

Consummate justice or complete folly? Doctors and Consumer Protection Act

At the end of a panel discussion on the Consumer Protection Act held during the recent annual conference of the Tamilnadu Orthopaedic Association, the audience was asked to vote on whether they thought the act good or bad. Not surprisingly, the vote was overwhelming in considering the act bad. What was surprising was, that when the panelists were asked to vote, two out of three doctors on the panel felt it was good. The lone lawyer felt it was bad!

Doctors' concerns

The doctors on the panel were all active in the Indian Medical Association. The reasons they gave in favour of the act were revealing. They felt that unethical practices had become common in the medical profession, and the Medical Council of India, which should have been active in policing the profession, was itself corrupt and therefore inactive. One of them said that the manner in which doctors became members of the Council presently, itself ensured that only the corrupt would succeed. The doctors also felt that the Act had forced an improvement in the equipment of nursing homes. The lawyer felt that the present act was imperfect and needed fine-tuning.

The main reasons given by those who opposed the Act were: the difficulty of proving negligence, the difficult circumstances in which doctors worked and the inability of the members of the consumer forums to understand the intricacies of medical decision making. The lawyer said that most forums were very scrupulous in analyzing complaints. It was not necessary that the latest treatment was followed; only an acceptable method at an acceptable level of competence was necessary. It was always essential for the complainant to prove negligence.

The panel discussion was one of the best-attended events of the conference. It was supposed to last for two hours but went on for well over three and had to be guillotined. It was clear that the act was a source of much discomfort to doctors. Orthopaedic surgeons are one of the most sued. Only obstetricians and anaesthesiologists out do them. It was interesting that the chief cause of litigation was instigation by another surgeon. This was the unanimous view of all the panelists.

All the doctors on the panel felt that an important cause of patient dissatisfaction was the failure of the doctor to communicate properly with the patient. Patients felt bitter that the doctor had hidden facts from them. One of the doctors in the audience felt that informed consent was just a farce because if one revealed all the possible complications, even the rare ones, most patients would never consent to surgery.

The central issue

Although the discussion was interesting, it seemed to me

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that it skirted the central issue. Half a century after independence, we have failed to develop a system of medical care that will ensure a reasonable result for almost all patients. What we have at present is absolute chaos. The consumer protection act is relevant only to a small group of patients who can afford to pay for private care. Even this small group is unsure of how to access competent care. Most people are guided by the reputation of the doctor or the hospital. In order to develop this reputation, doctors and hospitals market themselves in many ways, almost all of them unethical. Thus the potential for malpractice is built into the system. We are faced with the sad irony of under treatment in the public sector and over treatment in the private. The public hospitals are over crowded. It is impossible with the current doctor-patient ratio to do justice to the patients. On the other hand, the poor patients are sometimes used as guinea pigs when the doctor wishes to learn a new treatment or procedure. As one doctor put it: "learning curve in the government hospital and earning curve in the private hospital!" In the private sector, too many doctors are chasing too few patients. The desire to ensure that the patient does not move to another doctor is a powerful motivation to malpractice. There is no security of income for a young doctor just beginning practice. This is a sure method of ensuring that at least some will be tempted to unethical practice.

If doctors wish to get away from the infirmities of the Consumer Protection Act, tinkering with it will not be a long-term solution. We have to be in the forefront of working for a system in which both patients and health personnel are benefited. This is the only sure way to reduce if not eliminate malpractice.

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