6. High Court of Bombay. *High Court on its own motion v State of Maharashtra.* Suo Motu Public Interest Litigation No. 1 Of 2021 [cited 2022 Dec 21]. Available from: https://indiankanoon.org/doc/79004584/
7. Supreme Court of India. *Suchita Srivastava & Anr, v. Chandigarh Administration*. Civil App. No. 58845 of 2009. 2009 Aug 28 [cited 2022 May 30] Available from: https://indiankanoon.org/doc/1500783/
8. Centre for Enquiry into Health and Allied Themes (CEHAT). *Role of Medicolegal Evidence in Rape Trials: A Review of Judgements at the Sessions Court in Mumbai, India.* ISBN: 978-81-89042-87-5. 2020. [cited 2022 June 1]. Available from: https://www.cehat.org/uploads/files/Rape%20Judgement%20Review%2031-12-2020.pdf
9. Supreme Court of India. *Alakh Alok Srivastava v Union of India & Ors.* WP (C) No. 565 of 2017. 2017 Jul 28 [cited 2020 Apr 13] Available from: https://indiankanoon.org/doc/173765963/
10. Eusebius S. Parens Patriae and Role of State under Juvenile Justice Law in India. In: *Juvenile Justice Law in India: A Critical Study.* Bhopal: National Judicial Academy, India; 2021 Jan[Cited 2022 May 31]: pp 74-96. Available from: https://www.researchgate.net/publication/348404835_Parens_Patriae_and_Role_of_State_under_Juvenile_Justice_Law_in_India
11. High Court of Bombay. *XYZ (Minor) through her Father… v. State of Maharashtra & Anr.* Writ Petition (Civil) LD-VC-82 of 2020. 2020 Jun 30[cited 2022 May 31] Available from: https://bombayhighcourt.nic.in/writereaddata/weborders/PDF/O30062020357.pdf

COMMENTARY

The Consumer Protection Act, 2019: A critical analysis from a medical practitioner's perspective

BHAVIKA VAJAWAT, DAMODHARAN DINAKARAN, OMPRAKASH V NANDIMATH, ARPITHA HC, CHANNAVEERACHARI NAVEEN KUMAR, CHETHAN BASAVARAJAPPA, SURESH BADA MATH

Abstract

The landmark judgment in the case of Indian Medical Association v VP Shantha in 1995 brought the medical profession under the ambit of the Consumer Protection Act, 1986. The Consumer Protection Act, 1986, was later repealed and replaced by the Consumer Protection Act, 2019. This article delves into the implications of the 2019 Act, highlighting significant changes in its scope, including the expansion of the definition of "consumer" and the incorporation of telemarketing and e-commerce within its ambit. Moreover, the amendments affect pecuniary jurisdiction, grounds for litigation, and introduce mediation cells, and the Central Consumer Protection Authority (CCPA). This article underscores concerns related to an increase in frivolous cases against medical practitioners and in defensive practice, ultimately impacting the overall quality of patient care. Recommendations for timely redressal and safeguards against unwarranted litigation are proposed to mitigate the adverse implications of the amended Act and ensure the well-being of both healthcare providers and patients.

Keywords: *Consumer Protection Act, medical profession, doctors, medical practitioner, compensation, service provider*

Authors: **Bhavika Vajawat** (v.bhavika@ymail.com), Senior Resident, Department of Psychiatry, National Institute of Mental Health & Neurosciences, Bengaluru, Karnataka, INDIA; **Damodharan Dinakaran** (corresponding author — dina.nimhans@gmail.com), Assistant Professor of Psychiatry, Telemedicine Centre, Department of Psychiatry, National Institute of Mental Health and Neurosciences, Bengaluru, Karnataka, INDIA; **Omprakash V Nandimath** (ovnandimath@nls.ac.in), Professor of Law, National Law School of India University, Bengaluru, Karnataka, INDIA; **Arpitha HC** (arpithahc@rvu.edu.in), Assistant Professor, School of Law, RV University, Bengaluru, Karnataka, INDIA; **Channaveerachari Naveen Kumar** (cnkumar1974@gmail.com), Professor and Head of Community Psychiatry Unit, Department of Psychiatry, National Institute of Mental Health and Neurosciences, Bengaluru, Karnataka, INDIA; **Chethan Basavarajappa** (drchethanraj@gmail.com), Assistant Professor, Department of Psychiatry, National Institute of Mental Health & Neurosciences, Bengaluru, Karnataka, INDIA; **Suresh Bada Math** (nimhans@gmail.com), Professor and Head of Forensic Psychiatry Unit and Head of Telemedicine Centre, Department of Psychiatry, National Institute of Mental Health and Neurosciences, Bengaluru, Karnataka, INDIA.

To cite: Vajawat B, Dinakaran D, Nandimath OV, Arpitha HC, Kumar CN, Basavarajappa C, Bada Math S. The Consumer Protection Act, 2019: A critical analysis from a medical practitioner's perspective. *Indian J Med Ethics.* 2024 Jan-Mar; 9(1) NS: 65-69. DOI: 10.20529/IJME.2023.073

Published online first on November 27, 2023.

Peer Reviewers: Monica Sakhrani and one anonymous reviewer.

Introduction

The doctor-patient relationship, which forms the cornerstone of healthcare, has swung from the idealisation of doctors to their devaluation. Violence against doctors has made newspaper headlines several times in the last two decades [1]. This has led to insecurity on the part of doctors who have worked hard to earn their licence to practise. The Consumer Protection Act (CPA) was first passed in India in1986 [2]. For several years it was not clear whether the medical profession came under the ambit of the Act [3]. The matter was settled when the Honourable Supreme Court held, in the case of *Indian Medical Association v VP Shantha,* that medical services would be treated as services under the CPA 1986 [4]. This landmark decision declared the doctor-patient relationship to be "contractual" in nature [4,5].

With rapidly evolving technology and the need for a more comprehensive Act, CPA 2019 received the assent of the President on August 9, 2019, and was made effective from July 20, 2020 [6]. The amendments in the CPA 2019 include changes in pecuniary jurisdiction, the introduction of alternative dispute resolution mechanisms, new provisions

for litigation, the introduction of regulators such as the Central Consumer Protection Authority (CCPA), and the inclusion of telemarketing within the ambit of the law [6]. This article discusses the scope and implications of these changes from a medical practitioner's perspective.

The medical profession as service provider under CPA 2019

The term "health services" was included in the definition of services in the draft bill of the CPA 2019 but was dropped from the final version of the law [7]. For this reason there were doubts about the applicability of CPA 2019 to medical services. It has since been clarified that the definition of services under Section 2(42) of CPA 2019 is inclusive, and categorically excludes only two types of services — those which are free of charge, and those which are "personal". However, even here, "free" services provided by a hospital or doctor would fall under the ambit of the CPA if other patients pay for the same service [6, 8]. Regarding personal services, the "contract *for* personal services" has been differentiated from the "contract *of* personal services". The former deals with a contract where the provision of a service depends on one's skill, knowledge, and discretion (such as the doctor-patient relationship), and comes under the CPA 2019. The latter deals with the provision of services that involve obeying orders to perform an assigned job (such as the chauffeur-employer relationship) and does not come under the ambit of the CPA 2019 [5]. Therefore, services of any description, with the above exceptions, come under CPA 2019 and include the medical profession and healthcare services.

Significant amendments in CPA 2019

Table 1 provides a summary of the important changes in the CPA 2019 [6]. These include: broader objectives and definitions; more description of the Act; introduction of regulatory bodies such as the CCPA, and inclusion of e-commerce, telemarketing, unfair contract, product liability, changes in pecuniary jurisdiction, provision for mediation, regulations on advertisements, video-conferencing for hearings, stringent punishment and penalties for offences listed under Section 89, 90 and 91 of the Act.

CPA 2019 provides an expanded definition of "consumer" to include any person who "buys any goods" and "hires or avails [sic] any services" which includes offline or online transactions through electronic means, or by teleshopping, or direct selling, or multi-level marketing. The introduction of e-commerce may have provided the impetus for the CPA 2019. Telemedicine services also come under the ambit of CPA 2019. Moreover, all doctors are mandated to provide a receipt or bill for payment received for their services (consultation). This is required for both in-person and tele-medicine consultations, and if a bill or receipt is not provided, it shall be deemed to be an unfair trade practice.

Scope and implications of CPA 2019 in the health sector

Pecuniary jurisdiction

The word "pecuniary" means "relating to or consisting of money" [9], and "jurisdiction" means "the official power to make legal decisions and judgments" [10]. All courts in the judicial hierarchy have pecuniary limits. There are several changes made in the pecuniary jurisdiction in CPA 2019. First, litigation up to Rs one crore, between Rs one and 10 crore, and more than Rs 10 crore would be filed in the District, State, and National Commissions, respectively. Second, the pecuniary jurisdiction would depend on the consideration paid and not the compensation claimed [6]. "Consideration" refers to the amount of money paid by the patient to obtain the services provided by the doctor [6: chap IV]. This means the determination of consideration is based on the amount of money paid by the consumer and not the actual value of the service. This is an important change, as the pecuniary jurisdiction under CPA 1986 was determined by the compensation claimed by the patient, and not the actual consideration [2].

To illustrate, a patient pays a doctor/hospital Rs 2 lakh for an operation, sustains an injury during the operation due to alleged medical negligence, and makes a claim of Rs 2 crore as compensation. Under the previous legislation, this case would have gone to the National Commission as the claim is over Rs one crore. Under the current Act, it would come to the District Commission as the consideration is less than Rs 1 crore. Therefore, with the new provision, cases which were filed in either National or State Commission, are now likely to come to the District Commission [6: chap IV].

The second major change is about the place where the complaint can be lodged. Take the case of a doctor who resides in Bengaluru and provides specialist urology care to a patient from Bihar. The patient develops complications and decides to file a complaint against the doctor. Under CPA 1986, the patient was required to file the complaint in Bengaluru. Under CPA 2019, the patient has the choice of filing the complaint either at the place where s/he resides or works, or at the place where the service provider resides [6: sec 34 (2)].

Third, the provision for tele-hearing allows doctors to participate in hearings from any part of the country [6: sec 38].

The workload of the District Commission is likely to increase substantially as litigation of the amount of up to Rs one crore will be taken up by these bodies which are already under-staffed. Without additional human resources to meet the objectives of this amended law, there will be a further and substantial delay in delivering justice, defeating the very objective of the CPA, which was to achieve speedy redress unavailable in the civil courts.

Table 1: Comparison of CPA 1986 with CPA 2019

Sr.no	Areas	CPA, 1986	CPA, 2019
1	Objectives	Better protection of the interests of consumers. Establishment of consumer councils for the settlement of disputes.	Protection of the interests of the consumers. Establish authorities for timely and effective administration.
2	Number of Chapters	4	8
3	Number of Sections	31	107
4	Change in nomenclature	District Forum	District Commission
5	Regulator	No separate regulator	Central Consumer Protection Authority
6	Relevant new inclusions	Not applicable	E-commerce, telemarketing, Unfair contract, product liability, pecuniary jurisdiction, mediation, endorsement of goods, misleading advertisements, offence and penalties
7	Complainant	As defined	The extended definition includes: In case of a minor, his parent or legal guardian
8	Deficiency	As defined	The extended definition includes: Deliberate withholding of relevant information
9	Unfair contract	Not defined	Includes: imposing on the consumer any unreasonable charge, obligation, or condition which puts such consumer at a disadvantage
10	Product liability	No provision in the consumer court	Compensation available for product liability
11	Consumer rights	As defined	Addition of rights to: protection, be informed, be assured, be heard, redressal, and consumer awareness
12	The limitation period for filing a complaint	2 years	2 years with a provision for condonation
13	Filing jurisdiction	Place where the seller's office is located	Additional provision: complaint can be filed where the complainant resides or works
14	Electronic filing	Not available	Available
15	Pecuniary jurisdiction	Based on the value of the compensation claimed District Forum: up to Rs 20 lakh State Commission: Rs 20 lakh to Rs 1 crore National Commission: above Rs 1 crore	Based on the value of the goods or services paid as consideration District Commission: up to Rs 1 crore State Commission: Rs 1-10 crore National Commission: above Rs 10 crore
16	Appeal deposit	50% of the amount or Rs 25,000, whichever is less	50% of the amount ordered by the District Commission before filing an appeal before the State Commission
17	Court fees	As defined	No fees for consideration of less than Rs 5 lakh; For amounts above Rs 5 lakh: Rs 200-2,000 in the District Commission, Rs 2,500-6,000 in the State Commission, Rs 7,500 in the National Commission
18	Mediation	Not available	Provision for settlement and partial settlement through mediation is available. Appeal cannot be made against a settlement done through mediation.
19	Non-compliance of an order of the commission	Punishable with imprisonment for a term which shall not be less than one month, but which may extend to three years and/or with fine which shall not be less than two thousand rupees, but which may extend to ten thousand rupees	The term of imprisonment is the same but the fine has been increased, which shall not be less than Rs 25,000 and may extend to Rs one lakh, or both
20	Bench	Circuit bench	Regional benches to be appointed by the Central Government by notification
21	Experts to assist the National Commission or the State Commission	No provision	On application by a complainant or otherwise, may direct any individual or organisation or expert to assist the National Commission or the State Commission
22	Dismissal of frivolous or vexatious complaints	The complainant shall pay costs not exceeding Rs 10,000	No provision
23	Video conferencing	No provision	Consumers can seek tele-hearings

Mediation cells

Alternate dispute resolution mechanisms in the form of mediation cells have been introduced in CPA 2019 [6: sec 74]. Mediation is a process through which the people involved in a dispute decide to mutually settle their legal problems with the help of an unbiased third party who acts as a mediator [11].

The involvement of mediation cells may hasten the process of settlement between parties which may otherwise take several months or years to settle. Furthermore, settlement in mediation is reached after the demands of all parties involved are heard. The settlement, therefore, is mutually agreed upon and once arrived at, no appeal is allowed. The mediation panelist need not be a specialist in the subject of the case involved.

However, the Consumer Protection (Mediation) Rules, 2020 [12], specify that certain matters, particularly medical negligence that resulted in grievous hurt or death, are excluded from the scope of mediation. Therefore, it is imperative for doctors to know that cases relating to medical negligence involving grievous hurt or death, cannot be taken to mediation.

Litigation

India has witnessed an alarming increase in medical litigation after the judgment in *Indian Medical Association v VP Shantha* [13,14]. The CPA 2019 includes new provisions for grounds for litigation and their processes [6].

First, grounds for litigation include failure to issue a receipt or bill to the patient; failure to take informed consent (in the ambit of unfair trade practice); failure to maintain confidentiality; false endorsement of services or a misleading advertisement, product service liability and "deficiency" in services. This last encompasses "any act of negligence or omission or commission by such person which causes loss or injury to the consumer and deliberate withholding of relevant information by such person to the consumer".

Second, there is no requirement for payment of a fee for filing litigation for services up to Rs five lakh. For filing litigation for services that cost more than Rs five lakh, a nominal fee needs to be paid. The CPA 2019 permits electronic filing of complaints, and tele-hearings. Changes in the pecuniary jurisdiction for filing complaints have been discussed above.

Compensation

On October 24, 2013, the Supreme Court awarded a record-breaking compensation of Rs 6,08,00,550 — with 6% interest per annum from the date of the complaint to the date of the payment — amounting to about Rs 11 crore, to the claimant in *Balram Prasad v Kunal Saha & Ors* [15], for the death of a patient from medical negligence by doctors and a private hospital. This judgment sparked debate about how medical negligence compensation should be calculated. The court stated that the "multiplier method", commonly used in the motor accidents tribunal, was not suitable for cases of death resulting from medical negligence because the two are fundamentally different in nature. The court reasoned that using the multiplier method for medical negligence cases would result in significantly lower compensation as it relies on a notional income figure, often set at a relatively low amount, which is even lower in cases where the victim has no income. As hospitals, nursing homes and doctors in India often earn substantial profits, using the multiplier method in medical negligence cases may not serve as a deterrent against medical negligence. Large payouts might ensure accountability and deter medical negligence, and unethical practice. Finally, it is important to provide financial support (in the form of compensation) to either the victim or the family.

On the other hand, it may be argued that the care of patients is also compromised by non-availability of infrastructure, which is the State's responsibility. Hence, the State too bears responsibility for lapses or deficiency in care. It may also be argued that it is hard to implement first-world standards with a third-world infrastructure. High rates of compensation may encourage defensive practice, affect the mental health of doctors due to the constant fear of scrutiny, lead to their bankruptcy, and force them to spend time in legal proceedings, compromising patient care.

Regulation

Regulation under the CPA has become more stringent with the introduction of the Central Consumer Protection Authority (CCPA) under Sec 10(1) of the CPA 2019, which has been vested with powers to investigate *suo moto*, ie on their own accord, even without any request by the parties involved, and also upon the receipt of a complaint. The CCPA can look into matters related to consumer rights, product liability, unfair trade practices, etc. For example, if a hospital is offering a service package, the CCPA has the power to investigate the quality and cost of the products available in the service, and question the hospital about the same. The CCPA may also give its advice about and form new rules for such a package, including setting a "fair" charge [6: Chap III].

Implementing regulations could enhance service quality and lower expenses for patients, but it might also raise product prices as manufacturers will need to ensure top-notch quality. It is important to note that the CCPA is not the sole authority governing healthcare professionals. Other bodies like the Medical Council of India, State Medical Councils, and the National Human Rights Commission, along with laws like The Clinical Establishments Act, 2010, also play a role. The addition of the CCPA to the CPA could potentially create more confusion for healthcare professionals.

Telemarketing and e-filing of complaints

The practice of telemedicine is increasing due to advances in technology, awareness, affordability, acceptability,

convenience, and requirements due to the Covid-19 pandemic.

Telemedicine requires doctors to treat patients with the same level of care and accountability as in an in-person consultation. Guidelines have been drafted for telemedicine that ensure safe and transparent practice [16]. Due to its potential to reach distant parts of the country for remote diagnosis and management of cases, telemedicine will be common in a few years, particularly for care in low-income regions. Hence, inclusion of telemedicine in the CPA 2019 is beneficial. However, technical issues, such as connectivity problems and data security concerns, can compromise the quality of telemedicine services and pose risks to patient confidentiality. Additionally, the lack of a physical examination in telemedicine consultations might limit the doctor's ability to accurately diagnose certain conditions, potentially leading to misdiagnoses or overlooked complications.

Conclusion

The ease of filing complaints under CPA 2019 — and the absence of any penalty for filing frivolous or false complaints — will enormously increase the number of frivolous cases against doctors and other service providers. Defensive practice may increase, leading to an increase in the cost of medical services. It is vital to have mechanisms for timely dispensation of cases to prevent violence against doctors and for early redress of consumers' grievances. This would require increasing the number of courts and resources, especially at the district level. Penalties for filing false complaints should be included in the law. If doctors are found not guilty, they should be compensated for the loss of their earnings. Without such safeguards against unfair targeting by consumers and costly litigation, doctors are likely to lapse into defensive practice resulting in a reduced quality of care.

Conflict of interest: *None declared*

References

1. Ghosh K. Violence against doctors: A wake-up call. *Indian J Med Res*. 2018 Aug; 148(2): 130–133. https://doi.org/10.4103%2Fijmr.IJMR_1299_17
2. Ministry of Law and Justice, Govt of India. The Consumer Protection Act 1986. Act No. 68 of 1986. New Delhi: MoLJ; 1986[Cited 2020 Jul 31]. Available from: http://legislative.gov.in/sites/default/files/A1986-68_0.pdf
3. Supreme Court of India. *Dr AS Chandra and Ors. vs Union of India and Ors*, on 17 April, 1992 [Cited 2020 Jul 31]. Available from: https://indiankanoon.org/doc/1595175/?type=print
4. Supreme Court of India. *Indian Medical Association vs VP Shantha & Ors* on 13 November, 1995 [Cited 2020 Jul 29]. Available from: https://indiankanoon.org/doc/723973/
5. Mohanty A. Medical Negligence under Consumer Protection Act: A Judicial Approach. *Latestlaws.com*. 2018 Aug [Cited 2020 Jul 31]. Available from: https://www.latestlaws.com/wp-content/uploads/2018/08/Medical-Negligence-under-Consumer-Protection-Act-A-Judicial-Approach-By-Abhipsha-Mohanty.pdf
6. Department of Consumer Affairs, Govt of India. The Consumer Protection Act, 2019. Act No. 35 of 2019[Cited 2020 Aug 7]. Available from: https://www.indiacode.nic.in/bitstream/123456789/15256/1/a2019-35.pdf
7. Garari K. Healthcare to be out of consumer courts. *Deccan Chronicle*. 2019 Jul 7[Cited 2020 Oct 10]. Available from: https://www.deccanchronicle.com/nation/current-affairs/080719/healthcare-to-be-out-of-consumer-courts.html
8. Pandit MS, Pandit S. Medical negligence: Coverage of the profession, duties, ethics, case law, and enlightened defense - A legal perspective. *Indian J Urol*. 2009 Jul;25(3):372-8. http://dx.doi.org/10.4103/0970-1591.56206
9. Oxford Dictionary. Definition of "pecuniary "by Oxford Dictionary. *Lexico.com*. [Cited 2020 Aug 7]. Available from: https://www.lexico.com/en/definition/pecuniary
10. Oxford Dictionary. Definition of "jurisdiction' by Oxford Dictionary. *Lexico.com* [Cited 2020 Aug 7]. Available from: https://www.lexico.com/en/definition/jurisdiction
11. Mediation in India. *Mediate.com* [cited 2020 Aug 7]. Available from: https://www.mediate.com/articles/mediation-in-india-articile.cfm
12. Department of Consumer Affairs, Govt of India. The Consumer Protection(Mediation) Rules, 2020. 2020 Jul 22[Cited 2020 Aug 7]. Available from: https://consumeraffairs.nic.in/sites/default/files/Mediation%20Rules.pdf
13. Akhter S. Patients are now suing doctors at an alarming rate: Mahendrakumar Bajpai. *ET HealthWorld*. 2016 Mar 16 [Cited 2020 Oct 10]. Available from: https://health.economictimes.indiatimes.com/news/industry/patients-are-now-suing-doctors-at-an-alarming-rate-mahendrakumar-bajpai/51420266
14. Economic Times. Medical litigation cases go up by 400%, show stats. *ET HealthWorld*. 2015 Dec 6 [Cited 2020 Oct 10]. Available from: https://health.economictimes.indiatimes.com/news/industry/medical-litigaAtion-cases-go-up-by-400-show-stats/50062328
15. Supreme Court of India. *Balram Prasad vs Kunal Saha & Ors* on 24 October, 2013. Civil Appeal No. 2867 of 2012[Cited 2020 Aug 7]. Available from: https://indiankanoon.org/doc/35346928/
16. Board of Governors in supersession of the Medical Council of India. Telemedicine Practice Guidelines Enabling Registered Medical Practitioners to Provide Healthcare Using Telemedicine. 2020 Mar 25[Cited 2020 Aug 7]. Available from: https://www.mohfw.gov.in/pdf/Telemedicine.pdf