Vol 3 Issue 2 March 2013

Impact Factor : 0.2105

ISSN No : 2230-7850

Monthly Multidisciplinary Research Journal

Indian Streams Research Journal

Executive Editor

Ashok Yakkaldevi

Editor-in-chief

H.N.Jagtap

IMPACT FACTOR : 0.2105

Welcome to ISRJ

RNI MAHMUL/2011/38595 **ISSN No.2230-7850**

Indian Streams Research Journal is a multidisciplinary research journal, published monthly in English, Hindi & Marathi Language. All research papers submitted to the journal will be double - blind peer reviewed referred by members of the editorial Board readers will include investigator in universities, research institutes government and industry with research interest in the general subjects.

International Advisory Board

Flávio de São Pedro Filho
Federal University of Rondonia, Brazil

Kamani Perera
Regional Centre For Strategic Studies, Sri Lanka

Janaki Sinnasamy
Librarian, University of Malaya [Malaysia]

Romona Mihaila
Spiru Haret University, Romania

Delia Serbescu
Spiru Haret University, Bucharest, Romania

Anurag Misra
DBS College, Kanpur

Titus Pop

Mohammad Hailat
Dept. of Mathmatical Sciences, University of South Carolina Aiken, Aiken SC 29801

Abdullah Sabbagh
Engineering Studies, Sydney

Catalina Neculai
University of Coventry, UK

Ecaterina Patrascu
Spiru Haret University, Bucharest

Loredana Bosca
Spiru Haret University, Romania

Fabricio Moraes de Almeida
Federal University of Rondonia, Brazil

George - Calin SERITAN
Postdoctoral Researcher

Hasan Baktir
English Language and Literature Department, Kayseri

Ghayoor Abbas Chotana
Department of Chemistry, Lahore University of Management Sciences [PK]

Anna Maria Constantinovici
AL. I. Cuza University, Romania

Horia Patrascu
Spiru Haret University, Bucharest, Romania

Ilie Pintea,
Spiru Haret University, Romania

Xiaohua Yang
PhD, USA

Nawab Ali Khan
College of Business Administration

Editorial Board

Pratap Vyamktrao Naikwade
ASP College Devrukh,Ratnagiri,MS India

R. R. Patil
Head Geology Department Solapur University, Solapur

Rama Bhosale
Prin. and Jt. Director Higher Education, Panvel

Salve R. N.
Department of Sociology, Shivaji University, Kolhapur

Govind P. Shinde
Bharati Vidyapeeth School of Distance Education Center, Navi Mumbai

Chakane Sanjay Dnyaneshwar
Arts, Science & Commerce College, Indapur, Pune

Awadhesh Kumar Shirotriya
Secretary, Play India Play (Trust),Meerut

Iresh Swami
Ex - VC. Solapur University, Solapur

N.S. Dhaygude
Ex. Prin. Dayanand College, Solapur

Narendra Kadu
Jt. Director Higher Education, Pune

K. M. Bhandarkar
Praful Patel College of Education, Gondia

Sonal Singh
Vikram University, Ujjain

G. P. Patankar
S. D. M. Degree College, Honavar, Karnataka

Maj. S. Bakhtiar Choudhary
Director,Hyderabad AP India.

S.Parvathi Devi
Ph.D.-University of Allahabad

Sonal Singh

Rajendra Shendge
Director, B.C.U.D. Solapur University, Solapur

R. R. Yalikar
Director Managment Institute, Solapur

Umesh Rajderkar
Head Humanities & Social Science YCMOU, Nashik

S. R. Pandya
Head Education Dept. Mumbai University, Mumbai

Alka Darshan Shrivastava
Shaskiya Snatkottar Mahavidyalaya, Dhar

Rahul Shriram Sudke
Devi Ahilya Vishwavidyalaya, Indore

S.KANNAN
Ph.D , Annamalai University,TN

Satish Kumar Kalhotra

Address:-Ashok Yakkaldevi 258/34, Raviwar Peth, Solapur - 413 005 Maharashtra, India
Cell : 9595 359 435, Ph No: 02172372010 Email: ayisrj@yahoo.in Website: www.isrj.net

Indian Streams Research Journal
Volume 3, Issue. 2, March. 2013
ISSN:-2230-7850
Available online at www.isrj.net

ORIGINAL ARTICLE

DOCTORS' DUTY TO TREAT A PATIENT

VENUGOPAL B.S.

Associate Professor, School of Law, Christ University, Bangalore.

Abstract:

The professional relationship that exists between doctor and patient is a contract for service, which emerges from acceptance by a doctor of an offer for treatment made by a patient. A private doctor is not under an obligation to enter into a contractual relation to treat every patient who approaches him. Even an emergency is also not an exception to this. An attempt is made here how for such a duty can be imposed on private doctors.

As the legal position stands now only government doctors are duty bound to extend the medical attendance to patients in emergency as well as non-emergency situations, because of their contract with the government who appoints them. The legal position under English law is the same. As contemplated in the National Health Service Act, only the government doctors are duty bound to treat the patients who approach them for treatment. It is a statutory obligation.

INTRODUCTION

Government hospitals are known for all sorts of maladies. The tragedy is further accentuated by the exclusion of government hospitals and doctors from the purview of the Consumer Protection Act, 1986. There are instances where in the governmental hospitals many patients in accident cases breathed their last due to the callous attitude of the doctors in not extending the timely medical attendance in one or the other pretext like lack of space, beds, facilities etc. The pathetic state of affair of the government hospitals was brought before the Apex Court in Paramananda Katara & Another v. Union of India. In this case the deceased met with a scooter accident.

He could not get the timely treatment in any of the government hospitals. Eventually he died. Perhaps he would have survived if timely medical attendance was extended to him. The Apex Court directing the Government to pay damages made a significant observation in the following words,

"…….. every doctor …… has professional obligation to extend his services with due expertise for protecting life. No law of state action can intervene to avoid / delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of his obligation cannot be sustained and therefore must give way ……"

According to the court the right to life contemplated in Art.21 of the Constitution includes right to medical attendance especially during emergencies to protect the life of a patient. It is laudable that the court time and again has invoked Art.21 to provide a constitutional dimension for the problems but for which the doors of public law remedy would have been closed to the poor people. As a part of continuation of that pious tradition the court invoked Art.21 to interpret right to life contemplated therein to include right to medical attendance especially during emergencies to protect the life of a patient. In addition to that procedural shackles have been made to give way to the timely medical attendance necessary to save the life.

It is said that a case is an authority for what actually it decides. It cannot be extended to matters which do not fall under it by way of logical extension. The only inference what could be made from the decision is that the government doctors are duty bound to treat the patients who approach them. The

Title :DOCTORS' DUTY TO TREAT A PATIENT
Source:Indian Streams Research Journal [2230-7850] VENUGOPAL B.S. yr:2013 vol:3 iss:2

Supreme Court affirmed the legal position in this regard by allowing a patient to invoke the writ jurisdiction against the State for violation of his right to life in Paschim Banga Khet Mazdoor Samity v. State of West Bengal, In this case a member of the samithy met with a train accident, resulting in serious head and brain injuries. He could not get treatment in any of the government hospitals within the city of Calcutta. Eventually he was admitted in a private hospital, where he had incurred an approximate expenditure of Rs.17,000/-. Dissatisfied against the callous attitude of the state run hospitals the samity filed a writ petition. The court directed the state government to pay Rs.25,000/- to the patient as compensation for refusing to treat him. The court rejected the plea of non-availability of facilities and it observed,

"Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The Government hospitals run by the state and the medical officers employed therein are duty bound to extend medical attendance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21."

It is evident from the observation that the court has reminded the state of it's constitutional obligation of providing reasonable medical facilities to protect the life of its citizens. The compensation awarded by the court can be considered only as a token of courts displeasure over the dismal state of affair of the state run hospitals. It cannot be considered as a common remedy that can be availed by a patient for any deficient medical services.

It is evident from the above decisions that the private doctors are not duty bound to treat any patient even in any emergency case. The reason for this can be discerned from the decision of an American court in Hurley v. Eddingfield,. In this case the plaintiff was under the care of the defendant doctor. She terminated the professional relationship. Subsequently in an emergency situation, she sent a messenger with fee to get him to administer the treatment. But the doctor did not attend her. She brought an action against the doctor for failing to attend her. The court recording a verdict in favour of the doctor observed that the licence to practice medicine would not compel him to treat every patient who approached him against his free will as a contractual relation depended on mutuality of consent of the parties to a contract.

The refusal of private doctors to treat the patients in emergency situation is due to the apprehension of being entangled in medical negligence case. But in the United States the courts have taken a lenient view not to impose liability on doctors for whatever treatment they render on the spot of accident. Moreover it should be noted that the concept of reasonable care and skill is very much flexible enough to accommodate any grave situation. Law does not expect a degree of standard of care in an emergency situation, which is generally expected under normal circumstances.

Another reason for refusal to treat in emergency situations is the cost of treatment. As the patient normally in accident cases is unconscious, he is not in a position to make necessary arrangement for the same. On the other hand, there may be some good doctors who may do the needful to save the life of the patient. But the patient may become wise after the event that he may refuse to bear the treatment charges, eventhough he is capable of. If a patient is poor the question of he bearing the cost of treatment does not arise at all.

The observations made by the Supreme Court in Paramananda Katara is a mere re-iteration of the code of ethics for doctors which impose an ethical obligation on them to treat patients especially in emergency situation, the violation of which does not give rise to any legal obligation. Therefore the efficacy of the above observation as laying down a binding legal rule compelling a private doctor to treat a patient, is doubtful.

Law has recognized a duty to enter into a contractual relation in case of public avocation like legal profession and common carrier. A lawyer cannot refuse to accept a brief unless there are justifying circumstances. In Gokul Prasad v. Emperor, the High Court of Allahabad in this regard made the following observation.

"It is very important that men at the bar should understand that they are members of a public profession. That is by their very profession they engage and undertake to act for anybody who fulfils certain conditions. Therefore if a client comes to them with proper instructions and prepared to pay a fair and proper fee and invites them to undertake a case of a kind, which they are accustomed to do and if they refuse….. should be punished as such."

A lawyer can refuse to enter into a contract only under the following circumstances.

(i)When he is physically disabled from appearing for the client.
(ii)When he may not be available to present the case in court, where his training in a special branch limits his usefulness in other branches.
(iii)Where the client is not prepared and able to pay him his reasonable fees.

(iv)Where he confines his practice in some courts and in some places only.
(v)Where he is likely to be called as a witness in the same case.
(vi)When he has been consulted by the other party.

Common law imposes an obligation on public carriers and innkeepers to enter into a contractual relation with every person desiring to do so, unless there is a justification for the refusal. Accordingly a common carrier is under an obligation to carry the goods offered to him for reasonable reward provided he has room. Goods can be refused if they are not of the class he carries or they are dangerous or of exceptional size or expose the carrier to undue risk or of value disproportionate to their safety measures or they are tendered at an unreasonable time or inadequately packed.

In R. v. Higgins, refusal to serve food on the ground that the food was sufficient only for the existing guests, was held to be a sufficient justification.

In R. v. Rymer, a customer was not allowed to enter into the inn on the ground that he came with two unhygienic dogs. It was held that the inn-keeper was justified in doing so.

In Browne v. Brandt, a customer was refused accommodation in an inn as all the bed rooms were full which was held to be a sufficient justification. It follows that if the bed rooms are not full, accommodation cannot be refused.

In Constantine v. Imperial London Hotels, a customer was refused accommodation on the ground of his colour. It was held unjustified.

The above discussion reveals that many inroads have been made by law into the freedom of contract which is a legacy of laizzeze faire theory. Accordingly inter-alia the persons undertaking a public profession cannot refuse to enter into contract unless there is justification for that.

Doctors also undertake a public profession. It is possible to infer a duty to enter into contracts in case of doctors also, as in the case of common carriers and innkeepers. However medical profession needs to be distinguished from other public professions. Medical science is an inexact science, which has its impact on the medical profession which is shrouded with uncertainties. Success of a treatment depends upon factors which are beyond the control of a doctor. It depends upon the age, stamina, endurance of a patient and how the body receives medicine. The reaction to a particular medicine varies from patient to patient. Medical treatment is a joint endeavour of doctors and other para medical staff. It requires full co-operation of a patient. Other public professions are not beset with these uncertainties. Therefore law needs to be protective of the medical profession. Keeping in mind the constraints, very cautiously the circumstances under which such a duty to enter into contract with a patient on the part of a doctor needs to be circumscribed. Accordingly justifiably under the following circumstances, a doctor can be exempted from entering into a contract with a patient.

1)When the doctor himself is sick.
2)When the condition of a patient is such that it is beyond his competency to handle the case.
3)Emergency and accident cases, which warrant performance of surgery for which necessary facilities are required.
4)When a doctor has confined his practice to a particular branch of medicine. For example a doctor who has confined his practice to gynecology need not attend a patient suffering from some other ailments.
5)When the patient is not prepared to pay the fees.

It follows that a duty to enter into a contract with a patient needs to be confined to only to those ailments which a doctor can competently and comfortably handle, provided there are necessary facilities for the same.

CONCLUSION

The above discussion reveals that private doctors are not under a legal duty to enter into contract with every patient who approaches for treatment. Such duty cannot be inferred even in an emergency situation. By refusing to treat a patient, a doctor does not violate any legal duty to invite liability. The refusal to treat will amount to violation of Hippocrates oath and code of medical ethics which is not justiceable in the court of law. The observation of Supreme Court in Paramananda Katara, reminds the doctors in general their moral obligation. It has not laid down any binding principle of law compelling the private doctors to treat a patient. Imposing such a duty must be examined in the light of uncertainties with which medical profession is shrouded. Accordingly like other public profession a duty to enter into a contract can be imposed subject to justifications for refusal to treat as discussed above.

One reason for private doctors refusing to treat the patients during emergencies resulting from

accident is the fear of an action for medical negligence. In such a situation courts should exempt the doctors from liability for any eventuality that might take place at the place of accident in the course of treatment. Another reason for such refusal is who is going to bear the cost and fee of treatment. It is submitted that in such a situation the state shall constitute a contingency fund out of which the charges can be defrayed.

Public law remedy cannot be invoked against private doctors for any refusal to treat a patient. It can be invoked only against government hospitals and doctors, when they refuse to treat a patient. It is the constitutional obligation of state to provide health facilities to the citizens. State cannot plead financial constraints to escape from its constitutional obligation. The Apex court has made it obvious that what requires to be provided is reasonable health facilities and it cannot be unlimited as it depends upon the financial resources of the state.

Government hospitals and doctors are excluded from the ambit of the Consumer Protection Act. For any deficiency in service in government hospitals, an aggrieved patient has to invoke the jurisdiction of the civil courts. Public law remedy has its limitation. It can be invoked only when the right to life is violated.

[1]See I. Kennedy & A Grubb, "Medical Law", London, 2nd edition, p.129 (1994), Pfizer Corporation v. Ministry of Health [1965]1 All E.R. 450 (H.L.)
[2]A.I.R. 1989 S.C. 2039
[3]Id at p.2043
[4]A.I.R. 1996 S.C. 2426
[5]Id at p.2429
[6]59 N.E. 1058, Ind. 1901
[7]See Angela Roddy Holder, "Medical Malpractice Law", New York, 2nd edition, p.7
[8]A.I.R. 1930 All 262
[9]Id at p.263
[10]Muralidharan Nair v. Antony, 1985 K.L.T.1
[11]See Halsbury's Statutes of England and Wales, London Vol.5, 4th edition, p.771 (1993); See also Raoul Colinvaux (ed.), "Carver's Carriage by Sea", London, Vol.1, 13th edition, p.4 (1982)
[12]See John Morris (ed.), "Chitty on Contracts", London, Vol.2, 13th edition, p.436 (1961)
[13]Ibid
[14][1948] 1 K.B. 165
[15][1877] 2 Q.B. 136
[16][1902] 1 K.B. 696
[17][1944] 2 All E.R. 171 (K.B.)
[18]See Paschim Banga Khet Samithy v. State of WestBengal, see supra note n.4
[19]State of Punjab v. Ramdubaya Bagga, A.I.R. 1998 S.C. 1703.

Publish Research Article
International Level Multidisciplinary Research Journal
For All Subjects

Dear Sir/Mam,

We invite unpublished research paper.Summary of Research Project,Theses,Books and Books Review of publication,you will be pleased to know that our journals are

Associated and Indexed,India

- International Scientific Journal Consortium Scientific
- OPEN J-GATE

Associated and Indexed,USA

- Google Scholar
- EBSCO
- DOAJ
- Index Copernicus
- Publication Index
- Academic Journal Database
- Contemporary Research Index
- Academic Paper Databse
- Digital Journals Database
- Current Index to Scholarly Journals
- Elite Scientific Journal Archive
- Directory Of Academic Resources
- Scholar Journal Index
- Recent Science Index
- Scientific Resources Database

Indian Streams Research Journal
258/34 Raviwar Peth Solapur-413005,Maharashtra
Contact-9595359435
E-Mail-ayisrj@yahoo.in/ayisrj2011@gmail.com
Website : www.isrj.net