

Liability of Health Professionals Under The Law of Contract

I. LEGAL PROVISIONS RELATING TO LIABILITY OF HEALTH PROFESSIONALS UNDER THE CONTRACT ACT

Liability of health professionals under the Contract Act 1872 mainly depends on the express or implied terms agreed upon by the patient or his representatives and the doctor or hospital. Consent for treatment on payment of fees on the part of a patient can be treated as an implied contract with the doctor, who by undertaking treatment on acceptance of fees, promises to exercise proper care and skill. The Indian Contract Act, which came into force in 1872, contains detailed provisions with regard to offer, acceptance, proposal, vicarious liability etc. A detailed review and examination of the cases reveals that, though the provisions have a direct bearing on the services being provided by doctors and hospitals, it has very limited application to medical negligence.

The following are some of the provisions which have a bearing on the relationship between doctor and the patient:

Section 2(h) : Contract: An agreement enforceable by law ie, for the formation of a contract there must be (1) an agreement; and (2) the agreement should be enforceable by law.

Section 2(e): Agreement: Every promise and every set of promises forming the consideration for each other.

Section 2(b): Promise and acceptance: When the person to whom the proposal is made signifies his assent then the proposal is accepted. A proposal when accepted becomes a promise.

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Section 3. Communication, acceptance and revocation of proposals: The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

Section 4. Communication when complete: The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

Section 8. Acceptance by performing condition or receiving consideration: Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal. Nothing herein contained shall effect any law in force in India and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

Section 9. Promises, express or implied: In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

Section 10. What agreements are contracts: All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Section 74. Compensation for breach of contract: When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the cases maybe, the penalty stipulated for.

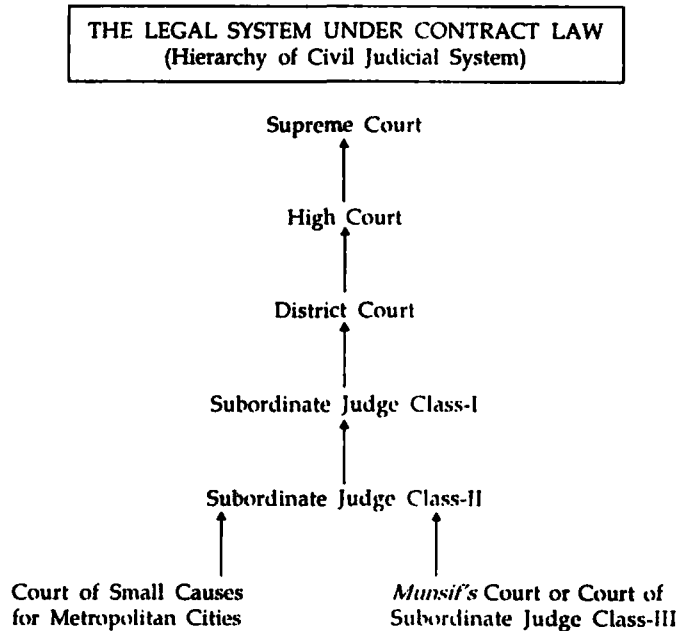
Section 182. Agent and Principal: An agent is a person employed to do any act for another or to represent another in dealings with third persons. The person whom such act is done, who is so represented, is called the 'principal'.

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It may be stated that, an agreement will become a contract only upon fulfillment of the following conditions:

- (i) There should be some consideration for it.
- (ii) The parties should be competent to enter into a contract.
- (iii) Their consent is free.
- (iv) The object should be lawful.

II. STRUCTURE



III. PROCESSES

Unlike the Constitutional Law, Law of Crimes, Consumer Law and Law of Torts, the Law of Contract is based on the principles of 'agreement between the parties for consideration.' The scope and dimension of the liability of the health professional for the acts of breach of contractual obligation is very narrow when compared to other legal options. Any person or his/her family members including dependants can file a case claiming damages in the courts specified herein. The procedure followed in Delhi, in which the amount claimed is less than one lakh, fall under the jurisdiction of the Civil Judge. If the value is more than one lakh and doesn't exceed five lakhs, it will fall under the jurisdiction of the District Judge. If the value exceeds five

lakhs, it can be filed in the High Court of the concerned State.¹ In appeal or the petition itself can be filed in the Supreme Court.

IV. KEY QUESTIONS

1. Can a medical practitioner file a civil suit for non-payment of fee for a visit and charges for medicines, given to the patient on the basis of implied contract?
2. Is the doctor contractually liable if he makes a promise to produce a particular result?
3. Is the hospital liable for the acts of the doctor/surgeon?

V. EXPERIENCES

1. Doctors Right to Collect the Charges for Providing Relief

In *Matheson v Smiley*² it was ruled by the Manitoba Court of Appeal that a surgeon was entitled to recover from the deceased man's estate reasonable remuneration for his service when he had, without request, given aid to a man who had attempted suicide.

2. Liability of Doctors Under the Contract Act

In *Indian Medical Association v VPShantha*,³ the Supreme Court ruled that professional men should possess a certain minimum degree of competence and that they should exercise reasonable care in the discharge of their duties. In general, a professional man owes to his client a duty in tort as well as in contract to exercise reasonable care in giving advice or performing services. Certain professions on the grounds of public interest enjoyed immunity from suit. The trend now is the narrowing of such immunity. Medical practitioners do not enjoy any immunity, and can be sued in contract or tort on the ground that they have failed to exercise reasonable skill and care. Thus medical practitioners, though belonging to the medical profession, are not immune from a claim for damages on the ground of negligence.

1 The government has moved to raise the pecuniary jurisdiction of the civil courts according to which the district court will have jurisdiction upto 20 lakhs and the high court above 20 lakhs.

2 (1932) 2 DLR 781.

3 (1995) 6 SCC 651.

3. Liability of Hospitals for the Acts of Its Doctors

The Supreme Court in *Syed Abdul Khader v Rami Reddy*,⁴ ruled that: the relation of agency arises whenever one person called the agent has authority to act on behalf of another called the principal and consents so to act. The relationship has its genesis in a contract.'

4. Who is an Agent/Servant/Employee?

The Supreme Court, in *Kalyani v Tirkaram*,⁵ while defining the categories of persons covered under the definition of agent held that the emphasis is on the power of the agent to represent his principal in dealing with third persons. The definition is wide enough 'to embrace a servant pure and simple, even a casual employee, a man who is engaged by me in the street to black my boots; but it cannot for a moment be contended that they are all to be placed in the same category.'

5. Liability of Doctors for Breach of Legal Duty

The Supreme Court, in *Joseph alias Pappachan & ors v Dr George Moonjely & anor*⁶ while dealing with the matter of death of a 24-year-old woman due to the negligence and breach of legal duty under section 73 of the Contract Act observed that the vicarious liability of those who run hospitals for the negligent acts of the doctors employed by them, the question is no longer *res integra*. It added that persons who run a hospital are by law under the self-same duty as the humblest doctor. Whenever they accept a patient for treatment, they must use reasonable care and skill to cure him of his ailment. The hospital authorities cannot, of course, do it by themselves; they have no ears to listen through the stethoscope, and no hands to hold the surgeon's scalpel. They must do it by the staff, which they employ; and if their staff is negligent in giving the treatment, they are just as liable for that negligence as is anyone else who employs others to do his duties for him. While awarding damages to the tune of Rs 1,60,000, the court ruled that the doctor has a legal duty to take all reasonable care. It further held that the first defendant is primarily liable for his negligent act, and the second defendant being the owner of the hospital is vicariously liable for the negligent conduct of the first defendant.

4 (1979) 2 SCC 601.

5 AIR 1938 Nag 255.

6 AIR 1994 Ker 289.

VI. CONCLUSIONS AND SUGGESTIONS

1. Though the relation between the doctor and the patient clearly falls under the ambit of the Law of Contract, these provisions have been invoked in very rare circumstances. A bare reading of the provisions reveal that even an implied contract between a doctor and a patient fall under the ambit of the Act. But after the enactment of the Consumer Protection Act, the litigation has been diverted from the Civil Courts to the Consumer Fora.
2. The provisions contained under the Contract Act are wide enough to cover even a breach or non-fulfillment of a contractual obligation resulting into mental disorder or loss to the patient. However, it is difficult to prove the allegations under this Act. Further unlike the Consumer Fora/ Commissions, the procedure being followed by the Civil Courts is time consuming. The compensation or damages being granted by them is very high and stand at a different footing.