



Medical Negligence and Consumer Protection

Smartaz Majumder

Independent Researcher, India

ABSTRACT

A consumer can be defined as an individual who acquires products or services for personal utilization or possession, as opposed to engaging in the act of reselling or utilizing them for manufacturing or production purposes. Consumer protection is the act of ensuring the protection of customers against fraudulent or misleading business activities. Legislation is frequently utilized as a means to safeguard consumers and ensure their protection. Corporations are prohibited from participating in fraudulent or unfair practices with the intention of gaining a competitive advantage or deceiving consumers, as a result of regulatory measures in place. Moreover, even those who are not direct consumers or users of the specific product in question can provide additional safeguards for the wider population.

Negligence can be described as the failure to exercise the appropriate level of care that is anticipated and ethically mandated. It is generally advisable for individuals to use prudence in their actions, duly considering the potential risks and adverse consequences that may arise for both individuals and property. Medical negligence can be defined as the failure of a medical practitioner or doctor to provide sufficient care, leading to a violation of their professional duties and resulting in injury to the patient. Medical negligence can arise due to errors in health management, aftercare, treatment, or diagnosis. Over the course of recent years, a significant number of fatalities have occurred as a result of instances of medical negligence.

This article primarily focuses on the concept of Medical Negligence, its inclusion within the scope of the Consumer Protection Act, and the measures available to safeguard individuals from the medical negligence exhibited by healthcare professionals and physicians.

INTRODUCTION

The contemporary period is commonly referred to as the consumer era. The interests of citizens cannot be disregarded by any government worldwide, as seen by the swift enactment of consumer protection legislation in practically every nation. In addition to the presence of consumer protection legislation in industrialized nations, there has been a notable surge in the enactment of consumer laws in developing countries. India, too, does not deviate from this principle. The Consumer Protection Act, 2019 is considered a significant piece of legislation in the realm of socio-economic legislation¹, aimed at protecting the rights of consumers in India. The consumer protection legislation in India was enacted in 2019, serving as a replacement for the previous Consumer Protection Act of 1986. This development followed a comprehensive analysis of consumer protection laws in various nations and involved extensive engagement with stakeholders from consumer, trade, and industry sectors both within India and internationally. In order to enhance the protection of consumers' interests and facilitate the resolution of their conflicts, several authority organizations, including consumer councils, are being established.

When an individual purchases specific things from a shopkeeper, they are classified as a consumer. When an individual chooses to utilize the services of a hotel, they might be classified as a consumer. When a client seeks legal counsel from a lawyer regarding matters of law, they can be considered a consumer. Likewise, when a patient seeks medical consultation or undergoes a surgical procedure, they can be regarded as a consumer. In recent years, there have been instances of medical professionals exhibiting negligence in their treatment of patients. Examples include inadequate attention to patients during surgical procedures, as well as instances where surgical instruments or cotton materials have been inadvertently left inside patients' bodies. These occurrences have resulted in severe health complications for patients, and in some cases, even fatalities. The many forms of carelessness discussed are collectively referred to as Medical carelessness, which fall under the purview of the Consumer Protection Act of 2019.

¹ Socio-economic legislations can be defined as, "The Legislations that provide protection for the dignity, freedom and well-being of individuals by guaranteeing state-supported entitlements to education, public health care, housing, a living wage, decent working conditions and other social goods."

LITERATURE REVIEW

For doing this research project, I have taken help from a lot of articles, books, research papers and journals. The first book which is referred by me for doing this research project is Consumer Protection Law by Dr. Raja MogiliAmirisetty² and Mrs. M. SavithriSravanthi³. From this book I was able to acquire knowledge about the basics of Consumer Protection Law.

The second book, which is referred by me is Law of Medical Negligence and Compensation by Mr R.K. Bag⁴. From this book I was able to acquire knowledge about the detailed analysis of the Consumer Protection Law.

The third book which is referred by me for this research project is Introduction To Medical Negligence Law In India by Dr. Siddhartha Goswami⁵. From this book I was able to acquire knowledge about the basics of Medical Negligence in India.

The Fourth book which is referred by me is Medical Negligence and the law in India by Tapas Kumar Koley⁶. From this book I was able to acquire knowledge on how the Medical Negligence falls under the Consumer Protection and detailed analysis of the Medical Negligence.

The fifth book which is referred by me for this research project is Laws Relating to Medical Negligence by Y. Venkateshwara Rao.⁷ From this book I was able to acquire knowledge about the different laws relating to Medical Negligence and the Judicial Decisions related to Medical Negligence.

RESEARCH OBJECTIVES

The Research Objectives of this Research Paper are:

- To do wide and extensive research on Medical Negligence
- To find out in what ways the medical negligence falls under consumer protection
- To find out what acts of doctor fall under the ambit of Medical Negligence

RESEARCH QUESTIONS

The Research Questions whose answer I want to find out by doing this research paper are:

- Which are the different types of negligence exhibited by the doctors?
- What are the different landmark cases pertaining to medical Negligence?
- What are the remedies a person can receive after they or their close ones are the victim of Medical Negligence?

RESEARCH METHODOLOGY

Doctrinal Methodology is the Research methodology that I have used for my Research Project. This sort of research approach involves analysing current statute provisions and cases to do research on a legal proposal. It also entails reviewing case law, organizing and categorizing legal arguments, and studying legal systems using legal reasoning.

RESEARCH HYPOTHESIS

H₁- The Laws and the Judicial Decisions in India are enough to protect the people from the Medical Negligence of the Doctors and Medical Professionals.

H₀- The Laws and the Judicial Decisions in India are not enough to protect the people from the Medical Negligence of the Doctors and Medical Professionals.

² Dr Raja Mogili Amirisetty is a renowned Author.

³ Mrs M. Savitri Sravanthi is a renowned Author.

⁴Dr. R.K. Bag is a renowned Author

⁵Dr. Siddhartha Goswami is a senior doctor and a renowned Author.

⁶Tapas Kumar Koley is Specialist Physician at Tilak Nagar Colony Hospital in Delhi and a renowned Author

⁷ Y. Venkateshwara Rao is a professor in the department of Botany in the Andhra University and a renowned Author.

HISTORICAL BACKGROUND OF CONSUMER PROTECTION LAWS IN INDIA

Many ancient writers and commentators, including Smriti⁸ and Shrut⁹, documented the societal conditions of individuals and provided legal guidelines to offer counsel to monarchs and leaders on the administration of the State and its populace. One of the primary concerns of the writers revolved around Consumer Protection.

The Manu Smriti encompasses the social, political, and economic conditions of ancient society. In addition to his other literary contributions, Manu has authored works pertaining to ethical business practices. According to the book, he established a code of conduct for dealers and implemented consequences for individuals who engaged in certain offenses against clients. Regarding the issue of adulteration, he proclaimed that the sale of a product as pure when it is actually coupled with another substance, or the misrepresentation of a subpar product as excellent, or the provision of a quantity or weight that is less than the specified amount, or the sale of any item that is readily available or disguised, shall not be permitted. In the realm of punitive measures, the mildest penalties were reserved for acts such as tampering with unadulterated merchandise, damaging precious gemstones, or improperly perforating them. Stringent penalties were proposed for fraudulent activities pertaining to the trade of seed corn, encompassing measures such as "mutilation" for individuals involved in the selling of non-seed corn products, "uprooting of previously sown seeds," and "obliteration of demarcation markers." Interestingly, Manu also provided definitions for the competency criteria of parties involved in the formation of a contract. According to Manu, a contract entered into by an individual who is under the influence of alcohol or drugs, experiencing serious illness, complete dependency, infancy, old age, or who is an unwanted guest, is considered null and invalid.

During the Middle Ages, the preservation of consumer protection was of utmost importance to kings. A variety of weight units were utilized throughout the period of Muslim rule in India. During the sultanate period, pricing decisions were made based on the local conditions. During the Alauddin Khilji¹⁰ era, the market experienced stringent controls. During that period, the city possessed an inexhaustible abundance of grain, and the pricing of grain-carriers was determined by the Sultan himself. Within the marketplace, a mechanism was present to regulate and uphold the price of a certain commodity. Shopkeepers who intentionally underweighted their products were subjected to a comparable form of punishment.

During the contemporary era, the traditional legal system of India saw a replacement by the British legal system. Nonetheless, the most notable accomplishment of British governance in India pertained to the establishment of a cohesive and modernized legal framework that spanned across the entire nation. The English legal system was implemented in India during the era of British colonialism with the objective of facilitating the dispensation of justice. While this assertion holds validity, it is imperative to underscore the preservation and adherence to Indian legal traditions and practices. Noteworthy modifications have been implemented to the Act. Consequently, British institutions and laws were able to peacefully coexist with local wisdom. Approximately 150 years ago, during the period of modernization in Britain, a series of legislative measures were implemented in response to the increasing presence of diverse individuals, properties, and transactions. Consumer protection was not an anomaly in relation to this principle. Consequently, during the period of British colonial rule, several significant legislations were enacted, including the Indian Penal Code of 1860, the Indian Contract Act of 1872, the Usurious Loans Act of 1918, the Agriculture Procedure (Grading and Marketing Act) of 1937, and the Drug and Cosmetic Act of 1940. These legislations were enacted to safeguard the general public against fraudulent commercial activities.

Following India's attainment of independence, a series of laws were enacted to safeguard consumer interests. However, these measures proved inadequate in effectively protecting consumers, as affluent individuals used gaps within the existing legislation to exploit others less privileged. Hence, the enactment of the Consumer Protection Act in 1986 was undertaken to address the specific concerns surrounding the safeguarding of customers, encompassing a wide range of products, services, and medical scenarios. The enactment of the Consumer Protection Act of 2019 was intended to address and strengthen the existing loopholes found within the Consumer Protection Act of 1986.

HISTORICAL BACKGROUND OF MEDICAL NEGLIGENCE LAWS IN INDIA

The concept of medical negligence in India has not been prevalent for a significant period of time. In former eras, doctors were expected to consistently perform their duties with utmost diligence, care, and attention, rendering the need for legal measures against medical negligence unnecessary throughout ancient and medieval periods. The issue of Medical Negligence garnered attention following the British colonization of India, and the initial legislation addressing this matter in India was Section 304A¹¹ of the Indian Penal Code, enacted in 1870. However, the incidence of medical negligence was not yet widespread during that time. The occurrence of medical negligence significantly increased during the Indian Independence, leading to its subsequent inclusion inside the Consumer Protection Act of 1986 upon its enactment. Moreover, the regulation governing Medical Negligence is the Indian Medical Council (IMC) (Professional Conduct, Etiquette, and Ethics) Regulations of 2002, which were established under the IMC Act of 1956. The Consumer Protection Act of 1986 has been superseded by the Consumer Protection Act of 2019, resulting in the replacement of provisions pertaining to medical

⁸Smritis are, "A body of Hindu texts usually attributed to an author, traditionally written down"

⁹Shrutⁱ refers to, "The body of most authoritative, ancient religious texts comprising the central canon of Hinduism."

¹⁰ Alauddin Khilji was, "An emperor of the Khilji dynasty that ruled the Delhi Sultanate in the Indian subcontinent from 1296 to 1316."

¹¹ Section 304A of the IPC deals with causing death by Negligence. This law says, "Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

negligence. The new provisions aim to enhance consumer protection against instances of medical negligence. The National Medical Commission Act was implemented on September 25, 2020, as a replacement for the Medical Council of India Act. Presently, it is one of the legislations pertaining to the subject of Medical Negligence.

CRITICAL ANALYSIS OF MEDICAL NEGLIGENCE

Medical negligence occurs when a physician fails to practice a reasonable standard of care or intentionally disregards the expressed desires of a patient. This encompasses the full range of activities performed by a medical practitioner, such as the unauthorized disclosure of a patient's medical records to an unidentified third party, as well as the diagnosis and examination of a patient without obtaining their agreement. Medical negligence can be established when a physician breaches their duty of care towards a patient, leading to harm or injury to the patient. Having established a comprehensive understanding of the concept of medical negligence, it is now imperative to analyze its manifestation within the acts undertaken by physicians. To ascertain the potential negligence of a doctor in the provision of their services, certain criteria are upheld to identify instances of improper conduct. The obligation to exercise care and the failure to demonstrate a suitable level of professional conduct, along with the resulting harm caused by such transgressions, are three examples within this category. Many of these mechanisms are designed to apprehend medical professionals who engage in such activities. Consequently, patients can be safeguarded against such physicians and are also deterred from engaging in erroneous behaviors. There exist multiple avenues via which physicians may exhibit negligence, encompassing:

- 1) Neglecting to fulfill obligations related to patient attendance and treatment.
- 2) Errors in the process of problem diagnosis

One notable issue is the inadequate gathering of comprehensive medical histories.

- 4) Errors in the administration of medical treatments.

There was a deficiency in the provision of advice and communication.

The Medical Profession encompasses various forms of carelessness.

- 1) Active neglect refers to the inappropriate execution of a task due to insufficient training and comprehension, such to administering an injection in an incorrect anatomical location.
- 2) Passive neglect, as its name suggests, refers to a form of carelessness characterized by the absence of action or inaction. In the scenario where a physician administers an injection without prior knowledge of the patient's allergy history.
- 3) Collateral negligence refers to a situation in which the doctor benefits from the patient's lack of attentiveness to medical counsel and failure to adhere to prescribed directions, leading to harm being inflicted onto the patient.
- 4) Concurrent negligence refers to a type of carelessness that involves multiple acts or omissions occurring simultaneously. Examples of concurrent negligence include instances where a doctor administers an improper injection to a patient, or when two physicians provide the incorrect injection to the same patient.
- 5) Persistent negligence - In this form of carelessness, patients are intentionally forsaken or left neglected by physicians who possess knowledge of their acts and omissions.
- 6) Gross negligence refers to a form of carelessness that is highly erroneous, since it involves the deliberate act of medical professionals intentionally leaving a foreign object inside a patient's body.
- 7) Hazardous negligence is frequently observed in cases where clinicians possess limited knowledge about their equipment, resulting in the utilization of unsterile tools during medical procedures.
- 8) Willful negligence refers to a form of medical negligence wherein healthcare professionals deliberately or inadvertently inflict harm upon their patients.
- 9) Regrettably, physicians who are accustomed to assuming substantial risks in their medical procedures are frequently the individuals who engage in this form of negligence, resulting in harm to the patient.
- 10) Negligence Per se refers to a type of negligence wherein a doctor violates a codified norm or statute, hence indicating a lack of regard for adhering to established regulations and displaying a reckless approach towards their professional duties.

CONSEQUENCES ON MEDICAL NEGLIGENCE IN INDIA

In India, medical negligence is subject to three distinct categories of legal penalties that are legally recognized. They are: 1. Civil Liability, 2. Criminal Liability, 3. Disciplinary Measures

1. Civil Liability- Broadly speaking, civil liability refers to the legal framework that enables individuals to pursue financial restitution in a civil court or by means of a consumer protection forum. Medical malpractice lawsuits are sometimes initiated by individuals who have a legal right to inherit or receive

benefits from the deceased patient, if they are still living. The primary objective of these cases is to establish the responsibility of a negligent physician and seek compensation for the damages incurred on behalf of the affected party.

2. Criminal Liability- In order to demonstrate criminal liability, the Indian Penal Code of 1860, which possesses a comprehensive scope and does not explicitly address medical negligence, may be employed.

3. Disciplinary Measures - In the event of medical negligence, the imposition of disciplinary action may result in the suspension or revocation of a medical license.

LAWS ON MEDICAL NEGLIGENCE IN INDIA

Laws on Medical Negligence in India can be divided into 3 parts:

1. Laws under the Consumer Protection Act, 2019
 2. Laws under the IPC, 1860 and CrPC, 1973
 3. Laws under the National Medical Commission Act, 2019
1. Laws under the Consumer Protection Act, 2019- As per the recently enacted Consumer Protection Act of 2019, medical services will be incorporated into the roster of services outlined in section 2(42). Any occurrence of medical negligence committed by a service provider shall be classified as a violation according to section 42(11) of the amended Consumer Protection Act of 2019. Individuals who have suffered harm as a result of medical treatment may initiate legal proceedings against healthcare professionals or medical institutions, such as doctors or hospitals, on the grounds of medical malpractice. In accordance with section 69(1) of the Consumer Protection Act, 2019, it is imperative that a complaint regarding medical negligence be lodged within a period of two years subsequent to the occurrence of harm.
 2. Laws under the IPC, 1860 and CrPC, 1973- The Indian Penal Code (IPC) section 304A prescribes a maximum imprisonment term of two years for anyone responsible for causing a person's death due to reckless or negligent behavior. This provision encompasses instances of motor vehicle accidents caused by rash and irresponsible driving, as well as cases of medical malpractice leading to the demise of a patient. It is also common for medical negligence suits to make use of other general sections of the IPC, such as Section 337¹² and Section 338¹³. The aggrieved party would initially lodge a formal complaint against the implicated individual or individuals with the relevant local law enforcement authorities. In the event that no action is done, the aggrieved individual may opt to lodge a criminal complaint in accordance with the Criminal Procedure Code of 1973.

There are defences for doctors accused of criminal responsibility in Indian Penal Code sections 80¹⁴ and 88¹⁵ of IPC.

3. Laws under the National Medical Commission Act, 2019- This legislation primarily addresses the imposition of disciplinary measures onto healthcare practitioners implicated in cases of medical negligence, including the suspension or revocation of their medical licenses.

JUDICIAL DECISIONS ON MEDICAL NEGLIGENCE IN INDIA

The Judicial Decisions regarding Medical Negligence in India are:

1. In *State of Haryana v. Smt Santra*¹⁶, The Supreme Court has ruled that it is imperative for every healthcare professional to exert a reasonable degree of caution in order to ensure the safety of their patients. A doctor can only be found accountable if they fail to exercise the same degree of reasonable care as would be expected of a doctor possessing ordinary competence.
2. In *Achutrao Haribhau khodwa and Ors v. the State of Maharashtra*¹⁷, The Supreme Court noted that the subject of medicine spans a broad spectrum of fields, presenting a varied selection of eligible courses. Therefore, it is crucial that a physician is not deemed responsible as long

¹² As per Section 337 of IPC, "Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both."

¹³ As per Section 338 of IPC, "Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both."

¹⁴ As per Section 80 of the Indian Penal Code, "Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution."

¹⁵ As per Section 88 of the Indian Penal Code, "Nothing which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm."

¹⁶DECIDED ON 2000

¹⁷1996 SCC (2) 634

as they are executing their obligations with conscientiousness and caution. The determination of an individual's level of responsibility cannot be only ascertained based on their selection of one course of action over another.

3. In the case of *Mr M Ramesh Reddy v. State of Andhra Pradesh*¹⁸, The hospital administration was deemed negligent due to their failure in maintaining cleanliness standards within the restroom facilities, which ultimately led to a fatal incident involving a patient in the obstetrics department slipping and succumbing to injuries within the lavatory area. The hospital was obligated to provide monetary compensation in the amount of Rs. 1 lakh.
4. In *Vinod Jain v. Santokba Durlabhji Memorial Hospital & Anr*¹⁹, The Supreme Court delineated the factors to consider in assessing responsibility in instances of medical negligence. In this case, the appellant has lodged a challenge against the National Consumer Disputes Redressal Commission of India (NCDRC) before the Supreme Court. The judgement of the National Consumer Disputes Redressal Commission (NCDRC) was affirmed by the Supreme Court, with the following observations being made:

If the activities of the doctor align with the established norms and regulations, they cannot be considered as negligent.

If an individual possesses the same skill set as an average person in their profession, it is not necessary for them to possess expertise in the field of medicine in order to be considered a doctor.

Due to the little control that a doctor possesses over a patient's healing process, it is not within their purview to make guarantees on the outcome. He can only exert maximum effort. One aspect that he can ensure is his ability to perform the duty, and it is imperative that he adheres to the established standards of care within the medical profession.

5. In the case of *Dr M. Kochar vs Ispita Seal*²⁰, During a conference held in Washington, DC, the National Consumer Dispute Redressal Commission conducted a review of faults in the In Vitro Fertilization (IVF) procedure. The patient initiated a medical malpractice lawsuit against the doctor as a result of the unsuccessful outcome of an in vitro fertilization procedure. The National Commission has concluded that a physician's decision not to perform a surgical procedure on a patient does not establish liability for medical malpractice.
6. In the case of *Dr. Kunal Saha Represented By Sri vs Dr. Sukumar Mukherjee And Ors.*²¹, The patient's spouse exhibited an allergic reaction to a prescription, and the medical practitioners demonstrated negligence in administering appropriate pharmaceuticals, resulting in a deterioration of her health and ultimately culminating in her demise. The court rendered a verdict of medical negligence against the doctor, resulting in the award of a sum of Rs. 6.08 crore as compensation.
7. In the case of *V.Kishan Rao Vs Nikhil Super Speciality Hospital*²², The patient, a female individual, received a drug for malaria that was not specifically prescribed to her. The Malaria Department officer lodged a formal complaint against hospital personnel upon discovering that his spouse had received treatment for typhoid fever instead of malaria, asserting that his wife had been subjected to improper medical care. In the above scenario, the theory of *res ipsa loquitur* was invoked, leading to a settlement amount of Rs 2 lakhs being awarded to the surviving spouse.
8. In *Jacob Mathew V. State of Punjab*²³, The Apex Court has ruled that doctors must make difficult decisions in some situations. They are sometimes compelled to do things that are more dangerous because they have a better probability of succeeding in making that option. In some instances, however, there is a lower risk of failure and a larger probability of success. As a result, the outcome will be determined by circumstances and facts of the case.
9. In *Juggan Khan v. State of Madhya Pradesh*²⁴, The appellant was a homoeopathic physician with a licence to practise. After seeing an advertisement, a woman came to him for guinea worm treatment. She grew agitated after taking the medication he suggested, and despite antidotes, she died later that evening. Under Section 302 of the Indian Penal Code, the appellant was convicted guilty of murder. Prescription of hazardous medicines without appropriate testing and knowledge was deemed irresponsible by the court.
10. In *A.S. Mittal and another V State of UP and Others*²⁵, The Supreme Court heard a case involving a disaster at a 'Eye Camp' in Uttar Pradesh. A total of 108 patients were operated on during the camp, with 88 of them undergoing cataract surgery. 84 of these individuals had their eyesight permanently damaged. This incident was discovered to be caused by the use of ordinary saline in the surgeries. The doctor was found responsible by the court because this amounted to medical malpractice.

¹⁸1975 36 STC 439 AP

¹⁹ DECIDED ON 2018

²⁰IN THE STATE COMMISSION:DELHI

²¹NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

²²CIVIL APPEAL NO.2641 OF 2010

²³CRIMINAL APPEAL NO. 144-145 OF 2004

²⁴1965 AIR 831

²⁵1989 AIR 1570

11. In the case of Poonam Verma v Ashwin Patel and others²⁶, The Supreme Court established a standard for criminal liability and distinguished between negligence, recklessness, and rashness. It stated that someone acts negligently when he or she violates a legal duty unintentionally through an act or omission. A reckless act committed by someone who is aware of the consequences but believes they will not occur as a result of their actions. According to the Court, conduct that does not constitute recklessness or intentional wrongdoing should be immune from prosecution.
12. In Spring Meadows Hospital and another v Harjol Ahluwalia²⁷, A typhoid-infected child was admitted to the hospital of the appellant. After the nurse gave the youngster an injection, he passed out. The youngster was sent to AIIMS after exhausting all options. The parents were told of the child's grave condition by the doctors on the scene. As a result of the overdose injection, the child had cardiac arrest. The doctor and the nurse were deemed accountable to pay for their carelessness, according to the court.
13. In the case of C.P. Sreekumar (Dr.), MS (Ortho) v. S. Ramanujam²⁸, The Supreme court heard a medical malpractice complaint in which the respondent was injured while riding his bike. He suffered serious injuries, including a hairline neck fracture. After examining the different possibilities, the doctor decided on hemiarthroplasty rather than an internal fixation operation. The procedure was carried out the next day. The respondent sued the doctor for failing to use the internal fixation technique to treat his injuries. The Supreme Court ruled that the appellant's choice to perform hemiarthroplasty on a 42-year-old patient was not sufficiently egregious that it constituted medical malpractice.
14. In the case of Vinod Prasad Nautiyal vs Smt. Savitri Uniyal & Ors.²⁹, the Hon'ble National Commission agreed with the Hon'ble State Commission that no expert opinion was necessary to demonstrate that a surgery was conducted without proper provisions for a competent anaesthetist.

CONCLUSION

Whenever any person selling any item does anything wrong negligently or purposely, which results in the loss of the customers, he or she is responsible for it and will get punished for it, either in the form of compensation to be given or any criminal liability or any disciplinary action. The doctors and medical professionals are also treated in the similar way. Whenever they do something negligently or purposely, which results in the harm of the patient, then they are required to pay compensation for it, or they face criminal liability, or many a times disciplinary actions are taken against them.

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²⁶1996 AIR 2111

²⁷DECIDED ON 1998

²⁸IV (2006) CPJ 365 NC

²⁹NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION