

Consumer as Co-Protector in Health Services

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People are an integral part of health systems and not external beneficiary only. Health services need to be designed and policies written keeping the consumer perspective at the centre. Considering the complexities of health sector - people are both consumer and co-producer of services- a combination approach where attention is on raising awareness on consumer rights and duties and providing health education, will be fitting tool for consumer protection in a holistic sense

Consumer is a person (or organization) who buys Goods (i.e., refrigerator, foods items) or Services (i.e., stay in a hospital or consultation by a physician) for their own use. In economics, the exchange of goods and services makes one person the seller and the other a buyer (if it is for business purpose) or consumer (if they are the end user). In such transactions, other than in an idealized situation, there is 'information asymmetry' - one party, either seller or buyer/consumer, has more or better information (about the product and/or service) than the other. This 'information asymmetry' can affect seller and consumer alike and poses a risk of 'market failure'. Since economy and a functioning market is of interest to all modern societies, in all levels (Local, State and Union), the Governments takes up responsibilities for establishing and implementing mechanisms for both business and consumer protection¹. This article focuses on consumer protection and awareness in the context of Health Services in India.

Concept of Consumer Protection

There are United Nations Guidelines for Consumer Protection (UNGCP), which were first adopted by the United Nations General Assembly (UNGA)

on April 16, 1985. The UNGCP are considered "a valuable set of principles for setting out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems and for assisting interested Member States in formulating and enforcing domestic and regional laws, rules and regulations that are suitable to their own economic and social and environmental circumstances, as well as promoting international enforcement cooperation among Member States and encouraging the sharing of experiences in Consumer Protection." (UNCTAD, 2015). The UNGCP has been expanded/ updated twice since then, with new resolutions adopted in 1999 and 2015, respectively. Thereafter, countries have initiated steps to set-up legal mechanisms for grievance redressal as well as making consumers aware of their rights, responsibilities and duties. Consumer protection focuses on making them aware of products or services, their characteristics and the other aspects including place to buy, price, and the need etc.

Consumer Protection in India

India was amongst the earliest to join the legislative approach for consumer protection with enactment of the Consumer Protection Act (CPA) in 1986, within a year of UNGCP,

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1985. Afterwards, the Union and State Governments in India have developed mechanisms and enacted legislations, which aim to work on consumer protection and awareness. There are around 15 major acts/legislations, directly or indirectly contributing to consumer protection in India and CPA of 1986 continues to be central piece of legislation in this direction (Box 1).

The CPA, 1986 of India aims to ensure that rights of the consumer² are protected and to safeguard and protect the interest of consumers; focus on simplification of procedures for seeking redressal of grievances of patients or their relatives. The Consumer Protection Act 1986 provides for consumer disputes redressal at the district, state and national level. With the help of this law the agencies can solve grievances in a speedy, simple and inexpensive manner. A separate Department of Consumer Affairs was set up at the state and central government. This act aims for less expensive procedure and has guidance on time bound resolution of disputes. There are other legislative measures as well which are listed in Box 1.

Health Services and Consumer Protection

Over the years, various courts in India have clarified and delivered rulings and judgments to bring medical/dental profession, hospitals, dispensaries, nursing homes and other related services under the Section 2(1) (o) of Consumer Protection Act, 1986. The judgements have made a distinction between a “contract of service” and a “contract for services”³ under consumer protection acts and included services under medical profession as ‘contract for services’.

The different characteristics of health sector and services, from other sectors, also need to be acknowledged in this discussion. A major difference is that a clear distinction between producer of services and consumer may not always be possible. People



are not the external beneficiaries of health services or consumer only and in an extended view, they are the ‘co-producer’ of health services as well. What people/patients do at personal/individual level influences the outcome of health services rendered. Their behavior (physical activity, moderation in alcohol consumption or tobacco cessation) determines their health status and outcomes. For example, when people (and patients) adopt appropriate and early care seeking

or comply with the prescriptions and advice of physicians/care providers, they produce good health and contribute to the outcome.

Understandably, there are a few other provisions and mechanisms, which directly and indirectly can be considered as tools for consumer protection. One approach is public provision of health services and regulation of health services. The provision of health services by

Box 1

Legislative provisions for consumer protection in India

Directly related to consumers in Health Services

The Mental Healthcare Act, 2017

The HIV/AIDS Act, 2017

The Food Safety and Standards Act, 2006

The Transplantation of Human Organs Act, 1994

The Infant Milk Substitutes, Feeding Bottles and Infant Food (Regulation of Production, Supply and Distribution) Act, 1992

The Consumer Protection Act, 1986

The Prevention of Food Adulteration Act, 1954

The Drug and Cosmetics Act, 1940

Consumers at Broader Level

The Competition Act, 2002

The Environment Protection Act, 1986

The Prevention of Black Marketing Act, 1980

The Essential Commodities Act, 1955

The Protection of Civil Rights Act, 1955

The Fruits Product Order, 1955

The Essential Commodities Act, 1955

The Agricultural Product Act, 1937

The Sales of Goods Act, 1930

The Indian Contracts Act, 1872

government is considered an approach to ensure that the services are available at affordable cost. Regulation of prices of products and services in health sector are other mechanisms to keep services within affordable limits. The other mechanism is the standardization of products and ensuring that services meet minimum standards. This is done to assure the quality of products. For health sector, there are Indian Public Health Standards (IPHS) and then the Clinical Establishment (Registration and Regulation) Act, 2010 also prescribe minimum standards for all types of health facilities. There is National Accreditation Board of Hospitals and Healthcare Providers (NABH), which has standards available and to give NABH accreditation to healthcare facilities in India.

Recent Initiatives

Consumer protection in any setting cannot rely solely upon legislative measures and single tool approach. Regulatory approaches



are useful but sub-optimal enforcement and implementation limits the effectiveness. This case for supplementary mechanisms becomes stronger in the backdrop of the debate on whether those who receive free medical care from private charitable or governmental hospitals- can claim rights as 'consumers' under the Consumer Protection Act, 1986 or

not. Some of the measures to support patients and protect consumers in health services in India are as follows:

The Clinical Establishment (Registration and Regulation) Act, 2010: This act aims to ensure that all clinical establishments meet basic minimum standards, are registered with the authorities and follow the standard treatment guidelines, amongst many others. The act also aims to protect consumers in healthcare from unscrupulous providers. This is a central act and a limited number of Indian states have adopted and implemented this act so far.

State Specific Regulations on Clinical Establishments: In the last decade, a number of Indian states have enacted legislations regarding regulation of healthcare facilities, costs of procedures and mechanisms for penalties for violations of such provisions. These Acts and rules ensure quality of health services and protect consumers in health services.

The Drug (Price Control) Order (DPCO), 2013: This order was issued by the Indian government under the Essential Commodities Act, 1995 and in suppression of the Drug Price Control Order of 1995. The DPCO has provision for government regulating the price of essential medicines and drugs. This is highly relevant in the Indian context as the cost of medicines

Box 2

Consumer awareness can play important role in health

The consumer has a direct role to play in increasing awareness about the consumer protection, rights and duties. They can also inform and influence a few other aspects of health services (collateral benefits). Indicative list includes as follows:

Shaping the policy dialogue (- media, civil society) and place Health higher on the policy table/dialogue.

Demand for (from Union and State Governments).

Re-designing health services for making people oriented and focused.

Population or public health services; shift attention from curative or personal health services.

More investment on Primary Health Care Services.

More provision of promotive and preventive health services.

Invest more money by government on health (Government investment on health in India is one of the lowest in the world).

To establish mechanisms so that people don't fall into poverty while accessing health services, i.e. social health insurance.

Bringing accountability and transparency to ensure that commitments made are fulfilled.

Strengthening dialogue between people and their people's representative for strengthening healthcare services.

contributes two third of total cost paid out of pocket by patients/people. There are wide variations in the cost of same medicine produced by different manufacturers. DPCO ensures that at least for medicines which are included in the Essential Drug List (EDL), the patient does not end up paying an exorbitant cost. The government has exercised their power to control/cap the prices of stents and implants through this order, which has reduced the cost to the patients and proven mechanisms for consumer protection.

Other Examples: In the last few years, the attention on prescription of generic names of drugs by providers is also seen as an approach for consumer protection.

The Way Forward

While India has made a stride, there is a long way to go for protecting consumers in all sectors. There are a few steps which could be considered, specifically for health sector and services:

Adopting a Broader and Holistic Approach: An approach which has a blend of (1) making consumers aware of their rights, giving due considerations to the complexities of health services and related outcomes and (2) making consumers aware of their duties. Alongside, a third component of 'health education' has to be an integral part of the process. In other words, an appropriate blend of 'consumer awareness'⁴, 'health education'⁵ and 'health literacy'⁶ can lead to consumer protection in health sector as well as better/improved health outcomes in India.

In fact, a well-informed consumer and community can contribute to improve overall health outcome in the country (Box 2). There are a wide range of themes and topics for health education and literacy in India⁷.

Engaging Civil Society: The government agencies in these efforts need to be further supplemented by the non-government systems to raise consumer awareness. The civil society

organizations and existing community set ups such as *Mahila Arogya Samitis* under National Urban Health Mission in India and ASHA workers under National Health Mission (NHM) could play many roles in this area in the health sector.

Utilizing emerging strengths: The mechanisms including mass media (print and broadcast) could be optimally utilized for awareness and protection of consumers in health sector. The emerging strength of information and communication technology, mobile based applications and social media platforms could serve an appropriate tool for raising consumer awareness. However, caution must be exercised as these tools could prove harmful as well with spread of unverified information.

Health Education in Current

Incorporating Consumer Awareness and health education in the curricula of schools and colleges at different levels has to be a systematic process to be implemented at all levels over a period of time.

Conclusion

People are an integral part of Health systems and not external beneficiary only. Health services need to be designed and policies written keeping the consumer perspective at the centre. Considering the complexities of health sector - people are both consumer and co-producer of services- a combination approach where attention is on raising awareness on consumer rights and duties and providing health education, will be fitting tool for consumer protection in a holistic sense. The stakeholders have to play their roles and existing legislative and non-legislative tools will contribute to the process. This is an opportune time: the government of India has released a new national health policy (2017) and there is an ongoing policy dialogue on Universal Health Coverage (UHC) in the country. The UHC is possible with active participation of people and communities and consumer awareness can play an important role.

Readings

UNCTD. United Nations Guidelines on Consumer Protection. Accessible at <http://unctad.org/en/Pages/DITC/CompetitionLaw/UN-Guidelines-on-Consumer-Protection.aspx>

Agrawal AD, Banerjee A. Free medical care and consumer protection. *Indian J Med Ethics* 2011.

Govt. of India. The Consumer Protection Act, 1986. Accessible at http://ncdrc.nic.in/bare_acts/Consumer%20Protection%20Act-1986.html

Govt. of India. The Clinical Establishments (registration and regulation) Act, 2010. Accessible at <http://clinicalestablishments.nic.in/cms/Home.aspx>

Endnotes

- 1 One of the commonly referred examples of health services and consumer mechanisms is 'health insurance'. In health insurance, the issues of 'information asymmetry'; 'adverse selection' 'cream skimming' and 'moral hazards' comes in and the governments have to intervene to ensure that the insurance companies do not exclude people who are in the maximum need of insurance i.e., those with pre-existing conditions, as was happening in United States of America till The Affordable Care Act (popularly known as Obamacare was enacted) in 2010. At the same time, mechanism should be established that insurance should not lead to delay in use or over use of health services by people (moral hazard). This situation demands for regulatory mechanisms as well as consumer awareness.
- 2 The rights of consumer include right to safety, right to be informed, right to choose, right to be heard, right to seek redressal and rights for consumer education, amongst other.
- 3 A "contract for services" implies a contract whereby the party rendering service is not subject to detailed direction and control but exercises professional or technical skill, knowledge and discretion. A "contract of service" involves an obligation to obey orders

in the work to be performed and as to its mode and manner of performance.

- 4 Consumer awareness means awareness of consumers in different aspects of consumption activities. Consumer awareness is a broader and wider concept. It covers awareness about Maximum Retail Price (MRP); about Fair Price Shops; about price, quality of the product; about their rights and duties, amongst other aspects.
- 5 Health education is any combination of learning experiences designed to help individuals and communities improve their health, by increasing their knowledge or influencing their attitudes.
- 6 The cognitive and social skills which determine the motivation and ability of individuals to gain access to, understand and use information in ways which promote and maintain good health. Health Literacy means more than being able to read pamphlets and successfully make appointments. By improving people's access to health information and their capacity to use it effectively, health literacy is critical to empowerment.
- 7 These topics which need to be part of health education in India may range from addressing issue of preference of people prefer and their demands injectable medications even for conditions (such as fever or diarrhea) for which equally effective oral medications are available. The challenges of mis-use, over-use, 'over the counter' sale of prescription drugs and antibiotics and incomplete course of antibiotics. These practices are posing risk of emerging risk of anti-microbial resistance. The health education can improve the healthy habits and behavior, which would be vital for tackling the emerging burden communicable diseases (NCDs) such as diabetes and hypertension are increasing in India. A large proportion of these conditions can be prevented through health education and promotion such as healthy diet, physical activity, tobacco cessation and moderation in consumption of alcohol. □

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'India State Level Disease Burden' report released

The findings of 'India State Level Disease Burden' report of Indian Council of Medical Research (ICMR) were released on November 14, by the Vice President of India .

The estimates released which are based on utilization of all available epidemiological data, show that the per person burden due to major infectious disease, that is, diarrheal diseases, lower respiratory infections, and tuberculosis is 7 to 9 times higher in the states like Bihar, Odisha, Uttar Pradesh, Assam, Rajasthan, Madhya Pradesh and Jharkhand than in other states. Likewise, the burden due to the leading non-communicable diseases, that is, Ischemic Heart Disease, Stroke, Diabetes, Chronic Obstructive Lung Disease is 4-9 times higher in some states than in other states.



The disease profile of each state showing the contribution of specific diseases and risk factors to the overall health loss can be a useful guide for states when they develop their Project Implementation Plans for health. The open-access visualization tool shows disease and risk trends in each state 1990 to 2016 in a simple manner, which can be of much use for policy makers. Planners and experts in each state can use the findings released to engage with the India State-level Disease Burden Initiative to further improve health in their respective states.

The data and results shared by the India State-level Disease Burden Initiative in its report, scientific paper, and the online visualization tool will serve as a useful guide for fine-tuning health planning in each state of the country.

The India State-level Disease Burden Initiative, a joint initiative between the Indian Council of Medical Research (ICMR), Public Health Foundation of India (PHFI), and Institute for Health Metrics and Evaluation (IHME) in collaboration with the Ministry of Health and Family Welfare, Government of India along with experts and stakeholders associated with over 100



Indian institutions, released the first comprehensive set of state-level disease burden, risk factors estimates and trends for each state in India to inform health planning to reduce health inequalities amongst states

in India. These estimates are based on analysis of all identifiable epidemiological data from India over quarter of a century.