

Consumer Protection Bill 2018: Implication on Medical Profession: An Overview and Critical Appraisal

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Abstract

Consumer protection Bill 2018 had been introduced in January 2018 in Parliament of India and it has been passed by Lok Sabha in December 2018. This bill seeks to amend Consumer Protection Act 1986. Medical services have been included in the ambit of CPA 1986 by means of judgement of Hon'ble Supreme Court. Any change in this act will also affect the Medical service providers. This act makes the healthcare services providers including hospitals, manufacturers, and doctors more accountable to consumers i.e. the patients. It broadens the scope of the act, includes the latest requirements based on changing times also allows stricter punishment to the defaulters. This article compares the Consumer Protection Act of 1986 with the present amended bill and highlights the implications of these changes on Medical Profession.

Keywords: Consumer Protection Bill 2018; Consumer Protection Act 1986; Medical Practice, Doctor-patient relationship.

Introduction

Consumer protection Act 1986 [1] was enacted to provide for better protection of interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer's disputes and for matters connected therewith. With the introduction of this Act and Supreme Court's judgement regarding inclusion of Medical Professionals and their services under the purview of this Act, there was a drastic shift in the Doctor-patient relationship to a dealer-consumer relationship [2]. This Act and judgement set ripples in the Medical practice and a new phase of Defensive medicine started emerging. After the introduction of these changes, patients who

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were now also consumers had an easy option of redressing their grievances but they also started facing the heat of Defensive medicine which required a great number of investigations as proof before any treatment was initiated [3]. Increasing awareness among the patient community led to flooding of complaints to the consumer forums. It was subsequently realized that though the disposal rate was high (90%), the total duration of case being fought in consumer courts was also high (about 12 months) [4]. Also with change in time there has been a change in the segment of consumers. Doctors need to develop standard protocols for management of cases which will be a great defence for doctors in such litigations. The introduction of e-commerce, online consultancies, increasing role of advertisement through media including internet, greater amount of products being manufactured and sold etcetera have already altered the face of service industry, necessitating the changes in Law.

Key Features of Cpa Bill 2018 in Relation to Medical Practice [5]

Consumer Complaints

- The Bill sets up Consumer Disputes Redressal Commissions (consumer courts) to hear complaints

on matters like: (i) defect in goods or deficiency in services; (ii) unfair or restrictive trade practices; (iii) excessive pricing; (iv) knowingly selling goods or providing services that do not meet safety norms; and (v) product liability. Such complaints can be filed electronically and from where the complainant resides or works.

Product Liability

- The Bill allows a person to make a claim of product liability against a manufacturer, seller, or service provider for any defect in a product or deficiency in a service. A claim for compensation may be made for any harm caused, including: (i) property damage; (ii) personal injury, illness, or death; and (iii) mental agony or emotional harm accompanying these conditions.

Unfair contracts

- A contract is said to be unfair if it causes significant change in the rights of the consumer, which include the following:

- (i) requiring excessive security deposits;
- (ii) imposing a disproportionate penalty for a breach in contract;
- (iii) refusing to accept early repayment of debts;
- (iv) terminating the contract without reasonable cause;
- (v) transferring a contract to a third party to the detriment of the consumer without his consent; or
- (vi) Imposing unreasonable charge or obligations which put the consumer at a disadvantage.

- The State and National Commissions may determine if the terms of a contract are unfair and declare such terms to be null and void.

Unfair and restrictive trade practices

- An unfair trade practice includes:
 - (i) making a false statement regarding the quality or standard of a good or service;
 - (ii) selling of goods not complying with standards;
 - (iii) manufacture of spurious goods;
 - (iv) non-issuance of a receipt for a good or service sold;
 - (v) refusing to withdraw or refund goods or

services within 30 days; or

- (vi) Disclosing personal information provided by a consumer to any other person.

- A restrictive trade practice is one that imposes unjustified costs or restrictions on consumers, including:

- (i) delays in supply that lead to increase in price; and
- (ii) Requiring purchase of certain goods or services as a condition for procuring any other goods or services.

- The CCPA may take steps to prevent and discontinue unfair and restrictive trade practices. The District, State or National Commissions may order the discontinuation of unfair and restrictive trade practices.

Penalties

- If a person does not comply with the orders of the District, State or National Commissions, he may face imprisonment up to three years, or a fine not less than Rs 25,000 extendable to Rs one lakh, or both.

- If a person does not comply with an order issued by the Central Consumer Protection Authority (CCPA), he may face imprisonment of up to six months, or a fine of up to Rs 20 lakh, or both.

- For false and misleading advertisements, a penalty of up to Rs 10 lakh may be imposed on a manufacturer or an endorser. For a subsequent offence, the fine may extend to Rs 50 lakh. The manufacturer can also be punished with imprisonment of up to two years, which may extend to five years in case of every subsequent offence.

- The CCPA can also prohibit the endorser of a misleading advertisement from endorsing any particular product or service for a period of up to one year. For every subsequent offence, the period of prohibition may extend to three years. There are certain exceptions when an endorser will not be held liable for such a penalty.

- The CCPA may also impose penalties for manufacturing, selling, storing, distributing or importing adulterated products. The penalties are as follows:

- (i) if injury is not caused to a consumer, the penalty would be a fine of up to Rs one lakh along with imprisonment of up to six months;
 - (ii) if injury is caused, penalty would be a fine up to Rs three lakh along with imprisonment of up to one year;
 - (iii) if grievous hurt is caused, penalty would be a fine up to Rs five lakh along with imprisonment up to seven years; and
 - (iv) in case of death, penalty would be Rs ten lakh or more along with a minimum imprisonment of seven years, extendable to imprisonment for life.
- (i) if injury is caused, penalty would be a fine up to Rs three lakh along with imprisonment of up to one year;
 - (ii) if grievous hurt is caused, penalty would be a fine up to Rs five lakh along with imprisonment up to seven years; and
 - (iii) in case of death, penalty would be Rs ten lakh or more along with a minimum imprisonment of seven years, extendable to imprisonment for life.
- The CCPA may also impose penalties for manufacturing, selling, storing, distributing or importing spurious goods. The penalties are as follow:

Comparison Between CPA 1986 & CPA 2018

A comparison between the selection committees under CPA 1986 & CPA Bill 2018 is given in Table 1 [5].

Table 1: Selection Committees under the 1986 Act and 2018 Bill [5]

	1986 Act	2018 Bill
National Commission	<ul style="list-style-type: none"> • Comprises Supreme Court Judge and two central government officials. • Head of Commission to be appointed in consultation with Chief Justice of India. 	<ul style="list-style-type: none"> • No provision for selection committee. • Central government will appoint through notification.
State Commission	<ul style="list-style-type: none"> • Comprises High Court Judge and two state government officials. • Head of Commission to be appointed in consultation with Chief Justice of High Court. 	<ul style="list-style-type: none"> • No provision for selection committee. • Central government will appoint through notification.
District Commission	<ul style="list-style-type: none"> • Comprises District Court Judge and two state government officials. 	<ul style="list-style-type: none"> • No provision for selection committee. • Central government will appoint through notification

Table 2 compares the provisions of the 1986 Act with the 2018 Bill.

Table 2: Comparison of the Consumer Protection Act, 1986 with the Consumer Protection Bill, 2018 [5]

Provision	1986 Act	2018 Bill
Ambit of law	<ul style="list-style-type: none"> • All goods and services for consideration. • Free and personal services are excluded. 	<ul style="list-style-type: none"> • All goods and services, including telecom and housing construction, and all modes of transactions (online, teleshopping, etc.) for consideration. • Free and personal services are excluded.
Unfair trade practices*	<ul style="list-style-type: none"> • Includes six types of such practices (As discussed above) 	<ul style="list-style-type: none"> • Adds three types of practices to the list, namely: <ul style="list-style-type: none"> (i) Failure to issue a bill or receipt; (ii) Refusal to accept a good returned within 30 days (iii) Disclosure of personal information given in confidence, unless required by law or in public interest. • Contests/ lotteries may be notified as not falling under the ambit of unfair trade practices.

Product liability	<ul style="list-style-type: none"> No provision. 	<ul style="list-style-type: none"> Claim for product liability can be made against manufacturer, service provider and seller. Compensation can be obtained
Unfair contracts	<ul style="list-style-type: none"> No provision. 	<ul style="list-style-type: none"> Defined as contracts that cause significant change in consumer rights. Lists six contract terms which may be held as unfair.
Central Protection Councils (CPCs)	<ul style="list-style-type: none"> CPCs promote and protect the rights of consumers. CPCs established at the district, state, and national level. 	<ul style="list-style-type: none"> Makes CPCs advisory bodies for promotion and protection of consumer rights. Establishes CPCs at the district, state and national level. Establishes the Central Consumer Protection Authority (CCPA) to promote, protect, and enforce the rights of consumers as a class.
Regulator	<ul style="list-style-type: none"> No provision. 	<ul style="list-style-type: none"> CCPA may: <ol style="list-style-type: none"> issue safety notices; pass orders to recall goods, prevent unfair practices, and reimburse purchase price paid; impose penalties for false and misleading advertisements.
Pecuniary jurisdiction of Commissions	<ul style="list-style-type: none"> District: Up to Rs 20 lakh. State: Between Rs 20 lakh and up to Rs one crore. National: Above Rs one crore. District: Headed by current or former District Judge and two members. 	<ul style="list-style-type: none"> District: Up to Rs one crore. State: Between Rs one crore and up to Rs 10 crore. National: Above Rs 10 crore. District: Headed by a President and at least two members
Composition of Commissions	<ul style="list-style-type: none"> State: Headed by a current or former High Court Judge and at least two members. National: Headed by a current or former Supreme Court Judge and at least four members. 	<ul style="list-style-type: none"> State: Headed by a President and at least four members. National: Headed by a President and at least four members.
Appointment	<ul style="list-style-type: none"> Selection Committee (comprising a judicial member and other officials) will recommend members on the Commissions. 	<ul style="list-style-type: none"> No provision for Selection Committee. Central government will appoint through notification.
Alternate dispute redressal mechanism	<ul style="list-style-type: none"> No provision. If a person does not comply with orders of the Commissions, he may face imprisonment between one month and three years or fine between Rs 2,000 to Rs 10,000, or both. 	<ul style="list-style-type: none"> Mediation cells will be attached to the District, State, and National Commissions. If a person does not comply with orders of the Commissions, he may face imprisonment up to three years, or a fine not less than Rs 25,000 extendable to Rs one lakh, or both.
Penalties		
E-commerce	<ul style="list-style-type: none"> No provision. 	<ul style="list-style-type: none"> Defines direct selling, e-commerce and electronic service provider. The central government may prescribe rules for preventing unfair trade practices in e-commerce and direct selling.

Sources: Consumer Protection Act, 1986; Consumer Protection Bill, 2018; PRS.

Critical Analysis [5]

- The Bill sets up the Consumer Disputes Redressal Commissions as quasi-judicial bodies to adjudicate disputes. The Bill empowers the

central government to appoint members to these Commissions. The Bill does not specify that the Commissions will comprise a judicial member. If the Commissions were to have members only from the executive, the principle

of separation of powers may be violated. An eminent person in the field of law/ a renowned person from judiciary as a president/member of the committee will definitely protect the aggrieved consumers to benefit from the bill.

- The Bill empowers the central government to appoint, remove and prescribe conditions of service for members of the District, State and National Consumer Disputes Redressal Commissions. The Bill leaves the composition of the Commissions to the central government.
- Consumer Protection Councils will be set up at the district, state, and national level, as advisory bodies. The State and National Councils are headed by Ministers in-charge of Consumer Affairs. The Bill does not specify whom the Councils will advise. If the Councils advise the government, it is unclear in what capacity such advice will be given.

Consumer Protection Amendment Bill And Medical Services

As previously mentioned medical services came in the ambit of Consumer Protection Act as a result of Judgment of Hon'ble Supreme Court. The proposed amendment further strengthens the consumers and makes the medical service providers more accountable. The following are a few examples of scenarios where medical service providers can be held liable after amendment of Consumer Protection Act:

- Consumer can claim for product/ service liability from either manufacturer, service provider, and seller which can imply as the Manufacturer, Doctor or the hospital providing the service.
- The powers in the hands of central government could affect the independence of quasi-judicial bodies as well as powers of the state government as some of the issues pertaining to the consumer are in the purview of state/ district.
- Medical procedures are considered as contracts and therefore may be presumed as Unfair contracts if there is any significant change in the consumer rights.
- Misleading advertisements showing complete or magical cure for a disease can be punishable under the new Bill.

- Not fulfilling the promises made before or during treatment of the patient may amount to mental trauma to the patient or relatives.
- Charging excessively for treatment as compared to peers without any justification and without information to the patient.
- Failure to issue a bill or receipt for any Medical service provided and disclosure of any personal information given in confidence, unless required by law or in public interest. Both these conditions would imply as unfair trade practises under the new Bill and make the Medical service provider punishable under the Bill for the same.
- Disclosure of personal information of a consumer needs further elaboration especially in health care settings as it involves multidisciplinary approach.
- Referring a patient to another consultant without patient's permission.
- Not attending the patient when the patient so desires and not providing an alternate physician when there was a duty to take care of the patient.
- Forcing the patients to take medicine from a particular pharmacy or to get tested from a particular laboratory and then frightening them with certain poor outcomes in case these tests and medicines are taken from some other place.
- Paternal approach of doctors in not following patient's wishes for treatment.
- Online medical consultancies fall under the purview of the Bill.

Conclusion

The Consumer Protection Amendment Bill aims at strengthening the teeth of law and provides greater power to consumer by making the service provider more accountable.

Medical services will not be untouched by this change. Medical services providers have to lay down their rules and follow the letter of law earnestly to safeguard themselves from being found guilty under this law. Better Doctor patient relationship, more documentation and transparency and understanding limitations of

treatment by doctors and patients is required in future to avoid litigations against medical service providers.

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