Review Paper

Right to Emergency care: Consumer court

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Abstract

Indifference towards victims of accidents and those in emergency medical conditions and even women under labour who are about to deliver is not peculiar to India but is prevalent in other countries also. The SC of India as long back as 1989 observed in Parmanand Katara v. Union of India that when accidents occur and the victims are taken to hospitals or to a medical practitioner, they are not taken care of for giving emergency medical treatment on the ground that the case is a medico-legal case and the injured person should go to a Government Hospital. The SC emphasized the need for making it obligatory for hospitals and medical practitioners to provide emergency medical care.

Delhi State Consumer Court first taken up for consideration the question of maintainability of award against the hospital in case of brought dead patient: This paper deals with critical review of recent judgment of State Consumer Court of Delhi on the issue of right to emergency care of common man and deficiency of service in Indian context.

Key Words: Right to Emergency Care, Consumer Court, Compensation, Medicolegal

Introduction:

The Constitution envisages the establishment of a welfare state at the federal level as well as at the state level. In a welfare state the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare state. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail those facilities.

Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is of paramount importance. The Govt. hospitals run by State and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a Govt. hospital to provide timely medical treatment to a person in, results in violation of his right to life.

Hon’ble SC first examined whether the failure to provide medical treatment to a patient in emergency [Hakim Seikh] by the Govt. hospitals [in Calcutta] has resulted in violation of his rights and, if so, to what relief he is entitled. [3]

Brief facts of the Case:

- One Naik Subedar, Sh.K.L. Gulyani travelling in a bus in Delhi was attacked with a knife by one of a gang of pick-pockets who tried to take away his purse, which the army man resisted. He received a deep knife wound in his right thigh and started bleeding. At the bus stop on the red light the injured person disembarked presumably with a view to proceed to his house but he could not proceed due to the injury and fell down in front of the clinic of Doctor, was a paediatrician. He saw the injured person lying in front of his clinic and bleeding profusely but he went back into his clinic to attend to his patient and did nothing for the injured person. [Para 1-2][1]

- Sh. Naveen Kumar who along with his wife had come with their child to consult Doctor ran to a nearby Orchid Hospital and brought a stretcher and within the help of another person carried him to the hospital. The hospital authorities say by the time the injured person arrived he was dead and on the relevant papers it was mentioned that he was brought dead. [Para 3][1]

- The police was telephonically informed and they also arrived at the hospital and finalised
their normal and formal paper work and sent the body for post-mortem. [Para 4][1]

- The wife of the deceased army man thereafter filed a complaint before the District Forum against the hospital and Doctor and Orchid Hospital respectively and the District Forum after consideration of the evidence on record awarded a compensation of Rs.5,00,000/- (Rs. Five lac) against the hospital authorities and Rs.3,00,000/- (Rs. Three lac) against Doctor. [Para 5][1]
- Both of them have filed appeals, which have been amalgamated because both relate to the same occurrence. [Para 1-6][1]
- Medicolegal case: It is clear from the above mentioned facts that it was an emergency and a medicolegal case.

Case before the State Consumer Forum:
Consumer court first taken up for consideration the question of maintainability of award against the hospital in case of brought dead patient:
- Having considered the evidence about the same, Court was of the view that the hospital cannot be heaped with liability for the incident.

The contention of the hospital:
It was contended that by the time the patient was brought to the hospital he was dead. There is no plausible evidence to indicate that the deceased was alive when he was brought to hospital. Although the District Forum held that deceased was alive been brought to the hospital since his dead body was lying in the courtyard of the hospital.

This is the main circumstance on which reliance has been placed, Court observed “the mere fact that the dead body was lying in the hospital will not suffice to indicate that the deceased was alive when he was brought to hospital. Although the District Forum held that deceased was alive been brought to the hospital since his dead body was lying in the courtyard of the hospital.

There is no positive evidence about the fact of his being alive at the time of being brought to the hospital. At the same time there is an endorsement of the doctor on the official papers that he was brought dead. [Para 8][1]

DMC’s Enquiry Committee Report:
The Delhi Medical Council (DMC) held an enquiry about this circumstance and a committee of six doctors was formed for this purpose. The doctors after examining the whole matter concluded that the deceased was not alive when he was brought to the hospital.

Court observed that there is no reason to disbelieve the result of this enquiry. [Para 8][1]

Complainant defense:
It was argued by the counsel for the complainant that the doctors are inclined to support another doctor because of fraternity brotherhood and their report should not therefore be relied upon.

Court observed that this contention is unacceptable because in the ultimate analysis it is only a doctor who can look in to matters of medical negligence as well as other relating matters and no non-doctor will be able to do that.

Bolam Test relied:
Court further observed that is what the principle which is the Bolam Test Theory postulated by the Supreme Court upholds. [Para 9][1]

Objection on the partial nature of the Enquiry:
It was pointed out by the counsel for the complainant/respondent that no public witness was examined by the Enquiry Committee which suffices to indicate the partial character of the Enquiry. [Para 10]

Court observed that the non-examination of a public witness by the Committee will not make any difference because the question whether the patient is dead or alive, is beyond the comprehension of a layman.

Court justified the stand as if, for example the patient is in a coma a layman will not be able to determine whether he is dead or alive. [Para 10][1]

District Forum observations based on assumption and presumptions:
Court observed that the finding of the District Forum about the fact of the deceased being alive at the time of being brought to the hospital is based on assumption and presumptions. [Para 10][1]

Court concluded on this point that “It must therefore be held that the deceased was not alive at the time of being brought to the hospital”. [Para 10][1]

Case of doctor’s role in emergency:
Court ruled that the case of Doctor stands on a different footing. The injured army man was bleeding profusely and fell down right in front of the clinic of Doctor, who came out, saw him and went back into his clinic to see his patient. The injured army man continued to bleed profusely.
How callous and cruel on part of Doctor Manocha?

Doctor saw that the injured person was bleeding profusely and did not try to render any help or first aid. Court further went on to add that this is being inhuman and something beyond. [Para 11]

Defense by the Doctor:

It was pointed out by the counsel for Doctor that the Orchid Hospital was nearby and that is why presumably he did not render first aid.

Court observed:

That Doctor Manocha is a doctor and he would have and should have realised that it will take some time to the patient to be taken to hospital and since he was bleeding profusely it may be too late by the time he reaches the hospital and as such immediate aid was necessary.

It is not possible to say that Doctor Manocha being a doctor would not have realised the gravity of the situation and would not have foreseen that the profuse bleeding may result in death, and that it may be too late by the time he reaches the hospital.

The callous indifference of the doctor needs to be denounced in no uncertain terms. [Para 12][1]

Evidence of uninterested witness realized:

The evidence about the fact of Doctor having slammed the door of his clinic after seeing the injured person is invincible because Sh.Naveen Kumar and his wife Mrs.Vandna who had taken their daughter to Dr.Manocha have both categorically stated this fact, as observed by the District Forum.

Their evidence cannot be disbelieved because they are deposing against a doctor to whom they had gone for the treatment of their daughter and there was no reason for them, whatsoever to depose against the doctor except to disclose the truth. [Para 13]

Can a private doctor obliged to treat every injured before him?

On the defense by the counsel for Doctor that in any case he is a private doctor and he was under no obligation to attend any injured person lying outside his clinic, court observed in following words:

- "It is not only a doctor of the Govt. Hospital who is bound to render help to a dying man. Every doctor is bound by the Hippocratic oath and must render help to a seriously injured person." [Para 14][1]

- Here Consumer court mentioned about Hippocratic Oath, for which some doctors may differ that it is not legally binding on them because it is only a moral obligation. It is important to remind those doctors that modified version of Hippocratic Oath is now part of the Indian Medical Council (Professional Conduct, Ethics and Etiquettes) Regulations-2002, now binding and have force of law.

Chapter I, Point No. is relevant as it cast same duty on the physician mention in this case. [4]

Consumer court referred to the case of S.C. decided way back in 1989 [11] where it has been observed as follows:

- “Every doctor whether at a Government Hospital or otherwise has the professional obligation to extend his service with due expertise for protecting life.
- No law or state action can intervene to avoid/delay the discharge of this paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount.” [Para 14][1]

Lack of Information:

It was further observed in the aforesaid case [11] as follows:

- We are of the view that every doctor wherever he be within the territory of India should forthwith be aware of this position and therefore we direct that this decision of ours shall be published in all journals reporting decision of this court and adequate publicity highlighting these aspects should be given by the National Media as also through Door Darshan and All India Radio.
- The Registry shall forward adequate number of copies of this judgment to every High Court so that without delay the respective High Courts can forward them to every Session Judge within their respective jurisdiction and the Sessions Judge in their turn shall give due publicity to the same within their jurisdiction.
- The Medical Council of India shall forward copies of this judgment to every Medical College affiliated to it. Copies of the judgment shall be forwarded to every State Government with a direction that wide publicity should be given about the relevant practice so that every practising doctor would soon become aware of the position." [Para 15][1]
Consumer Court emphasized about deemed awareness by doctors:

Doctor must therefore be deemed aware of this position. It was further observed in the aforesaid case as follows:

- “We would also like to mention that whenever on such occasion a man of the medical profession is approached and if he finds and whatever assistance he could give is not sufficient really to save the life of a person but some better assistance is necessary it is also the duty of the man in the medical profession to render all the help which he could and also see that the person reaches the proper expert as early as possible.” [Para 16][1]

Duty of doctors towards injured:

Court observed that if at all Doctor was of the view that the injured person should be shifted to a hospital for proper treatment he failed in his duty as a doctor because he did not render any assistance in transporting the injured army man to the hospital and closed the doors of his clinic and went in to examine his patient.[Para 17][1]

Civil or Criminal liability:

Court clarified that “We are not concerned here with the question whether criminal liability is cast upon Doctor Manocha but it is clear from what has been stated above that a civil liability for damages is inevitable if he fails to perform his duty as a doctor”. [Para 18][1]

Applicability of the Consumer Protection Act 1986:

On the argument by the counsel for Doctor Manocha that since he was a private doctor and there was no payment or promise to pay there was no relationship of consumer and service provider between the two, and as such the Consumer Protection Act 1986 will not be applicable. [Para 19][1]

Court observed that however, in view of the finding of the Hon’ble Supreme Court as noted above this objection is unsustainable because the Supreme Court has mentioned that the obligation of every doctor whether a Govt. or otherwise for protecting life is a paramount obligation and is total and absolute. [Para 19][1]

Applicability of International Law:

The Universal Declaration of Human Rights has recognised the inherent dignity and the equal and inalienable rights of all members of the human family. The rights of the patients have developed on the concept of fundamental dignity and equality of all human beings. [Para 20][1]

WMA’s principle rights of patients:

They are as follows, every patient has a:

i. Right to health care, irrespective of age, sex, caste, creed, religion and economic status.

ii. Right to be treated with respect, care, compassion, attention and dignity without any discrimination.

iii. Right to get treatment in case of emergency.

iv. Right to be properly instructed regarding follow up and subsequent treatment.

v. Right to be referred to a better medical centre for better management.

vi. Right to know the rules regulations and charges of the clinic or hospital before getting treated or admitted.

vii. An absolute right to privacy, medical consultation, examination, findings, case discussions, test reports, procedures and treatment must be kept confidential and
Every patient has a right to get treatment in case of emergency:

Court emphasized that Rule No.3 of the aforesaid declaration which mentions that every patient has a right to get treatment in case of emergency. [6, 7]

The case of the injured person in hand was a case of emergency. He had a right of treatment.

A doctor was there at hand, who could render first aid and save life, but he turned his face the other side and refused to render first aid.

Court further emphasized that “There was as such violation of this specific condition and in this manner also liability is cast on Doctor Manocha”. [Para 22][1]

On the issue of Compensation:

As regards the quantum of compensation awarded by District Forum against Doctor Manocha, Court observed “we are not inclined to accept the plea of his counsel that the compensation is excessive and oppressive”.

Court further added “No amount of compensation can be considered as adequate where life is lost, because fatalities are irreversible. Looking into the enormity of callousness, displayed by the doctor the compensation can in no way be deemed excessive”.

Court concluded on this issue and the appeal of Orchid Hospital was allowed and the award made against it by the District Forum is set aside while the award made by the District Forum against Doctor Manocha is maintained and his appeal stands dismissed.[1]

Role of MCI:

Court for the unethical conduct on the part of doctor leave it to MCI and observed that “Let a copy of this judgment be sent to the Medical Council of India for such action against Doctor Manocha if any, as may be considered appropriate”.

Summary and Conclusions:

Now time will tell how MCI responds to this discretion given by the Consumer Forum and obligation of enforcing its on Regulations-2002, to gain the trust of the general public on its credibility as regulator of the Medical Profession which is already at stake due to recent allegation of corruption and subsequent dissolution of the MCI.

Health care provision, in popular perception is no longer viewed as a charity. It is a service like any other service that a consumer may buy, especially in the private health care sector. How the doctor is then obligated to provide health care without thought of economic returns? Does such a claim to health care become at once economic and moral because it involves human life? How does one decide when health care is a commercial service available on payment and when a moral service to be rendered without any pecuniary returns?

This might depend on individual perception. In this case the perception of the doctor, the couple who took the injured Gulyani to a nearby hospital, Gulyani’s family and the consumer court differs in their perceptions about emergency health care provision. While the doctor’s response to the sight of injured Gulyani just outside his clinic turns health care provision as a commercial proposition, the consumer court has clearly taken a more moral than a commercial position, but the logic used to arrive at its moral stand is premised on health care being a commercial venture. [10]

If a doctor in private practice who is not in any way supported by the state / government provides emergency care to a patient to save his life, he needs to be gratefully thanked and compensated for this by the state through a suitable mechanism [such as the following: Either an insurance scheme for emergency treatment by doctors of persons who are not
their patients but are brought to them in an emergency, the insurance premium being paid to the insurance company by the government and the cost of treatment being reimbursed to the doctor by the insurance company; Or, a scheme such as the solatium fund scheme in respect of those injured or killed by untraceable motor vehicles.

The Clinical Establishments Act, 2010, strikes at the very root of the principles laid down above and seeks to impose a mandatory legal binding, at the threat of punishment, upon all establishments (single doctor’s private OPD clinics as well as hospitals) that they must treat a patient brought in an emergency, without there being any provision for necessary fees. [10] This might as well prove to be the straw that breaks the camels back. The pity is that the camel in this case is highly educated and intelligent and prides itself to be the cream of the cream and is highly organised in the form of an elephantine organisation called the IMA, which might as well be spelled out as Indian Morose Association. This great profession / organisation refuses to see what is written on the wall. [9]

I would like to express my views based on various court judgments including 1996 SC Judgement of Mazdoor Khet Sangh case [11]:

- All the doctors are morally bound to serve humanity especially when emergency demands saving the life of human being
- Earning money is always a secondary consideration
- Whenever there is conflict between morality and law or conflict between two rights, the right which is morally correct or which protects public good always prevails
- In larger public interest such cases come very rarely in the professional life of any doctor
- Medical profession’s nobility rest in its philanthropic nature
- Meaning of Democracy as well as Fundamental Duties under Article 51A demands such actions on the part of every citizen including doctors
- Government, due to economic constraints may demand such actions from the doctors as in case of war (services of any citizens can be availed) irrespective of fact that its' the duty of the State to Protect its’ subjects
- We all should think above individual, and group interests in larger interest of humanity
- This judgment is good in all probabilities, it reminds us about our duty to attend the person in emergency to save the life within resources which I think we as a doctor can do very easily.

References:
1. Appeal No. A-2008/752, (Arising from the order dated 16.06.2008 passed by District Forum (West) Janak Puri, New Delhi, in Complaint Case No.52/2006), Principal Officer, M/s. Orchid Hospital & Heart Centre, C-3/91, Janak Puri, New Delhi vs. Mrs. Savita Gulyani, B-2C/7-A, Janak Puri, Janta Flats, New Delhi and
5. The Consumer Protection Act 1986
6. The Universal Declaration of Human Rights, 1948
8. PUCL Vs Union of India 1997-1-SCC 301
9. Tulsi Patel. Right to emergency health care: How does one decide when health care is a commercial service available on payment and when a moral service to be rendered without any pecuniary returns? http://www.tribuneindia.com/2010/20100819/edit.htm#6, the writer is Professor of Sociology, Delhi School of Economics, University of Delhi.
10. The Clinical Establishments Act, 2010
11. Paschim Bengal Khet Mazdoor Samity & Others vs. State of West Bengal (SLP (C) NO.796 / 92, Dated 06-05-1996).