number of medico-legal practitioners and

¹⁹AyonaBhattacharjee and Deepanshu Mohan, India's *Healthcare System Is Becoming More and More Unequal* The Wire Jun.12, 2017, <https://thewire.in/health/india-healthcare-system-inequality>.

²⁰IshaniDuttgupta, *Indian healthcare: Stop the brain drain of doctors* The Economic Times Aug.21, 2011 <https://economictimes.indiatimes.com/indian-healthcare-stop-the-brain-drain-of-doctors/articleshow/9677156.cms>.

²¹ Bertrand Lefebvre *Bringing World-class Healthcare to India. The Rise of Corporate Hospitals*, in Vaguet, A. (éd) *Indian Health Landscapes under Globalization*, Manohar, New Delhi, pp. 83-99 Mar. 31, 2012, <https://aoseine.hypotheses.org/173>.

²²Shakti Singh, *Alarming rise in medical negligence litigation: Study*The Times of India Nov. 18, 2016, <https://timesofindia.indiatimes.com/city/nagpur/Alarming-rise-in-medical-negligence-litigation-Study/articleshow/55484635.cms>.

law firms which deal with such cases. There is a backlash looming upon the patient community who have long exploited the doctors as a soft target. Doctors are appointing dedicated and specialized law firms to protect them from litigant patient parties and in some cases, file suit to demand their rights of protection as members of the respected and integral medical community.

VIII. CONCLUSION: CALL FOR IMMEDIATE ATTENTION AND APPROPRIATE AMENDMENTS:

It can be thus concluded that the above factors need to be discussed seriously and amendments be made if necessary because the stakeholders of this process are the patients who suffer due to their own misunderstanding. It has also been observed that the Medical community behaved much better than any other corporation thus careful thinking should take place before comparing them to profit only scenarios and forcing them under the ambit of certain laws and legislations especially the CPA.²³

It is unfortunate to note that doctors are inclined towards leaving their profession due to the increasing liabilities that they are facing currently due to ineffective laws²⁴.

The current defensive behaviour if allowed to continue can cause havoc the health status of our country. The causes are apparent and before our naked eyes, the government has to take steps to protect and give equal rights to the medical community and shield them from the harshness of the patients who are creating a graveyard for themselves. The laws regarding the consumers as well as the medical communities need to be revised and revamped according to the need of the hour as observed in India.

²³Consumer Protection, *supra*note15.

²⁴*Current Scenario*Legal MD, (Apr. 15, 2019, 10:20 AM), https://legalmd.in/current_scenario.