

Poll Results: Should Professionals be Held Liable Under the Consumer Protection Act?

A profession requires advanced education and training in some branch of learning or science. The nature of work is specialization and skill; substantial part of which is mental than manual - *Justice Trivedi*

**Now Just
imagine.....**



You are a start-up company and have given the task of developing your website to an IT professional. Now if the professional does not perform the said task as per your expectation and applied his own creativity and imagination will you be suing him for deficiency in providing services under the Consumer Protection Act?

In order to understand what our audience thinks, we conducted a poll on – “Whether medical practitioners and other professionals should be held liable for service deficiencies under the Consumer Protection Act”?

The results of the poll were as follows:

Yes 54%

No 23%

Maybe 23%
if there is
negligence

But before going into the question of the liability of professionals it is important to understand what the purpose of the Act was and who is a consumer?

Purpose of the Act -

- The purpose behind enacting the Consumer Protection Act was to protect the consumers from unfair conduct and the practices of traders.
- The whole act revolves around consumers' rights and aims at providing justice and fair treatment in cases of deficiency of goods or services.
- Section 1(4) of the Consumer Protection Act, 2019 ('ACT') states that the act shall apply to all goods and services. Even the preamble of the act is clear that it is to protect the consumer's interest.

Consumer of a service -

Consumer of a service is defined under Section 2(7) of the Act and means any person who – (ii) 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.



What is a service?

Service is defined under Section 2(42) of the Act, and it means service of any description which is made available to potential users and includes, but not limited to the following:

- 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.

The act makes it clear that any and every kind of service shall come within the definition and the same is not limited to the ones which are provided in the definition.

It can be argued that professionals such as advocates, doctors and IT persons provide services. If we say that they provide services then in case of deficiency in services, they can be held liable under the Act.

However, the Supreme Court has recently held that legal profession or any other regulated profession does not fall within the ambit of the Act.



Bar of Indian Lawyers Case

The Supreme Court in **Bar of Indian Lawyers through its President Jasbir Singh Malik and Anr. v. D.K. Gandhi PS National Institute of Communicable Diseases and Ors. (MANU/SC/0425/2024: 2024 INSC 410)** by overruling the decision of NCDRC in **D.K. Gandhi PS, National Institute of Communicable Diseases vs. M. Mathias (MANU/CF/0142/2007)** has held that legal profession or any other regulated profession does not fall within the ambit of the Consumer Protection Act, as such professions are sui generis and services availed from an Advocate fall within the ambit of a contract of personal service.

The reasoning given by the court was that:

- The very purpose and object of the Consumer Protection Act was to protect consumers from unfair trade practices and unethical business practices.
- The Legislature never intended to include the Professions, or the services rendered by the Professionals within the purview of the Consumer Protection Act.
- The court also stated that the legal profession is unique in nature and cannot be compared with any other profession.
- It further held that the relationship between a client and an advocate has unique attributes. Advocates are generally perceived to be the agents of their clients and owe fiduciary duties to them.
- Advocates must respect the autonomy of the clients and are not entitled to make concessions or undertakings without specific instructions from them.
- Therefore, it can be said that advocates are bound by the clients' instructions. Thus, a considerable amount of control is exercised by the client over the advocate in the manner they render their duties before the Court.

The court in this case has not only talked about the legal profession but has also included any other regulated profession. Therefore, not only lawyers, but other professionals including doctors and engineers can also come within the meaning of 'any other regulated profession'. However, the same is not explicitly specified in the judgment.



The Shantha Case

While adjudicating the above matter, the court also took note of their decision passed in 1995 in, **Indian Medical Association v. V.P. Shantha and Ors. (MANU/SC/0836/1995; 1995 INSC 720)** where medical practitioners were included within the purview of Services under the Consumer Protection Act, 1986 and referred the said case to Hon'ble CJI for reconsideration.

The court in the Shantha case held that

- The definition of “services” under the Act is broad enough to include the healthcare and medical sectors as well.
- The Court further ruled that services rendered by doctors and medical practitioners are covered under the Act if they are paid services, either directly or through an insurance policy.
- This landmark decision declared the doctor-patient relationship to be “contractual” in nature. However, this case will be reconsidered and then the position will be clear.

For now, the Supreme Court has held that lawyers will not come within the ambit of the Consumer Protection Act.

