Commentary: implicit contract with providing agencies, not with care providers

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Agrawal and Banerjee in their article (1) have brought up the interesting question of whether healthcare providers can be held liable under the Consumer Protection Act even for healthcare services that they have provided free of cost.

The Consumer Protection Act (2) was extended to services with the express purpose of defining the nature of services, validating the contracts under which such services were rendered and expediting the processes of claims which may arise when there is a perceived deficiency in the rendering of a service.

The legal profession has devoted considerable time and effort to bringing medical services under this act. It has been successful in establishing the norm that paid medical care is a service rendered under a paid contract. Such care has thus been brought under the jurisdiction of consumer courts. The medical profession, on the other hand, has been extremely vocal in claiming that though the intention of the courts is laudable, ie to introduce accountability, the net effect of the act has been to sow the seeds of distrust between patients and their representatives and doctors at large.

My contention has always been that though a service has been rendered, the definition of the service and the contract under which it is rendered has been subjective, unquantifiable, and open to misinterpretation. To be fair, the courts have always emphasised that the issue of failure of treatment is not to be confused with the delivery of inadequate service or criminal negligence (3). In practice, however, every case that has landed up in consumer or other courts has the background of failure of treatment.

Free healthcare, as provided by the government, or as in the cited case, through charitable trusts, entails no contract of service between the individual provider and the recipient of care.

Any implicit contract of quality or competence is essentially a social contract between the provider and recipients. It is not possible to quantify or monetise this service and the recipients are aware of this.

Whatever implicit assurance of quality exists is between the providing agency (in this case, the government), and the beneficiary; if, at all, any liability arises it should be solely that of the agency through which the service has been made available. I believe that the current opinion of the courts supports this practice.

It is not this writer's brief that the actions of a medical practitioner should be above scrutiny or reproach; rather it is the nature of the liability that is the matter under discussion. A doctor's liability to civil or criminal prosecution is not restricted by the coverage of the Consumer Protection Act.

I believe that as the quality and availability of the government-provided free medical care improves, this issue will raise its head again.

This might open a Pandora's box, since the liability of the government may be sought to be extended to other unpaid services like law and order and defence.

Medical services are specialised in nature, with a wide variability of parameters in each case; in the nature of the service given or denied; and in the assessment of its quality. Hence, the stand of the medical profession has always been: that it is best left to the profession or to the courts, with the aid of adequately qualified providers, to assess the same.

References

1. Agrawal AD, Banerjee A, Free medical care and consumer protection. *Indian J Med Ethics* 2011 Oct-Dec; 8(4): 240-2
2. The Consumer Protection Act, 1986. Gazette of India 1987, Extra.,Pt II, Section(ii). Available from: http://ncdrc.nic.in/1_1.html