THE HINDU CENTRE
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Interview

Consumer Protection Act 2019 and Health Care Services

S. RAJENDRAN

The dialysis unit at South Central Railway's Central Hospital in Lallaguda.
Photo: Special Arrangement / The Hindu.

The Consumer Protection Act, 2019 (CPA), which came into effect on July 24, 2020, is expected to go a long way in serving the interests of consumers at large. In times such as at the present, with the COVID-19 pandemic raging across the country, disputes are likely to arise over the shoddy services rendered in certain segments of the health care sector.

In the views of Alexander Thomas, President of the Association of Healthcare Providers of India, and O.V. Nandimath, former Registrar of the National Law School of India University, Bangalore, the new Consumer Protection Act will attempt to address the issues of unfair practices, especially in the private health care delivery systems. They do not really see the private health care providers either being benefited by the new enactment or to be really worried, if the processes are fairly in place in accordance with the required standards.

Dr. Nandimath is an Executive Chair Professor in-charge of the Think Tank on Health at the National Law School and Dr. Thomas, having spent a number of years in serving in mission hospitals, now plays an active role in engaging with the Government for health and medical education reform. He has edited many books on quality, communication, and climate change in relation to health.
In this interview with S. Rajendran, Senior Fellow of The Hindu Centre for Politics and Public Policy, they seek to put to rest the doubts over whether the new consumer protection enactment is applicable to the health care sector and from the new facets of the law, including the constitution of a consumer protection authority that will have adequate powers to serve the people. Excerpts:

The new Consumer Protection Act (CPA) has come into operation replacing the earlier law, which was over three decades old. What are the fundamental differences between the two Acts and will the new law serve the expectations of the consumer better than its predecessor?

Nandimath: The present law is a generation next statute intending to build upon the old 1986 law. The 1986 law intended to 'better protect' the interest of the consumer by providing easy dispute resolution tribunals at district, State, and national levels. It also established Consumer Councils – again at district, State, and national levels to work towards consumer welfare. However based on the overall experience gained by the working of the old CPA, a new enactment has been brought forth with greater emphasis on enhanced overall consumer welfare.

O.V. Nandimath

Of course, this is in addition to the existing institutions of dispute resolution and Consumer Councils.

The fundamental DNA of the existing law is that it aims for consumer welfare than dispute redressal alone. It provides for pro-active engagement with issues that would haunt the consumer. Establishment of Central Consumer Protection Authority (CCPA) with required statutory powers is another additional agency provided for, which might prove to be the game changer in the days to come. A lot depends upon the CCPA to realise the overall objective of the enactment. If this happens, the new law will certainly serve the expectations of the consumer in a much more meaning full way. In the new Act, the ceiling and the compensation at various levels have been increased. Mediation council is also a new feature and should certainly help in better resolution of consumer grievances.

The constitution of a CCPA, as envisaged under the new law, is expected to serve consumer welfare in a big way. The authority will be headed by a Chief Commissioner and will have sweeping powers with the investigation wing empowered to carry out search and seize operations and also register cases under the Code of Criminal Procedure. What are your views?

Nandimath: As stated earlier, if at all there is one major point of expectation in the new law, it is the establishment of the CCPA, with ample powers to investigate. From simple instances of overcharging for goods and services (for instance, packed food items are sold for more than MRP in a cinema theatre) to curbing of unfair trade practices, the agency will be very helpful.

This will irradiate the possibility of only an aware and knowledgeable consumer raising a dispute and claiming redress on individual basis. The CCPA's existence will facilitate all those consumers who are not or less aware of their rights and are deceived. Therefore, the CCPA will be the key institution that will probably bring about last mile realisation of the greater consumer welfare.

Given the COVID-19 pandemic and the need of the people for a good health care delivery system, does the new CPA augur well for the people at large or does it favour the private and corporate hospitals that are mushrooming across the country?

Nandimath: The Right to health is a fundamental right of an individual recognised by our Constitution. However, we have failed as a civil society to provide justiciability to this right. Technically speaking, the corresponding duty of the right falls upon the state; and the state, realising its limitation in providing optimal justiciability, has started seeing active assistance of private sector (which now accounts for nearly 70 per cent of total health care). However, at many levels, instead of taking the private sector into confidence, the state is using its sovereign authority. This has resulted in many unfair practices being employed by a few in the private sector. The recent pandemic has exposed these dynamics widely.

So, the new CPA will attempt to address the issues of unfair practices, especially in private health care delivery systems. We do not really see the private health care providers either going to be benefited by the new enactment or to be really worried if its processes are fairly in place in accordance with the required standards.

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Does the CPA apply to the medical services rendered by both the corporate and the Government sector hospitals or is it only to ensure a better service by the corporate hospitals? The Supreme Court had in one of its orders, passed about two decades ago, stated that only the services that are charged shall come under the purview of the Act.

Nandimath: There was speculation initially when some contended that the new CPA will not be applicable to medical services. But that is now settled. This law continues to apply to all medical services, which are 'bought' for consideration. In other words, if the patient pays for receiving the medical services, even at concessional rates, then he gets under the ambit of CPA.

If the medical services are rendered free or as charity, then they will be exempted. These principles are applicable to both Government hospitals and corporate hospitals alike. If a Government run establishment charges a fee, its service is liable under CPA, while a private hospital providing its services as charity gets exempted.

Yes. This approach is on the basis of Hon'ble Supreme Court's decision in V P Shanta's case in 1985. The same continues even now under the new CPA's regime.

Is it not a fact that the consumer protection law can be counterproductive in the case of medical services as private hospitals tend to ask for diagnostic reports leading to patients having to spend much more than they really ought to? Doctors and hospitals will be compelled to fend for themselves since there is every likelihood that they will be caught up in court cases and, consequently, in the reliance on medical laboratories.

Nandimath: It is generally argued that doctors adhere to defensive medication (including excessive diagnostic investigations) to defend themselves in case of litigation. There is marginal truth in the same. The evidence-based medicine approach, otherwise, also makes doctors lean towards multiple diagnostic investigation in any way. The core idea is that the patient shall be getting quality health care, of course at affordable prices.

Therefore, it cannot be straightaway alleged that the phenomenon is a result of consumer protection laws. If there were no CPA, obviously, the Civil Courts would have exercised the jurisdiction in medical negligence litigation. The medical community should work towards providing quality affordable healthcare. However, it is a strong prevalent sense that one of the consequences of the CPA has been the practice of defensive medicine and this will push up costs.

Alexander Thomas

Government hospitals, by and large, are known for rendering a poor quality of service while the corporate hospitals are better known for fleecing patients. How can it be ensured that patients receive a good service at a nominal cost?

Alexander Thomas: It is a rather sweeping statement that all corporate hospitals are fleecing. There are bad apples in every profession and the law should address this. Earlier, the private sector was providing a very small percentage of health care to the citizens of our country but has now grown to the extent of 70 per cent. It should also be remembered that the private sector has enabled the provision of state-of-the-art health care in India to its people. A few decades ago, government hospitals and quality health care were synonymous. Even today we have government institutions of excellence, e.g. NIMHANS, Jayadeva, AIIMS, PGI are few to illustrate. Government hospitals need to be given adequate resources and held accountable for their performance. Recent decisions to increase health allocation and path breaking medical education reforms will hopefully make this a reality.

Health care cost is increasing making it difficult for private (or corporate) establishments to keep their service price low. On the other hand, the Indian government spends about 1.28 per cent of GDP on health, which is awfully low. It also makes difficult for government establishments to increase their quality of services.

If the aim is to provide quality health services at nominal prices, the government should increase its spending, with effective reforms in the overall health insurance sector.

Have medical litigations increased substantially across the country? Does it have a direct bearing on the CPA? What is the role of the medical council and the medical associations in this matter?

Alexander Thomas: Insurance companies collate some data, which indicate that there is an exponential increase in medical litigations against doctors, compared with a few decades ago. This is probably a reflection of the social developments as well.

Access to consumer dispute redressal commissions was the major contributing factor to start with, which helped the patient to litigate easily. Now the present CPA does away with fees for value of goods or services up to Rs five lakh. Therefore, most of the medical services costing less than five lakh of rupees can be litigated against without any fees. This, hopefully, should not facilitate unnecessary litigation.

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Professional Regulatory Bodies (National Medical Commission) have a huge role to play to bring back professional approach and higher ethical standards into the system. This would, in the long run, reinstate the lost trust into the doctor-patient relationship, which would, in turn, help reduction of medical litigation gradually.

Medical associations should also supplement the role of a professional regulatory body and work towards development of high quality (with resource efficient) treatment protocols. These protocols would help the tribunals/courts to decide the disputes quickly and efficiently, in a worst-case scenario of litigation. Communication and trust are the key. Hopefully, the introduction of 'communication' and 'ethics' into the curriculum of MBBS will encourage and build a positive relationship between the patient and doctor.

Medical Insurance is gaining importance in the country largely due to the exorbitant cost of health care. What are your views on the same given the high cost of insurance as well? Will insurance, in the long run, help both the patients and the medical fraternity?

Alexander Thomas: As explained above, if we want quality health care, it is going to be certainly an expensive affair. Some source must fund the increased cost for better medical services. Millions of Indian families are going below poverty line due to catastrophic spending on health and this should be avoided. The state should increase its investment in improving health services, which unfortunately seems a distant dream.

The schemes announced by the Prime Minister recently will cover the large 'missing middle'. Government needs to ensure that health provision through public institutions is, at least, around 70 per cent. Scientific costing is a prerequisite base to ensure viable healthcare providers who, in turn, can provide affordable quality care by both government and private health care providers.

However, both effective coverage as well as cost of insurance is very high in India. Pandemic situations have made insurance more expensive and this trend would continue. Unless reforms specific to our country are not brought in the insurance sector, it would not yield the desired results, as we have seen in western countries. More innovative ways of health financing are to be devised by careful policy analysis and planning.

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Specially speaking from the present CPA angle, due to further relaxed standards for patients, the professional indemnity insurance cost will certainly increase, which, in turn, will make the health-cost dearer and would pinch the patient forming a vicious circle.

Will it not be appropriate for the authorities to fix costs for all medical procedures carried out at private hospitals, including the fee for the doctors concerned?

Alexander Thomas: The Utopian solution is certainly fixing the cost for all medical procedures. But the real challenge is how we cost the medical services reasonably across diversity ridden hospitals.

Obviously, costing shall precede price fixation. Therefore, the imminent need is to carry out a scientific study to ascertain actual cost of medical services. Otherwise, if unreasonable prices are fixed, it would finally lead to reducing the effectiveness of the overall system and would make the entire system to collapse, which is not the intent of anyone at all.

Health services must be affordable. But this does not mean they should only be affordable to the patient; but to the health service provider as well. Not only individual health, the health of the health delivery system should also be taken into consideration. Such a balanced approach alone will make a system sustainable.

Medical ethics is an important factor and corruption is quite rampant, be it in sourcing devices or compelling patients to undergo invasive or non-invasive medical procedures. What is your advice to the members of the medical profession and health care institutions?

Alexander Thomas: Being educators, we believe in the role of education in improving the professional standards. Education does play an important role in inculcating ethical values in the minds of medical students and, in addition, those trying to teach ethical values should themselves demonstrate to their students that their professional practice is ethical.

While we have been promoting privatisation in medical education as part of medical reform, it must be ensured that medical education is kept affordable. The nobility of the profession no doubt must be kept in mind and ethics and integrity must be emphasised right from student days. Society as a whole has to change and become more ethical.

Two reasons that have affected the doctor-patient relationship over the last decade or so are the CPA and the menace of capitation fees, which have to some extent taken away the 'nobleness' of the medical profession.

If we remember that the patient is the most important person and that it is because of the patient that we exist, and treat our patients with empathy and understanding, keeping his/her interests first, the situation will improve.

Related links:

1. **Ministry of Law and Justice. 2019.** The Consumer Protection Act, 2019, *The Gazette of India*, August 19. [https://consumeraffairs.nic.in/sites/default/files/CP%20Act%202019.pdf].
2. **Ministry of Law and Justice. 2020.** Corrigendum,*The Gazette of India*, April 24. [https://consumeraffairs.nic.in/sites/default/files/CP%20Act%202019-corrigendum.pdf].
3. **Ministry of Consumer Affairs, Food and Public Distribution. 2010.** Notification, *The Gazette of India,* Department of Consumer Affairs, New Delhi, July 15. [https://consumeraffairs.nic.in/sites/default/files/Act%20into%20force.pdf].
4. **Ministry of Consumer Affairs, Food and Public Distribution. 2020.** Notification, *The Gazette of India,* Department of Consumer Affairs, New Delhi, July 23. Source: Government of India. [https://consumeraffairs.nic.in/sites/default/files/Provisions%20of%20Act%20comes%20into%20force.pdf].

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In a journalistic career of nearly 40 years with The Hindu in Karnataka, he has extensively reported on and analysed various facets of life in the State. He holds a Master's degree from the Bangalore University. The Government of Karnataka, in recognition of his services, presented him the Rajyotsava Award - the highest honour in the State - in 2010. He can be contacted at srajendran.thehindu@gmail.com].