**Should doctors be kept out of the Consumer Protection Act?**

Earlier this month, the Supreme Court ruled that advocates cannot be held liable under the Consumer Protection Act, 1986, for deficiency in service. The Court also indicated that its 1995 decision that held medical professionals accountable under the Act may need to be revisited. It suggested that the definition of the term ‘services’ under the Act, which includes the medical sector, be re-examined. The issue will be placed before a larger Bench. Should doctors, like lawyers, be kept out of the Consumer Protection Act? Rajeshwari Sekar and Saroja Sundaram discuss the question in a conversation moderated by Aroon Deep. Edited excerpts:

Is it appropriate for patients to take recourse to the Consumer Protection Act?

Rajeshwari Sekar: It is a welcome decision by the Supreme Court to revisit the facts of the 1995 case; it will give a better explanation for the word ‘service’. Indian Medical Association v. V.P. Shantha was a landmark case which decided that doctors, medical professionals, and hospitals do come under the Consumer Protection Act as service providers. Doctors are highly qualified professionals who provide a service to the people. They are highly specialised. This cannot be equated with any other [profession] because human bodies react differently in different situations. A lot of work and research goes into medical practice. Many surgeries are high tech. Patients have to be carefully taken care of.

But there are people who misuse the Act. They don’t want to pay the doctor’s fee or the hospital fee. They create a ruckus and file a case under the Consumer Protection Act. This turns into a harrowing experience for doctors and hospitals. When things go well, a patient is happy, but when things go wrong, the patient blames the doctor and the hospital. This is dangerous. Doctors order a bunch of medical tests to protect themselves against these complaints. And that increases the cost of procedures. Everything has to be on record, so that if there is a dispute, they can prove that they were correct in doing whatever they did.

Saroja Sundaram: I think it is appropriate for patients to take recourse under the Consumer Protection Act because without the Consumer Disputes Redressal Commissions, the affected patients will not have an effective adjudicating body to get their grievances redressed. The Indian Medical Council Act, 1956, may define misconduct and take action on erring doctors, but how will it benefit the affected patient or family? I don’t think the National Medical Council has the powers to award compensation to patients for the injuries they sustained. There may be provisions in civil and criminal law, but criminal law may be brought into effect only in case of death of patients. We all know that while there is a remedy available in civil law, it is a long-winded trial with elaborate rules of procedure, fees, and delays. This deters an aggrieved patient or family from approaching courts. The Consumer Protection Act is a benevolent legislation enacted with the main objective of protecting the rights of consumers, and we all know who a consumer is. When a person buys a product or a service for a consideration, they are a consumer as defined under the Act. As for the medical profession, it is not a business per se, but a service rendered that is often associated with a cost.

The judgment in the V.P. Shantha case clearly explained the relationship between a doctor and patient as a contract for service and said that it (the medical service) would come within the purview of the Act. I think this judgment should stand good because it benefits the affected consumers, who are the affected patients. Otherwise, where will patients seek solace?

What are the problems and opportunities in using the Consumer Protection Act as the pathway for patients to challenge adverse outcomes?

RS: In some cases, we find there is gross negligence [on the medical professionals’ part]. In such cases, following the legal process is okay. But what about people who have done a good job and yet a shadow of doubt is cast on them? Patients go to court and file a case, then they go to the district forum, then to the State Commission on appeal, and then to the National Consumer Disputes Redressal Commission. It takes 10 harrowing years to prove that you are innocent. It’s an experience that really takes the spirit out of doctors. The doctor is rendering a service. He is highly qualified, just like an advocate. He is ready to help the patient. But these are the problems — delays and frivolous litigation. And there are people who just don’t want to pay doctors, so they come up with some case to cause trouble. It takes a toll on doctors.

If doctors’ associations themselves have an authority who can view these cases with expert medical knowledge and act, that would be sensible, instead of a person approaching the court and going the long way. The courts cannot decide by themselves anyway; they have to get an expert opinion from a group of doctors. So, that can be avoided.

SS: I think largely it [the 1995 judgment and the Consumer Protection Act] gives an opportunity for patients to challenge malpractice and seek redressal. The remedies provided under the Act are quite advantageous to the patient. In all these years I don’t think we will be able to point out any case of an unfair or incongruous judgment rendered by the redressal agencies under the Act. Expert opinion is sought if the issue is complex; only then are cases decided.

As for consumers, I think it is time to do a study to see how many frivolous cases have been filed over the years. In most cases it would be a genuine case of malpractice, or the patient or the family would have been made to strongly believe that they were wronged by the doctor. Non-provision of adequate information on time is one of the main reasons for this. The delay in consumer commissions is an issue that needs to be dealt with definitely because 10–12 years of delay in handling cases undermines the objective of the Act, which is to provide speedy redressal to complaints.

What would an alternative mechanism look like if consumer forums are deemed to be an inappropriate way of dealing with medical complaints?

SS: Action against malpractice is one thing, but to compensate an aggrieved consumer is another. As we have an ombudsman for the insurance, banking, and electricity sectors, maybe [we should have] an independent authority to deal with these issues as a first step. The consumer should always have the option to file a case before the consumer courts. But as a first redress, we could have a body where the matter could be taken to first. Similarly, we have the option of mediation under the Consumer Protection Act. As of now, medical negligence is not covered under it. That is something we could work on.

Do grievance redressal forums actually draw a distinction between explicit malpractice and adverse outcomes that follow a risk that was present in some way or the other? How can physicians safeguard themselves against litigation in cases where they genuinely did everything that they could to prevent a specific outcome?

RS: What is needed is a very strong regulatory authority which can monitor medical professionals’ activity, but they should also have powers to control what is happening.

There is medical indemnity insurance that a lot of doctors subscribe to in order to be safe if they get into any problem. But it is a difficult process if they have to go to court regardless.

SS: If you go through the judgments, there are several which have been decided against the consumers as well. It’s not like every doctor is framed and that every case fought ends up in favour of the consumer. The Commissions have handled the cases quite diligently, I would say.

Diligent service delivery, maintaining proper records about the patient’s history, taking proper consent for treatment will safeguard a doctor’s interest. Following the checklist protocols required for maintaining proper medical records is important. Communicating clearly about the risks [before procedures or treatment] and outcome of the procedure/treatment, and timely referral of the patient in case of complications help physicians safeguard themselves against such litigation.