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Medical Negligence and Consumer Welfare: A Challenge to the Nation

Dr. Manoj Kumar Sadual

Lecturer, University Law College, Utkal University, Bhubaneswar, India

Abstract

The aim of the Consumer Protection Act, 1986 is to secure, protect and promote the consumers rights. The principle of the Act is remaining the same irrespective of the different types of consumption pattern of the consumers. Enjoying 'service' is also under the scope of the Act subject to certain limitations. This paper is specially designed to present the scenario of 'medical services' and its utility towards the patients (Consumers) under the purview of the Act by the help of many judgments and valuable remarks of the Supreme Court of India to adjudge the real relationship between the medical practitioner and patient. Medical negligence is a wrong, gets birth during the various processes of diagnosis, treatment, operation or administration of medicines, where as medical negligence is a prohibited theory in accordance with the medical ethics and medical code of conduct of the medical practitioners. So, 'medical services' and 'consumerism' is discussed in this paper, along with some suggestive and remedial measures at the end with hoping for subjective redefinition of the law by the Apex Court.

Introduction: In India the concept of 'welfare society' was prominent after the independence. Many legislations, provisions, laws and Acts have been made and implemented to protect the citizens of so-called 'Welfare Society'. Among of them 'Consumer Protection Act, 1986' is a commanding Act which itself is a milestone in the history of socioeconomic welfare legislation in India. The main purpose of this Act is to safeguard the interests of consumers as against the trading segment of the society. And the objectives of this act have emerged as a much better Act after the amendment held in 1993 and again in 2002. The Act helps the consumer in two respects Firstly; it provides a cheap, expeditious, quick remedy. It is a measure of sure and swift justice. The consumer can proceed in his own jurisdiction (district) where he suffers as a consumer. Secondly, a good enough improvement has been effected in the system of remedies, which was in work before the Act. He can saw in his own District Forum against the other party with whom he had no direct relationship.

The same pattern of responsibility is also available to the dispensers of the consumer services. The Act also expands to and includes all kinds of sources along with different kinds of goods. What is "Service"? The term "Service" has variety of meanings. It may mean any sort of benefit or anything promoting happiness to the consumer. The concept of 'Service' is very wide. "Service" means service of any description that is made available to potential. [Users and includes but not limited to the provision of]¹ facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement on the purveying of news on other information but does not include rendering of any service free of charge or under a contract of personal services.² The words "but not limed to" have been inserted in between the previous words in the amendments held in 2002 by which the definition of 'service' is extended and not limited to the facilities mentioned in the definition, but it includes other similar services in it jurisdiction.

Medical Service & Consumer: It is a very difficult job to correlate the relationship between medical service and consumer under the Consumer Protection Act, as there is nothing specific about the said relationship between medical service and consumer under the Act. According to the Act a consumer is

he who “ [hires or avails of] any services for a consideration which has been paid on promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avail of] the services for consideration paid on promised, a partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person ³[but does not include a person who avails of such services for any commercial purpose. “ commercial purpose” does not include the services availed by a person exclusively for the purpose of earning his livelihood, by means of self- employment.]⁴ A conclusion can be drawn from the given definitions of ‘consumer’ and ‘service’ as per the Act that the person (consumer) has to pay or promise to pay (partly, deferred) in the form of consideration to the service dispensers.

Many times ‘medical services’ put in dilemma to determine their jurisdiction. A question often arises whether the services of medical practitioner should be excluded from the scope the Act. The Act discharges any service that is rendered freely or under a contract of personal service. Personal service stems from a master and servant relationship, which was totally different from a Doctor – Patient relationship. So, it is obvious to ignore the service rendered “under a contract of personal service”. Because service would not include any service rendered free of charges or under a contract of personal service⁵. On this juncture another confusion arises. Services rendered in Government Hospital are free from any charges. So, does the person (consumer) availing free service will also fall within the ambit of “Service”? On this point, the law is well – versioned with the judgment of Hon’ble Supreme Court, and held, *inter alia* that service rendered at a Government hospital, Health centre or dispensary where services are rendered on payment of charges and also rendered free of charge to persons availing such services would fall within the ambit of the expression “service” under Sec. 2(1) (0) of the Act irrespective of the fact that the service is rendered free of charge.⁶ Free service would also be “service” and the recipient of such service is a “consumer” under the Act.⁷ Here the Act has double face. When the Act discharges free service or service under a contract of personal service, simultaneously by some decided cases free service in Govt. hospital is ascribed as “service” under the Act. On this particular point the Act contradicts with its own principles. To avoid such confusing and indefinite situation, the court has narrated a middle way for survival of the Act. A “contract of personal service” has to be differentiated from a “contract for personal services”. In the absence of a relationship of master and servant between the patient and medical practitioner, the service rendered by a medical practitioner to the patient cannot be regarded as service under a contract of personal service. Services rendered by a servant for the master is calculated as “contract for personal services” and are not covered by exclusionary clause of the definition of service contained in Sec. 2 (1) (0) of the Act. The personal service has a well-known legal implication and has been confused in the context of the right to seek enforcement of such a contract under Specific Relief Act. There can be a “contract of personal service” if there is relationship of master and servant between the doctor and patient. And in such event the services rendered by the doctor definitely to his employer (Who availing doctor’s service) would be excluded from the purview of the expression ‘service’ under section 2 (1) (o) of the Act.

Undoubtedly the relationship between a medical practitioner and a patient carries within certain degree of mutual confidence and trust. Therefore the services rendered by the doctor (medical practitioner) can be regarded as services of personal nature. Since there is no relationship of master and servant, between the doctor and patient they said service cannot be treated as a contract of personal service rather a “contract for services”. Te service rendered by the doctor to his patient under such contract is not covered by the exclusionary part of the definition of “service” under Sec. 2 (1) (o) of the Act. Service rendered free of charge by a medical practitioner attached to a Hospital / Dispensary to everybody, would not be “Service” under Sec. 2 (1) (o) of the Act. The payment of a token amount for registration purpose only at the Hospital / Dispensary would not change the position.

Medical Negligence and Consumerism: So far as persons engaged in medical profession are concerned, it may be said that every person who enters in the profession under takes to bring a reasonable degree of skill and care. It is always true that a doctor never under takes that he will positively cure a patient. But he must under takes to practice a fair, reasonable and competent degree of skill and care. This implied under taking covers the liabilities of a doctor in respect of his

diagnosis, his liability to aware the patient about the risk hidden in the treatment and his liability in respect of treatment.

A doctor has indebted to his patients as a duty holder in the following ways –

- ❖ Duty of care in deciding whether to undertake the case.
- ❖ Duty of care in deciding to which treatment to give
- ❖ A duty of care in the administration of Medicine and the treatment.

Violation of any of these duties leads towards medical negligence to the patient. So, “medical negligence” is a civil wrong done by the medical practitioners due to their carelessness during treatment. Non- performance of the duties by the medical practitioner also leads towards medical negligence. An over – crowded nos. of examples may justify what is medical negligence. For example,-

- ❖ Child born after sterilization⁸
- ❖ Foreign body left in abdomen⁹
- ❖ Kidney stone not removed as advertise¹⁰
- ❖ Legs of the child burnt¹¹
- ❖ Loss of Legs¹²
- ❖ Kidneys damaged by wrong transfusion¹³
- ❖ Scissors found in body on cremation¹⁴
- ❖ Sponge left in abdomen¹⁵
- ❖ Uterus removed without justification¹⁶ etc. and many more.

Practically wrong occurs due to negligence. As there are two kinds of wrongs – a) Civil and b) Criminal and both arises out of negligence. Negligence in the form of breach of duty is a wrong as a Tort. A Homeopathic medical practitioner treated the patient with Allopathic medicines. The patient died and the doctor held responsible.¹⁷ A Homeopathic doctor has no authority to administer Allopathic medicines. It is against his duty as well as against the ethics.

Another dynamic step taken by the Apex Court towards justifying consumerism in a case and held that when a young child was taken to a private hospital by parents and treated by doctors, then not only child but his parent also be treated as consumers. Hence the child suffered damaged due to the negligence of Hospital, doctors and Staff, both the child and parents could claim under this Act.¹⁸

Where the liability of medical negligence is concerned there is no difference among a Private Nursing Home/ Govt. Hospital / Dispensary / Health Centre which is rendering medical services and their service is within the ambit of this Act.¹⁹

Many case have witnessed of the medical profession of doing service to the humanity have continued be in the clutch of commercial activities and have been mercilessly extorting money from helpless patient and their family members and yet do not provide the necessary services which is beyond medical ethics.

Conclusion and Suggestions: The consumers those are availing the medical services are at need and in emergency. Wrong diagnosis, administration of medicine or treatment can lead the patient towards death. So the doctor should work in accordance with the medical ethics. This act alone is not sufficient to provide relief to the consumers. Judiciary has to play a promotional role simultaneously with this Act. Judiciary cannot protect the interest of the common men unless it would redefine the protection of the Constitution and Common Law which must be adaptable and flexible.

In order to give effect to the broader objects of this Act some steps are suggested as under –

- ❖ Private practice by doctors of the Govt. Hospital should be banned immediately with full strictness.
- ❖ Consumption and intoxication of liquor by the doctors during working hours should be forbidden.
- ❖ Medical practitioners should be bound to follow medical ethics and code of conducts.
- ❖ Medical practitioners should keep a correct record of pre – diagnosis or pre – operation stage and the subsequent progress of the case.

Medical practice is a noble service and also service to the mankind. The medical practitioner should not make it commercialise and treat their patient not as consumers. And finally, the idea of “Consumer Protection “should be publicized by state Governments and various NGOs through the following modes. –

- ❖ Educative schemes and programmes
- ❖ Organising Seminar, Symposia and Debate at School level.
- ❖ Distributing pamphlets, handbills etc.
- ❖ Publishing in attractive and understandable mode in media.
- ❖ Establishing Consumer Redressal Centres at Block level.

References:

1. Substituted by Act 62 of 2002, Sec. 2
2. Sec. 2 (1) (o)
3. Inserted by Act no. 62 of 2002, Sec. 2 (c) (i)
4. Substituted by Act. No. 62 of 2002 Sec. 2 (c) (ii)
5. Army Group Insurance fund v. Naik Sohan Lal 2002 (1) CPR 87 (HP)
6. Indian Medical Council v. V.P. Shantha, III (1995) CPI 1 (SC)
7. Prasanth S. Dhanaka v. Nizams Institute of Medical Sciences, I (1999) CPJ 43 at 58 : (NC)
8. State of Hariyana v. Smt. Santra, I (2000) C.P.J. 53 (SC)
9. Smt. Roshini Pritam v. Dr. R.T. Kulkarni, III (1996) C.P.J. 441 (Karnataka)
10. Kidney stone centre v. Khem Singh, II (2001) C.P.J. 436 (Chandigarh)
11. P.M. Ashwini v. Manipal Hospital, Bangalore, I (1997) C.P.J. (Karnataka)
12. Gugusewak Singh v. Dr. Jaskaran Singh, III (1996) C.P.J. 3000 (Panjab)
13. Jaspal Singh v. P.G.I., Chanigarh, II (2000) C.P.J. 439.
14. Nihal Kaur v. Director, P.G.I., Chandigarh, III (1996) C.P.J. 112
15. Aleyamma Verghese v. Dewan Bahadur Dr. V. Verghese & others, III (1997) C.P.J. 165 (Kerala)
16. Lakshmi Rajan v. Malar Hospital Ltd., III (1998) C.P.J. 586 (TN)
17. Punam Verma v. Ashain Patel & others, AIR 1996 (SC) 2111
18. Spring Meadows Hospital v. Harjot Aluwalia, (1998) 4 SCC 39
19. Prasanth v. Nizam's Institute of Medical Sciences, Hyderabad, 1999 CPR (NC)
20. Bangia, R.K. (2004), "Consumer Protection Laws & Procedure", Allahabad Law Agency, Faridabad.
21. Singh, Avtar (2004), "Law of Consumer Protection", Eastern Book Company, Lucknow
22. Majumdar, P.K. (2005), "Law of Consumer Protection in India", Orient Publishing Company, New Delhi.
