

IN THE PINK NEED FOR ASSERTING PATIENTS' RIGHTS

The medical fraternity must be made accountable for their actions. And patients, as consumers of medical treatment, must have the right to health education. Dr. Amar Jesani and Dr. Anil Pilgaokar talk about the need for asserting patient's rights

The purpose of law, it is said, is to 'regulate' human activities in a society. The medical world concerns itself with improvement in physical and mental health of the people and the prevention, diagnosis and treatment of illness. It is, therefore, quite natural that laws relating to the medical world need to be examined and modified/rectified from time to time in relation to their impact on the society and people they aim to regulate.

The Indian legal system and laws, particularly those related to medical practices have been borrowed, to a great extent from the British system. It is pertinent to compare their impact on people in terms of their relevance to them. It is not possible to examine each law separately to understand its usefulness to the patients. While focussing generally on the status of regulations presently available for doctors and hospitals, we will also briefly explain the lack of will on the part of the government to implement them for the benefit of the patients. When laws become mere paper laws, the responsibility of the patients to seek their genuine implementation correspondingly increases.

DOCTORS AND LAWS :

Medical practitioners have to register before they can practice and collect consultation fees for and registration is subject to minimum standards of qualification. Under the Maharashtra Medical Act, it is the responsibility of the various Medical Councils (MCs) to see that these rules are observed. These Medical Councils are also empowered by the Act to cancel the registration of a medical practitioner from the Medical Register if a "serious professional misconduct" occurs.

In the UK several registrations have been cancelled either because it is "necessary for the protection of members of the public or in the best interest of the person suspended". And there is usually a very meaningful debate on the issue in medical journals which acts as a deterrent for others. Such cancellation of registration of medical practitioner is rare in our country.

“A doctor has no right to do anything to a patient without his consent, except in the case of emergency when he must exercise discretion”. However, the securing of a signature for consent should not be allowed to become an end in itself. The most important aspect of any procedure must always be the act of explaining to the patient or relative the nature and the purpose of the proposed operation and, therefore, to obtain a fully informed consent.

However, the absence of cancellations need not be construed to mean that things are above board in India. In fact the virtual absence of activity on strictly implementing the MC’s own code of medical ethics has created a situation of rampant unethical medical practices. A few examples would be sufficient to illustrate this point.

For example, according to the Act: "Nothing in the Act shall extend to prejudice or in any way affect the lawful occupation, trade or business of chemists and druggist and dentist or the rights, privileges or employment of duly licensed apothecaries so far as they extend to selling, compounding or dispensing medicines". Yet it is almost a universal practice for general practitioners in India to dispense drugs and charge for the same.

Similarly the Code of ethics does not permit the doctor to charge for the services not rendered by the doctor. Yet, doctors who refer patients for consultation and investigations normally receive payment from the consultants and the centres doing investigations. This is called “cut practice” and a number of doctors indulge in it. The MCs have taken no action against this.

The glycerol tragedy in the J J Group of Hospitals in the 1980s has highlighted the problem. In this case, everyone including the doctors of the hospital, was negligent. Strangely, the MC chose to remain silent on the issue.

It is circumstances such as these where the ethics and rules enforcing bodies such as the MC refrain from acting that the need for people's participation in such matters is felt. What can an individual do when professional bodies fail to act?

Another issue is related to informed consent. "A doctor has no right to do anything to a patient without his consent except in the case of emergency when he must exercise his discretion". However, the securing of a signature to a consent should not be allowed to become an end in itself. The most important aspect of any procedure must always be the act of explaining to the patient or relative the nature and the purpose of the proposed operation and therefore to obtain a fully informed consent. In our country this is even more important (though admittedly also more difficult) since there is so much illiteracy and lack of information. In such cases, informed consent is reduced to mere signature-obtaining. The matter becomes even more serious when, to meet the family planning targets, healthy women and men are subjected to sterilisation operations.

HEALTH CARE SERVICES AND LAW :

While there is similarity in the British and Indian laws in respect to drugs and registrations of doctors, the hospital services policy of the two are different. In the UK, under the National Health Services Act 1946, comprehensive health services are made available to the people. This includes a scheme of social insurance and covers an overwhelming percentage of the country's population. In India there is no comparable legislation and the state health sector incorporates the medical services including Central Government Health Services (CGSS) and Employees Services Insurance Scheme (ESIS). Indeed there are public hospitals and dispensaries which are supposed to deliver medical services free or at very nominal fees but in effect are found wanting. There are no minimal standards clearly specified for private hospitals and nursing homes or dispensaries to adhere to. For all the furnishing and opulence, the private nursing homes are not able to provide minimum scientific medical standards to patients. So much for high quality of medical care in the private sector.

While legislation provides for the possibility of ensuring justice without prejudice, both its content and form are limited to the socio-political context of particular societies. Therefore, while struggling for progressive legislation's, it is imperative that a patient's rights movement is built up and supported, so that all good provisions of the law are made full use of to empower people.

Further, in states like Maharashtra, Delhi and Karnataka there are specific laws (the other states do not even have a law on paper) for registration of private nursing homes and hospitals. But these laws are not having minimum standards prescribed under them and are not properly implemented. On the other hands, in the government sector, the standards do exist on paper but the political will to allocate adequate resources to implement them is absent. That is why it is not unusual to find a Primary Health Centres being reduced to mere bricks and mortar structures. Thus, a government not having will to implement its own minimum standards in the government institution can hardly be expected to have will to formulate and implement the same in the private sector. Ironically hotels and restaurants of some cities in India are graded according to the services they make available hospitals are not.

The quality and quantity of health or medical care made available to the people is largely inferior. With the paucity of resources it is clearly evident that radical and pragmatic legislative and policy approaches are necessary.

In our country medical and health care is grossly inadequate and despite a number of medical malpractices there is hardly any litigation or effort to redress injustice caused. Even when there is litigation, the odds are heavily pitted against the patient in more ways than one (i) there is a strong nexus amongst doctors to 'protect' one another in the event of a case in the court; (ii) patient record is not available to the patient for proper presentation of the case; (iii) and lastly the cases drag on (very

often) for such an extraordinary length of time that most people find it beyond their means to `sustain' litigation.

Although the Consumer Protection Act and the Consumer Courts set up under it are supposed to provide speedy disposal of cases, they are also failing in fulfilling this goal due to ever increasing backlog, paucity of facilities made available to them by the government and above all the higher courts' tendency to grant stays and entertaining appeals against their judgements.

The dominant section of medical profession which is strongly opposed to the application of Consumer Protection act to the medical practice and hospitals, has tried to blunt the Act in two ways. Firstly it has challenged the very validity of its application to the medical care. Here they have partially succeeded by getting an order from the Madras High Court. Secondly, it has tried to subvert its implementation by creating strong opposition to it in the profession so that not many doctors come forward to help victims and give evidences in the court. This is combined with their efforts to obtain stays against the consumer court judgements so that the patient could be worn down in the lengthy legal battles.

Thus, legal provisions cannot be an end in themselves. While legislation provides for the possibility of ensuring justice without prejudice both its content and form are limited to the socio-political context of particular societies. Its extension and implementation is a consequence of people's movements. Therefore, while struggling for the progressive legislations it is imperative that a patients' rights movement is built up and supported so that all good provisions of the law are made full use of to empower people.