

ALTERNATE DISPUTE REDRESSAL MECHANISMS IN HEALTHCARE

S.V. Jogga Rao *

Honest and transparent communication between Doctor and Patient in a given situation, many a time prevents onslaught of potential and impending litigation. Needless to add, a Doctor-Patient relationship premised on trust-deficit and lack of faith, in the event of any kind of adverse consequence, inevitably leads to Court litigation i.e., aggrieved patient dragging either Doctor or Hospital or both to the Court.

Paradoxically, in our context, we experience both, with only one striking difference, namely, dwindling culture of the former and entrenching influence of the later.

Consequently, Professional Indemnity Insurance has become the order of the day for almost all the Medical Practitioners, who construe it as a perfect safeguard. As a result, the unwritten norm acquires crucial significance, namely, stance of self-protection and corollary to non-disclosure. Meaning thereby, the communication between Doctor and Patient becomes almost extinct.

* Advocate & Healthcare Consultant, Legalexcel. Formerly, Professor of Law, NLSIU, Bangalore and Dean and Professor of Law, RGSOIPL, IIT Kharagpur.

More than two decades of experience in this regard, has only revealed that more or less 10-12% of cases resulted in Court/Forum's awards against Doctors and Hospitals. This success in a way further strengthened the resolve that stance of self-protection indeed protecting the interests of Doctors and Hospitals. So is non-disclosure. This naturally led to further erosion of trust and faith in a Doctor-Patient relationship and cemented popular perception against medical practitioner and corporate healthcare or establishments. Hence, for an aggrieved Patient, Court litigation (Civil, Criminal or Consumer or Statutory Authority) is the only option. One may or may not succeed in getting redressed but surely will harass, shame and shun Medical Practitioners and Hospitals before media and public at large.

In the process, the popular public mood has become insensitive to the fundamental nuances and underlying complexities of medical practice in general and health care delivery in particular. Similarly, Hospitals and Doctors caught in the web of revenue maximization which drives the spate of illegal and unethical elements in professional conduct which is responsible for health care delivery. It has become such a vicious whirlpool, everyone gets sucked into the same.

Adverse consequence per se is construed on par with negligence and claim as to grievance redressal ensues. Likewise, Patient provides an opportunity for the establishment and the Doctor in a highly competitive environment.

In the backdrop of this kind of matrix, thinking about ADR is not only challenging but also quite perplexing in nature. Considering our own context and more particularly etiological factors of unabated systemic failures, Justice delivery has received a severe blow and resultant erosion of public faith. Undoubtedly, ADR is no longer a matter of choice but a matter of inevitable necessity.

In the broader contours of conflict resolution, ADR has much to offer and respond. However, the obtaining reality is not very encouraging. Much water needs to be flown. That doesn't mean that effective initiative in this regard can't be introduced in the realm of healthcare. Be that as it may, much deeper concern in this regard is, whether ADR can be invoked in cases of medical errors or medical negligence or professional misconduct or unethical conduct or culpable criminality? The ultimate challenge is whether ADR can serve as a positive and influencing force to improve medical care or not?

Undeniably, ADR in healthcare deserves a meaningful attempt and purposeful push primarily, so as to revive honest and transparent disclosure and communication in a Doctor-Patient relationship. Similarly, genuine patient grievance redressal must be addressed outside the domain of Court rooms and in the presence of neutral mediators.

By attempting to do so, apart from many other tangible benefits for everyone, ADR protects and promotes interests and relationships, which is the essence of our lives which we lead and cherish!

* Dr. S.V. Jogga Rao , Dean of G. Kuppuswamy Naidu Memorial Hospital , Coimbatore.