

# Medical Negligence and Health Care Consumerism

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Published in IJIRMP (E-ISSN: 2349-7300), Volume 10, Issue 4, July-August 2022

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## 1. INTRODUCTION

*“Today’s consumers reveal the future of healthcare”<sup>1</sup>*

Consumers today want to take responsibility for managing their own health. Yet most feel that they do not have the information and the tools to do so. In other industries, customers can easily access feature, benefit, and cost comparisons to guide their purchasing decisions. In contrast, the healthcare industry presents a vast array of confusing choices, touchpoints, and service flows without any initial pricing information. Majority of consumers consider their healthcare decisions to be the most important and costly decisions they make.

### **Consumerism defined**

The word "**consumerism**" means "the welfare of consumers by safeguarding their rights, giving them the necessary protection against restrictive business practices and unfair business practices as well as against goods or services which are harmful to them and save them from economic exploitation by sellers / traders / manufacturers of goods and services. The Constitution of India also guarantees certain fundamental rights to every Indian citizen. The right to live with high standards is part of the directive Principles of the Constitution. Consumerism is an integral part of the guidelines given by the Constitution.

Today, the customer is given the highest priority when it comes to quality or the usefulness of the goods or services. The fundamental provisions of the law must protect the business consumer. Consumerism in healthcare is transforming an employer's health insurance plan, putting economic purchasing power and decision-making in the hands of plan members. In short, the goal of healthcare consumerism is to empower patients to be fully involved in their healthcare decisions.

### **Healthcare in Consumerism**

The notion, which acknowledges people's roles as buyers and administrators of their own health and wellbeing, has been ingrained in the healthcare system.

Consumerism in healthcare is frequently at the top of the C-suite priority list, with most firms understanding that they must adapt to changing patient behaviours in order to stay competitive. Developers of health information technology, payers, and politicians are all attempting to adjust to a world where the patient is also the medical consumer. Adding the service of healthcare to the word consumerism is the new eureka in the world where the public and every consumer who avails the medical facilities have their hands uplifted in the choice and nature of treatment received by them from the healthcare professionals who upheld their privilege of anonymity until this period.

With the industry's movement toward value-based treatment, the term "healthcare consumerism" gained traction, although it's not the first time the United States has used it. Language referring to patients as

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<sup>1</sup> Kaveh Safavi(Senior Managing Director – Global Health) and Brian Kalis(Managing Director – Digital Health), Accenture 2019 Digital Health Consumer Survey, February 12, 2019.

customers dates all the way back to the 1930s, according to a 2015 literature assessment done by Nancy S. Lee, PhD, of the University of California San Diego<sup>2</sup>.

In her study abstract, Lee noted, "Findings from Consumer Reports demonstrate that the consumer movement of the 1930s–40s ardently fought for universal health care." "Whereas today's consumer rights rhetoric emphasises individual decision and personal accountability, consumerism in health care at the time articulated notions about consumer democracy, framing choices and duty in collectivist terms and emphasising health care as a social benefit."

"Healthcare consumerism," as defined by medical experts today, refers to the individual's choice and responsibility in paying for and maintaining one's own health. The term, which gained popularity as value-based care gained traction and high-deductible health plans (HDHPs) became more prominent, denotes the patient's role as a primary payer of healthcare and a primary driver of wellness.

### **Consumerism and Consumer Protection Laws**

With the advent of healthcare consumerism, grew not only the rights of the patients in the nature of consumers to the healthcare services provided by the medical and healthcare industry but also the duty of the medical practitioners, medical service providers and the government to provide an established set of rights for the patients as consumers.

Previously, the laws and legislations in a global sphere as well as in India only provided for the penalisation and liability of the medical practitioners under the criminal legislations<sup>3</sup> over medical negligence<sup>4</sup> and the victims were the ones who had to approach to the appropriate forum and prove that such medical negligence has been committed over them by such professionals. Only after the advent of this concept, the patients were also treated as consumers and entitled with rights to which the medical professionals and health care institutions<sup>5</sup> were duty bound<sup>6</sup> to not violate<sup>7</sup>.

The researcher in this research paper will aim at discussing the concept of consumers, negligence<sup>8</sup> and medical negligence and provide a detailed understanding on how these laws evolved in India and in the international sphere. The tests to prove negligence<sup>9</sup>, the duty of care<sup>10</sup> on part of the medical professionals<sup>11</sup> and the rights of the patients as decided by the judiciary<sup>12</sup> and established under law are also emphasised and discussed in detail. The researcher will highlight the pivotal role played by the judiciary in interpreting the rights of the patients as consumers against the acts of medical negligence with the help of decided case laws from the advent of the Consumer Protection Act, 1986 to till date regarding the COVID-19. The researcher will on the whole provide a nexus between these rights and how consumerism transformed over the decades.

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<sup>2</sup> Nancy S. Lee, 'Findings from *Consumer Reports* show that the consumer movement of the 1930s–40s staunchly advocated for universal health insurance', UIC (2015).

<sup>3</sup> *Jacob Mathew v. State of Punjab*, AIR 2005 SC 3180; (2005) 6 SCC 1; 2005 Cri LJ 3710.

<sup>4</sup> *King v. Phillips*, [(1953) 1 QB 429].

<sup>5</sup> *Gian Chand v. Vinod Kumar Sharma*, AIR 2008 H.P. 97.

<sup>6</sup> *Spring Meadows Hospital and others v Harjol Ahluwalia*, Civil Appeal No. 7858 of 1997.

<sup>7</sup> *Moni v. State of Kerala*, SA. No. 832 of 2000(G).

<sup>8</sup> *Kusum Sharma & Ors. v. Batra Hospital & Medical Research Centre and Ors.*, (2010) 3 SCC 480.

<sup>9</sup> *Vinod Jain v. Santokba Durlabhji Memorial Hospital and Ors.*, AIR 2019 SC 1143.

<sup>10</sup> *Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Babu Godbole*, 1969 AIR 128.

<sup>11</sup> *Chandigarh Clinical Laboratory v. Jagjeet Kaur*, IV (2007) CPJ 157 NC.

<sup>12</sup> *Indu Sharma V. Indraprasta Apollo Hospital and Ors.*, 2015 2 CLT 454 (NC).

Medicine has been practiced serving mankind since forever. In India and from all over the world, a huge number of individuals enter emergency clinics to go through treatment for one or another ailment. To-day, the financial thought is in actuality has turned into the sole criteria to decide the patient-specialist relationship. The specialists are depending on unreasonable practices to earn money. In addition to these unfair practices rehearses, doctors commit errors and blunders at any time during the hour of treatment.

Wrong treatment is the most well-known justification behind individuals whining about medical negligence, followed by lack of care, no treatment and constrained discharge are different explanations behind medical negligence.

The patients who experience the ill effects of the negligence of doctors are too many, but very few have access to the courts. Not all many patients who have experienced unfriendly results move the courts and surprisingly in that, not many get compensation. In this specific circumstance, the current review expects its significance in assessing the viability of the Consumer Protection Act in managing medical negligence cases and legal methodology towards doctor patient relationship.

Carelessness and rash medical activity are covered under Medical Negligence. It also includes the conduct of medical professional's vis; medical practitioners, nurses, hospitals, and anyone who is engaged in medical service. So, the main attempt of the researcher in this research paper is to introduce and explain what negligence and medical negligence is and how an act may or may not be considered negligent.

The Consumer Protection Act was passed in 1986 with high hopes that there will be speedy disposal of consumer grievances and create an expeditious redressal forum, However, the experience with this quasi-judicial forum is not satisfactory. There is a strict increase in complaints, delay in disposal of cases, lack of expert knowledge, and inefficient forums in many cases. This legislation which had few lacunas was later replaced by a new legislation called the Consumer Protection Act, 2019. This study aims to bring out methods to implement an efficient consumer redressal mechanism.

The patients were granted various rights in the nature of consumer rights and rights to patients by various charters and legislations in recent times. This study aims at accessing whether such rights of the consumers are upheld and respected by the medical professionals and how it is evolving towards healthcare consumerism.

## **CONCLUSION**

Majority of the literature has remarks of consumerism and patient's rights generally. There is no proof of any complete examination on the investigation of ongoing patterns of Medical Negligence cases in Indian and the viability of Consumer Protection Act, 2019, furthermore, the job of National and State Consumer Disputes Redressal Forum.

This field remains generally neglected and the requirement for this review is likewise felt due to the need to concentrate on the accompanying realities about tolerant idea like rising pattern in patient's abuse, abuse of rights of the patients, foundation of district forums, development of customer association. With the advent of transformative consumerism, the availing of health care services by the patients have also moved to online consultations, especially during the times of the COVID-19 pandemic. In these instances, there are many probabilities for the consumers to be exploited by the medical professionals and therefore there is a need of dependable research in this field to know the rights and remedies available to the patients and the need for justice at grass-root levels.