

Doctors and the Consumer Protection Act (CPA)

The recent landmark judgement by the Supreme Court, stating that medical services to patients, for which fees are charged, come under the purview of Consumer Protection Act 1986, has put a curtain on the long-drawn-out debate between doctors and consumers on the issue. Whilst the matter was still under deliberation by the Court, several claims were made from within the medical profession, probably as part of a strategy. Consumer courts were not equipped or competent to judge on intricate medical matters involved in medico-legal litigation, implying that there was wide scope for injustice. Once their powers were augmented medical councils, and not Consumer Courts, should take these matters up. Consumer Protection Act would ultimately be against the interest of patients because there would be defensive medicine. These arguments release a lot of hot air but shed no light. Now that the dust has settled it is worth examining how the medical community has responded to the very positions it tried to take.

During the past two years - whilst the case was before the Supreme Court - there was a public uproar on the kidney transplant racket. How did the medical community-and the medical councils in our various states respond to it? Many doctors knew of those who had indulged in such practices but chose to be tight-lipped bystanders. The medical councils stirred into a semblance of activity only after the media turned on the heat. Their activity seems to have conveniently petered out. But then, historically, the medical councils, meant to be the guardians of ethical standards in medical practice, have chosen to look the other way, avoid taking action and even neglected to exercise the powers they already have. How, then, can the argument that the medical community in general and medical councils in particular would provide adequate regulation and redressal to safeguard the plight of the patients were they granted extra powers, inspire confidence?

As regards defensive medicine, by its very nature, it will be intended to safeguard the interests of the doctor.

Transferring the expenses incurred on this account to patients will constitute an unfair practice under the Consumer Protection Act. Does this mean that the doctor is to be defenseless? The need for such defense would be minimised if we had standard protocols for investigation and treatment of common diseases. We understand that the Indian Academy of Paediatrics is evolving protocols for paediatric problems. This is a step in the right direction. As long as the doctor follows nationally accepted protocols, normally he cannot be accused of negligence or malpractice.

The bench of the Consumer Court is headed by a retired judge who can avail of expert services if and when needed. In Bombay, the court requires the complainant to provide attestments from two medical doctors that there is a basis for admitting the case. This means that when the case against a doctor is before the CPA court, at least two medical doctors feel there is prima facie merit in it. What is more, if the complaint proves to be frivolous, the complainant can be fined upto Rs. 10,000/- Surely, there is no room for apprehension. The judgement, by itself, does not encourage the filing of suits against doctors. By and large, the Indian citizen does not like to litigate.

Is the Consumer Protection Act a dampener for medical practice? I do not think so. On the contrary, taken in the right spirit, it is a boon for ethical, patient-oriented doctors. Doctors claiming to adhere to ethics have always lamented that colleagues stooping to unethical practices have an unfair advantage because there is no control over these practices. The CPA should help in curbing this unfair advantage.

If doctors would like less legal restrictions on themselves, they must regulate - and be seen to regulate - themselves through adherence to the principles of medical ethics.

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A quack is a person who pretends to knowledge which he does not possess; who promises to do what he is either not sure he can perform or what he is certain he cannot perform; who represents his practice to be more successful than that of other men; who pretends to cure diseases known and admitted to be incurable; whose manner is confident and imposing; whose tone and language are unhesitating and boastful; who employs remedies, the nature and composition of which he keeps unknown and who deals in specifics and universal remedies. He is addicted to handbills, newspapers and imilar modes of making known his pretensions and proceedings. This is the quack and the conduct of this man is quackery.

(From *Edinburgh Medical and Surgical Journal* 1845;63: 176)