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Concept of Caveat Venditor and its Application in Healthcare and Education Sector

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Abstract

This conceptual paper seeks to present the concept for the application of the principle of *'Caveat Venditor'* or 'Seller Beware' in Higher Education and Healthcare sectors in India. Simply, this principle imposes a greater responsibility on the sellers themselves for the goods and services that they sell. This note presents the need for implementing the *'Caveat Venditor'* principle to the two important service sectors in India, i.e., higher education and healthcare. In terms of cost, there has been a steady and steep rise in cost of both higher education and healthcare in India over the last decade. It is important to note that despite the steep rise in the cost of both higher education and healthcare, there has been no corresponding improvement in the quality of these services. While the ROI (Return on Investment) for students in India continues to be extremely low, quality of healthcare in India is still not up to the mark and lack of accountability from these service providers ensures that this trend continues. In view of the importance and spectacular growth potential of these two service sectors in India, coupled with the non-commensurate improvement in quality/outcomes/accountability of these services, the time is right to examine if the application of the principle of 'Caveat Venditor' is the only solution.

Keywords: Caveat Emptor, Caveat Venditor, Consumer, Consumer Protection Act, 2019, Goods, Services, Healthcare, Education,

1. Introduction

As per the Charles T. LeVin (LeViness, 1943), the legal relationship between buyer and seller, caveat emptor (buyers beware) was a pretty sick horse. What should have been the case, that it is the manufacturer and the merchant who must beware, i.e., caveat venditor (sellers beware), on penalty of fine or imprisonment for not selling the right quality product or for unfair pricing. As compared to caveat venditor, the Latin ancient maxim (caveat emptor) was not very ancient, dated back to the time of Coke, marked a new individuality of thought and custom. As a matter of fact, caveat emptor was more popular in America but it was never a legal principle of Middle Ages, not the same was found in the Roman Law, in spite of its Latin maxim.

In fact, the Middle ages considered buyer with the same connotation as "the customer is always right". Even in Feudal times the same regimentation was followed and the main focus of any trade control was to ensure an open market, a fair price, an honest measure etc., though it was very difficult to achieve many a times.

References date back to reign of King John about 1256 wherein the brewers were more often hauled into court for the charges of dispensing of bad beer or use of scant measures, there were also complaints wherein men of Sprouston buy measly pigs and sells sausages and puddings unfit for human bodies or the cooks and pastry-makers of the town warm up pastries and meats on the second and third day etc. There was penalty imposed on the sellers but in spite of that there were cases reported occasionally too.

In India, the new Consumer Protection Act 2019 has been passed and which is effective from 20th July 2020, now advocates caveat venditor to a greater extent, of course not so in strong words but experts believe that it is the good beginning. The new Act bridges the gaps such as needs of modern consumerism and emerging consumer disputes, a holistic approach to enforce the rights of consumers. The earlier Act (1986) is alleged to have become a tool for misuse by seller and acceptable defence for the courts as well showing the concept of caveat emptor. The entire responsibility was placed on consumers to carry out diligence on their own.

2. Significance Of The Study

Simply put, there is a need to introduce the role of caveat venditor more effectively, in order to streamline the buying and selling activities holistically, specifically looking into the needs of few service industries such as education or health care services. There are number of cases frequently witnessed in the health care services wherein the cost of services has skyrocketed while there is no

transparency with regard to quality. It is understood that services are intangibles, further ensuring the quality in it is a very tedious job, however when the cost has become so high, surely there comes the genuine need to put across in tangible form the various terms and conditions which can be measured and understood by consumers.

Cases wherein few doctors and medical staff were beaten by relatives of deceased person for the alleged wrong treatment while a hefty sum paid by latter or students filing the case against university or educational institutions for not providing the services committed by the former as shown in Appendix-1. One extract from Indian Journal of Medical Ethics as shown in Appendix-2 under the title "First the money, then the discharge" and "First the money, then the body" are really eye opener. One clear indication is that the cost of treatment or education has become very high beyond the reach of poor or middle-class people.

Now when the problems have gone deeper affecting the larger section of the crowd, surely the matter requires to be examined. Government has also interfered time to time as it has been witnessed in the case of controlling the prices of stents, but the real problems are on a different footing. If we look at any product say, tooth paste we find a number of details such as MRP, Quantity, date of Expiry and Manufacturing, Compositions etc., while in getting the services we find hardly any relevant details. A simple enquiry made in the web site of a prominent hospital about their cancer treatment (Proton Therapy) did not fetch any relevant details. When contacted the customer care, it was found that it is a huge amount the patient has to incur while the details about price (forget details about quality of treatment) even was not available. It was given that they need the patient first to consult the doctor and based on the discussion and diagnose, the detailed treatment with cost are given.

While it is said that the new Consumer Protection Act 2019 is advocating the role of caveat venditor, how the same is going to address the above issues. Whether the new regulation is sufficient in its approach to address the real concerns of buyers of goods and services or it has to be further amended in the relevant provisions, the technicalities involved in addressing the compliance of quality commitment in providing services in general and specifically relating to health care and education etc., require meaningful critical analysis.

In marketing field, 4Ps are discussed for goods while 7Ps are applicable for services. So, the new Act whether it is going to impact the policies of company (seller) with regard to fixing 7Ps while providing services, are very interesting things to watch in future.

3. Review of Related Studies

As per Charles T. LeVin (LeViness, 1943), the concept of caveat emptor was more popular in America but it was never a legal principle of Middle Ages, not the same was found in the Roman Law, in spite of its Latin maxim. In Sehgal School of Competition vs Dalbir Singh (2005), the student after having paid the fees for medical entrance examination found the coaching was not up to mark and wanted refund of fees, the Commission noted that educational institutes or coaching centre that charged a lump sum fees for the whole duration, should refund the fees if service was deficient in the quality of coaching etc. Any clause saying that fees once paid shall not be refunded is unconscionable and unfair and therefore not enforceable. This view was maintained by District and State Forums as well as in appeal by the National Commission. In the case of Om Prakash vs. Reliance General Insurance (2010), the honorable Supreme Court had made a very essential observation that the Consumer Protection Act, being beneficial legislation, hence the same should be interpreted liberally and in the interest of public at large. Here it would be relevant to mention that rejection of claims by Insurance companies merely on technical grounds (delay in submission of claim) has time and again been condemned by the Judiciary and Insurance Regulator, Insurance Regulatory and Development Authority (IRDA) which had issued a Circular in 2011 and emphasized that insurance claims in which intimation or submission of documents had been delayed due to unavoidable circumstances should not be rejected. Howard Johnson (2013) said in his article “Caveat Venditor (Let the Seller Beware)”, published in the International Journal of Law and Management that in reality, even in the mid-19th century when the laissez-faire philosophy was dominant, the consumer was not left without the protection of the law. Freedom of contract notionally existed and much judicial rhetoric was expended on justifying it but in reality, the courts were quite astute in protecting consumers in situations where they were the victims of fraud, trading malpractice or unequal contracts. In the case of Ruchika Malhotra vs. Myntra Designs Ltd (2018), it was held that the third-party seller, Sreyash Retail Pvt. Ltd. was responsible for the discrepancy of service. The plaintiff when booked orders for two pair of jeans of United Color of Benetton through the site Myntra Designs Ltd but found to have received two pairs of jeans from United Color of Benetton and Tommy Hilfiger respectively. When the plaintiff asked for replacement that same was not allowed.

4. Objectives Of The Study

The following objectives are to be achieved:

- To justify the advocacy of caveat venditor in general.

- To identify the difficulties connected in applying the concept of caveat venditor in health care or education sector
- To provide solution to such aforesaid difficulties

5. Hypotheses Of The Study

Since this is a conceptual paper, hypotheses may be formed and tested by researchers who are further interested in the scope of this topic.

6. Population And Sample

Not Applicable because of this being a conceptual paper

6.1 Statistical Techniques Used in the Present Study

While exploratory research shall be used at the outset, there would be also descriptive format of research comprising (random) sampling to supplement the findings of the former. Explanatory justification would follow next. Wherever possible and depending on situation, few dipstick surveys would be done to collect the input from officials or few beneficiaries or consumers, even from experts or references may be drawn from court cases.

Secondary data shall be used as available in the websites of few health care companies and universities or educational institutions in Indian and abroad. Surely a comparative analysis of the services in India versus same services in few developed countries would be taken up and accordingly few solutions resulting from such comparison would be further fine-tuned with respect to Indian perspective. Care shall be taken to see that the solutions are feasible and can be implemented. The theoretical tools as said above shall be used but to be further calibrated from the angle of practical use in the Industries.

6.2. Data Analysis and Interpretation

Finding out the real parameters to judge the quality of service is a big challenge, no doubt. Probably this being the most serious justification as to why the sellers take a ride on the buyers. The court has been pointing out the loopholes time to time in few of the many court cases as cited above, but the regulation needs to evolve further to formulate the clear-cut policies in this regard.

While there are difficulties in identifying the quality parameters applicable to services on the one side, but a quick comparison of specific services in the health care sector in India and the developed countries such as one world class Mayo Hospital (Refer Appendix -3) speak a different story. The pricing of Sars Covid19 test of the current situation is very much available in the website of Mayo

Hospital, whereas the pricing of a very costly treatment of Cancer is not available in the website of the most prominent hospitals in our country. Whether it will be called a laxity in the part of hospital authorities of our country or it is the riding on the loopholes of regulation, are surely something that requires serious consideration by policy makers.

7. Recommendations

The quality of educational services, the matters need serious attention It is understood that the National Educational Policy (NEP 2020) has got vision of providing high-quality education but there is a genuine requirement of system overhaul so as to ensure quality from elementary level to higher education including vocational training. In this case also a quick comparison of details of commitment of the institutions in India and abroad in providing the quality in services to students, faculty and other stakeholders, are surely a serious point of concern for policy makers. It is really nice to point out the right spirit and effort of the current Government, which are no doubt commendable but the deep-rooted corruption and unprofessional style of functioning of educational bodies, which are very hard to go. The gap between Academy and Industry, has been expanding to a great extent in spite of good policies of the Government.

8. Conclusion

Today, in spite of the best intention and efforts of the regulations and Govt., there are frequent cases of exploitation of customers. Can't our current administrators and business men take a note in the best spirit from our earlier predecessors of half a dozen centuries back? The problems are serious but surely can be resolved. It is believed that when the cost of everything has increased including health care and education services specifically, there would be surely competition and the quality parameters would come naturally, it is simple economics. Either Government would intervene to regulate or might be the cost would decline or quality of service would improve, otherwise there would be a social unrest.

Service providers would give an explanatory detail of quality of services and would stick to them or more cases of dispute would be there in court to handle. This would further lead to changes in the regulation by Government. Marketing gurus would elaborate technically while justifying the additional 3Ps applicable to services. Specifications with regard to providing services would be similar or more than what we notice in the case of merchandise.

References

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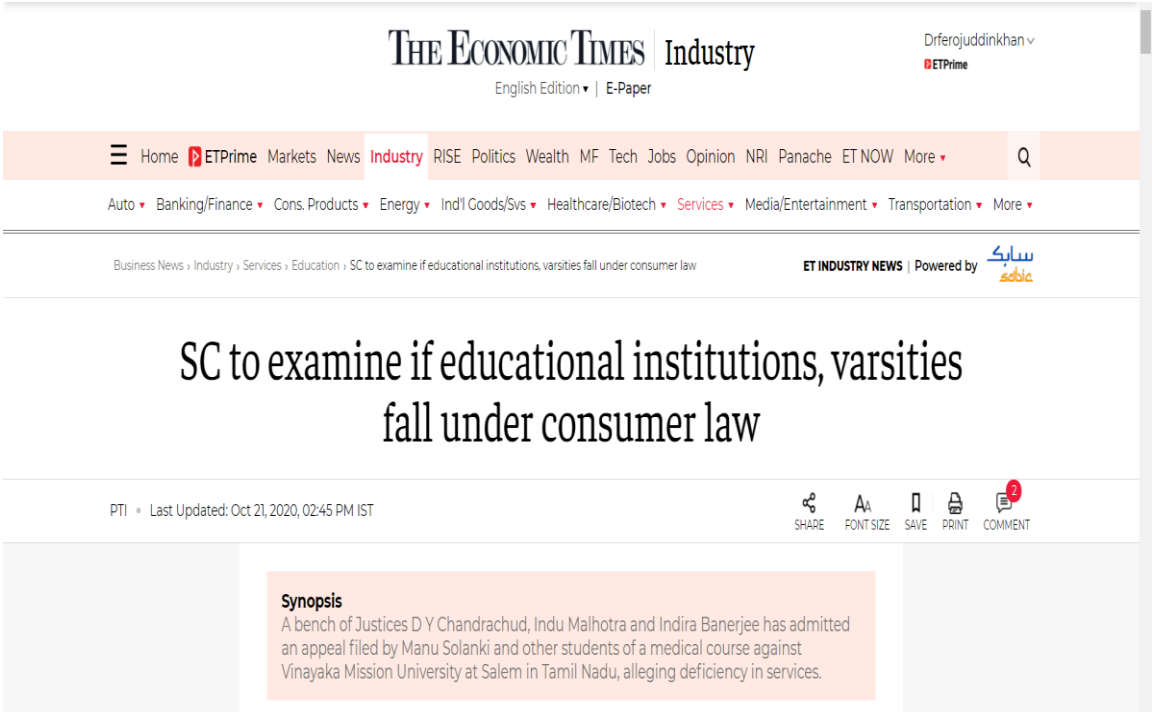
Appendix-1



Appendix-2

Indian Journal of Medical Ethics Vol III No 2 April-June 2006

FROM THE PRESS

First the money, then the discharge

In Bihar, a dalit woman was reportedly held captive for nearly two months by the owner of a private nursing home for non-payment of medical bills. She was freed after her mother filed a complaint with the district magistrate.

Times News Network. Hospital held dalit captive for two months. *The Times of India*, January 20, 2006.

First the money, then the body

Authorities at the BSES hospital in Andheri, Mumbai, refused to hand over the body of 59-year-old Ghaffur Shaikh, who died in the hospital, until relatives paid the bill. When the patient was brought into the BMC-owned, semi-privatised hospital the family was told that there was no space in the general intensive care unit (costing Rs 200 a day) and they would have to admit him to the private ICU at Rs 3,000 a day. Hospital sources said this was a common practice in the hospital. The BMC-owned hospital is now partly funded by Reliance Energy and two-third of the beds are charged at the private rate.

Times News Network. Hospital refuses to hand over body, incurs mob wrath. *The Times of India,* March 27, 2006

Yet another municipal hospital goes private

A plot meant for a civic cancer hospital at Marol, Mumbai, is being handed over to a private party for a 1,000-bed multi-speciality hospital. The hospital was meant to meet the increasing burden of cancer cases in the city. The municipality defended the decision saying that 200 beds in the new hospital are to be reserved for municipal patients. Calling it a betrayal of the people, Congress corporator Amin Patel described the 200-bed reservation as a "mere announcement".

Naresh Kamath. Pvt hospital replaces civic cancer project. *The Hindustan Times*, March 27, 2006.

Farmers driven to sell their kidneys

The National Human Rights Commission has asked the Maharashtra government to look into reports that poor farmers in the state have been driven to sell their kidneys to raise funds and pay off their mounting debts.

Ramu Bhagwat. NHRC probe into farmers' kidney sale. *The Times of India,* January 30, 2006.

Amputation "as per medical guidelines"

It was not enough that the police fired on tribals protesting the setting up of a steel plant in Orissa. The bodies that were given for post-mortem were reportedly sent back defaced – the palms were amputated, apparently for identification purposes. The chief district medical officer of Jajpur Brundaban Biswal told reporters that this was done according to medical guidelines as the police could not confirm their identities. Their palms were amputated after the bodies were photographed and thumb impressions taken. Following the news report of this amputation, the chief minister suspended three doctors and also ordered a probe into the incident. The Orissa Medical Service Association protested the action. "The government should not take action against the doctors on the basis of baseless allegations. The bodies were intact when they were handed over to the police," said OMSA president Madhusudan Mishra.

Himanshu S Sahoo. *Hindustan Times,* January 6, 2006. Sandeep Mishra. Orissa docs threaten to stop autopsy. *The Times of India*, January 16, 2006

Teaching or target chasing?

The magistrate of Allahabad told over 6,400 teachers in nearly 2,000 government primary schools of Allahabad district to bring in at least two new cases of sterilisation before March 31 or face punishment. He has also told Class III employees of the medical and health departments to bring in at least 10 cases each or face suspension.

Amit Sharma. Now, it's sterilisation for them. *Indian Express,* February 20, 2006.

Guardian's decision to donate ward's kidney?

Radheshyam Soni, a resident of Sarguja district in Chattisgarh, has moved the high court to be allowed to transplant a kidney from his mentally unstable younger son to his elder son who is the family breadwinner, and who has been on dialysis for five years. Other family members are either unsuitable or unwilling to be donors. Doctors have refused to conduct the operation saying that the donation could be made only with the donor's full consent and understanding of the consequences of the operation. Soni's advocate, Jameel Akhtar Lohani, has argued that Section 51 and 52 of the Mental Health Act of 1987 allows a guardian to take decisions on behalf of a mentally unsound person. This could be extended to allow the father to take the decision to donate, on behalf of his son.

Milind Ghatwai. Father moves court, says allow mentally unsound son to donate kidney. *The Indian Express*, March 11, 2006.

Patients complaining? Get out the guns

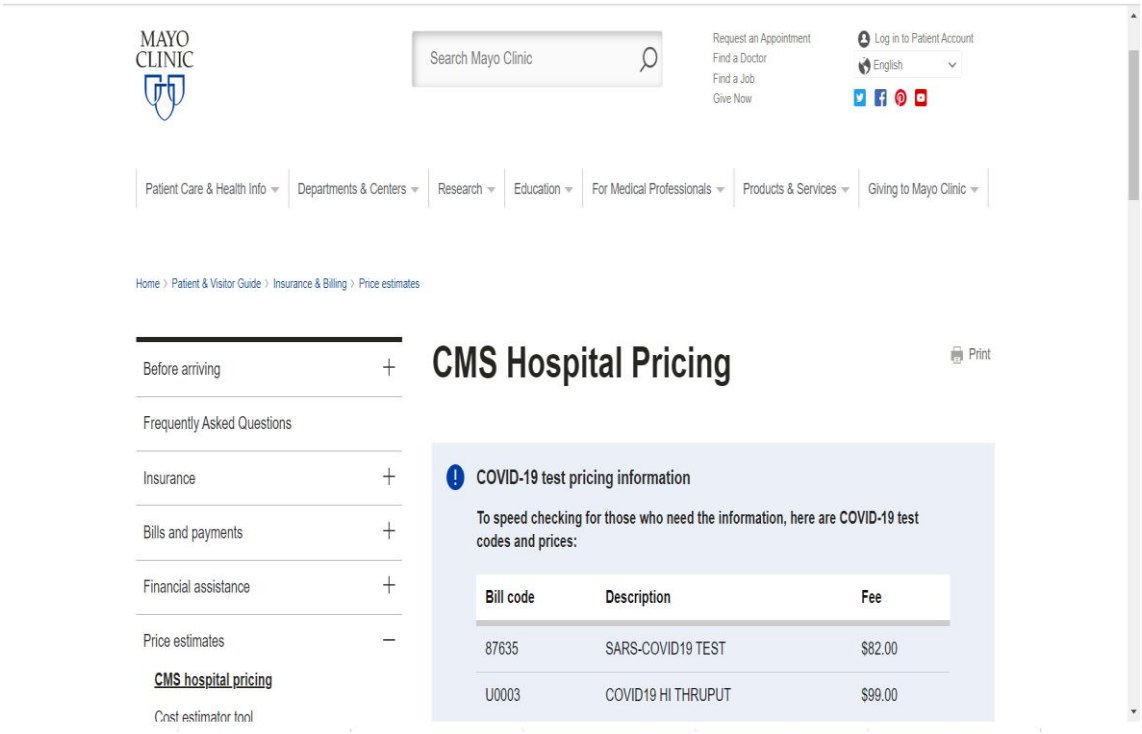
The Mumbai Municipal Corporation responded quickly to the strike by over 2,500 resident doctors protesting the rising instances of patients' relatives assaulting doctors. They proposed to install close circuit television cameras to deter such acts of violence and even made a provision for this in the annual budget. Till the CCTVs are installed, "As an immediate measure security personnel posted at civic hospitals will be given walkie-talkies," said Vijaysinh Patankar, additional municipal commissioner.

The BMC also turned to an Israeli security firm to improve hospital security. The team did an inspection of KEM hospital and later made a presentation to the BMC on how to upgrade security.

There was no mention of improving the health care infrastructure at the hospital.

Malathy Iyer. BMC seeks private help to beef up hospital security. *The Times of India*, March 12, 2006.

Appendix-3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