

To Be or Not to Be Sued under Consumer Protection Act: Medicolegal dilemma for the Health Care Providers

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Abstract

A landmark judgment by the Hon'ble Apex Court in *Bar of Indian Lawyers vs. D.K. Gandhi* (2024) has illuminated the medicolegal dilemmas faced by health care providers under the Consumer Protection Act (CPA). This paper critically examines the judiciary's interpretation that professions, including medical and legal, are excluded from the scope of the CPA 2019. The legal analysis with critical eyes and juristic approach, reveals that the Act, intended to safeguard consumers from unfair trade practices, does not encompass the services rendered by professionals whose work is grounded in specialized knowledge and skill. The judgment underscores the necessity for judicial interpretation in clarifying legislative intent, emphasizing that professionals should not be categorized alongside traders and businessmen. This exclusion reflects a deliberate legislative choice, aiming to distinguish the unique nature of professional services from commercial transactions. The paper further explores the implications of this ruling for health care providers, advocating for a procedural strategy to raise preliminary objections against complaints filed under the CPA 2019. Ultimately, this judgment serves as a definitive guide, reinforcing the specialized regulatory frameworks governing professional conduct and ensuring that medical professionals are rightly excluded from the consumer protection ambit.

Keywords: Health Care Provider (HCP); Doctor; Lawyer; Court; Laws; Consumer Protection Act (CPA).

INTRODUCTION

Statutory interpretation of the Consumer Protection Act 2019 clarifies that professions, including legal and medical, are not and cannot be encompassed by the Act. When ambiguity arises in any statutory provision, it is the judiciary's role to

decipher the legal citations used. By employing the method of 'literal construction' within the broader 'context of the schematic approach, its scope, and the considering the professed purpose of the Legal Act and applying various rules of construction, the judiciary decodes the likely intention of the lawmakers, who framed the CPA Act in 1987. The primary goal of judicial construction is to ascertain the "Intent of Law makers." Statutes are presumed to include specific components, as lawmakers are assumed to have intended their inclusion. This assumption guides the judiciary in interpreting the language and purpose of the law. By examining these components and applying various rules of construction, the judiciary seeks to clarify the likely intent of the lawmakers. This process ensures that the broader context, scheme, and objectives of the statute are considered, providing a clear understanding of the law's intended scope and application.

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DISCUSSION

'To Be Or Not To Be' is the famous proverb, in the dilemma faced by protagonist, in the world famous play titled, Hamlet, written by William Shakespeare,¹ for the audience. In deliberating on the aforementioned basis to the medicolegal dilemma for Health Care Providers (HCPs), 'To Be Or Not To Be' Sued under Consumer Protection Act., the Hon'ble Apex Court in the Case of: Bar of Indian Lawyers vs D.K. Gandhi,² on May 14, 2024, decreed that neither the statement of the objects and reasons of the Consumer Protection Act, 1986, nor that of the CP Act, 2019, suggest that professions such as legal and medical services fall within the scope of the Act. The judiciary interprets statutes to include certain components that lawmakers are assumed to have intended. By examining the language, context, and purpose of the Act, the judiciary elucidates the likely intent of the lawmakers. This process ensures that the Act is applied as intended, protecting consumers while recognizing the unique nature of professional services, such as doctors and lawyers.

It is a well-established principle that professionals cannot be categorized as businessmen or traders, and their clients or patients cannot be classified as consumers. The Consumer Protection Act, 2019,³ was enacted by the Parliament "to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effectively administration and settlement of the consumer's dispute and for matters connected therewith or incidental there to".

The new legislation prominently features the theme of consumer protection, aiming to enhance it through various procedural measures. Key among these interventions are the bolstering of class action lawsuits and the introduction of mediation as an alternative dispute resolution forum. By strengthening class actions, the legislation enables consumers to collectively pursue legal action, thereby increasing their leverage and ability to seek justice against corporations or entities that have wronged them. This collective approach not only facilitates access to justice for individual consumers who might otherwise lack the resources to pursue litigation independently but also acts as a significant deterrent against corporate misconduct.

In addition to reinforcing class actions, the legislation introduces mediation as an alternative forum for resolving disputes. Mediation offers a less adversarial and often more expedient way to handle conflicts, focusing on mutually agreeable solutions rather than protracted legal battles. This approach

can reduce the burden on courts and provide a more efficient path to resolution for consumers, ultimately leading to quicker, more satisfactory outcomes.

By integrating these procedural enhancements, the new legislation aims to create a more robust framework for consumer rights. The dual emphasis on class actions and mediation reflects a comprehensive strategy to protect consumers, ensuring they have multiple avenues to seek redress and resolve disputes. This multifaceted approach not only empowers consumers but also promotes a fairer, more accountable marketplace. As a result, the legislation represents a significant step forward in safeguarding consumer interests and fostering a more just economic environment. A consumer⁴ is an individual who purchases goods or services for personal use or ownership, rather than for resale or use in production and manufacturing. A person, to be a consumer of goods, should satisfy, that the goods are bought for consideration. A person who uses goods with the buyer's approval is considered a consumer. However, anyone who obtains goods for resale or commercial purposes does not qualify as a consumer.

The pertinent sections of this judgment are provided below: Though the query posed before the Hon'ble Supreme Court is whether a legal complaint alleging the 'deficiency in the service' against an advocate, practicing the law, would be maintainable under the CPA Act, further questions arise from this, which deserve consideration: The question of whether the Lawmakers intended to include the professional services delivered by the Law professionals within the scope of the Consumer Protection Act (CP Act) 1986, as re-enacted in 2019, merits careful consideration. Given the nature of professional work, which demands a highest level of teaching, professional training with internship, and expertise in proficiency, which involves specialized mental work, where success depends on numerous factors beyond one's control, it is clear that a professional's role cannot be compared to that of a businessman, trader, or service provider of goods as outlined in the Consumer Protection Act.

Professionals operate in specialized fields where their success is influenced by various uncontrollable elements, making it inappropriate to treat them on par with those engaged in business or trade. The consumer services delivered by a businessman or trader to consumers concerning goods or products are fundamentally different from those provided by professionals to their clients. Lawmakers are presumed to have a thorough understanding of the legal aspects, but there seems no strong reason or compelling logic to believe that the Lawmakers proposed to encompass

professions, professionals, or their services within the Act's ambit.

Definitions

Black's Law Dictionary defines Profession: As a public declaration respecting something.⁵ Also a calling, vocation, known employment; divinity, medicine, and law are called the "learned

professions." As we have heard during legal arguments between the defence and prosecution in medicolegal cases, when the lawyers addresses their opposite attorney as "my learned colleague" or "my learned friend" maintaining the due respect and etiquettes of legal profession, while proving their point of allegations or defence.

Table 1: Practical Definitions of Profession & Professional

Practical Definitions of Profession & Professional
<p>Profession:</p> <ul style="list-style-type: none">- A business or trade that requires specialized training, skills, and expertise.- An occupation or career that involves providing expert services or guidance to clients or customers.- A field or industry that requires a high level of education, training, and proficiency. <p>Professional:</p> <ul style="list-style-type: none">- A person who provides expert services or guidance in a particular field or industry.- A service provider who has specialized training, skills, and expertise in a specific area.- An individual who is qualified and certified to practice in a particular business or trade. <p>Learned profession:</p> <p>A learned profession is an occupation that requires advanced education, training, and expertise in a specific field of study, typically in a discipline that involves intellectual and theoretical foundations. Learned professions often involve:</p> <ol style="list-style-type: none">1) Advanced degrees: Typically requiring a bachelor's degree or higher, such as a master's or doctoral degree.2) Specialized knowledge: Involving a deep understanding of theoretical and practical concepts, principles, and methods.3) Expertise: Demonstrating a high level of skill, proficiency, and judgment in applying knowledge to real-world situations.4) Critical thinking: Requiring analysis, evaluation, and problem-solving skills to address complex issues.5) Ethics and standards: Adhering to professional codes of conduct, ethics, and standards that guide practice. <p>Examples of learned professions include:</p> <ul style="list-style-type: none">➤ Law➤ Medicine➤ Engineering➤ Architecture➤ Dentistry➤ Veterinary medicine➤ Pharmacy➤ Psychology➤ Social work➤ Academia (Professorship) <p>These professions often require continuous learning, professional development, and staying current with advancements in their field to maintain expertise and provide high-quality services.</p> <p>Learned professional:</p> <p>A learned professional is an individual who has acquired advanced knowledge, skills, and expertise in a specific field of study, typically through formal education and training. They possess a deep understanding of theoretical and practical concepts, principles, and methods, and demonstrate a high level of proficiency and judgment in applying their knowledge to real-world situations.</p> <p>Characteristics of a learned professional include:</p> <ol style="list-style-type: none">a. Advanced education: Typically holding a bachelor's degree or higher, such as a master's or doctoral degree.b. Specialized knowledge: Having a deep understanding of their field, including its theories, principles, and methods.c. Expertise: Demonstrating a high level of skill, proficiency, and judgment in their field.d. Critical thinking: Possessing strong analytical, evaluative, and problem-solving skills.e. Continuous learning: Committing to ongoing professional development to stay current with advancements in their field.f. Ethical practice: Adhering to professional codes of conduct, ethics, and standards that guide their practice. <p>Examples of learned professionals include:</p> <ul style="list-style-type: none">➤ Doctors and medical specialists➤ Lawyers and judges➤ Engineers and architects➤ Professors and researchers➤ Dentists and veterinarians➤ Pharmacists and psychologists➤ Social workers and counselors <p>Learned professionals are recognized for their expertise and are often sought out for their advice, guidance and services.</p>

The word “profession” has its roots in Proto-Indo-European root⁶ meaning “to speak, tell, say” and has evolved over time to encompass various meanings. Here’s a breakdown of its etymological journey:

- Mid-14th century: “Any solemn declaration”
- 15th century: “Occupation one professes to be skilled in, a calling” (derived from “professen,” meaning “to take a vow” in a religious order)
- Medieval Latin: “Professare” (to declare publicly) from “professus” (avowed)
- Latin: “Profiteri” (to declare openly, testify voluntarily, acknowledge, make public statement of)
- “Pro-” (forth) from PIE root “*per-” (1) (forward)
- “Fateri” (acknowledge, confess) from PIE root “*bha-” (2) (to speak, tell, say)

Related words and roots:

- “Professed” and “professing”
- Proto-Indo-European root “*bhā-” (to speak, tell, say)
- Greek: “pheme” (speech, voice, utterance), “phōnē” (voice, sound), “phanai” (to speak)
- Sanskrit: “bhanati” (speaks)
- Latin: “fari” (to say), “fabula” (narrative, account), “fama” (talk, rumor, report)
- Armenian: “ban, bay” (word, term)
- Old Slavonic: “bajati” (to talk, tell)
- Old English: “boian” (to boast), “ben” (prayer, request)
- Old Irish: “bann” (law)

This etymological exploration reveals the word “profession” has its roots in the idea of publicly declaring or acknowledging something, whether it’s a vow, an occupation, or a statement.

Interpreting the Prologue or the Preamble of the CP Act, 2019 to construe ‘the definition of profession’ as ‘business’ or ‘trade,’ or ‘professional’ as ‘service provider,’ would unduly extend the Act’s scope beyond its intended purpose, potentially undermining its effectiveness.

Therefore, it is our considered opinion that the Consumer Protection Act 1986, got amended in 2019 and re-enacted, was specifically designed to protect consumers from unfair trade practices and unethical business conduct.⁷ There is no

evidence to suggest that the Lawmaker intended to include professions, or the services provided by professionals within the purview of the Act. The primary objective of the CP Act is to safeguard consumer rights within the realm of business and trade, not to regulate professional services.⁸

It is notable that the legislative analysis of the CP Act 2019 undoubtedly indicates the lawmakers’ intent to exclude the medical profession from its scope. The drafted Consumer Protection Bill 2018, which was presented and debated in both houses of Parliament, initially included the term ‘healthcare’ and Healthcare providers in the inclusionary part of Section 2(42). However, the legislative members objected to this inclusion. The Lawmakers piloting the CPA Bill clarified that the inclusion was in deference to the Supreme Court’s judgment in *IMA vs. VP Shantha* 1995.⁹ Despite this explanation, the legislative members didn’t agree, leading to an amendment of the Bill. In the Consumer Protection Bill 2019, the ‘healthcare’ was deliberately removed, and this revised version was ultimately approved. The deliberate deletion of the term ‘healthcare’ from the preamble of updated Consumer Protection Act 2019 was a considered decision by Parliament following thorough deliberation. After thorough discussion and critical analysis, the Hon’ble Bench has unequivocally concluded that the professions of law and medical professionals aren’t, and can’t be, included under the provisions of the CP Act, re-enacted in 2019. This interpretation hinges on a careful examination of the Act’s language, legislative history, and the broader context of its provisions.

Article 141 of the Indian Constitution,¹⁰ mandates that the law declared by the Supreme Court in a judgment is binding on all courts within the territory of India. The principles evolved, along with the reason and rationale underlying the decision, forms the Latin maxim: *ratio decidendi*, which became the binding segment of the court’s decision. Considering this constitutional mandate, the Hon’ble Supreme Court’s legal interpretation of the CP Act 2019, serves as a definitive guide for all subordinate courts.

Physicians, when faced with complaints filed against them under the Consumer Protection Act, should now interpose an objection *in limine* (this is a Latin phrase often used in legal contexts which means: Submit an objection prior to the commencement of proceedings), citing the Supreme Court’s judgment that explicitly excludes the Learned professions (including legal & medical) from the Act. This procedural strategy should

allow the matter to be Set aside in compliance with the Supreme Court's interpretation. A similar approach should be taken by legal professionals. This course of action was exemplified in the DK Gandhi judgement involving an advocate.

In the case at hand, a complaint was filed against a lawyer under the CP Act. The lawyer interposed an objection *in limine*, asserting that the legal profession is not included within the ambit of the Consumer Protection Act. The Consumer Forum ruled in favor of the advocate, supporting the exclusion of legal services from the Consumer Protection Act. However, upon appeal to the NCDRC, the NCDRC relied on the landmark judgment of the Apex Court in IMA vs VP Shantha, to rule that legal services were indeed covered under the Act. This decision was subsequently challenged in the Hon'ble Supreme Court.

The Hon'ble Supreme Court, upon reviewing the appeal, overruled the National Commission's decision. The Apex Court analysed that the earlier judgment in IMA vs VP Shantha, which had included medical services within the purview of the CP Act, was not applicable in the current context of the CPA (2019) Act. The Hon'ble Supreme Court's judgment emphasized that neither the legal nor the medical professions were intended to be covered by the Consumer Protection Act, amended in 2019. This interpretation was drawn from the legislative intent and the specific language of the Act, which did not encompass these professions.

Regulation by professional councils, such as the Bar Councils or Medical Councils, does not grant professionals immunity from civil or criminal liability for misconduct or negligence. However, in our view, the Consumer Protection Act was never intended to apply to professions or professionals, and thus they should not be subject to its provisions of the CP Act, of either 1986 or 2019. In light of this consideration, the court summarized its conclusions as follows: The Consumer Protection Act (CP Act) of 1986, as revised in 2019, was enacted with the primary goal of safeguarding consumers against deceptive trade practices and unethical business conduct. The legislative intent was never to bring professions or professional services within the scope of the Act, but rather to focus on regulating commercial activities that impact consumer welfare. The Hon'ble Apex Court's decision underscores the importance of legislative clarity and judicial interpretation in delineating the scope of statutory provisions. It also highlights the necessity for professionals to be aware of the legal framework governing their practice and to assert their rights appropriately within that framework.

The Hon'ble Supreme Court Bench's decision, comprising two judges, in the case of Bar of Indian Lawyers vs. D.K. Gandhi on May 14, 2024, overrides and overrules, completely overturns and nullifies the decision of the Hon'ble Bombay High Court in the case of MLAG (Medicos Legal Action Group) vs. Union of India dated October 25, 2021.¹¹

The Hon'ble Bombay High Court had been approached to interpret the CPA 2019, and issue orders to Consumer Forums to refrain from registering cases of medical negligence. The court dismissed the petition on several grounds:

- i. The petition was deemed thoroughly misconceived.
- ii. The language of Section 2(42) in CPA 2019 is almost identical to that of Section 2(1)(o) of the 1986 Act, leading to the conclusion that the legal meaning of the section should remain the same.
- iii. Healthcare was not specifically included in the Integrative part of the section of CPA to avoid overburdening it.
- iv. The Lawmakers' statement in Parliament, regarding the 2019 Bill, could not be construed as a reflection of Parliament's will.
- v. The court inferred that Lawmakers did not intend to exclude healthcare from CPA 2019.

The Hon'ble Bombay High Court essentially based its decision on the belief that the intent of Parliament was not to exclude healthcare from the Bill. However, this interpretation has been overruled by the Hon'ble Supreme Court's decision. In the D.K. Gandhi case,¹² the Hon'ble Apex Court thoroughly analyzed the CPA 2019, and concluded that the professions of Law and Medicine aren't, and can't be, considered included under the CPA Act. This decision was reached after considering the legislative intent, the specific interpretation of the amended CP Act 2019, and the broader context of its provisions. The Supreme Court emphasized that neither the legal nor the medical professions were intended to be covered by CPA (2019), contrary to the Hon'ble Bombay High Court's interpretation.

The Hon'ble Supreme Court's Decision has binding effect on all over the India and its jurisdiction including all the lower courts of India, Under the Indian Constitution's Article 141 mandate, which states that the case-law, decided by the Hon'ble Supreme Court, has binding effect on all over the India, and its jurisdiction including all the lower courts of India.¹³ This judgment provides a definitive interpretation that excludes legal and

medical professionals from the scope of CPA 2019, effectively nullifying the Bombay High Court's ruling. The doctors should note this Hon'ble Apex Court judgment into account and adopt a unified stance. Physicians, when faced with complaints under CPA 2019, should submit an objection prior to the commencement of proceedings, citing this Hon'ble Supreme Court's judgment, which explicitly excludes the Healthcare providers from the Consumer Protection Act. This approach will ensure that the matter is handled in accordance with the Hon'ble Apex Court's interpretation and that medical professionals are rightly excluded from the purview of the Act.¹⁴

Table 2. Medicolegal Puzzle in Rhymes

Medicolegal Puzzle in Rhymes
<p>Within the realms of law and care, A puzzle lies, both bright and fair. "To be or not to be," we see, The question of liability.</p> <p>A doctor's touch, a lawyer's plea, Under Consumer's scrutiny. But here's the twist, as courts unfold, Professions' bounds, in acts, we hold.</p> <p>The Hon'ble Court, in wisdom's gaze, Did look upon the legal maze. In DK Gandhi's case, they did decree, That doctors, lawyers, should be free.</p> <p>From acts designed for trade and sale, Not for those whose tasks entail, A higher call, a learned skill, Where stakes are more than simple till.</p> <p>To read the laws, to understand, Is justice's fine and noble hand. In statutes, words can twist and bend, So courts must bring the clearer end.</p> <p>Intent of law, the heart, the key, Not caught in mere formality. So when in doubt, judiciary, Must guide us through this quandary.</p> <p>Though patient sues and client cries, In fields where great expertise lies, The Court asserts with logic strong, They don't to consumer laws belong.</p> <p>For health and law, so intertwined, Are guided by a different mind. Their counsils judge, their peers review, Their codes are made for what they do.</p> <p>So here's the riddle, wrapped in rhyme, Of how the law sees such a time. "To be or not to be," we muse, But now we know, they can't accuse.</p> <p>For in the end, the Court has shown, The bounds of acts are clearly known. With wisdom, law, and judgment fine, Professionals, thus, are well-defined.</p>

In summary, the Hon'ble Apex Court's decision in, Bar Of Indian Lawyers vs D.K. Gandhi,¹⁵ clarifies that the lawyers and doctors are excluded from CPA 2019. This binding ruling overrules the Hon'ble Bombay High Court's judgment,¹⁶ and both legal and medical professionals should invoke this precedent to protect their interests under the Act.

Decriminalizing Medical Negligence Or Criminalizing Medical Practice:

It was professed before the Parliament to decriminalize medical negligence but what in reality happened to specifically criminalize practice of medicine by registered medical practitioners: Medical negligence deaths to be decriminalized, as Lok Sabha passed new criminal law bills on BNS, 2023. At that moment, cases of criminal negligence are handled under IPC 304 A, which pertains to causing death due to negligence. The announcement was immediately hailed by the medicos and the various medical associations, especially the Indian Medical Association (IMA), which had urged the government to decriminalize medical negligence death.

The BNS (2023) Section 106 (1) describes that: Any person who causes the death of another through a rash or negligent act, but without intent to harm, shall face imprisonment of up to five years and/or a fine. However, if the act is committed by a RMP during a medical procedure, the punishment shall be imprisonment of up to two years and/or a fine.

Interpretation: In the context of this sub-section of 106 of BNS (2023), the term RMP shall be construed to mean a medical practitioner who:

- Possesses a medical qualification that is duly recognized under the National Medical Commission Act, 2019; and
- Has been enrolled in the National Medical Register or a State Medical Register in accordance with the provisions of that Act.

The BNS (2023) Section 106 (2) describes that: Any person who causes the death of another person due to reckless and negligent driving, but does not intend to cause harm, and fails to report the incident to a police officer on duty or the duty Magistrate promptly, shall be liable to a prison sentence of up to ten years and/or a fine.¹⁸

Note: In Indian Penal Code (IPC), 1860, prior to repeal, "causing the death of another person due to reckless and negligent driving, followed by escaping without reporting it" was not recognised as an offence.¹⁹

Lawmakers proposed amendment to **decriminalise** (exempt from criminal liability) medical procedures as promised during proceedings. However, the amendment made was the exact opposite of what was promised to the doctors by the Lawmakers. The amendment in fact criminalizes all acts “done by a registered medical practitioner while performing a medical procedure.”

Following amendments were made in BNS 2023, Section 106:

1. In BNS 106 (1) the punishment was increased to imprisonment of “five years” in place of “Two years” in IPC 304 A.
2. And to it was: “If such an act is committed by a RMP during the performance of a medical procedure, the RMP shall be subject to imprisonment for a term of up to two years and shall also be liable to a fine.”

Interpretation: In the context of this sub-section of 106 of BNS (2023), the term RMP shall be construed to mean a medical practitioner who:

- Possesses a medical qualification that is duly recognized under the National Medical Commission Act, 2019; and
- Has been enrolled in the National Medical Register or a State Medical Register in accordance with the provisions of that Act.²⁰

Objections in the BNS 2023, Section 106:

1. The provisions of BNS 106(1) are in contravention of the provisions in Chapter III of BNS which under the good faith doctrine provide exemption from criminal liability to a duly qualified, registered and licensed physician. All acts done in good faith for the benefit of the patient with his/her consent are exempted from criminal liability.
2. Identifying specifically acts of registered medical professionals for harsh criminal liability is arbitrary, discriminatory and violative of equality.
3. It is not evident that the amendment made by official amendment in the BNS draft bill was subjected to the debate needed for approval before the Parliament.²¹ What was the justification given by the lawmakers for the amendment in contravention of their statement that they would bring an official amendment to decriminalize medical negligence?

4. Was it not an act of parliamentary impropriety if not an act of misleading Parliament?

Suggested Amendment in BNS, 2023:

Kindly Delete from BNS 106(1) “and if such act is done by a registered medical practitioner while performing medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.” And

Substitute it with BNS 106(1) “ An act of a registered medical practitioner (RMP) while performing a medical procedure, shall be exempted from any criminal liability, under the provisions of *Bhartiya Nyaya Sanhita, 2023.*”

Utilizing Artificial intelligence for interpreting Laws relevant in Legal Medicine:

All these issues were the point of discussion and debate with the help of Artificial Intelligence – Copilot.²² It highlights the stand that the medical profession can take to get the amendment amended or declared ultra vires.

The discussion and the debate in the form of queries and response.

Q.1. Which Section of BNS, 2023 corresponds to IPC 304- A of IPC?

Response

The section of the *Bhartiya Nyaya Sanhita* (BNS) corresponding to Section 304A of the Indian Penal Code (IPC), which deals with causing death by negligence, is Section 106. This section imposes a punishment of up to five years of either simple or rigorous imprisonment, along with a fine.

Q.2. Is there a specific aspect of this section you are interested in exploring further?

The original Sec 304 A of IPC was:

Any person who causes the death of another by performing a rash or negligent act, which does not constitute culpable homicide, shall be subject to imprisonment for a term up to two years, a fine, or both.²²(emphasis added)

Interpretation: It may be seen that the liability and punishment for negligence for a medical practitioner remains same in BNS 106(1) and IPC 304 A. The worse aspect is that under amended 106(1) the medical professional’s acts are specifically added for criminal liability.

Q.3. Yes, what is added to it for registered medical practitioner?

Response

For registered medical practitioners, the Bharatiya Nyaya Sanhita (BNS) includes specific provisions under Section 106 to address their unique position. These provisions recognize the complexity and risks involved in medical practice. Here are some key points:

1. **Good Faith Exemption:** If a registered medical practitioner causes death by negligence while acting in good faith and in the course of their professional duties, they may be exempt from criminal liability. This is to ensure that doctors are not unduly penalized for unintended outcomes while performing their duties with reasonable care and skill.
2. **Informed Consent:** The importance of obtaining informed consent from patients is emphasized. If a medical practitioner has obtained informed consent and has acted within the scope of that consent, it can serve as a defense against allegations of negligence.
3. **Standard of Care:** The standard of care expected from medical practitioners is higher than that of an ordinary person. The law takes into account the specialized knowledge and skills of medical professionals when determining negligence.
4. **Expert Testimony:** In cases involving medical negligence, expert testimony from other medical professionals is often required to establish whether the standard of care was breached.

These provisions aim to balance the need for accountability with the recognition of the inherent risks in medical practice.

Is there a specific case or scenario you would like to discuss in relation to these provisions?

Q.4. These are not part of BNS, 106, but are part of Exemption sections of BNS that protects a doctor from criminal liability!

Response

Thank you for pointing that out. You're correct that the specific protections for registered medical practitioners are part of the exemption sections in the Bharatiya Nyaya Sanhita (BNS), rather than Section 106, itself. These exemptions are designed to protect doctors from liability under certain

conditions. Here are some key points from those sections:

1. **Good Faith Exemption:** This exemption protects doctors who act in good faith and within the scope of their professional duties. If a medical practitioner causes harm or death while performing their duties with reasonable care and skill, they may be exempt from criminal liability.
2. **Informed Consent:** Emphasizing the importance of informed consent, this exemption protects doctors who have obtained proper consent from patients before proceeding with treatment. If the treatment is within the scope of the consent given, it can serve as a defense against negligence claims.
3. **Standard of Care:** The law recognizes that medical practitioners are held to a higher standard of care due to their specialized knowledge and skills. This exemption takes into account the complexities of medical practice when determining negligence.
4. **Expert Testimony:** In cases of alleged medical negligence, expert testimony from other medical professionals is often required to establish whether the standard of care was breached. This helps ensure that judgments are based on informed medical opinions.

These exemptions aim to balance the need for accountability with the recognition of the inherent risks and complexities in medical practice.²²

Q. 5. Is there a specific exemption or case you would like to explore further? In contradiction to these provisions, lawmakers added Sec 106(1) to specifically criminalize medical procedures!

Response

It sounds like you're referring to a recent legislative change that might impact medical practitioners. Section 106(1) of the Bharatiya Nyaya Sanhita (BNS) appears to specifically address the criminalization of certain medical procedures, which could indeed be seen as contradictory to the protective provisions for doctors.

This addition could potentially create a challenging environment for medical practitioners, as it might increase the risk of criminal liability even when acting in good faith and within the scope of their professional duties. It's important to understand the exact wording and implications of Section 106(1) to fully grasp its impact.

Q. 6. Would you like to delve deeper into the specifics of Section 106(1) and its implications for medical practitioners? Or perhaps discuss how this change might affect the legal landscape for medical professionals in India?

Response

Section 106(1) of the Bharatiya Nyaya Sanhita (BNS) appears to introduce specific criminal liability for certain medical procedures, which could indeed be seen as contradictory to the protective provisions for doctors. Here are some key points to consider:

- 1. Criminalization of Medical Procedures:** This section might criminalize specific medical procedures if they result in harm or death, regardless of the intent or good faith of the medical practitioner. This could include procedures that are inherently risky but necessary for patient care.
- 2. Impact on Medical Practice:** The introduction of such a provision could create a chilling effect on medical practice. Doctors might become more hesitant to perform certain procedures, even when they are medically necessary, due to fear of criminal liability.
- 3. Balancing Accountability and Protection:** While the intent might be to ensure accountability, it's crucial to balance this with protections for medical practitioners who act in good faith. Over-criminalization could undermine the ability of doctors to provide effective care.
- 4. Legal and Ethical Implications:** This change raises important legal and ethical questions. It could lead to increased litigation and a need for clearer guidelines on what constitutes criminal negligence in medical practice.
- 5. Role of Expert Testimony:** In cases where Section 106(1) of BNS is invoked, expert testimony will be crucial to determine whether the medical practitioner acted within the accepted standard of care.²³

Understanding the exact wording and legislative intent behind Section 106(1) is essential to fully grasp its implications. It might also be helpful to look at any legal commentaries or case laws that have emerged since their introduction.

Q. 7. Would you like to explore any specific aspect of this section further, such as its legislative history or potential case studies? Will the lawmaker ever be able to decriminalize medical negligence. Would you like to explore any specific aspect of this issue

further, such as potential legal challenges or the impact on medical practice?

Response

Let's Hope for the best and prepare for the worst!

Q. 8. A medical practitioner can be prosecuted for gross negligent acts under BNS- 106, like any other person.²⁴ Why then is this discriminatory provision that too in contravention of the exemption clauses?

Response

Your concern as a RMP, is quite valid. The introduction of a provision that specifically criminalizes certain medical procedures under Section 106(1) of the Bharatiya Nyaya Sanhita (BNS) seems contradictory, especially given the existing exemption clauses designed to protect medical practitioners. Here are some points to consider:

- 1. Consistency in Legislation:** Laws should be consistent and coherent. Introducing a provision that criminalizes medical procedures while having exemption clauses to protect doctors creates a legal contradiction. This inconsistency can lead to confusion and uncertainty in the medical community.
- 2. Discriminatory Impact:** If medical practitioners are subject to additional criminal liabilities that are not applied to other professionals, it can be seen as discriminatory. This could discourage doctors from performing necessary but high-risk procedures, ultimately affecting patient care.
- 3. Legislative Intent and Trust:** The Lawmakers' statement about decriminalizing medical negligence followed by the introduction of a criminalizing provision can undermine trust in the legislative process. It raises questions about the true intent behind the legislation and the transparency of the process.
- 4. Legal Challenges:** Such contradictory provisions could be challenged in court. Legal professionals and medical associations might argue that the provision is unfair and inconsistent with the broader legislative intent of protecting medical practitioners acting in good faith.
- 5. Impact on Medical Practice:²⁵** The fear of criminal liability might lead to defensive medicine,²⁶ where doctors avoid certain procedures or over-prescribe tests²⁷ and treatments to protect themselves from

potential legal action.²⁸ This can increase healthcare costs and negatively impact patient care.²⁹

Addressing these concerns requires a clear and consistent legal framework that balances accountability with the need to protect medical practitioners who act in good faith. It might be beneficial for medical associations to engage with lawmakers to clarify these provisions and ensure that the laws support both patient safety and the professional integrity of doctors.

Q. 9. Would you like to explore potential legal challenges or discuss how medical associations might address these issues with lawmakers?

Response

To address the concerns regarding the contradictory provisions in the Bharatiya Nyaya Sanhita (BNS) and their impact on medical practitioners, here are some potential steps and strategies that medical associations and legal professionals might consider:

Table 3. Interpreting Best Practice Guidelines

Key Principles of Best Practice Guidelines:

- **Guidelines augment, but don't replace, clinical judgment:** They offer suggestions, not rules, and acknowledge individual patient variations due to biological differences, comorbidities, resource availability, and personal preferences.
- **Intended use:** Guidelines primarily support clinicians in providing better patient care but may also be used by non-clinicians (e.g., insurers, administrators, lawyers) for quality measurement, payment determination, and legal cases. Primarily intended for clinicians to enhance patient care, guidelines may also be used by non-clinicians (insurers, administrators, lawyers) for:
 - Quality measurement
 - Payment determination
 - Malpractice cases
- **Effective implementation: Well-crafted guidelines are essential but insufficient for quality improvement. They require a comprehensive program engaging patients and clinicians in decision-making, supported by:**
 - A patient and clinician engagement program
 - Implementation strategies, including:
 - Systems enhancements
 - Clinical reminders
 - Quality improvement tools
 - Decision support tools
 - Outcomes measurement and feedback

Guidelines and Clinical Judgment:

Guidelines are designed to support, not supplant, clinical judgment.³⁵ They offer suggestions, not rigid rules, acknowledging individual patient variations due to:

- Biological differences (drug metabolism, immune response, genetic endowment)
- Comorbid conditions
- Local resource availability (social and economic environment)
- Patient preferences

While guidelines apply to most patients, some require tailored management.³⁶

1. Engage in Dialogue with Lawmakers

- **Consultation and Advocacy:** Medical associations can engage in direct dialogue with lawmakers to express their concerns about the contradictory provisions. They can advocate for a clear and consistent legal framework that balances accountability with protection for medical practitioners.
- **Public Statements:** Issuing public statements and position papers can help raise awareness about the potential negative impacts of the current provisions on medical practice and patient care.

2. Legal Challenges

- **Judicial Review:** Legal professionals can file petitions for judicial review to

challenge the contradictory provisions.³⁰ They can argue that these provisions are inconsistent with the broader legislative intent and the principles of fairness and non-discrimination.

- **Case Law:** Leveraging existing case law and precedents where courts have ruled in favor of protecting medical practitioners acting in good faith,³¹ can strengthen the argument against the new provisions.³²

3. Clarification and Amendments

- **Propose Amendments:** Medical associations can propose specific amendments to the BNS to remove or modify the contradictory provisions. This can include clarifying the scope of Section

106(1), and ensuring it aligns with the exemption clauses.

- **Legislative Committees:** Participating in legislative committee hearings and providing expert testimony can help influence the drafting and amendment process.

4. Education and Training

- **Legal Education:** Providing legal education and training to medical practitioners about their rights and responsibilities under the current legal framework can help them navigate the complexities of the law.³³
- **Risk Management:** Implementing risk management strategies and best practices³⁴ can help medical practitioners minimize the risk of legal liability.

Best Practice Guidelines (BPG) are primarily designed for clinicians to enhance patient care, but they may also be utilized by non-clinical stakeholders, such as:

- Insurers
- Healthcare administrators
- Lawyers

These stakeholders may repurpose guidelines for various objectives, including:

- Quality assessment and measurement
- Payment determination and reimbursement decisions
- Malpractice litigation and defense

This secondary use of Best Practice guidelines can have significant implications for healthcare delivery and patient outcomes.³⁷ Although Best Practice guidelines are mainly intended for clinicians to inform patient care, they can also be leveraged by non-clinical professionals in diverse ways. For instance, insurers and administrators may apply guidelines to evaluate quality performance and determine payment structures. Additionally, guidelines may be invoked in malpractice proceedings, thus Best Practice guidelines: **'To be or not to be'** used by Lawyers, in suing the RMP for alleged medical malpractice.³⁸ This broader application of guidelines underscores their significance in shaping healthcare practices and policies.

5. Public Awareness Campaigns

- **Informing the Public:** Educating the public about the importance of protecting medical practitioners who act in good faith can help build support for legislative changes.

- **Media Engagement:** Engaging with the media to highlight the issues and potential impacts on healthcare can help garner public and political support for necessary changes.

6. Collaboration with Legal Experts

- **Interdisciplinary Collaboration:** Collaborating with legal experts, ethicists, and other stakeholders can help develop comprehensive strategies to address the legal and ethical implications of the current provisions.
- **Research and Analysis:** Conducting research and analysis on the impact of the provisions on medical practice and patient care can provide evidence-based support for proposed changes.

By taking these steps, medical associations and legal professionals can work towards creating a legal environment that supports both accountability and the professional integrity of medical practitioners. Wouldn't we like to explore any of these strategies in more detail or discuss specific actions that can be taken, to safeguard our clinical practice!

CONCLUSION

To conclude, the Hon'ble Apex Court's ruling has set a clear precedent that the Learned professionals of law and medicine (Lawyers and Doctors) are excluded from the legal provisions of CP Act, 2019. This decision has a binding effect on all Indian courts, including the consumer courts of NCDRC, State Consumer court, District consumer court and should guide the handling of complaints against legal and medical professionals under the CP Act. Both lawyers and physicians should raise preliminary objections based on this ruling to ensure that their professions are rightly excluded from the provisions of the Consumer Protection Act.

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