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september, 1987. the



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BUSTER**

It was filed either under the law of torts to claim damages or under other relevant sections (304 A, 336, 337 and 338) of the IPC, to get the negligent punished.

However, after the introduction of the Consumer Protection Act, a drastic change has taken place and litigants are preferring claims through the District, State or National forums. The two main reasons for this are that hardly any costs are involved in this procedure, and the case is decided in a short span of 3 to 4 months.

A Primer on Consumer Protection Act:

Consumer Protection Act (CPA in short) was enacted by Parliament in December 1986 and came into force on 1 September, 1987. The aim of act is to provide a simple, speedy and inexpensive redressal for consumer grievances relating to defective goods, deficient services and unfair trade practices. A 1992 landmark ruling by the National Consumer Disputes Redressal Commission in the case of Vasantha Nair vs Cosmopolitan Hospital has already established that medical services can be tried under CPA.

Consumer:

Consumer means any person who hires any services for a consideration, and includes any beneficiary of such services other than the person who hires the services, when such services are availed of with the approval of the first mentioned person. The status of a patient is that of a consumer, because the patient pays for the services or has the liability to pay which may be by full down payment, in instalments or under any deferred payment system.

If a person has received free services without paying for the same, he cannot be called a consumer. This is why government hospitals providing services without any charges are outside the preview of the Act. A person who avails himself of the facility of a government hospital is not a consumer because the facility offered in government hospitals is not service hired for a consideration.

For deficiency of service in government hospitals, the aggrieved person will have to file a claim in civil court. If the conduct of the hospital doctor amounts to criminal negligence, the patient can cause to prosecute the doctor in criminal court.

Deficiency:

Deficiency is any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in pursuance of a contract or otherwise in relation to the service.

Service:

Service means service of any description, but excludes free service and personal service. Treatment in a hospital (excluding government hospitals) on payment amounts to hiring of service for a consideration. Therefore, a complaint would lie if there is deficiency in service rendered by a member of the medical profession.

Definition of " service" excludes from its scope service under a contract of personal service. Strictly speaking, service rendered by a doctor is not essentially personal service. The high court of Kerala had ruled (Vasantha P

Nair vs Cosmopolitan Hospital 1991). “ There is in a general sense a personal element in the medical officer’s service to their clients, but we do not think that they can be called personal service. It will be incorrect, infelicitous and crude to describe it as personal service.

Personal service stems from a master-and-servant relationship. It is wrong to call the service rendered by a lawyer or doctor to his or her clients as personal service”. Doctors have tried to take shelter in the past under the concept of personal service, which is no more tenable.

Time Limitation:

A claim for compensation under CPA must be filed at a Forum within three years of the subject matter of the complaint (e. g.

death) having arisen. If an amendment to the Act, presently under consideration of the government is passed, this period is likely to be raised to one year. At the District Forum, a case has to be heard within three months of being filed.

Consumer Disputes Redressal Levels:

Under a three-tier redressal machinery, consumer disputes redressal forums have been established at all the district levels and state capitals. The National Consumer Disputes Redressal Commission is located at New Delhi. The National Commission deals with compensation claims above Rs. 30 lakhs. The largest medical consumer compensation claim is Rs.

3 crore by a person from Amritsar for the death of his son after multiple surgeries, allegedly unnecessary. The largest consumer compensation

received so far is Rs. 17.35 lakhs by international table tennis player V Chandrasekhar for his case against Apollo Hospital, Chennai for disabilities suffered after a negligent operation. The State Commission deals with disputes where compensation claims above Rs. 5 lakhs are preferred. District forum deals with compensation claims up to Rs.

5 lakhs.

Powers of Redressal Forum:

Redressal forums have the same judicial powers as a civil court. It means it can summon and enforce the attendance of witnesses and to produce documents. Medical Malpractice cases which could take over a decade in the past are now decided in months by the redressal forums.

Epilogue:

The medical profession got a severe jolt when in April 1992 the National Consumer Redressal Commission, on appeal from Kerala State Redressal Commission, decided that the activity of providing medical assistance for payment carried out by hospitals and members of medical profession falls within the scope of the expression "service" defined in Consumer Protection Act 1986 and that in the event of any deficiency in the performance of such service the aggrieved party can invoke the remedies provided under the Act. A body of medical men feels that when an individual errs, he should be prepared to face the consequence that follow, irrespective of what category and in what capacity he is discharging his duty at the time and a doctor of any discipline working in any category or capacity is not, and cannot, be an exception to this principle.

The key grievance of the medical fraternity is that there is no provision for having a medical technical expert on the Forums to provide technically sound opinion on the doctor's/ hospital's performance. An amendment to the Act has now made a provision for inclusion of an independent expert.

Patients' Bill of Rights:

The government is concerned about the deteriorating services in medical care both in private nursing homes and public hospitals.

Consumer organisations are also pressing for a charter of right of consumers of medical services. The Indian Medical Association would also welcome a citizen charter for patient's welfare on the lines of the similar charter in the United States. A subcommittee of the central consumer council is going into the various shortcomings as existing in both public and private medical care and to prepare a charter of patient's rights. Indian Medical Council has a member on the subcommittee.

The charter will serve as the guiding document for considering cases by courts, besides being a reminder to doctors and hospitals of their responsibilities and obligations. The draft of the charter of patients' rights being finalised by this committee is being modelled on the American Bill of Patients Rights approved by the American Hospital Association in 1973.