



# Health as Consumable Item: The Indian Scenario

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### Opinion

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## Abbreviations

IPC: Indian Penal Court; CPA: Consumer Protection Act; BNS: Bharatiya Nyaya Samhita.

## Opinion

The hon'ble apex court of India in its landmark judgement in V.P Santha vs IMA case in 1987 included health sector under the jurisdiction of consumer court and ruled that medical services provided by doctors fall under the ambit of Consumer Protection Act. The consumer protection act (COPRA) of 1987 has been replaced again in 2019 by CPA. Like any profession on earth, medical profession also has black ships. The whole idea of the hon'ble judiciary was to protect the interest of our patients and thereby the citizens of this country. But time has proved that inclusion of health sector under consumer protection act has its own fallacies. The following are some of them:-

- The fundamental mechanism of doctor patient relationship depends on trust. This has got completely destroyed in the last three decades.
- Media and press has inculcated an idea in the mind of its viewers and readers that human beings are immortal. A patient only dies due to wrong diagnosis and treatment made by a doctor. Therefore a doctor is solely responsible for all mortality and morbidity of the patients. Being soft targets, doctors are facing violence at their workplace resulting to physical assault, if there is suspicion made by patient party related to medical negligence or death of the patient. Few doctors had been beaten to death.

- After the inclusion of CPA in medicines, corporate hospitals came into play. Doctors are now seeking jobs in these hospitals as their paid consultant for obvious financial security. The name & fame of an individual doctor made from his individual practice has been phagocytosed by that of a corporate hospital. Some corporate hospitals do not allow their panel consultants to do private practice. Management of big corporate hospitals create pressure on their consultants through their managers regarding their performance. When finance starts controlling medical decision making, there is bound to be a catastrophe.
- Cost of treatment has increased considerably. Medical insurance companies are capping their reimbursement limit for certain treatments. Rest of the money have to be paid by the patient. Considering the present situation, doctors are trying to play safe. Since the court looks for evidence based medicine & not on clinical judgements based on experience only, doctors are relying more on investigations rather than on their age old clinical acumen only for diagnosis & treatment of their patients. Therefore, the cost of these investigations have to be borne by the patients.
- After the inclusion of CPA in health sector, various professional indemnity companies have come into play. They are providing civil, criminal & consumer case coverage to a doctor & hospitals against a handsome premium which a doctor had to cough up. The premium tariff varies from doctor to doctor depending upon their specialization & vis a vis amount of risk involved. For example, professional indemnity fees will be more for a surgeon than a psychiatrist.
- A patient is no more a patient to a doctor. He/she is a consumer. All patients are considered as potential plaintiffs who can drag his /her consultant doctor to the consumer court at the drop of the hat. Therefore the



human touch and flavor in a doctor patient relationship has been long lost.

- Many so called “agencies for the benefit of the patients” have cropped up. In case of any unpleasant experience of the patient, they are actively helping the patient or patient party to file a litigation against the doctor or the hospital with a condition that they will have a certain percentage share of the compensation, if awarded by the consumer court.
- CPA on medical world is having its long term effect. Doctors are avoiding complicated cases in their private setup and referring these patients elsewhere, particularly to government hospitals.
- After coming to know the fate of some doctors who had faced charges against them in the court of law, medical students are now opting for less complicated, less risky and mortality free specializations. Therefore postgraduate seats in general surgery, cardiovascular surgery, paediatric surgery or neurosurgery are remaining vacant during admission after PG entrance examination & MCh examination. If this continues, our country will suffer from non-availability of surgeons of this speciality in near future
- Due to huge population and less doctor patient ratio, doctors are bound to give less chair time to their patient in their busy outdoor thereby making obvious mistakes in their diagnosis leading to litigations being filed against them in consumer courts. About 5.2 million consumer cases are filed against doctors in India per year.

Directly or indirectly, all these apocalypses are due to inclusion of health sector into the jurisdiction of consumer court. Time has come to re-evaluate the situation. Can health be a consumable item? In my opinion: never. Why does a patient go to a doctor? A patient visits a doctor in order to get cured from his/her ailment. In other words, for healing & to remain healthy. But healing is multifactorial! It depends on age, ethnicity, immunity status, nutritional status, various biochemical parameters of human body, medical facilities available to the patient, patients financial status and affordability of medicines or treatment facilities etc. Therefore how can health be standardized like any product like an apple phone or Samsung television set where thousands of the same model manufactured and sold to the consumers will have the same quality? The standard of treatment for a patient suffering from COPD in a metro city corporate hospital ICCU will be different than the same being treated in a rural health setup, due to lack of infrastructure and facilities. So how can hon'ble court standardize treatment quality and find negligence? Every individual is different so also their response to a disease. It has been seen recently that various medical societies in India are circulating treatment protocols to its respective doctor members, for education purpose and also to make them aware about

possible negligence in treatment. However, these are mainly quoted from standard medical authentic textbooks and journals and they are generalized. Response of the individual to treatment varies from person to person and it cannot be exactly predicted beforehand. Various quality audits like that of NABH, NABL, QCI are being conducted in private hospitals but that doesn't guarantee cure from disease of an individual.

Health care service belongs to services marketing sector, and the experience here is variable. Unlike goods marketing, services marketing depends on 7 P's. They are: Product, Price, Place, Promotion, People, Process and Physical environment. Whenever “People” factor comes into play, experience of the consumers/ patients will be variable. For example: Aviation Industry like banking sector also belongs to Services marketing. If you catch Kolkata Delhi flight ten times on ten different dates but on the same departure time and flying with the same operator, you are bound to undergo ten different experiences. This cannot be standardized like goods marketing because so many parameters are variable, although every flight operators have their own SOP's. Similarly, health care services and its possible outcomes cannot be rigidly standardized as it involves multiple variable factors.

### The Present Indian Scenario

Doctors in India are now working at gun point. A patient can develop grievances against his treating doctor or hospital if his/hers expectations do not match with his experience during his treatment period. A complaint can be lodged by the patient at the following places against the doctor or hospital:-

- District consumer commission worth 50 lakhs compensation
- State consumer commission worth 2 crores compensation
- National consumer commission worth more than 2 crores compensation
- State Medical council for cancellation of doctors registration
- National Medical Commission
- State clinical establishment regulatory commission against the treating hospital
- Apex body of the respective medical speciality
- Legal authorities like district/ state high court/ Supreme court
- Social media, print media and press.
- Police and human rights commission.

### Punishment

Previously according to Indian penal court(IPC) section 304 A, punishment for causing death of a patient or any

negligent act done by a doctor was imprisonment for up to two years or with fine or with both. This law has been replaced by Bharatiya Nyaya Samhita(BNS) section 106(1) from 1st July 2024 as death from any rash or negligent act done by a registered medical practitioner while performing a medical procedure shall be punished by imprisonment up to two years and also liable to fine. So now imprisonment is mandatory. Along with this the medical community is regularly facing physical violence and verbal abuse in their work place.

### Conclusion and Suggestions

- The topic “Medico legals for doctors” should be included in MBBS curriculum for increase of awareness among medical students. They should also be taught certain “soft skills” related to communication with the patients and their relatives. They should learn to avoid medical jousting i.e criticizing their colleagues. This causes negative effect among the patients and their relatives.
- Doctors should learn two basic aspects of medico legals- How to write informed consent and how to keep records. Without proper documentation there is no defence in the court of law.
- There is acute shortage of doctors in India. This could be solved by increasing graduation and post-graduation seats. Reservation of post-graduation seats for backward classes & other quotas must be immediately dissolved, as after passing MBBS, all doctors are getting same stipend, same accommodation facilities, and are exposed to PG medical teaching by same professors. So there is no discrimination. For the sake of vote bank politics, keeping quotas in PG entrance examination is depriving meritorious students from entering various specialities which has started affecting the health care delivery system of India. Admission to PG curriculum should be only done on the basis of merit.
- Due to huge work load, chair time is less everywhere particularly in government hospital. This can be solved

as our country has a huge pool of efficient doctors having diploma qualification in their respective speciality. National medical council should encourage absorption of diploma doctors as faculty for the post of assistant professor in various teaching hospitals. Criteria should be diploma in a particular speciality with minimum 5 years experience post PG.

- Doctors must not be arrested by police and subjected to jail like any other petty criminals. This is sending wrong message to the society. By an ordinance, power should be given to the medical councils, both state and national, to investigate any act of negligence of a doctor, if he or she faces any allegation from the patient or his/her relatives. In order to avoid biasness, a committee comprising of doctors from other state should look into the matter and give its verdict.
- If found guilty of negligence, a doctor can be fined by the medical council along with temporary cancellation of his/ her registration for a brief period of six months. In order to revoke his/her medical registration, that particular doctor must pass an examination comprising of MCQ and on camera viva voce conducted by the medical council and executed by the faculty members of government medical colleges belonging to the same speciality. At least 4 chances should be given at a gap of six months. This will help the accused doctor to brush up his/her knowledge so that no further incident of medical negligence happens in the future professional life. Depriving a doctor from practice will affect his/her patients, doctor’s economic condition & medical work force of the country.
- In conclusion, considering all the above mentioned arguments, let’s hope that one day a P.I.L will get filed in Supreme court of India by medical associations for re-evaluation of 1987 V.P Santha vs IMA judgement related to inclusion of health care under the jurisdiction of Consumer court which has caused much hindrance than help to Indian society in last 3 decades.