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

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There is no conflict of interest. There are no sponsorships, financial contributions by others or any competing interests

The submission is not under consideration for publication in any other journal

**Abstract**

The doctor-patient relationship took a “contractual” form after the judgment passed in the Indian Medical Association v. V P Shantha case in 1995. This landmark judgment brought the medical profession under the ambit of the Consumer Protection Act (CPA) 1986. With rapidly evolving technology and the need for a more comprehensive act, the CPA 2019 was made effective from 20th July 2020 onwards. Since then, several questions have been raised about whether the medical profession continues to be bound by the CPA 2019. In terms of the layout and provisions, there are several advances in the CPA 2019 compared to that of 1986. Some of these include changes in pecuniary jurisdiction, the introduction of Alternate Dispute Resolution mechanisms, new provisions for litigation, the introduction of regulators such as the Central Consumer Protection Authority, and the institution of telemarketing. There has been an introduction of several novel provisions, changes in the existing provisions, and simplification of the procedures including provisions for registering cases against the service providers on an online portal. These changes would act synergistically as a significant tool in protecting consumer rights in India. These benefits would be available to consumers without any retribution for filing false complaints. Currently, the State does not hold any responsibility for providing compensation to its consumers, and hence it’s the doctors' responsibility to provide the same. These changes in CPA 2019, will empower its consumers but might lead to an increase in frivolous litigations, defensive practices, and burden on the doctors. Indemnity insurance, capping of compensations, increase in Government funding for the health sector, payment for loss of practice if doctors are not found guilty, fining of frivolous cases and expeditious resolution of cases might prove to be necessary steps to protect the medical profession from the burden of frivolous litigation.

**Keywords**

Consumer Protection Act, medical profession, doctors, medical practitioner, compensation, service provider

**Introduction**

The relationship between doctors and their patients forms the cornerstone of healthcare. This relationship has been conceptualized in various philosophical and sociological forms for several centuries(1). This relationship has also tremendously swayed between idealization and devaluation of doctors. Violence against doctors, which was unheard of in India a couple of years ago, has made newspaper headlines several times in the last decade(2). This has led to threat, insecurity, and fear of constant scrutiny in the lives of doctors who after burning their midnight oil and constant toiling have finally been able to practice. There are reports which state that only 15% of medical negligence cases are genuine, however more systematic studies are required(3). The Consumer Protection Act (CPA) in India was first passed in 1986 with the rationale of promoting and protecting the rights of the consumers(4). For several years after the enforcement of CPA 1986, the country continued to witness a muddled stand on whether the medical profession came under the ambit of the CPA 1986(5). In this legislation, medical service was not clearly excluded or included, hence a writ was filed in Supreme Court under Article 32 of the Constitution of India, to decide upon the Scope and Jurisdiction of the CPA 1986 concerning medical services. In this case, *Indian Medical Association v. V P Shantha,* the Honorable Supreme Court held that medical services would be treated as services under CPA 1986 which led to the resolution of a long standing conundrum(6). This landmark decision embarked on the doctor-patient relationship as 'contractual'(6,7). With rapidly evolving technology and the need for a more comprehensive act, CPA 2019 received the assent of the President on 9th August 2019 and was made effective from 20th July 2020 onwards. In terms of the layout and provisions, there are several advances in the CPA 2019 compared to 1986. Some of these include changes in pecuniary jurisdiction, the introduction of Alternate Dispute Resolution (ADR) mechanisms, new provisions for litigation, the introduction of regulators such as the Central Consumer Protection Authority (CCPA), and the institution of telemarketing. This article discusses the scope and implications of these changes from a medical practitioners’ perspective on medical practice, health care services, patients, judiciary, and administration.

**Medical profession-a ‘service provider’ under CPA 2019?**

The term “health services” was included in the definition of services in the draft bill of CPA 2019. However, this term was dropped from the final version of the law(8). The conundrum of applicability of CPA 2019 to medical services arose mainly due to this reason. However, the definition of services under section 2(42) of CPA 2019 is "inclusive" and categorically excludes only two types of services i.e., those which are free and those which are “personal”. However, "free" services provided by a hospital or doctor would still fall under the ambit of the CPA if other patients pay for the same service(9). Regarding personal services, the “contract for personal services” is different from the “contract of personal services”. The former deals with a contract were the provision of service depends on one's skill, knowledge, and discretion (ex: doctor-patient relationship) while the latter deals with the provision of services that involves obeying orders to perform an assigned job (ex: Chauffer-master relationship). “Contract of personal services” does not come under the ambit of the CPA 2019(7). Therefore, service of any description, with the above exceptions, comes under CPA 2019 which includes the medical profession and health care services. Also, the Supreme Court Judgment still upholds its decision of the Indian Medical Association v. V P Shantha case with regards to the inclusion of doctors in the CPA and hence it is the law of the land. After 1996, there have been a series of Supreme Court judgments under CPA 1986 which have withheld the same. However, if the medical profession wants to be outside the purview of this act, then the following requirements should be fulfilled: (a) Amendment of the act categorically excluding healthcare services, and/or (b) the Supreme Court, in its interpretation of the new legislation, may consider keeping the healthcare services outside the purview of this act. There are a few studies that have assessed the awareness of the CPA 1986 among doctors and medical students. These studies have reported that even though a majority of the doctors are aware of the existence of CPA 1986, its scope and implications are understood only by a few of them(10,11).

**CPA 1986 vs. CPA 2019: what’s new?**

Table 1 provides a comprehensive summary of the important changes in the CPA 2019. These include: (a) having broader objectives and definitions, (b) greater description of the Act compared to CPA 1986, (c) introduction of regulatory bodies such as the CCPA, (d) introduction of and/or changes in e-commerce, telemarketing, unfair contract, product liability, pecuniary jurisdiction, mediation, regulations on advertisements, video-conferencing for hearings, offences and penalties. CPA 2019 provides an expanded definition of 'consumer' to include any person who ‘buys any goods’ and ‘hires or avails 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 appears to be a glaring advancement and perhaps acted as an impetus for the CPA 2019. Telemedicine services also come under the ambit of CPA 2019. This may have a serious impact on the growth of telemedicine in our country. Further, all doctors are mandated to provide a receipt or a bill for the payment obtained for their services (consultation). This is required for both the in-person and tele-medcine consultation. If it is not provided, it shall be deemed to be an unfair trade practice.

**Table 1: Comparison of the CPA 1986 with CPA 2020**

|  |  |  |  |
| --- | --- | --- | --- |
| **Sl.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 newer 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: protection, informed, 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 20 lakhs  State Commission: 20 lakhs to 1 crore  National Commission: above 1 crore | Based on the value of the goods or services paid as consideration  District Commission: up to 1 crore  State Commission: 1 crore to 10 crores  National Commission: above 10 crores |
| 16 | Appeal deposit | 50% of the amount or 25,000 rupees, 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 <5 lakh rupees;  For amount >5 lakh:  200 to 2000 rupees in District Commission  2,500 to 6000 rupees in State Commission  7,500 rupees in National Commission |
| 18 | Mediation | Not available | Provision for settlement and partial settlement through mediation is available.  One can’t appeal against the 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 imprisonment term is the same but the fine has been increased, which shall not be less than twenty-five thousand rupees and may extend to one lakh rupees, or with both |
| 20 | Bench | Circuit bench | Regional benches to be appointed by the Central Government by notification |
| 21 | Experts to assist NC or SC | No provision | On application by a complainant or otherwise, may direct any individual or organization or expert to assist the National Commission or the State Commission |
| 22 | Dismissal of Frivolous or vexatious complaints | The complainant shall pay cost not exceeding rupees ten thousand | No provision |
| 23 | Video conferencing | No provision | Consumers can seek tele-hearings |

**Scope and implications of CPA 2019 in the health sector**

In this section, the nuances of the CPA 2019 that are relevant for health services and medical professionals have been discussed focusing mainly on the scope and its implications.

**(1) Pecuniary Jurisdiction**

The term “pecuniary” means “relating to or consisting of money” and “jurisdiction” means “the official power to make legal decisions and judgments”(12,13). All courts in the judicial hierarchy have pecuniary limits. There are several changes made in the pecuniary jurisdiction in CPA 2019, which are as follows: (a) litigations up to one crore, between one and ten crores and more than ten crores would be filed in the District, State, and National Commission respectively, and (b) the pecuniary jurisdiction would rely on the “considerate” and not the “compensation” claimed. “Considerate” means the amount of money paid by the patient to obtain the services provided by the doctor. This is an important change as the pecuniary jurisdiction under CPA 1986 was determined by the compensation claimed by the patient and not the considerate amount. For instance, if a doctor/hospital was paid rupees 2 lakh by a patient for an operation and the patient sustained an injury during the operation due to alleged medical negligence for which a claim of 2 crore was made as compensation, the patient would have to approach the District Commission as his considerate is 2 lakhs. The second concern is about the place where the complaint can be lodged. For instance, if a doctor who resided in Bengaluru provided specialist urology care to a patient from Bihar, during which the patient developed some complications and decided to file a complaint against the doctor. Where would the patient complain? In Bihar or Bengaluru? Under CPA 2019, the patient has been embossed with the choice of filing the complaint at a place where he either resides or works or at the place where the "service provider" resides. **Arguments**: (a) the provision of ADR may reduce the burden on the District Commission, which is otherwise expected to increase, (b) the determination of considerate is based on the amount of money paid by the consumer and not the actual value of the service, and (c) the provision for tele-hearing is available which allows the doctors to participate in the hearings from any part of the country. **Counter-argument:** The workload of the District Commission is likely to increase substantially as litigations of the considerate amount of up to one crore will be taken up by these courts. Already these courts are working under-staff and may require human resources to meet the objectives of this aspirational law. This may result in a marked delay in delivering justice, which could act as a potential threat of violence against doctors.

**(2) Mediation Cells**

ADR mechanisms in the form of mediation cells have been introduced in CPA 2019. 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(14). Once the dispute has been settled between the parties involved, it cannot be appealed against at a later stage in the court of law. **Arguments:** (a) The involvement of mediation cells may hasten the process of settlement between parties which may otherwise take several months or years to settle, and (b) As against litigation, the settlement in mediation is reached after the demands of the parties involved are heard. The settlement, therefore, is mutually agreed, legalized, and settled once for all and no appeal is allowed. **Counter-argument: (a)** if a grievous injury is sustained from a commercial commodity, the case may be taken up by mediation cells if it does not amount to medical negligence. For instance, if a person were to sustain a grievous injury due to the explosion of his electric geyser, the case can be taken up by mediation cells. However, cases of medical negligence that result in grievous hurt or death cannot be taken up by mediation cells, and (b)the mediation panellist need not be a specialist/professional in the area of the case involved. As the panellists are appointed by the selection committee, would individuals with no training in the medical profession be suitable for being a part of the mediation cell?

**(3) Jury**

Deciding jury is the bench of the commission. In the CPA 1986, it was mandatory that in all consumer fora, one of the members of the bench had to be a former judge either from the High Court or the Supreme Court, which is not the case with CPA 2019. **Argument**: The involvement of civil society and no mandatory involvement of the judiciary may help in easing out the overburdened judiciary. **Counter-argument:** In the CPA 2019, there may not be a single individual with any form of professional training in law and judiciary, medical professionals as a member of the bench. This may have a direct impact on the quality of judgment. Specifically, the appraisal is for cases related to the medical profession which involves various complexities in understanding sensitive and nuanced medical aspects.

**(4) Litigation**

India has witnessed an alarming increase in medical litigations after the *Indian Medical Association v. V P Shantha* case judgment was passed(15,16). Some of the newer provisions for litigation and their processes under CPA 2019 have been enumerated:

1. Grounds for litigation: (a) failure to issue a receipt or bill to the patient (b) failure to take an informed consent comes in the ambit of unfair trade practice (c) failure to maintain confidentiality (d) false endorsement of services or any misleading advertisement and (e) product service liability and “deficiency” in services which 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”.
2. Processes of litigation: (a) there is no requirement of fee for filing litigation for services (considerate) up to 5 lakhs, (b) for filing litigation for services that cost more than five lakh rupees, a nominal fee needs to be paid which has been summarized in table 1, (c) availability of electronic filing of complaints, (d) availability of tele-hearings, and (e) changes in the pecuniary jurisdiction reducing logistic issues in filing complaints which have been discussed earlier.

**Argument:** Liability for manufacturing defects could be diverted to the product manufacturers and sellers. For example, if a doctor placed an ear implant that broke inside the ear after the operation due to its manufacturing defect, then the product manufacturers would be held responsible for the mishap and not the doctor. **Counter-arguments: (a)** The new provisions could propagate an increase in the number of frivolous litigations against doctors due to the simplification of procedures, newer identified grounds for litigation, and lack of any retribution for filing false complaints, and **(b)** With newly identified grounds of litigation, the paperwork of doctors may substantially increase which might increase their burden

**(5) Compensation**

In 2013, the Supreme Court awarded a compensation of 11 crores for the death of a victim on the grounds of medical negligence which was borne by doctors and a private hospital(17).

**Arguments:** (a) large pay-outs awarded by courts might be prudent to ensure accountability, deter medical negligence, and unethical practice. (b) Providing financial support (in the form of compensation) to either the victim or victim’s family is an important way of helping them handle the loss/injury. **Counter-arguments:** (a) non-availability of resources could compromise the care of the patients, hence the State is also responsible for lapses or deficiency in care and it is hard to implement a first-world regulatory structure to a third-world infrastructure, (b) the method of calculating the compensation is unpredictable and varies significantly between cases in the absence of a standard method of calculation, and (c) high rates of compensation may lead to the propagation of defensive practices, impairment of the mental health of doctors due to constant fear of scrutiny, bankruptcy and more time spent in legal proceedings compromising patient care. Doctors from small towns may move to big cities as the resources are better available.

**(6) Regulation**

The regulation under CPA has become more stringent with the introduction of the CCPA which has been vested with ample powers to investigate suo-moto or based on a consumer complaint. It would look into matters related to consumer rights, product liability, unfair trade practices, etc. For example, if a hospital is offering a package 'x', the CCPA would have the power to investigate the quality and cost of the products available in the service and accordingly question the hospital about the same. The authority is also endowed with the power to give its advisory and form new rules for such a package including setting its cost which is considered ‘fair’.

**Arguments:** This might improve the quality of services, cut down their cost, and indirectly promote health tourism. **Counter-arguments: (a)** this could lead to a paradoxical increase in the cost of the products as the product manufacturer will have to take extra measures to ensure a good quality of the products which would indirectly lead to an increase in the cost of compensation, and (b) CPA is not the only regulatory body for doctors that may impugn on the clinical professional boundaries. There are a host of other regulatory bodies and laws governing their practice which include the Medical Council of India, State Medical Council, Clinical Establishment Act 2010, National Human Rights Commission, etc. which could lead to litigation of doctors in the civil or criminal courts, additionally.

**(7) Telemarketing & e-filing of complaints: the “hot-cake”**

The practice of telemedicine is increasing due to various factors like advancement in technology, awareness, affordability, acceptability, convenience, and the requirement due to the COVID-19 pandemic.

**Argument:** (a) telemedicine requires the doctors to see the patients with the same level of care and accountability as an in-person consultation. The guidelines for telemedicine are laid and one has to just adhere to these to ensure a safe and transparent practice(18), and (b) due to its potential to reach out to distant parts of the country, telemedicine will be a mainstream practice in few years to come(19). (c) e-filing of complaints would help many patients to fight their cases and they need not go to the consumer court, and therefore needs to be a part of the CPA 2019. **Counter-arguments:** (a) 75% of the doctors in India reside in urban areas whereas 68.7% of India’s population resides in rural areas(20). Telemedicine is known for its utility in remote diagnosis and management of cases(19). It is, therefore, essential for care in low-income regions. Due to the changes in pecuniary jurisdiction, if the doctors are required to travel to remote areas for hearings, it may propagate a defensive practice and consultation of patients from distant places may be avoided, and (b) bringing the telemedicine under the ambit of CPA 2019 may have a serious impact on the growth of telemedicine specialty, because the patient can give complaint in his home town and the doctor will have to fight the case sitting in a different city & (c) e-filing of complaints may increase the number of frivolous cases against doctors and other service providers enormously and may have a direct impact on the quality of medical services, defensive practices may increase, cost of medical services may increase, and the quality of the justice provided under the CPA may also suffer.

**Conclusions**

The introduction of several novel provisions, changes in the existing provisions, and simplification of the procedures will all act synergistically as a significant tool in protecting consumer rights in India. However, certain nuances that require a closer look at the interpretation of the law have been highlighted. There are certain forms of evidence-based mental health services such as psychotherapy which are dependent on the various therapist, illness, and patient-related factors for its outcomes. Would the failure of psychotherapy be considered as a ground for litigation? Would treatment modalities like psychotherapy, complementary, and alternative medicine also be a part of services under CPA 2019? As the brunt of compensation is most of the time borne by doctors, it might be important that (a) all doctors have indemnity insurance as more than 80% of healthcare in India is dispensed by the private sectors(17), (b) a uniform and predictable method of calculating compensation or a no-fault liability system geared up having upper limits to the compensation amount and (c) State held responsibility in financing the claims of the compensation. As the number of litigations is expected to increase, it would be vital to have mechanisms for timely dispensation of cases to prevent violence against doctors and for early redressal of the consumers’ grievances. This would require increasing the number of courts and resources, especially at the district level. For the lack of any inherent retribution for filing false complaints, the number of frivolous cases might increase, therefore mechanisms like fining false complaints should be rolled in and if the doctors are not found guilty, loss of pay should be granted to them. As the resolution of litigations requires expertise, it is recommended that doctors should be a part of the bench of various commissions and mediation cells. There is also a need to relook into the requirement of the number of regulatory bodies for the doctors. Lastly, it is important to take steps to enhance the awareness of this "game-changing" act among health care professionals.

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