CHAPTER I INTRODUCTION
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The patient is not just a group of symptoms, damaged organs and altered emotions. The patient is a human being, at the same time worried and hopeful, who is searching for relief, help and trust.\(^1\)

Patient is rightly termed as the most delicate consumer as the world of medicine and therapy is alien to him. Medical negligence cases are increasing in number and are causing irreparable damage to their physical and mental well-being.

Legal approach to medical interference has undergone an attitudinal change concomitant to social development. There is a growing awareness regarding patient’s rights. This trend is clear from the spurt in medical negligence litigations. The Indian Supreme Court has endeavoured painstaking efforts to constitutionalize right to health as a fundamental right.\(^2\) The patient-centred initiative of rights protection is critical in the economic context of the rapid decline of state spending and massive private investment in the sphere of the health care system.

1.1 RIGHT TO HEALTH AND HEALTH CARE

India is a member of UN since the time of proclamation of Universal Declaration of Human Rights (UDHR) in 1945 and was a party to it. The spirit of Indian Constitution indicates the influence of this International legal instrument. Most of the Civil and Political rights are guaranteed as Fundamental Rights. The Constitution makes a forceful appeal to the state through Directive Principles of State Policy to work towards assuring the Economic, Social and Cultural Rights.\(^3\)

Health and Health care are Human Rights. This is reflected in the provision for “right to highest attainable standard of physical and mental health” of the

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\(^3\) RAVI DUGGAL, Right to health and Healthcare, Theoretical Perspectives, HEALTH CARE CASE LAWS IN INDIA 1-16 (MHIIR DESAI & KAMAYANI MAHABAL ed. 2007)
International Covenant on Economic, Social and Cultural Rights 4. The Constitution of India guarantees ‘Right to Life’ as the fundamental right of the citizen. It states, “No person shall be deprived of his life or personal liberty except through procedure established by law”5.

Till 1970s, the courts, by and large interpreted “life” literally. A change was visible in the judicial approach, lately. Over the years, it has come to be accepted that life not only means animal existence, but the life of a human being with all its concomitant attributes. This would include a healthy environment and effective health care facilities6.

Part 4 of Indian Constitution prescribes Directive principles of State Policy. These are the guiding principle for states while enacting laws and implementing policies. The obligation of the state to provide health care facilities is set out in the Part 4.

In one of the earlier cases of Public Interest Litigation in Municipal Council, Ratlam v. Vardhichand & Ors7, the Supreme Court observed that, “The State will realize that Article 47 makes it a paramount principle of governance that steps are to be taken for the improvement of public health as amongst its primary duties.”8

In CESC Ltd v. Subash Chandra Bose9, the Supreme Court, referring to various International instruments concluded that right to health is a fundamental right.

In CERC v. Union of India10, while dealing with a PIL for the protection of the health of the workers engaged in mines and asbestos industries, the apex Court stated that:

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4 Article 12 of International Covenant on Economic, Social, Cultural Rights. 
5 Article 21 of the Indian Constitution
6 supra note 3 at 17-35
7 1980 Cri LJ 1075
8 supra note 3 at 17-35
9 AIR 1992 SC 573
10 1995 AIR 922, 1995 SCC (3) 42
It would thus be clear that in an appropriate case, the Court would give appropriate directions to the employer, be it the State or its undertaking or-private employer to make the right to life meaningful; to prevent pollution of work place; protection of the environment; protection of the health of the workman or to preserve free and unpolluted water for the safety and health of the people. The authorities or even private persons or industry are bound by the directions issued by this Court under Article 32 and Article 142 of the Constitution.

1.2 MEDICAL NEGLIGENCE

Negligence is the failure to take due care, as a result of which one causes injury to another. Carelessness becomes a ground for legal liability only in cases where there is a duty to take care. Medical Profession is one of such segments where duty to be diligent is imposed in the strictest sense. A medical practitioner is expected to have a particular degree of skill and knowledge and he is also expected to be careful in using that skill and knowledge. It is not enough that he acted in goodfaith. He is expected to use the requisite degree of due care. The legal position regarding the standard of care is set in Common law that a doctor is not negligent if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art. The Supreme Court of India has settled law in this regard in 2004.

A medical professional may be held liable for negligence if, he has not possessed of the requisite skill which he professed to have possessed and (or) he did not exercise with reasonable competence in the given case, the skill, which he did possess. The standard to be applied for judging whether the professional is negligent or not would be that of an ordinary competent person exercising ordinary skill in that profession.

With increasing privatization of the health care sector and gradual withdrawal of state from it, the role and obligations of private sector becomes more and more significant. In ordinary circumstances, private medical practitioner or a private hospital, has a right to decide, whether to undertake a case or not.however,Medical Council of India in its affidavit filed before the Supreme Court stated that though doctors are not bound to treat every case, they cannot

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11 supra note 3 at 71-86
12 Bolam v.Friern Hospital Management Committee 1957 2 All ER 118
13 Jacob Mathew v. State of Punjab (2005) 6 SCC 1
14 Parmanand Katara v. Union of India AIR 1989 SC 2039
refuse an emergency case on humanitarian grounds and the noble tradition of
the profession necessitates this. Indian courts have held that in emergencies
neither government nor private doctors can insist on payment of money before
dealing with the patient. In *Parvat Kumar Mukerjee v. Ruby General Hospital*,
the National Commission held that, in emergencies the doctor is bound to treat
and cannot insist on delaying the treatment until the fees were paid.

1.3 **CIVIL LIABILITY AND DEFICIENCY IN MEDICAL SERVICE**

There are two kinds of civil remedies. Public law and private law remedy.
Private law remedy involves action under Torts or Contract. In public law
remedy, the claim is against the state for a wrong committed by it or persons
acting under it. Both exist independent of each other. If there is a medical
negligence by a doctor in a government hospital, writ jurisdiction of the SC or
HC can be invoked. At the same time the injured party can also seek civil law
remedy under Torts, contract against individuals before civil courts or consumer
fora.

The civil liability in negligence cases are by and large covered by the judge
made common law under law of Torts. The Indian law on negligence is highly
influenced by this part of common law. The trend remained the same over
decades with few changes, here and there.

The Supreme Court held in Laxman Joshi’s case that, when the medical
practitioner gives treatment or advice, he impliedly undertakes that he is
possessed of skill and knowledge for that purpose. And in executing his duty he
must employ a reasonable skill, knowledge and care. Therefore, the medical
practitioner will be bound by liability in the absence of any of the two. In an
action for medical negligence the injured party has to prove, not only that, he
has suffered injury but it is the result of the negligence of the doctor.

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15 supra note 3 at 37-45
17 supra note 3 at 71-86
18 Laxman Balkrishna Joshi v. Trimbak Bapu Godbole AIR 1969 SC 128
19 Philips India Ltd. v. Kunju Punnu 1975 M. L.J. 792
In some circumstances, however, negligence can be attributed even though there is no direct nexus between injury and conduct of medical practitioner. In Poonam Verma’s case, the act of a homeopathic doctor prescribing allopathic medicine was held to be ‘negligence per se’. Similarly in cases where the doctrine of ‘res ipsa loquitur’ is applied, in the absence of a justifiable reason from the defendant, it is assumed that the accident occurred due to the want of care from the defendant.

1.4 LIABILITY UNDER CONSUMER PROTECTION ACT, 1986

In case of medical negligence, an injured party can claim compensation either through a civil suit or a complaint lodged under Consumer Protection Act (COPRA), 1986. After the enactment of this legislation, there has been a wide spread debate as to whether the Act is applicable to medical services or not? Wide ranging issues from the applicability of the Act to medical practitioners, the nature of medical services which would be covered, nature of consumers etc. have been litigated. The Supreme Court finally set at rest the controversy in the case of Indian Medical Association v V.P. Shantha. The Court held that proceedings under COPRA are summary proceedings for speedy redressal and the remedies are in addition to private law remedy. Therefore, it cannot be denied to a patient who is suffering from deficiency in medical service.

Since then, there has been a significant rise in the medical negligence cases being filed under COPRA. However, there are practical difficulties as far as Indian patients are concerned—political, social and also legal—which hurdles the delivery of justice.

It is attempted in this study to critically analyse the provisions of Consumer Protection Act, 1986 to scrutinise Civil Liability for Deficiency in Medical Services with Special reference to Surgical Treatment.

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21 (1995) 6 SCC 651
22 supra note 3 at 71-86
23 supra note 3 at 72-87
1.5 RATIONALE OF THE STUDY

- Consumer Protection is one of the major concerns of twenty-first century due to the increasing invasion of market economy all around the globe.
- Consumer Protection through enforcement of consumer rights is an accepted approach internationally and concern over patient’s rights is gathering momentum.
- A patient, as a consumer is most delicate, due to the special situation.
- The number of Medical Negligence cases reported, especially that of Surgical Treatments increases abysmally.
- Health Sector is a booming industry in India.
- The medical terminology and technology is beyond the understanding of an average patient. Along with this the innovative marketing strategies complicates the situation and makes him more and more powerless.
- Consumer Protection Act, 1986, being the prominent legislation in this area, need to be revisited. Its enforce mechanism needs to be studied for suggesting possible changes to invigorate the legal system so as to promote welfare needs.

1.6 OBJECTIVES OF THE STUDY

- To examine the provisions in Law of Torts and other legislations like, Indian Medical Council Act, 1956 and Clinical Establishment etc., so as to develop clear picture on the current status of civil liability for deficiency in medical services.
- To scrutinise the legal position and significance of Consent and Informed Consent with respect to surgical treatments in India
- To analyse the effectiveness of Consumer Protection Act 1986, in fixing liability for Deficiency in Medical Services.
- To study principles and practice with regards to Remedies available, Burden of Proof and Calculation of Damages in case of Deficiency in Service by medical professional generally and specifically with respect to Surgical Treatments.
- To highlight the judicial approach in this area.
1.7 Research Problem

Enumerable cases are reported of medical negligence relating to surgical treatments causing irreparable damage to physical and mental well-being of human beings. Patient is rightly termed as the most delicate consumer. In the current situation, obtaining consent of patient prior to surgical treatment is a farce. Being a professional misconduct, liability in this case is difficult to prove for an average patient. Therefore available remedies become a far cry. Even with respect to calculation of damages for pain, suffering, emotional disturbances and loss followed by such deficiency in services, there are no concrete standards under the Act.

Under this background a critical analysis of implementation of Consumer Protection Act 1986 in this specific area is essential to find out and incorporate effective legal measures to ensure right to health and wellbeing of citizen through this legislation.

Though there are several studies on Consumer Rights specifically and Consumer Protection generally, there is no study which focuses only on Civil Liability for Deficiency in Medical Services, especially in Surgical treatments under Consumer Protection Act, 1986. Therefore, this study fills the gap.

1.8 Review of Literature

To study the Civil Liability for Deficiency in Medical Services and its implications in Consumer Protection Act, and also to identify the areas already investigated, the researcher has referred to important studies already undertaken on Consumer Protection and Medical Negligence. These references were helpful in formulation of hypothesis.

- Ramakant Tiwari & Mahesh Dabade, in the book titled, “Current issues in Social Sciences”, address the issues in Social Science in 21st century. The book identifies and analyses those issues in the light of globalized economy and the changing paradigm, consequential changes in lifestyle, work culture,
family, interpersonal relations etc. Seventh chapter of this book identifies consumer as an issue of the millennium and the coming decades. The chapter contains a general study of the problems faced by consumer, changes in consumer behaviour, and the concept of Consumer Rights for Consumer Protection.

- **AVTAR SINGH**’s book, “Law of Consumer Protection” has explained the basic concepts and definitions as used in the Consumer Protection Act of 1986 in general terms. This book analyses different fields of consumer goods and services, subject-wise, depending upon the decisions delivered by the State and National Commissions. The author has discussed in detail the applicability of the Consumer Protection Act, 1986 to various services like airlines, banking, housing, insurance, posts and telegraphs and telecommunications.

- **R.K.BANGIA**’s, “Consumer Protection Laws and Procedures” is a comprehensive study on various Consumer Protection laws and Procedure in India.

- **NIRAJ KUMAR**, in his book “Consumer Protection In India” has made a detailed study about Consumer Protection in India, starting from origin, movement, legislation and its functioning.


• **SABA NIZAMI** has edited the book titled, “Consumer Rights: Perspective and Experiences” which is a collection of relevant, authoritative and thought provoking articles written by experts in the field and published in research journals. The book focuses on issues, perspectives and experiences of consumer rights and brings to light some aspects of consumer responsibility. There are three sections to this book. The first section covers issues related to consumer rights and responsibilities. The second section is covering consumer issues in some specific industries and the third section shares various country experiences.

• **M.NAZER**, edited the book titled “Consumer Rights and Awareness” which is a compilation of scholarly articles on the topic Consumerism and Consumer Awareness. These articles discuss topics range from origin to the development and the current trends in Consumer Protection.

• **SURESH MISRA** edited the book “Consumer Protection in India: Policies and Case Studies” which is the outcome of a National Seminar on ‘Consumer Protection in India: Lessons learnt and Future Challenges’ organized by IIPA. The papers contributed by well-known experts discuss some of the most important and critical issues pertaining to Consumer Protection in India. The following Papers were most significant for this research.
  
  o **HIMADRI PHUKAN** in the article, “Consumerism and Consumer Protection Act” discusses the concept of consumerism and the philosophy of Consumer Protection Act. The author highlights the working of Consumer Redressal Agencies in this respect.

  o **P.V.V. SATYANARAYANA MURTHY** in his paper, “Working of Consumer Redressal Agencies” highlights the working of the Consumer Redressal Agencies which have brought the consumer justice delivery System close to the door steps of Indian Consumers. Lack of judicial knowledge on the part of non-judicial members hinders the speed of justice. The paper points out that due to lack of infrastructure, some For a are unable to render speedy justice. The three tier judiciary is totally dependent on Consumer Affairs Ministry for each and every thing including appointment and financial support. The author suggests that it is high time; we made these Agencies more independent.
o RAMESH KUMAR in the paper title, “Alternative dispute Resolution and Consumer Protection Redressal Machinery” brings to light the drawback of present system of redressal grievance under CPA and opines that, though Consumer Protection Act is a focused legislation with minimum legal and technical procedure, yet the system is not able to provide the consumers, the relief they deserve.

o G.P PRASAIN in his paper, “Consumerism in Manipur: An overview” describes the status of consumerism in the state of Manipur. This was a rare piece of much required information as studies from North-East India are relatively miniscule in the entire literature in this area.

o G.C.MATHUR and GAURI MODWEL in the paper, “Strengthening Consumer Movement” have classified Consumer Protection into three elements, that is Protection, Awareness and Education. Authors conclude that Consumer Protection is an amalgamation of awareness and education. It is opined that consumer Protection will be fast and effective if the regulation and procedures are uniform in all the states.

- RAJYALAKSHMI RAO in the book titled, “Consumer is King: Know your Rights and Remedies” discusses in detail the issues related to Consumer Protection in varied areas such as Banking, Insurance, Railway Services, Air services, Unfair Trade Practice and Medical Negligence. Medical Negligence under Consumer Protection Act is analysed through a detailed description of various land mark decisions by the Supreme Court and National Commission. The question of consent and informed consent is clearly explained with a detailed analysis of the Supreme Court decision in this respect. The liability of Doctors and Vicarious liability of hospitals is also discussed in great detail.

Reports

- Economic Survey (2013) conducted by the staff of the economic division of the Department of Economic Affairs in the ministry of Finance echoes the objectives for India’s economic progress. It contains chapters on key aspects of the macro economic growth factors such as industry, services, human
development and sustainable development. The survey is analytical document as well as a document recording date and government activities.

- The Implementation Report of UN (2013) is a summary of UN guidelines on Consumer Protection. The report states the objectives, General principles and guidelines for protection of the economic interest of consumers. The report emphasizes on the need for creating awareness among consumers for the effective implementation of these guidelines. The report calls for international Co-operation in this respect.

- The planning commission report (2012) is a vision & mission-strategy plan document for the 12th plan (2012-2017). It covers areas of Consumer Protection, safety, redressal mechanism, price monitoring, consumer education etc. A separate chapter is set aside for planning measures for ensuring product safety. However the report is silent about service safety.

- The Briefing Paper (2011) prepared by Centre for Consumer Action, Research & Training evaluates the significance of COPRA in tune with Medical Services. The report addresses various issues such as burden of proof, vicarious liability of hospitals, lack of awareness among, consumers etc.

Research papers

- Anurag K. Agarwal in his paper titled, “Medical Negligence: Law and Interpretation” examines the concept of negligence in medical profession in the light of interpretation of law by the Supreme Court of India and the idea of the ‘reasonable man’. He makes a detailed study on various decisions and concludes his paper by saying; those courts have to depend on the advice of experts in this area heavily, except in cases of blatant violation of protocol and doing things which are considered to be unreasonable and imprudent. The level of subjectivity in such decisions is quite high and the purpose of law to be certain and specific is defeated to a large extent. Recent decisions are a good step in the direction of making this murky area a bit tidy, however, a lot needs to be done by the courts in the shape of clearer judgments so that the layman can benefit.
• **DAYASHANKAR TIWARI** in his paper titled, “Medical Negligence in India: A Critical Study” analyzes the concept of negligence in medical profession in the light of interpretation of law by the Supreme Court of India. The paper covers the entire range of definitions from negligence to professional and areas such as vicarious liability of hospitals are discussed in detail.

• **MICHAEL BOYLAN** in the paper titled, “Medical Accidents: Is Honesty the best policy? Time for legal duty of candour?” studies the medical accidents in Ireland which is comparable in Indian background. The author identifies the problems arising out of this socio-legal issue and argues that, it is better to accept what went wrong. According to him, imposing a legal duty of candour will bring down both the number and the cost involved in such litigations, benefitting both the patient and the doctor.

• **M. SRINIVAS** in his research paper titled “Medical Negligence and Consumer Rights: Emerging Judicial Trends)” analyses the judicial trend in the area of Medical negligence and Consumer Protection. He discusses the gradual change in the attitude of Judiciary from Bolam case to Kishan Rao’s Case.

• **SWETA S. AGARWAL & SWAPNIL S. AGARWAL** in the paper titled, “Medical negligence – Hospital’s responsibility” examines patient’s right to expect a certain standard of care when he puts himself in the hands of the hospital authority or health care providers. When a hospital fails to uphold this responsibility, the institution may be held liable for causing damage to its patients. The vicarious as well as direct liability for providing health care facilities is carefully discussed in the light of judicial decisions.

• **VIRENDRAR PAL SINGH et al**, in the Article “Awareness about Consumer Protection Act and Medical Negligence among Private and Government Medical College & Hospital Faculty Members” makes an empirical study on awareness about Consumer Protection Act and medical negligence among the faculty of medical and surgical specialties of Dayanand Medical College & Hospital, Ludhiana and Govt. Medical College & Hospital, Patiala. According to this research paper, awareness regarding COPRA is unsatisfactory among medical practitioners in Private and government...
hospital. In comparison surgical specialists are better aware than general practitioners.

- **Santhosh C. S and Nawaz B.**, in the research paper titled ‘Perception of Ethics and Consumer Protection (CPA) among Doctors’ is a study conducted among doctors regarding their awareness about Consumer Protection Act, 1986. A questionnaire was prepared and one hundred Doctors (Academic Professionals) who wilfully consented to participate were asked to fill their response among the choice given. It was a self-administered, structured questionnaire. The study concluded that awareness levels among medical academic professionals are less about ethics and Consumer Protection Act, 1986.

- **P. Guruswamy et al**, in the research paper titled, “A Study on Consumer Awareness on Consumer Protection Council – A Special Reference to Coimbatore District” analyses the level of awareness and the extent of utilization of Consumer Protection Council. This study concludes that many of the consumers have fear about the Court and Procedures.

- **Michael Frakes and Anupam B. Jena** in the paper, “Does Medical Malpractice Law Improve Health Care Quality?” approach this question using direct, clinically validated measures of health care treatment quality. This analysis suggests that medical liability and health care quality is supplementary to each other. They are related and have a long way to go.

- **Neil Vidmar**, in the paper titled, “Medical Malpractice Lawsuits: An Essay on Patient Interests, the Contingency Fee System, Juries, and Social Political malpractice” discusses medical malpractice liability, law and procedure in American Civil Law from a limited perspective. The paper involves issues about compensation of patients, ability of the American Tort System to separate meritorious claims from non-meritorious claims, degree to which the threat of lawsuits deters negligent medical errors or causes doctors to engage in defensive medicine etc.

- **Andrew J. Oswald and Nattavudh Powdthavee**, in the paper titled, “Death, Happiness and the Calculation of Compensatory Damages” analyses the current method of calculating non-monetary damages. This
paper studies the mental distress caused by bereavement. The largest emotional losses are from the death of a spouse; the second-worst in severity are the losses from the death of a child; the third-worst is the death of a parent. The paper explores how happiness regression equations might be used in tort cases to calculate compensatory damages for emotional harm and pain-and-suffering.

- **MARK GEISTFELD** in the paper titled, “Placing a price for Pain and Suffering: A New Method for Helping Juries Determine Tort Damages for Nonmonetary Injuries” argues that pain-and-suffering awards are desirable and proposes a method for calculating nonmonetary injuries. After a thorough survey of the approaches used to compute pain-and-suffering damages, the author demonstrates that full compensation is desirable since eliminating or reducing nonmonetary damage awards would create significant inefficiencies and inequities. Applying economic principles, this article recommends that damages can be assessed from an ex-ante perspective that asks how much a reasonable person would have paid to eliminate the risk that caused the pain-and-suffering injury. The author shows that this methodology is appropriate for all tort cases; that it would yield reasonably accurate results despite data limitations.

- **RONEN AVRAHAM** in a paper dealing with the same issue, “Putting a price on Pain-and-Suffering Damages: A Critique of the Current Approaches and a Preliminary Proposal for Change” suggests a system of nonbinding age adjusted multipliers after making a detailed analysis of the existing modes of calculation of nonmonetary damages in Tort cases.

- **ERIC A. POSNER AND CASS R. SUNSTEIN** in the paper “Dollars and Death” makes a comparative analysis of Administrative Regulations and Tort Law dealing matters involving Mortality Risks. According to the author, philosophy of both systems has to be combined to form a middle way since such a method will enhance the social welfare.
• **HYPOTHESES**

The Study titled as “Civil Liability for Deficiency in Medical Services with Special Reference to Surgical Treatments: A Critique of Consumer Protection Act, 1986” will proceed with the following Hypotheses.

- The law and procedure under Consumer Protection Act 1986, is not adequate in fixing Liability for Deficiency in Medical Services in India.

1.9 **RESEARCH METHODOLOGY**

The study will be based on a doctrinal research. A thorough study of the existing legal provisions, judicial decisions, working of the legislation, legal provision in other countries and their feasibility, is planned. Therefore the method will involve documental analysis, textual analysis and policy analysis in this area. Since judicial decisions in India and abroad constitute an inevitable part of the study, case study method may also be adopted as and when required.

1.10 **SCOPE OF THE STUDY**

- Availability of legal remedies and access to justice are crucial in protection of rights generally, and particularly in addressing grievances of health and safety. This study aims to reveal not only the obstacles but also the potential of the existing legal framework. A scrutiny of the working of Consumer Protection Act, 1986 might enable discovering more appropriate methods in facing the challenges of welfare of consumers in India.

- With the opening up of economy and rapid advancement in technology, consumer has become more vulnerable. This vulnerability is absolute in health sector. This study aims to suggest legal reforms through a comprehensive analysis of Consumer Protection Act, 1986 and other legislations in this area such as Indian Medical Council Act, 1956 and Clinical Establishments Act, 2010 so as to protect the interest of patients in case of Deficiency in Medical Services.

- The study is expected to explore the area of Contributory Negligence and its implications on the liability for Deficiency in Service. Therefore it may
also come out with precise guidelines on the duties and responsibilities of Patients.

- The Consumer Protection Act was passed in 1986 with high hopes that such legislation will solve almost all grievances of consumers through speedy and expedite redressal forum, However, the experience with this quasi-judicial forum is not perfectly satisfactory. Complaints are increasing about inordinate delay, lack of expert knowledge, and inefficient or non-functioning of forums in many cases. This study aims to bring out methods to implement an efficient consumer redressal mechanism

- Consumer Rights are a far cry, when there is no access to remedy. This study aims to find out methods ensuring consumer, her Right and Might

- Though among Indian states there are extremities in terms of political, economic and human rights atmosphere which can reflect in the enforcement of Consumer Rights also, the study will be analysing the effectiveness of the Act in India, generally.

1.11 PLAN OF CHAPTERS

For the convenience of the study, the thesis is divided in to six chapters. The plan of chapters is as follows.

Chapter-1- Introduction .The chapter introduces law on medical negligence and Consumer Protection Act, 1986.An overview on the current legal position of civil liability for deficiency in medical services. Chapter includes the design of the study.

Chapter-2-Medical negligence Liability under Tort law. The chapter is divided into four units. The first unit introduces the concept of negligence and professional negligence. It is an analytical study into the earlier concept of common law, later developments and the recent trends. The second unit contains a detailed analysis of civil liability for medical negligence under Tort Law in India. The past and present legal scenario is studied through various judicial decisions. It includes an analysis of the legal status in other countries. Third unit is discussing defences available for medical negligence and the fourth unit
is touching upon liability under other legislations in this area such as Indian Medical Council Act, 1956, Clinical Establishments Act, 2010 etc.

Chapter -3 Consent and Informed Consent: Legal Scenario is an in-depth study of the rules relating to, medical consent and its need. The chapter is divided into four units. The first unit discusses consent and informed consent under various laws such as criminal law, contract law and tort law. Second unit is discussing consent in relation to medical negligence and its position in India with case laws. Third unit makes a comparative analysis of medical consent in US, UK and other common law jurisdictions. The last unit is analysing the current legal position in the background of other socio-political factors affecting right to health in India and suggesting changes in law.

Chapter-4 – Deficiency in Medical Services under Consumer Protection Act, 1986 is an analysis of the provisions in the Act and its applicability to Medical Services, with special reference to surgical treatment.

The first unit is studying the significance of COPRA, 1986 in medical negligence by scrutinising definitions and interpretations of terms such as consumer and service under the statute and by the courts. The second unit is about medical negligence under COPRA. It contains a detailed discussion on the extent of the term ‘service’ and inclusion of medical services under it. Technical aspects such as capability of forum, locus standi, burden of proof etc. are also covered at length. Third unit discusses surgery as method of treatment, its history, legal aspects and liability of surgeon under the Act at various stages of its performance. Chapter will contain an extensive study of judicial decisions in this respect. The Last unit is a comparative study of consumer law in UK and US with that of the Indian statute. This chapter will look in to some of the lacunas of the Act as far as medical negligence is concerned.

Chapter -5- Remedies contains an in-depth study of various remedies in case of Deficiency for Medical Services available under civil law with special reference to Consumer Protection Act. The first unit is studying remedies from its philosophical perspective. Purpose of compensation, various theories etc. are covered. Second unit discusses about damages, different principles governing
award of damages under general law, calculation of damages under various heads etc. Third unit studies judge made laws on award of compensation and also the constitutional provisions for remedy for medical negligence. Last unit is about remedies under COPRA and Judicial decisions.

Chapter-6-Conclusion. This chapter contains general and specific observations, and conclusion. The study will contain a bibliography at the end.