Review Article

Recent Supreme Court Judgements bring Urgency to a Sociolegal Review of the Inclusion of Medical Profession in the Consumer Act

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Abstract

Background : A three judge bench of the Supreme Court in Bar Association of Indian Lawyers *versus* DK Gandhi has allowed the inclusion of Medical Profession in the Consumer Protection Act (CPA) while keeping lawyers out of its purview. It was first included in the CPA by the judgement in Indian Medical Association *versus* VP Shanta by interpreting the word "any" before "service" and by classifying medical treatment as a "contract for service" and not "contract of service "which is excluded. Medical Profession neither figures in the legislative intent leading to the act nor in the United Nations Resolution on Consumer Protection which inspired it. CPA does not regulate the Medical Profession by acts such as the National Medical Commission Act 2019 which registers doctors. CPA neither gives any specific direction to the medical profession as by acts like the Medical Termination of Pregnancy Act 1971 nor does it have any reference to the Medical Profession as in General Acts such as the Bharatiya Nyaya Sanhita 2023. Yet the largest number of medical complaints are adjudicated by the Consumer Courts where in 70 % of cases no expert opinion is taken to favor a summary trial. However, this intent is defeated since a medicolegal complaint on an average takes 8.04 years to resolve. Consumer Court judgements, however, influence contemporary medical treatment protocols in diverse areas from consent taking, investigations in common cases like Acute Appendicitis to the interpretation of the specialist qualification of an Anaesthetist. CPA has spurred the rise of defensive practice which is detrimental to the Health Care Delivery System of the country. It violates fundamental rights of the citizens and the doctors. A review of the inclusion of medical treatment in CPA as pointed out in the SC judgement, is the need of the hour.

Key words : Supreme Court, Consumer Protection Act, Defensive Medical Practice.

A three-judge bench of the Supreme Court (SC) reconfirmed the inclusion of medical profession in the Consumer Protection Act (CPA) as earlier decided in Indian Medical Association *versus* VP Shanta[1]. It, however, left other factors to be considered in a future trial. Earlier a two-judge bench of the SC in Bar of Indian Lawyers *versus* D K Gandhi[2] had questioned its inclusion. This review examines some of the fall outs of the continuation of medical profession in the CPA which lends urgency to a sociolegal examination.

Editor's Comment :

- A new court case based on socio legal facts is needed to examine the fallouts of the inclusion of Medical Profession in the Consumer Protection Act since it is leading to defensive medical practice and increasing the cost of treatment.

History of the Inclusion of Medical Profession in CPA

Consumer Protection Act 1986 was the first act in India to curb unfair trade practices and strengthen consumer rights[3]. It was enacted in response to the United Nations General Assembly declaration number 39/248 (1985) on consumer rights which urged Governments to implement consumer protection policies[4]. CPA set up consumer courts in the districts, states and at the national level for speedy disposal of consumer grievances. Medical profession, however, was neither mentioned in the United Nations Declaration nor in the CPA 1986 which followed. There was no legislative intent to include Medical Profession in CPA as evident from the parliamentary debate which preceded the enactment of the act. Indian Medical Association *versus* VP Shanta, SC (1995) first included medical profession under the CPA when it interpreted the preposition "any" before the word "services"[5]. The CPA offered the consumer an opportunity for a summary trial. Consumer Courts, therefore, became the first forum for grievance related to medical treatment.

The CPA 1986 was repealed by the CPA 2019 which changed the pecuniary powers of the various Consumer Courts and also introduced mediation[6]. Even though the Minister of Consumer Affairs Late Mr Ram Vilas Paswan mentioned in the parliamentary debate introducing the bill that medical profession would be outside the purview of the act, the final draft accepted by the Parliament still contained the word "any" qualifying services even though "medical" was not specifically mentioned[7]. Services offered free of charge and those under a "personal contract" were excluded. A public interest litigation against this act, citing the views of the Minister in the Parliamentary debate was rejected by the Bombay High Court in Medicos legal Action Group *versus* Union of India (2019).

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Analysis of Laws regulating medical profession and the Consumer Protection Act

The CPA 2019 or its predecessor CPA 1986 do not have any directions remotely related to the conduct of a Medical Professional. This in contrast to the regulatory laws which ensure that the citizens receive safe and effective medical treatment. These include the acts for registering qualified and trained Medical Professionals (Table 1), laws which regulate specific clinical areas of a medical professional eg abortion, organ donation and surrogacy (Table 2) and some general acts and regulations which have specific non clinical directions for the medical professionals such as criminal liability, clinical waste disposal and professional ethics and conduct (Table 3).

Yet the consumer courts are the first forum for medical grievance. In 70% cases they try medical complaints without an expert opinion which often lead to a disconnect between popular perception and professional practice. V Kishan Rao *versus* Nikhil Super Specialty Hospital & Anr felt that the confusion of diagnosis between typhoid and malaria was a simple issue not meriting an expert opinion, in the process overlooking a diagnostic dilemma which continues to be highlighted in academic journals as a clinical challenge[8,9].

Effect of the Inclusion of Medical Treatment in CPA

Consumer Court judgements create sensational headline in the lay press by causing knee jerk reactions in management protocol which is not always in the patient's best interest. A few of such instances are highlighted.

Table 1 — Acts registering medical professionals

(1)	National Medical Commission Act 2019
(2)	National Commission for Indian System of Medicine Act 2020
(3)	National Dental Commission Act 2020
(4)	National Commission of Homeopathy Act 2020
(5)	National Nursing and Midwifery Commission Act 2023
(6)	The Pharmacy Act 1948
(7)	The National Commission for Allied and Healthcare Professions (NCAHP) Act, 2021

Table 2 — *Acts providing directions for medical professionals in specific clinical conditions*

(1)	Mental Health Act 2017
(2)	HIV & AIDS (prevention & control act) 2017
(3)	Medical Termination of Pregnancy Act 1971
(4)	Pre Conception & Pre Natal-Diagnostics Techniques Act 1994
(5)	Transplantation of Human Organs & Tissue Act 1994
(6)	Assisted Reproductive Technology (regulation) Act 2021
(7)	Surrogacy (Regulation) Act 2021

Table 3 — *Acts with miscellaneous direction for medical professionals*

(1)	Bharatiya Nyaya Sanhita 2023
(2)	Epidemic Disease Act 1897
(3)	Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
(4)	Biomedical Waste Management Rules 2016
(5)	Indian Medical Council (Professional Conduct & Ethics Regulation) 2002
(6)	Drugs and Cosmetic Control Act 1940

Consent :

In Samira Kohli *versus* Dr Prabha Manchanda a consent for diagnostic laparoscopy was obtained from an unmarried lady who subsequently needed a total Hysterectomy because of extensive endometriosis discovered in laparoscopy[10]. The consent for Hysterectomy was taken from the mother because then the patient was under anesthesia. The court thought that consent taking was not proper and that the indication of Emergency Hysterectomy was not urgent. It awarded compensation for medical negligence. Since then, doctors' professional organizations have been circulating consent forms of various types without clear uniformity[11]. Some of them mention the probability of cardiac arrest which appears in the product insert of the commonly used local anaesthetic lignocaine injection[12]. This is a source of considerable anxiety to the patient. When Vinod Khanna *versus* RG Stone Urology & Laparoscopy Center ruled that preprinted consent forms are improper, many clinical establishments changed to videography of consent, causing logistic difficulty, adding to the cost without contributing to the success of treatment[13]. In Dr Soumitra Kumar *versus* Debashish Goswami, the doctor was held guilty of taking improper consent because amniotic fluid embolism as a cause of death was not mentioned in the consent form of caesarian section , overlooking the extreme rarity of this condition which occurs in 1: 40,000 to 1 in 50,000 deliveries[14,15].

Computerized Tomography (CT) in Acute Appendicitis:

A Cochrane review found the incidence of Negative Appendicectomy Rate (NAR), where no inflamed appendix was found following Appendicectomy, dropping from 23% to 3% when the use of pre-operative CT scan went up from 10% to 90%[16]. In 2014, 90% of American surgeons used CT for acute appendicitis while 13% of UK doctors used it in 2012. However, CT caused a delay in treatment which exposed the patient to the risk of abscess or perforation. This places the Indian doctor in a piquant situation where he risks a charge of medical negligence if he doesn't inform the risks and benefits of a pre-operative CT to a clinically diagnosed patient of acute appendicitis even when it isn't readily available and affordable. Such a counselling often unsettles the patient and cause a dangerous delay in treatment. The doctor continues to face the risk of a charge of medical negligence since even in a positive CT scan 3% patient will have NAR.

Anesthetists Without Recognized MCI Qualification :

The Government of India recognized in 2002 that the shortage of Anesthetists with Medical Council of India (MCI) recognized qualification threatened its emergency obstetrics and neonatal services. Consequently, the

maternal mortality rate and infant mortality rates, that are key indicators of public health were negatively affected. It, therefore, has a programme to train doctors with MBBS degree to administer anesthesia after three months of training[17]. However, in HM Alkute *versus* Grant Medical Foundation Ruby Hall Clinic (2016) the Consumer Court in Pune held the Anesthetist guilty of medical negligence because he did not possess an MCI recognized degree[18]. This overlooked the judgement of the Kerala High Court in Dr Balachandran *versus* the State of Kerala which had accepted that a six months experience in anesthesia is sufficient for a doctor to be able to work as an Anesthetist[19]. Poor awareness of the rules, regulations, acts and judgements, therefore, continue to threaten a charge of medical negligence to the surgeon for taking the services of an anesthetist without MCI recognized qualification.

Violation of Fundamental Rights of Citizens by the CPA :

The CPA is an impediment to the fundamental rights of the citizens. The violation of right to life under article 21 of the Constitution highlighted in Paschim Banga Khet Mazoor Samity *versus* the State of West Bengal stands to be amplified. In this case one Hashim Sheikh had to run from pillar to the post for getting a state hospital bed to treat his head injury sustained from a train accident[21]. He finally had to be treated in a private hospital for which he was awarded compensation by the court. An enquiry committee of the West Bengal Government had then recommended that the patient should have been treated in a trolly when there was no vacant hospital bed available. However, today such a situation of strained resources does not spare the treating Physician from the charge of medical negligence before a Consumer Court. Compelling a Physician to treat under such compromised situation is a violation of his fundamental right to profession under article 19(1)(g) especially when CPA does not have the power under article 19(6) to override this right[22].

Conclusion

The inclusion of medical profession under the CPA is today in a dire need of review. The initial idea of a speedy trial has been defeated when a review shows that a medicolegal complaint in India takes average 8.04 years to resolve[23]. Its socio-legal fallouts , such as encouraging defensive medical practice, are serious and challenges the nation's health care resources.

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