

CONSUMER PROTECTION ACT 1986 AND IT'S IMPLEMENTATION IN HEALTHCARE SYSTEMS

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ABSTRACT

Each and every one of us are consumers, with no exceptions. Many are unaware of what important position a Consumer plays in an economy, a consumer's rights and powers. In spite of various Laws and Acts in favour of consumers, they were exploited by merchandise at various levels. There is a demand for quality and quantity for goods and optimum services by consumers. In order to enforce, mandate and moderate the same, Consumer Protection Act was introduced in 1986 and had 3 amendments till 2018. With the advent of sophisticated technologies and engineering, overall quality, accessibility, availability of finished goods as well as services has been revolutionized. However, consumers are still largely at dismay. Healthseekers were excluded from the ambit of Consumer Protection Act as services were not an integral part of Consumer Protection Act, however with recent amendments, healthseekers and physicians are also under its purview. An attempt is made, to focus on various consumer protection issues from various aspects and perspectives and further scope for remedial measures.

KEYWORDS: Consumer Protection Act, CPA 1986, Consumer Rights & Health Care Systems

INTRODUCTION

India, with a strong judicial system had various Laws and Acts to empower the consumers. Though many of them existed, Consumers were still in a helpless situation owing to several causes such as ignorance, illiteracy, unorganized and fragmented groups, spurious goods/below par to reasonable market standards and deceptive advertisements which furthered ignorance. Inspired by the Consumer Protection guidelines passed in UN in 1985; Indian Law makers, after careful evaluation and considerations passed the National Act of Consumer Protection Act on 24th December 1986.¹ Consumers were regularly exploited

and were denied quality products and services as well as compensation to claim against spurious goods. The Act enabled a separate 3 tiered proforma where the consumers could meet, represent themselves and seek Redressal. Earlier, all consumer disputes were handled by civil courts in India which had certain advantages and disadvantages. The 3 tier Redressal forums exist outside the consideration of regular courts and are specifically for this. The forums are a. District level b. State level c. National level

Brief History

Economics is an estimator of grade of a civilization. Levels of commerce and

economics indicated progress & advancements^{2,3}. All recorded, existent literature dating back to Ancient civilizations such as Indus Valley civilizations has evidence regarding market place and rules. Over the years, rules and regulations became more strict, refined and robust. Manusmriti, Kautilya's arthashastra, etc were hallmarks of their time, which clearly defined compensations, punishments etc. Sultanate also had various new rules implemented, which steadied the quality and quantity of goods. Under Britain's colonial rule, administration was advanced and made uniform. British are credited with 2 important reforms, i.e Metric system and Modern uniform legal system. These two were quintessential in rise of power of a consumer. Indian legal system also adopted and adapted various Global laws regarding consumers and their safety which eventually lead to enactment of CPA 1986.

Table 1.1 Table depicting the 6 Rights of Consumer

Rights of Consumer¹

CPA designed to protect and safeguard 6 rights of a consumer	6 "R"s
	Right to Choose
	Right to Consumer Education
	Right to Safety
	Right to Represent/ Right to be Informed*
	Right to be Heard
	Right to seek Redressal

1. Right to Choose – The consumer has every right to choose any brand, any good or service, facility. He is considered to be Sovereign. That is, no merchandise can exercise monopoly. Any influence or exertion of authority over this, is regarded as interference in choice. Eg- A health-seeker can choose his treating physician, treatment modalities, generic / patent medicine, etc.

2. Right to Consumer Education – The Consumer should be aware of his status as a responsible customer, citizen and his rights. Government of India has launched several measures like *JAGO GRAHAK JAGO, UPABHOKTHA JAGARAN & SAMRAKSHAN UPABHOKTHA KA* with the help of Tele-media and broadcasting to reach even the remotest end-user and keep him informed and updated. Eg- A health-seeker needs to evaluate exaggerating advertisements and enquire about products with experts and come to conclusion.

3. Right to Safety – The consumer should not be harmed in any way, i.e Physically, Mentally and psychologically by consumption of spurious/ low quality products, that is he should not pay for his own injury. Eg- Injuries which may occur due to sub-standard medicines and drugs.

4. Right to Represent/ Right to be informed - Consumer has right to be informed about the quality, quantity, potency, purity, standard and price of goods. Producer has to provide all details regarding the goods dutifully. Government has undertaken issuing of standards for each commodity. Eg- Certificate from QCI & Certificate of Pharmaceutical Products CoPP⁶- Ayurveda products, BIS Hallmark-Gold, Silver, Jewellery, ISI- Industrial

products, AGMARK- Agricultural Produce, FPO- Processed foods

5. Right to be heard – Consumer service cells have been organized for representation of consumers at appropriate forums. Consumers can represent themselves, or on behalf of other consumers at the 3-tier consumer Redressal forum.

6. Right to Seek Redressal - Consumers are eligible for monetary compensation against any sub-standard goods or services, which do not meet the appropriate market standards. Eg- Exchange & Repair of spurious goods, Health-seekers suing Physician for wrongful procedure under ambit of CPA.

Responsibilities of Consumer

1. Consumer should be Quality conscious that is; one must always check for relevant purity marks issued by government and other authentic organizations
2. Consumer should not be misled by exaggerated or false advertisements of the products
3. Consumer must exercise his rights, especially during validity period of guarantee and warranty
4. Consumer must procure valid Cash Memo/Bill/Voucher/ Ledger entry/ Tax Invoice for every transaction
5. Consumer must not buy anything blindly
6. Consumer must not buy anything in hurry
7. Consumer must exercise his rights, before valid purchase.

Remedies for Aggrieved Consumers

3 tier, quasi-judiciary machinery consisting of Redressal forums at District, State and National levels. This machinery has rights to solve disputes of consumers in stipulated time.

Any dispute which doesn't involve tests, laboratory investigations, etc ought to be sorted within 30 calendar days or 1 month from the date of lodging of complaint

Any dispute which involves tests, laboratory investigations etc ought to be sorted within 90 calendar days or 3 months from the date of lodging of complaint.

Following are remedies for aggrieved consumers

1. Exchange of faulty goods for new, functioning goods.
2. Cash Refund
3. Repair of defective parts of goods
4. Monetary Compensation, apart from cash refund for those products which are proven hazardous

5. Sustainance/ Maintenance Money where ever necessary

Amendments and Bills of CPA

There were in total, 3 amendments to CPA (as on Mar 2019):- **1991, 1993 & 2002**

Amendment 1991¹

-Incorporate Provision for **quorum** (minimum 5 people to be present at any point)

-Appointing persons to preside over state commission/ district forum in case of absence of president

Amendment 1993¹

-Defines what “appropriate laboratory” under the act is. Only such recognized laboratories could be employed for investigation in cases of disputes.

-Redefined “Consumer” as not only user of physical goods but also **paid services**.

-Brought “Assemblers” and those who provide “storage facilities” into the ambit of manufacturers.

-Oral and written statements, either fully or partially, falsely describing/ claiming to be of standard quality, etc were considered under “unfair trade practices”

-Establishment of secondary/additional district Redressal forum if deemed worthy

-To give more power to the redressal agencies under the act

Amendment 2002¹

-Demarcated the power of each level based on claim amount, i.e. District forum to process complaints valued up to 20 lakhs. State forum to process complaints valued up to 1 crore and National forum to process 1 crore to 10 crores.

-Regulation of completion of disputed with stipulated time, i.e one month or 30 calendar days since the receipt of complaint, for those which doesn't require laboratory investigations and 3 months or 90 calendar days for those which require investigations

-Strengthening Redressal agencies with more power.

-Streamlining the procedure

-Widening scope for act to make it more functional and effective

Bills

Bill 2011⁷

16th Dec 2011 Bill was passed but due to change in government at center it was lapsed.

Bill 2015⁸

Introduced in Aug 10, 2015 but withdrawn as new 2018 bill was introduced

Bill 2017⁹

Introduced in December 2017, Approved in both houses in December 2018. Current status- Pending

Penalties

Under ambit of CPA 1986, Redressal forum is eligible to enforce one or more of the below:-

1. Removal & Replacement of defects with good of similar description without defect

2. Replace old goods with new goods of similar description

3. Bear the cost of such faulty good

1. Compensation and Monetary aid as deemed right by forum

2. Withdraw spurious goods and hazardous materials.

All consumer forum judgement are monetary in nature. They do not have the authority to order imprisonment or other penalties as opposed to regular courts.

If respondent has not complied with Judgement of any of the Redressal forum, then they are subjected to

i. Imprisonment not less than one month, which may extend to 3 years.

ii. Fine not less than 2,000 which may extend upto 10,000

iii. Both

Advantage and Disadvantage of CPA

Advantages

Consumers may opt out of unwanted communication

All customers can opt out of spam from their mails, sms, with regard to promotional newsletters and e-mails.

Eg:- Many clinical practice management softwares come with automated reminders, auto-generated messages etc, which may be disabled from healthseeker's end.

Consumers may terminate fixed term agreements and contracts

Consumers are allowed to terminate fixed contract by giving sufficient notice as stated in rules of agreement. Eg:- Appointments,

elective surgeries maybe cancelled or re-scheduled.

Consumers may lodge complaint, to the concerned authorities and dedicated Redressal forum

The consumer, who is affected, either by themselves or any one on their behalf, may lodge complaint with concerned authorities in the 3 tier Redressal system.

Consumer may demand refund as well as compensation

A consumer is eligible for seeking refund / replacement as well as monetary compensation when goods and services are not to reasonable market standards, during cases of overbooking, etc.

Consumer may demand for Examination of goods on delivery

Unless specified by Consumer, Supplier has the obligation to keep up his claim of deliver-by-date and also has to allow them to examine goods upon delivery. Eg- Medical devices.

Consumers may refuse payment if estimation of services were not formally declared

Consumers ought to be informed of probable costs of services opted, before raising a formal bill. Consumers may opt out of a payment if estimation of services were improper, incoherent or erroneous. The supplier may have to provide probable margin or variations or communicate the same beforehand. Consumer may refuse payment if actual costs and estimated costs variation are too high Eg: - estimations for *Kaala vasthi, Karma vasthi, Panchakarma* procedures duration of stay, etc

Consumers can demand that the agreement forms to be made in simple, understandable language

Agreement forms and other documents should be in very simple language which is understandable to most literates. It should be devoid of Jargons and other complicated statements. Eg- Consent forms, bills etc.

Disadvantages of CPA

Free services are not under the ambit of CPA

Any service or good which has not paid will not be accountable under CPA. It extends to Free Medical services as well.

Basic Amenities are not covered under CPA

Basic amenities such as water, electricity, sanitation etc all of which are paid services, still lies outside the consideration of CPA

CPA cannot impose strict liabilities on suppliers of spurious goods

Though there is ample scope for a consumer to seek refund, Redressal and compensation, by lodging a complaint, CPA cannot impose liability for producers of such hazardous goods.

CPA does not exactly address Safety requirements and Environmental hazards

Safety requirements and Environmental hazards arising due to hazardous goods and improper services is not dealt by CPA. Each individual case has to be dealt with separate dedicated acts for that purposes.

Many Consumer cases were advised to approach regular judiciary system.

-The ACT does not permit publication of names of producers who manufacture deficient goods

-The act does not permit a consumer to lodge a complaint in Consumer Redressal

forum, if alternate remedies can be obtained by other laws/acts.

-There is no or scanty investigation in cases

Hardly cases undergo rigorous investigations and examinations, thus quality of judgement are questionable.

Jury members are not always competent

Since many jury members do not belong to Judicial background, they can have erroneous approach to handling cases.

Jury members are at difference with each other

A Professional rift is noticed between Jury members from Judicial background to members from non-judicial background.

DISCUSSION

Physicians and healthseekers are very much under the ambit of CPA 1986.

Health seeker can exercise his rights as a consumer and may ask for choice of attending physician (Right to choose), may question validity of advertisements of Hospitals & Medical Institutes (Right to consumer information), be protected against negligence and malpraxis (Right to safety), can question the standards of Medicaments, Surgeries & Protocols (Right to be informed) , can seek Redressal for adverse outcomes (Right to redressal) and may approach Redressal forum for such complaints (Right to be heard) . Physicians/ Medical institutes also may pursue a case if valid bill (with previously stated estimations) is raised but is unpaid by health seeker.

Certain precautions for the physicians to avoid litigations:-

1. Evidence and perfect documentation
2. Maintenance of online copies of documents

3. Communication & Rapport with health seekers

4. Mentioning “diagnosis review” if diagnosis isn’t confirmed

5. Consent for procedures, examinations, etc.

6. Constant updates of Knowledge, Skills, Procedures, Legal knowledge, etc.

7. Every practicing physician/ surgeon must have basic knowledge regarding laws, rules and acts concerned with medicine & medical practice.

There is a constant evolution of CPA and more potent act is expected when the bill is enacted into practice.

CONCLUSION

Consumer Protection Act 1986 has drastically changed scenario of consumer-merchandise/supplier transactions. The global market is now progressively moving towards a positive approach. Through various Governmental and non-Governmental agency’s rigorous efforts, CPA is vital and instrumental in providing quality, quantity and comfort to the end-user. It has enabled even laymen to approach forum and seek Redressal. It has minimized number of issues based on product/service. By constant evaluation by concerned authorities & experts, we can raise the scope & ambit of the act for betterment of Mankind.

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