

To Be or Not to Be Sued under Consumer Protection Act: Medicolegal dilemma for the Health Care Providers

Shri Gopal Kabra¹, Vivekanshu Verma²

How to cite this article:

Shri Gopal Kabra, Vivekanshu Verma. To Be Or Not To Be Sued under Consumer Protection Act: Medicolegal dilemma for the Health Care Providers. Indian Journal of Legal Medicine. 2024;5(1):31-34.

Abstract

The recent landmark judgment of the Hon'ble Supreme Court related to Legal Medicine and Consumer Protection Act, has been discussed with critical eyes and juristic approach. Efforts have also been taken to explain relevant and allied provisions of some other laws, which have an impact on the subject.

Keywords: Health Care Provider (HCP); Doctor; Lawyer; Court; Laws; Consumer Protection Act (CPA).

INTRODUCTION

Statutory interpretation of the Consumer Protection Act 2019 clarifies that professions, including legal and medical, are not and cannot be encompassed by the Act. When ambiguity arises in any statutory provision, it is the judiciary's role to interpret the language used. By employing the method of 'literal construction' within the broader 'context of the scheme, scope, and professed purpose' of the Act, and applying various rules of construction, the judiciary elucidates the likely intent of Law makers. The primary goal of judicial construction is to ascertain the "Intent of Law makers." It is presumed that statutes incorporate certain components, as Law makers are assumed to have intended their inclusion.

DISCUSSION

'To Be Or Not To Be' is the famous proverb, on the dilemma faced by protagonist, in the world famous play titled, Hamlet, written by William Shakespeare,¹ for the audience. In deliberating on the aforementioned basis to the medicolegal dilemma for Health Care Providers (HCPs), 'To Be Or Not To Be' Sued under Consumer Protection Act; the Hon'ble Supreme Court in Bar of Indian Lawyers vs D. K. Gandhi,² on May 14, 2024, decreed that neither the statement of objects and reasons of the CP Act, 1986 nor that of the CP Act, 2019, suggested including professions or services provided by professionals, such as advocates and doctors, within the scope of the Act. It is a well-established principle that professionals cannot be categorized as businessmen or traders, and their clients or patients cannot be classified as consumers. The Consumer Protection Act, 2019,³ was enacted by the Parliament "to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effectively administration and settlement of the consumer's dispute and for matters connected therewith or incidental thereto". The recurring theme in the new legislation is the protection of consumers which is sought to be strengthened by procedural

Author Affiliation: ¹Medico-legal Consultant, Santokba Durlabhji Memorial Hospital, Jaipur 302015, Rajasthan, ²Associate Consultant, Department of Emergency and Trauma Care, Medanta - The Medicity, Gurugram 122001, Haryana, India.

Corresponding Author: Shri Gopal Kabra, Medicolegal Consultant, Santokba Durlabhji Memorial Hospital, Jaipur 302015, Rajasthan, India.

E-mail: kabrasg@hotmail.com

Received on: 14.06.2024 **Accepted on:** 13.08.2024

interventions such as strengthening class actions and introducing mediation as an alternate forum of dispute resolution.

A consumer⁴ is defined as someone who acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing. A person, to be a consumer of goods, should satisfy, that the goods are bought for consideration. Any person who uses the goods with the approval of the buyer is a consumer. Any person who obtains the goods for resale or commercial purposes is not a consumer.

The relevant parts of the judgment are extracted below: Though the question posed before us is whether a complaint alleging 'deficiency in service' against advocates practicing the legal profession would be maintainable under the Consumer Protection Act, further questions arise from this, which deserve consideration: Whether the Legislature ever intended to include professions or services rendered by professionals within the purview of the CP Act 1986 as re-enacted in 2019? Therefore, considering the nature of a professional's work, which requires a high level of education, training, and proficiency, and involves skilled and specialized mental work in specialized fields where success depends on many factors beyond one's control, a professional cannot be treated equally or at par with a businessman, trader, or service provider of products or goods as contemplated in the CP Act. Similarly, the services rendered by a businessman or trader to consumers regarding goods or products cannot be equated with the services provided by a professional to clients in their specialized profession. The legislative draftsmen are presumed to know the law, and there is no good reason to assume that the Legislature intended to include professions, professionals, or the services provided by professionals within the ambit of the CP Act. Any interpretation of the Preamble or the scheme of the Act to construe 'profession' as 'business' or 'trade,' or 'professional' as 'service provider,' would extend the scope of the Act beyond its intended purpose and would be counterproductive. We are therefore of the considered opinion that the very purpose and object of the CP Act 1986, as re-enacted in 2019, was to provide protection to consumers from unfair trade practices and unethical business practices only. There is nothing on record to suggest that the Legislature ever intended to include professions or professionals within the purview of the Act.⁵

It is worth mentioning that the legislative analysis of the CP Act 2019 clearly indicates Law Maker's intent to exclude the medical profession from

the Act. The drafted CP Bill 2018, presented and debated in both houses of Parliament, specifically included 'healthcare' in the inclusionary part of Section 2(42). However, members objected to the inclusion of 'healthcare' in the Bill. The Hon'ble minister piloting the Bill pointed out that this inclusion was in deference to the IMA vs VP Shantha 1995,⁶ judgment of the Supreme Court. Despite this, the members did not agree, and the Bill was subsequently amended. In the CP Bill 2019, 'healthcare' was removed, and this version was ultimately approved. The removal of 'healthcare' from the CP Act 2019 was a deliberate decision by Parliament after thorough deliberation.

After extensive analysis and deliberation, the Hon'ble Bench has unequivocally concluded that the professions of law and medicine are not, and cannot be, included under the Consumer Protection Act 2019. This interpretation hinges on a careful examination of the Act's language, legislative history, and the broader context of its provisions.

Article 141 of the Indian Constitution,⁷ mandates that the law declared by the Supreme Court in a judgment is binding on all courts within the territory of India. The principles evolved, along with the reason and rationale underlying the decision, form the ratio decidendi, which is the binding part of the judgment. Considering this constitutional mandate, the Hon'ble Supreme Court's interpretation of the Consumer Protection Act 2019, serves as a definitive guide for all subordinate courts.

Physicians, when faced with complaints filed against them under the CP Act 2019, should now raise a preliminary objection, citing the Supreme Court's judgment that explicitly excludes the medical profession from the Act. This procedural strategy should allow the matter to be dismissed in accordance with the Supreme Court's interpretation. A similar approach should be taken by legal professionals. This course of action was exemplified in the instant case involving an advocate.

In the case at hand, a complaint was filed against a lawyer under the CP Act. The lawyer raised a preliminary objection, asserting that the legal profession is not included within the ambit of the Act. The District Forum ruled in favor of the advocate, supporting the exclusion of legal services from the CP Act. However, upon appeal to the National Commission, the Commission relied on the judgment of IMA vs VP Shantha to rule that legal services were indeed covered under the Act. This decision was subsequently challenged in the Hon'ble Supreme Court.

The Hon'ble Supreme Court, upon reviewing the appeal, overruled the National Commission's decision. The Court clarified that the earlier judgment in *IMA vs VP Shantha*, which had included medical services within the purview of the CP Act, was not applicable in the context of the 2019 Act. The Hon'ble Supreme Court's judgment emphasized that neither the legal nor the medical professions were intended to be covered by the CP Act 2019. This interpretation was drawn from the legislative intent and the specific language of the Act, which did not encompass these professions.

The fact that professionals are governed by their respective councils, such as the Bar Councils or Medical Councils, does not absolve them from civil or criminal liability arising from professional misconduct or negligence. Nonetheless, as discussed above, we are of the opinion that neither the professions nor the professionals were ever intended to be brought within the purview of the CP Act of either 1986 or 2019. In the light of the above consideration, the court summarized their conclusions as follows: The primary purpose and object of the CP Act 1986, as re-enacted in 2019, was to provide protection to consumers from unfair trade practices and unethical business practices. The Legislature never intended to include either the professions or the services rendered by professionals within the purview of the said Act of 1986/2019.

The Hon'ble Apex Court's decision underscores the importance of legislative clarity and judicial interpretation in delineating the scope of statutory provisions. It also highlights the necessity for professionals to be aware of the legal framework governing their practice and to assert their rights appropriately within that framework.

Incidentally, the judgment delivered by the Two Hon'ble Judge, Supreme Court Bench in *Bar Of Indian Lawyers vs D. K. Gandhi* on May 14, 2024, overrides and overrules, on all counts, the judgment of the Hon'ble Bombay High Court in *Medicos Legal Action Group vs Union of India* on October 25, 2021.⁸

The Hon'ble Bombay High Court had been approached to interpret the Consumer Protection Act (CPA) 2019, and issue orders to Consumer Forums to refrain from registering cases of medical negligence. The court dismissed the petition on several grounds:

- i. The petition was deemed thoroughly misconceived.
- ii. The language of Section 2(42) in CPA 2019 is almost identical to that of Section 2(1)(o)

of the 1986 Act, leading to the conclusion that the interpretation of the section should remain the same.

- iii. Healthcare was not specifically included in the inclusionary part of the section to avoid overburdening it.
- iv. The Hon'ble Minister's statement in Parliament, regarding the 2019 Bill, could not be construed as a reflection of Parliament's will.
- v. The court inferred that Lawmakers did not intend to exclude healthcare from CPA 2019.

The Hon'ble Bombay High Court essentially based its decision on the belief that the intent of Parliament was not to exclude healthcare from the Bill. However, this interpretation has been overruled by the Hon'ble Supreme Court's decision. In the case of *Bar Of Indian Lawyers vs D. K. Gandhi*,⁹ the Hon'ble Apex Court thoroughly analyzed the CPA 2019, and concluded that the professions of law and medicine are not, and cannot be, included under the Act. This decision was reached after considering the legislative intent, the specific language of the Act, and the broader context of its provisions. The Supreme Court emphasized that neither the legal nor the medical professions were intended to be covered by CPA 2019, contrary to the Hon'ble Bombay High Court's interpretation.

The Hon'ble Supreme Court's ruling is binding on all lower courts, as mandated by Article 141 of the Indian Constitution, which states that the law declared by the Hon'ble Supreme Court, is binding on all courts within India.¹⁰ This judgment provides a definitive interpretation that excludes legal and medical professionals from the scope of CPA 2019, effectively nullifying the Bombay High Court's ruling.

The medical fraternity should take this Hon'ble Apex Court judgment into account and adopt a unified stance. Physicians, when faced with complaints under CPA 2019, should raise a preliminary objection citing this Hon'ble Supreme Court's judgment, which explicitly excludes the medical profession from the Act. This approach will ensure that the matter is handled in accordance with the Hon'ble Apex Court's interpretation and that medical professionals are rightly excluded from the purview of the Act.¹²

In summary, the Hon'ble Apex Court's decision in *Bar of Indian Lawyers vs D. K. Gandhi*,¹³ clarifies that the professions of law and medicine are excluded from CPA 2019. This binding ruling overrules the Hon'ble Bombay High Court's judgment,¹⁴ and

both legal and medical professionals should invoke this precedent to protect their interests under the Act.

CONCLUSION

To conclude, the Supreme Court's ruling has set a clear precedent that the professions of law and medicine are excluded from the Consumer Protection Act 2019. This decision is binding on all courts and should guide the handling of complaints against legal and medical professionals under the CP Act. Both lawyers and physicians should raise preliminary objections based on this ruling to ensure that their professions are rightly excluded from the purview of the Act.

Declaration of generative AI and AI-assisted technologies in the writing process:

During the preparation of this work the authors used 'Chat GPT' in order to improve the language and readability. After using this tool/service, the authors reviewed and edited the content as needed and take full responsibility for the content of the publication.

Conflict of Interest: Nil.

REFERENCES

1. "To be, or not to be" is a speech given by Prince Hamlet in the so-called "nunnery scene" of William Shakespeare's play Hamlet (Act 3, Scene 1).
2. Hon'ble Supreme Court in Bar Of Indian Lawyers Through Its ... vs D. K. Gandhi, Ps National Institute Of ... on 14 May, 2024.
3. Consumer Protection Act, 2019
4. Singh, JS. Commentary on Consumer Protection Act, 2019. Lexman Publishers, 2024. Define Consumer, p24.
5. Hon'ble Supreme Court in Bar Of Indian Lawyers Through Its ... vs D. K. Gandhi Ps National Institute Of ... on 14 May, 2024.
6. IMA vs VP Shantha 1995.
7. Article 141 of the Indian Constitution.
8. Hon'ble Bombay High Court in Medicos Legal Action Group vs Union Of India on October 25, 2021.
9. Hon'ble Supreme Court in Bar Of Indian Lawyers Through Its ... vs D. K. Gandhi Ps National Institute Of ... on 14 May, 2024.
10. Article 141 of the Indian Constitution.
11. Hon'ble Supreme Court in Bar Of Indian Lawyers Through Its ... vs D. K. Gandhi Ps National Institute Of ... on 14 May, 2024.
12. Kabra, SG. Statutory Interpretation Of Consumer Protection Act 2019: Professions, Legal And Medical, Are Not And Cannot Be Included In The Act (legalserviceindia.com) <https://www.legalserviceindia.com/legal/article-16611-statutory-interpretation-of-consumer-protection-act-2019-professions-legal-and-medical-are-not-and-cannot-be-included-in-the-act.html>
13. Hon'ble Supreme Court in Bar Of Indian Lawyers Through Its ... vs D. K. Gandhi Ps National Institute Of ... on 14 May, 2024.
14. Hon'ble Bombay High Court in Medicos Legal Action Group vs Union Of India on October 25, 2021.