
CRITICAL ANALYSIS ON LEGAL PROFESSIONALS UNDER THE CONSUMER PROTECTION ACT

Shruti Maskara, NMIMS, Hyderabad

ABSTRACT

The legal profession has traditionally been seen as noble and honourable, charged with preserving justice and serving the society. Therefore, in order to ensure that clients obtain effective legal representation, lawyers have an obligation to practise their profession with honesty and integrity.

The inclusion of legal practitioner within the ambit of Consumer Protection Act, 2019 has caused a significant debate concerning the applicability of the Act to the legal profession. But traditionally, the legal profession was considered distinct governed by the Advocates act, 1961, and regulated by the BCI, which oversees the professional conduct.

This paper critically analyses whether lawyers' "services" should fall under the purview of the CPA, particularly in the case of negligence or deficiency in service. And it further explores advocates' duties towards their clients, including their obligation to provide competent representation. The objective of this research is to provide light on whether the CPA's inclusion of legal practitioners improves consumer protection or compromises the integrity of the legal community.

Keywords: legal practitioner, Consumer Protection Act, Justice, Services

INTRODUCTION

The Consumer Protection Act recently passed in 2019 and the act specifically aimed at providing legal framework for protecting consumers' rights, educate them and make them aware about their rights and providing redressal against unfair trade practices.

The legal profession is considered one of the noble professions and as Justice Iyer calls it, "the most brilliant and attractive of peaceful professions, with responsibilities both inside and outside it, which no person carrying on any other profession has to shoulder". We cannot ignore the fact that the profession of law is an honourable profession and it occupies a pride of place in the liberal professions of the country.

The inclusion of legal professionals within the ambit of the CPA has raised critical debates with regard to the nature of the services, professional autonomy, and consumer rights. Whereas professions from every sector had traditionally been brought under the purview of the said legislation, the question was whether such professional services rendered by lawyers could be held to be "services" as well. The courts were initially not very keen to bring legal professionals within the ambit of the Act in view of the unique character of the legal profession having its own code of conduct under the Bar Council of India.

As the Hon'ble Supreme court has observed in "Re Sanjiv Datta, Secretary, Ministry of Information and Broadcasting the legal profession is a solemn and serious occupation". The legal profession is different from other professions since what the lawyers do affect not only an individual but the administration of justice which is the foundation of a civilized society.

For the simple reason that the regulation of the legal profession, its mandate to afford protection to consumers, leads to tremendous difficulties associated with accessing the quality of legal services under contemporary regulatory schemes. Is bringing legal professionals under the Consumer Protection Act, is an answer for this?

This paper aims to give perspective whether lawyers come within the scope or under the ambit of the Consumer Protection Act, 2019, and what amounts to an advocate's duties and when would his services be regarded as deficient, whether the inclusions of legal practitioners within the Act are essential where there is an existence of Advocates Act with all the possible implications of inclusion.

RESEARCH METHODOLOGY

This research examines the relationship between the legal profession and the Consumer Protection Act (CPA), with an emphasis on legal practitioners' responsibility under the CPA. And The objective of this research is to provide light on whether the CPA's inclusion of legal practitioners improves consumer protection or compromises the integrity of the legal community.

- Research design: The study utilizes a qualitative research approach focuses on a comparative analysis of the legal profession and a relationship with the CPA.
- Data collection: This research paper will include both primary and secondary sources to explore, analyze and conclude its findings.

This research data is sourced from legal and literature review, a thorough review of existing literature including articles, books and legal journals. With the help of land mark cases and legal precedents.

RESEARCH QUESTION

1. To what extent has the inclusion of legal professionals within the ambit of the CPA improved access to justice for clients, particularly in cases of professional negligence or deficiency in services?
2. Is there any need of including legal professional ‘services’ under the CPA?
3. How does the inclusion of legal professionals under the CPA impact the balance between consumer rights and professional autonomy, and what are the broader implications for legal accountability and the ethical conduct of lawyers in India?

LITERATURE REVIEW

In the paper “liability of the legal practitioner for professional negligence: a critical analysis” by Jeet Singh Mann, mainly focus is on the accountability of legal professionals for negligence in their services. It highlights the evolving legal framework, particularly the role of consumer protection laws in addressing professional negligence. He also highlighted that the conduct of the legal practitioners has been deteriorating. It is strongly believed that there is a need to

redefine the liability of these professionals under the Consumer protection Act, 1986, which is capable of providing speedy and economical justice to the aggrieved person.

In the paper “Liability of Legal Professionals under The Consumer Protection Act” by M. Parvathi Warriar examines legal professionals' responsibility within the framework of consumer protection laws in India. He highlighted some of the recent judgements such as of D.K. Gandhi v. M. Mathias, how it extended the CPA's scope to legal services. However, the Hon'ble Supreme Court in Bar of Indian Lawyers v. D.K. Gandhi excluded legal professionals, ruling that legal services involve a "contract of personal service." This debate revolves around how they need to balance the legal profession.

In the paper Consumer Protection Act, 1986 and legal profession in India: some new developments by Gurjeet Singh mainly he explores the evolving intersection of legal services and consumer protection. And also examines how early jurisprudence excluded legal professionals from CPA's ambit, citing the legal profession's unique regulatory framework. However, it highlighted the recent developments and significant cases and judgments that reflect a growing judicial inclination to address deficiency in legal services while balancing the ethical standards.

IS CLIENT A CONSUMER?

According to Section 2 (7) (ii) of the Consumer Protection Act, 2019 a consumer is defined as any person who “hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose”¹. This definition holds any person who hires or avails any service for consideration Commercial purpose and does not include persons who avail of services for commercial purposes. The explanation further provides that "the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment".

¹ <https://consumeraffairs.nic.in/sites/default/files/CP%20Act%202019.pdf>

The High Court of Madras in the matter of Srimathi and others v. The Union of India and others, has held that the services rendered by the legal practitioners fall within the ambit of the Consumer Protection. Such observation was made by the high court on the ground that no such provision is there in the Advocates Act to bar the jurisdiction of other courts and authorities or tribunals in relation to matters connected with the advocates or disputes arising between the clients and their advocate.²

WILL SERVICES BE CONSIDERED AS LEGAL SERVICE?

If we talk about services as per the Consumer Protection Act, 2019 it has been defined as, “service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;”.

In many of the cases it was said that the definition is subjected to a very wide interpretation, as the definition start with ‘services of any description’ this term is having a very wide scope. There were many cases which talks about this, in the case of Lucknow Development Authority v. M K Gupta³ it is a detailed explanation of the section. The court said that the concept of service is very wide. It is in three parts; the main part is followed by the inclusive clause and ends by the exclusionary clause. The main cluse itself is very wide and it applies to service made available to its potential users and the words ‘any’ and ‘potential’ are of wider aptitude.

It also says that a ‘contract of personal service’, and the relationship between a client and an advocate is that of professional service? And is it a ‘contract of service’, the advocate is obligated not to disclose any confidential information of his client to anybody if he discloses the information will lead to tortious liability.

It was held in Rangaswamy v Jaya Vittal⁴ that as per Section 2(1)(o) of the Consumer Protection Act, 1986, the service under a contract of personal service is excluded from the definition of

² Srimathi and others v. The Union of India (1996)

³ Lucknow Development Authority v. M K Gupta (1993)

⁴ Rangaswamy v Jaya Vittal (1990)

the word service and since the advocate-client relationship falls under this category so it is automatically excluded from the definition of service.

However, in the case of *D. K. Gandhi v Mathias*⁵, the National Consumer Redressal Commission observed: "The ambit and scope of Section 2(1)(o) of the Consumer Protection Act, which defines 'service' is very wide and well established. It covers all services except rendering of services free of charge or a contract of personal service. Undisputedly, lawyers are rendering service. They are charging fees. This is not a contract of personal service. There would, therefore, be no reason to hold that they are not covered under the provisions of the Consumer Protection Act, 1986.

Now the next part is will this come under the 'contract of service', or if there is a distinction between 'contract of service' or 'contract for service' the same thing has been distinguished in different cases. In the case of *Indian Medical Association v Shantha*⁶, the Supreme Court articulated and concluded that "there is no question that Parliamentary Counsel were working knew about the distinction between the term 'contract of service' and the term 'contract for services', and deliberately used 'contract of service' instead of the term 'contract for services' in the part of the definition of 'service' which excludes." Because "an employer cannot be classified as a customer regarding the service made by the employee under a contract of employment." Given this ruling, it stands to reason that those who provide legal advice cannot be excluded.

On the other hand, one must keep in mind that services delivered by advocate are not comparable to banking, telecom, or entertainment because they are of a completely different nature. The BCI also declared that it was an acknowledged judicial fact that advocates are not engaged in a trade, commerce or an industry nor is any of their work is subject to the Service Tax Act, but rather constitutes an activity in aid and assistance to the administration of justice.

ADVOCATES DUTIES TOWARDS CLIENT

The advocate has a primary duty towards their client, they must act in the best interest of their clients and diligently represents their client. The Advocates Act, 1961 grants the bar councils the authority to formulate the guidelines of professional conduct and etiquette for advocates

⁵ *D. K. Gandhi v Mathias* (2007)

⁶ *Indian Medical Association v Shantha* (1995)

and also permits them to impose disciplinary action on advocates for reasons of professional misconduct. The Bar Council of India is empowered to exercise disciplinary powers with respect to the professional misconduct of advocates. Besides the Bar Council of India, advocates are also answerable to the courts before whom they appear, and the courts have the power to act against advocates for acts of misconduct or breaches of duty during proceedings.

As per the rules of the BCI,

- The advocates are duty bound to not to withdraw from services from serving a client once he has agreed to serve them.
- An advocate is bound to make full and frank disclosure to his client of all matters relating to his connection with the parties related to the parties which likely to affect the client.
- It is the duty of and advocate to uphold the interest of his client by all fair and honourable means.
- A lawyer must not in any manner (directly or indirectly) disclose to anyone the communications made to him by his client, nor may he disclose any advice given by him for the proceedings.
- An advocate should not charge for his services depending on the success of the matter undertaken.⁷

In the case of *State of U.P v U.P State law Officers*, it was stated that, a lawyer must be fair so that justice may be achieved. He lowers himself if he acts merely as a tool for his client. This relationship between the lawyer and private client is equally applicable between him and the public bodies.”

"But, in *K Vishnu v National Consumer Dispute Redressal Forum*⁸, it was noted that “even if the advocate is regarded as officer of the court and is part of justice system, the advocate cannot be dispensed with his primary duty of service to his client for the remuneration received.” In chapter II, part iv of BCI rules, rules have been provided which set out the

⁷ <https://www.barcouncilofindia.org/info/rules-on-an-advocates-duty-towards-the-client>

⁸ *K Vishnu v National Consumer Dispute Redressal Forum* (2000)

Professional Standard that an advocate must adhere to, and these rules have been incorporated under Section 49(1) (c) of the Advocates Act, 196.”

DEFICIENCY IN SERVICE BY LAWYERS

The lawyers charge fee for rendering services, the basic requirement of service under CPA. A lawyer is not liable for the positive outcome of the case, but he should be held liable if he fails to provide the promised services. There is a need to examine the scope of the word “deficiency of services” under this act. It is necessary to answer the questions whether the act and omission of the legal professionals constitute a failure in service as defined under the CPA. According to section 1(11) of the Consumer Protection Act, "deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes— (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer ii) deliberate withholding of relevant information by such person to the consumer; consumer.”

But the word ‘negligence’ is not precisely defined in law, in the case of *Jacob Mathews v. State of Punjab*, the court held that, the standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising his ordinary skills in that profession. The judge also cited that case of *Michael Hyde and Associates v J. D. Williams*,⁹ it was observed "that the defendant's competence is to be assessed using the lowest standard that would be considered appropriate where a profession encompasses a variety of opinions regarding what constitutes an acceptable standard of conduct." Additionally, it was noted in the case that "A professional may be held liable for negligence on one of two findings: either he did not exercise the skill that he did possess with reasonable competence in the given case, or he did not possess the requisite skill that he professed to possess." Whether the accused has engaged in negligence, the standard of judgement to be used is that of an average competent individual using an average level of expertise in that field. Not every professional needs to be at the highest level of knowledge in the field in which they practice.

⁹ *Michael Hyde and Associates v J. D. Williams* (2000)

The lawyers shall not be liable for unfavourable judgments or outcomes of a case because the judgments or outcome is not determined solely on the provider's services. However, if there is deficiency in the service provided upon accepting consideration such as a fee, then the attorney can be sued under the prevailing Consumer Protection Act. Therefore, it implies that services are only deemed negligent or inadequately executed when they are not carried out in a way that a reasonable, competent professional would do; this is independent of whether or not the proceedings are successful. Because there would be no use for the laws, if every client who lost a case could sue his lawyer, if this is considered as standard.

EXCEPTIONS TO LIABILITY FOR NEGLIGENCE BY LAWYERS

Lawyers may not always be held liable for professional negligence. There are many exceptions to the liability for negligence by lawyers:

- Sometimes contributory negligence by the client might be the cause of injury for which a lawyer should not be held liable. If a client is an educated person and able to understand the legal documents for any lapse, his advocate cannot be held liable, but on the other hand if the client is solely relying on the advice of his lawyer the test of reasonable client shall be applies.
- A lawyer may commit a mistake in interpreting some of the ambiguous provisions of law, inspite of the reasonable care There is no denying that certain legal principles are intricate and difficult to understand. A general practitioner is required by law to use reasonable efforts to learn the law. If he is unable to do it, he needs to seek the counsel of an authority in that field. As long as a lawyer fulfils the duties, the issue of negligence does not come up. If a lawyer fails to make reasonable efforts and causes an error, he will be held accountable.
- Generally, a lawyer has an obligation to provide advice on subjects for which a client seeks it. He is not required to look into or offer advice on an unasked issue. It follows that if the client is well experienced, the lawyer is released from his duty of rendering advice on unasked matters. But if the client is not experienced the duty of a lawyer arise to give advice even on the unasked matters. In *Caaradine Properties Ltd. v. D.J.*

Freeman & Co.,¹⁰ the court stated that inexperienced clients are entitled to a broader understanding of their retainer and obligations than experienced clients.

- A client has to act in accordance with the instruction of his lawyer but the law does not prevent a person from mismanaging their affairs by instructing a lawyer to behave accordingly. A lawyer might avoid responsibility on the plea by claiming they were following their client's directions. However, such instructions should not be the result of lawyer's advice.

THE ADVOCATES ACT AND CONSUMER PROTECTION ACT

In order to reform and consolidate the rules pertaining to legal practitioners and to establish the Bar Councils and an All-India Bar, the Advocates Act was established in 1961. According to section 2(1)(a) of the aforementioned act advocate means “an advocate entered in any roll under the provisions of this act.” The act contains all the provisions related to admission, enrolment of advocates, the code of conduct and other provisions. The main issues with this act are that it doesn't define the term ‘misconduct’.

In the case of *Noratanman Courasia V. M. R. Murali*¹¹ it was established that the term ‘misconduct’ lacks a definite meaning. It includes in overall any incidence of discipline violation. It indicates inappropriate action, intentional misconduct, or wilful breaking of a code of conduct. The term may refer to the improper purpose, which is more than just an error of judgment. Though the meaning of the term ‘misconduct’ lacks a specific definition and is influenced by context, delinquency, and impact on discipline and responsibility, make it difficult to define precisely.

The distinction was also drawn between ‘misconduct’ and ‘negligence’, in the case of *P. D. Khandekar v. Bar Council of Maharashtra*¹² it was held that there is a distinction between providing inappropriate and incorrect legal advice. Professional misconduct does not include lawyers' mere negligence in the practice of his profession when it does not coincide with any moral delinquency. However, The Advocates Act only penalises for misconduct that requires both intention and negligence. Mere negligence without a malicious purpose does not constitute

¹⁰ *Caaradine Properties Ltd. v. D.J. Freeman & Co.* (1999)

¹¹ *Noratanman Courasia V. M. R. Murali* (2004)

¹² *P. D. Khandekar v. Bar Council of Maharashtra* (1983)

misconduct.

However, from the sections of the advocates act it can be inferred that if an advocate is found guilty of misconduct the punishment available to them would be of disciplinary action, the client would not be eligible for civil penalties or monetary compensation given that the client was harmed by the advocate's misconduct. This is further important that due to deficiency of service by some advocates, the client may refrain in approaching the court for any injustice they may face.

In the case of *Virendra Kumar Gupta v. Anil Kumar Jain*¹³ the national consumer disputes redressal commission decide in favour of the petitioner, the advocate does not appear for an execution proceedings and the petitioner were awarded Rs. 1 Lakh as compensation for mental agony and harassment caused due to the deficiency service on the part of the respondent advocate.

However, if we look on the other side, bringing the advocates under the consumer protection act might undermine the act's main goal of facilitating speedy disposal of cases. When client lost, they want to sue their lawyer and hold him accountable which will increase a greater number of cases submitted to the forum. This might mean two things: first, it could put a strain on the Consumer Redressal Forum; second, it can mean that the clients who might have been legitimately impacted don't get the justice they deserve.

In one of the recent case the Hon'ble Supreme court held that the advocates are no longer liable under consumer protection law for alleged deficiency in services. In the case of *Bar of Indian Lawyers v. D. K. Gandhi PS National Institute of communicable diseases and ors.*¹⁴, the respondent hired the appellant's services to file a complaint against the dishonouring of cheque. The sum paid was delivered to the appellant but didn't reach the respondent. Appellant filed a suit claiming that the sum was due to him as fees. The complaint was filed before the district consumer forum and appellant argued that it has no such jurisdiction but they decide in favour of the respondent. The State Commission granted the appeal, concluding that the services provided by advocates did not fit under the definition of a "service" as stated in Section 2(1) of the CP Act. The National Consumer Disputes Redressal Commission ("NCDRC") decided, among other things, that a complaint under the CP Act would be admissible if there was a defect

¹³ *Virendra Kumar Gupta v. Anil Kumar Jain* (2011)

¹⁴ *Bar of Indian Lawyers v. D. K. Gandhi PS National Institute of communicable diseases and ors.* (2024)

in the service provided by the Advocates. The supreme court reached to the conclusion that legislature never intended to include the professions or services rendered by professionals under the CP Act. But this contradicts a 28-year-old judgment in *Indian Medical Association v. VP Shantha*, which determined that medical practitioners are covered by the CP Act. While addressing the questions of procedure legality the court notes that legal profession is sui generis, or unique in nature and it cannot be compared with any other profession.

The Hon'ble Supreme court held that the services rendered by the advocate do not fall within the scope of the CP Act and they come under the 'contract of personal service'. Accordingly, the Hon'ble Supreme Court overruled the NCDRC decision in *D.K. Gandhi PS v. M, Mathias*, where it was held that if there was any deficiency in the services rendered by the lawyers and a complaint under the CPA, 1986, would be maintainable.

CONCLUSION

The legal profession has always been considered as a noble profession and been regarded as respectable. It has been constantly viewed that the legal profession plays a desirable role in the life of the community. If the community loses confidence in the profession because of inappropriate behaviour of some members of the profession, not only the profession be damaged, but justice will be hindered as well. If a person is engaged in the practice of law, they must practice law in the spirit of honesty rather than in the spirit of mischief or for the purpose of making money.

Generally, people approach lawyers for seeking justice against any unfairness they faced rather than taking the law into their own hands and confronting injustice by themselves. This is due to their faith and trust in the attorneys and the system of judiciary. When a client approaches the lawyer for a specialized service, then it is the duty of the lawyer to exercise the requisite ordinary skills to meet the satisfaction of the client, if he breaches that duty then it becomes a negligence or deficiency of services.

The liability of lawyers to pay damages like the other professionals, to pay damages for deficient services, is nothing new. However, the changing legal landscape has prompted questions about whether legal services should be held accountable under consumer protection rules, especially when consumers pay fees and anticipate a specific level of service. While some judgments have recognized client as consumers and held legal professionals liable under

the CPA, but the Hon'ble Supreme Court has made it clear by ruling that legal services fall under a "contract of personal service", the court excluded them from the scope of the CPA.

At the same time, the issue related to deficient legal services cannot be ignored, it will be essential to ensure that clients receive competent legal representation while maintaining the standards and ethics that uphold the profession. It would be preferable to incorporate a provision in the Advocates Act that offers compensation to the impacted parties, given the nature of the profession and the existence of an existing specific Act controlling advocates.

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