

Medical Negligence vis-à-vis Consumer Protection Act 2019

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Abstract

The Consumer Protection Act (CPA) 2019 replaces the old Act but maintains its objective of protecting the consumers. It is more of a consumer-centered Act which emphasizes on the interests and convenience of the consumer as well as on the duties and responsibilities of the goods and service providers. The mistrust between doctors and patients/relatives is increasing day by day. CPA 2019 further strengthens the right of the patients as consumer and makes the Medical practitioner more prone to compensation cases. The Medical profession has neither been included but at the same time nor has been excluded from the bill. The government has just taken 'healthcare' out of inclusion list, but it has not been included in the exclusion list. So, the Medical Negligence cases are still under the ambit of the Consumer Protection Act by a prevailing judgment of the Honorable Supreme Court. Hence, it is vital that medical professionals be aware of the various aspects of the CPA 2019, especially those that are relevant to their profession.

Keywords: Consumer Protection Act 2019; Consumer Protection Rules, Health care; Doctor; Patient; Consumer; Service provider; Professional liability.

Introduction

Medical Negligence is the lack of reasonable care and skill in the duties exercised by the medical professional, which result in damages to the patient under his care.¹⁻⁴ Depending on the extent of damage, the negligence may be Civil or Criminal. Civil negligence entitles the aggrieved patient to seek compensation for the damages he has suffered at the hands of the doctor. In Criminal negligence, legal proceedings are initiated by the state against the doctor and if found guilty may even result in imprisonment. Civil cases can be filed in civil courts or consumer Forums¹⁻⁴. The mistrust between doctors and patients/relatives is increasing day by day. In COVID-19 times, this has increased tremendously due to allegations of overcharging, causing death due to lack of oxygen, non attendance etc and also due to

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irresponsible and misleading statement by a celebrity yoga guru in Media. Consumer Protection Act 2019 passed by Indian Parliament further strengthens the right of the patients as consumer and makes the Medical practitioner more prone to compensation cases. Hence, a dire need exists for the medical practitioner to be aware of the new regulations of CPA 2019 particularly regarding its impact on the cases of Medical negligence medical practice and the possible preventive measures / solutions for the same.

Consumer Protection Act, 1986⁵

The Consumer Protection Act (CPA), 1986 was enacted in order to protect the interests of consumers as well as to provide means and measures to redressal in the case of violation of consumer rights. At the time of enactment, medical service was not included in the list of services to which the CPA was applicable.

Indian Medical Association vs. V.P. Shantha [1995 SCC (6) 651]⁶

Honorable Supreme Court in its landmark ruling brought the medical services under the ambit of the Consumer Protection Act, irrespective of whether the medical services provided were free or paid, Government or Private.⁶ The services rendered by doctors/ hospitals whether government or private, who render free services to poor patients but charge fee for services rendered to other patients, even if it is totally free, would not be excluded from definition

of service in Section 2(1)(o). The Government hospitals may not be commercial in that sense but considering the overall objectives and scheme of the Act it would not be possible to treat the Government hospitals differently. In such a situation the persons belonging to "Poor class" who are provided services free of charge are the beneficiaries of the service which is hired or availed of by the "paying class". Hence, patients who sought services from medical professional were brought under the category of consumers and were protected by the CPA against sub-standard services and care. They were entitled to seek compensation for damages sustained through the Consumer Courts and forums that were established by the Act.

Consumer Protection Act, 2019⁷

Although the new Act replaces the old one, there has been no change in its objective to safeguard the interests and rights of the consumer. The new Act is more consumer-centered in that it has provisions for filing of complaint in the jurisdiction of the consumer as well as provisions to appeal against unfair trade practices or rules that have been established by the providers of goods and services. It also accommodates consumers of e-commerce which was absent in the old Act.⁸⁻⁹ The new act requires more accountability from service providers and sellers and manufacturers. Hospitals, Nursing Homes, Laboratories, Radiological Centres, Treatment centres will be considered as service providers. Pharmaceutical, Medical devices and equipments companies will be considered as sellers and manufacturer. All of these establishments will be subjected to more stringent legal action in case of damage to the patients.

With respect to Medical services and Profession, however, there is a status quo; it is neither included in the list of services to which CPA is applicable, nor is it explicitly excluded. So, in view of the authors, the Honorable Supreme Court judgment which includes medical services under the ambit of CPA still holds true, as was the situation prior to introduction of the new Act.

Section 85 of the CPA deals with the liability of the 'product service provider' and states that the service provider is liable when:

- a. the service provided by him was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance which is required to be provided by or under any law for the time being in force, or pursuant to any contract or otherwise; or
- b. there was an act of omission or commission or negligence or conscious withholding any information which caused harm; or
- c. the service provider did not issue adequate instructions or warnings to prevent any harm; or
- d. the service did not conform to express warranty or the terms and conditions of the contract.'

Section 85 is more or less comparable to the description of medical negligence as prescribed in standard textbooks and hence can be used as a 'guideline with a legal basis' in order to determine the occurrence of medical negligence, especially in the absence of a more specific law pertaining to medical negligence.

CPA 2019 also specifies that disclosure of personal information of the consumer, given in confidence, amounts to an offence and that the service provider will be punished for the same.

In July 2020, the Central Government through gazette notification brought about the 'Consumer Protection (E-Commerce) Rules, 2020' which applies to 'all goods and services bought or sold over digital or electronic network, including digital products', among other things.¹⁰ A few aspects of the Rules which are relevant to medical services that are provided online (under 'Duties of sellers on marketplace') are enlisted below:

- i. 'No seller offering goods or services through a marketplace e-commerce entity shall adopt any unfair trade practice...'
- ii. 'No such seller shall falsely represent itself as a consumer and post reviews about goods or services or misrepresent the quality or the features of any goods or services.'
- iii. 'No seller offering goods or services through a market place e-commerce entity shall refuse to take back goods, or withdraw or discontinue services purchased or agreed to be purchased, or refuse to refund consideration, if paid, if such goods or services are defective, deficient or spurious, or if the goods or services are not of the characteristics or features as advertised or as agreed to...'
- iv. 'Any seller offering goods or services through a marketplace e-commerce entity shall:
 - a. have a prior written contract with the respective e-commerce entity in order to undertake or solicit such sale or offer,
 - b. ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage

conditions of such goods or services.’

- v. ‘Any seller offering goods or services through a marketplace e-commerce entity shall provide the following information...:
 - a. all contractual information required to be disclosed by law,
 - b. total price in single figure of any good or service, along with the breakup price for the good or service...’

In view of the COVID-19 pandemic and lockdowns, government rules requiring social distancing and many companies and employees adopting work-from-home policies, the requirement for online consultations for non-emergency health services is on the rise and henceforth will continue to be a part of our daily lives. Hence, practitioners who provide their services through online platforms have an obligation to be aware of the rules in place, so as to ensure the smooth and unhindered continuance of their practice.

Preventive measures for Medical Professionals to avoid allegations of Medical Negligence¹¹

1. Proper Informed consent and not for mere formality).
2. A good communication should be ensured with the relatives explaining properly the condition and prognosis of the patient.
3. Do not ever guarantee results. The doctors should refrain from making vague promises of complete recovery and should always explain the complication or unforeseen danger associated with a specific treatment procedure.
4. Create and preserve proper records.
5. Employ only qualified assistants.
6. Have routine checking and maintenance of all instruments for proper functioning.
7. Take good and comprehensive Medical Indemnity Insurance.

Conclusion

The Consumer Protection Act 2019 can be considered as an upgraded version of the previous Act that it has replaced and is one that resonates with the current times. It is a consumer-centered Act which encompasses all walks of life that affect the consumer so that he/she may feel secure and protected against any and all forms of manipulation or discrimination. With the new Act there is a status quo as far as healthcare is concerned and so patients who approach medical professionals are considered as consumers

who are protected under the CPA. Therefore, medical professionals, who are also service providers in this regard, must be up to date in their knowledge of the various provisions under this Act as well as the ensuing Rules that have been notified in relation to this Act; this is to ensure a smooth practice of their profession and protection against unwarranted allegations and the lawsuits that might follow.

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