

1120

PATIENTS' PERCEPTION REGARDING MEDICAL TREATMENT IN THE CONTEXT OF CONSUMER PROTECTION IN INDIA.

Renu Sobti*

With the bringing of medical profession under the purview of Consumer Protection Act there is great fear in the medical community that they might get unnecessarily harassed because cases of genuine medical failures will increasingly be labelled as those of medical negligence. Present study is based on the hypothesis that misunderstanding between patients and doctors can be minimised if there is greater communication between them. The study examines whether there is satisfactory level of communication between doctors and patients; It also examines the extent of awareness of patients about consumer protection measures available to them and the extent to which patients who are dis-satisfied with the medical services are prepared to take advantage of consumer protection measures. The study also makes suggestions in this regard.

With the change in the societal values the patient-doctor relationship has undergone a substantial metamorphosis. With the growing commercialisation of the medical profession, consumerism and the education of the people, the expectations of patients from the doctors have increased. Not only do they look upon medical practitioner as a saviour but also provider of a service purchased for a price. As a result medical failures are being increasingly perceived and labelled as cases of medical negligence.

Legally speaking, when a patient comes to doctor for treatment and the doctor accepts the task, an implied contract comes into effect leading to creation of an obligation to perform medical duties and attendant tasks with reasonable care. Any breach of this duty is liable to be called medical negligence.

A LEGAL CONTRACT

It may be noted that relationship between the doctor and the patient is also legally recognised as that of a contractual nature because its foundation lies in a consent and a contract emerging therefrom. The consent in a contract between a doctor and a patient may be expressed or implied. A consent by a patient may either be given by himself or any person on his behalf.

A contractual patient-doctor relationship is established when the patient makes a request for medical examination, diagnosis, opinion, advice or treatment and the doctor undertakes to provide these. There are situations when a request by the patient is not necessary, for example, treatment of an infant, where the parents make the request or that of a victim of accident. The sanctity of such a relationship safeguards the interest

*Senior Lecturer, Shradhanand college, University of Delhi, Alipur, Delhi.

doctors) constitute 'service' as defined under Section 2(1)(0) of the Act, since 'consideration' has been paid by the patient to the hospital for availing the services. It was also held that the legal heirs of the deceased are also considered as consumers and they are covered under the Act.

The judgement of the National Commission sparked off a country-wide controversy. While some people were in favour of the decision and asked for inclusion of even free medical services provided by government hospitals to be within the purview of the Consumer Protection Act, 1986, others criticized the decision. The issue was extensively debated upon in the media, in technical scientific journals (medical and non-medical), and in seminars and conferences. There was also a considerable debate on the impact of the implementation of the CPA to medical services on the patient-doctor relationship. The entire medical profession was disturbed by the judgement of the National Commission. The Indian Medical Association (IMA) vigorously opposed it (IMA, 1994). Members of the medical profession were of the view that if the medical services came under the CPA, the patient-doctor relationship would be affected (Ravindran, 1993); doctors would always be in a state of fear psychosis. They would then ask their patients to go in for all sorts of investigations, consultation, and take medical indemnity insurance, which would mean considerable increase in cost of treatment and this would invariably be a burden on the patient (Chari, 1993). Since under this Act patients are likely to proceed against doctors in courts of law, doctors would decline to accept high-risk cases for treatment, thus denying medical care to the really needy patients (Goyal, 1992).

The points given in favour were that it was in this forum that a victim could get

compensation (Saraf, 1992); and that the medical professions became totally commercialised (Jindal, 1993) and it was no longer a noble profession (Mehta, 1992) and the medical professional were conducting themselves without any sense of fear of liability against negligence and malpractice (Saraf, 1992) and that the doctors were increasingly indulging in malpractice (Bal, 1992).

Even the various High Courts and the State Commissions were having different views on this aspect. In certain cases it was held that medical services are covered under the Act⁶ whereas the contrary view was that such services are not covered under the Act.⁷

Finally, the matter went to the Supreme Court; and its landmark judgement⁸ on November 13, 1995, brought the whole debate to a close. It affirmed that the services rendered to a patient, both medicinal and surgical, are covered under the Consumer Protection Act, 1986. It is thus that the entire medical profession has come under the purview of the CPA.

THE PRESENT STUDY

The judgement of the Supreme Court has major repercussions. On the one hand, there are possibilities of benefits in the form of speedy decisions, in-expensive justice, simple procedures, relief to the victim in the form of compensation, improved quality of patient care and doctors becoming more careful. On the other hand, there are possibilities of adverse effects which include increased cost of treatment, defensive medical practice, refusal to attend serious patients, especially in case of emergency, and deterioration in the 'humane' relationship between the doctor and the patient. Besides; it is likely that cases of medical failure are labelled as cases of medical negligence because it will always be open to question,