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REVISITING LEGAL IMMUNITY: LAWYERS EXEMPTED FROM CONSUMER PROTECTION ACT AND CONTEMPORARY JUDICIAL RAMIFICATIONS

AUTHORED BY - ADI JAIN & VANDAN PAREEK

ABSTRACT

Consumer protection is vital in legal services, ensuring clients receive competent and ethical representation within the judicial system. Like other professions, advocates might incur liability for deficiencies in their services arising from contract law, tort law, or the Consumer Protection Act. While advocates have a duty of care to their clients, their main objective is to assist the courts in the administration of justice, which often complicates the issue of liability for their services. This dual responsibility presents significant legal problems regarding the extent to which lawyers should be held liable under consumer protection statutes and other related laws.

This article explores the unique intersection of legal immunity and consumer protection, critically examining whether lawyers should be exempted from claims of service deficiency under the Consumer Protection Act with reference to the recent ruling of the Hon'ble Supreme Court in Bar of Indian Lawyers v. D.K. Gandhi PS National Institute of Communicable Diseases and Anr. A significant portion is dedicated to exploring major international and national laws concerning lawyer liability and consumer rights, supported by judicial precedents and scholarly works, to illuminate their real-world application, effectiveness, and potential limitations.

The discussion also gives a new perspective by analyzing the legal and professional ethics that lawyers must uphold, and the expectations of consumers as complainants. Furthermore, an international comparison with the laws of other countries is presented to offer insights into global practices that will help us understand consumer protection and accountability in the legal profession, supporting fairness for everyone involved.

Keywords: Consumer Protection, Liability, Legal Immunity, Service Deficiency, Legal and Professional Ethics.

INTRODUCTION

The legal profession is widely regarded as one of the most esteemed professions, as aptly described by Justice Iyer as “*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*”¹ As a part of their profession, they render service to the clients with respect to both litigious and non-litigious matters. They must render professional services in compliance with some legal requirements.² Despite the profession's esteemed status, it is not immune from scrutiny, especially when it comes to the quality of services provided by legal practitioners. One contentious issue in this regard is the extent to which lawyers can be held liable for deficiencies in their services under various legal frameworks, including the Consumer Protection Act (CPA) of 1986.

The CPA, enacted to protect consumer rights and redress grievances arising from deficient services and unfair trade practices, defines a 'consumer' under Sec. 2(7)³ as *any person who buys any goods or hires or avails of any service for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment*. This broad definition encompasses a wide range of services, ranging from healthcare to education, and arguably includes legal services as well. However, the application of the CPA in the context of legal services has been a subject of significant debate and judicial scrutiny. The crux of this debate revolves around whether legal professionals should be treated like any other service providers and thus be subject to the same liabilities under the CPA for deficiencies or shortcomings in the services provided by them.

The Supreme Court of India recently addressed the same issues in the cases of **Bar of Indian Lawyers v. D.K. Gandhi, PS National Institute of Communicable Diseases, and Anr.** The court determined that the legal profession possesses distinct characteristics that set it apart from all other professions, making it incomparable. Additionally, the court noted that hiring an advocate constitutes a personal service contract, beyond the purview of Sec. 2(42)⁴ of the Consumer Protection Act 2019, which outlines the definition of 'services'. This decision, alongside other judicial precedents, has influenced the present legal framework, wherein the

¹ Krishnaswamy Iyer K.V., ‘*Professional Conduct and Advocacy*’ (Asia Law House, 2024) 57.

² Venugopal B.S, ‘Civil Liability of Lawyers for Deficiency in Services: A Critical Analysis’ (2011) 53(2) Journal of the Indian Law Institute < <http://www.jstor.org/stable/43953506>> accessed 11 July 2024.

³ The Consumer Protection Act 2019, ss. 2, 7.

⁴ The Consumer Protection Act 2019, ss. 2, 42.

responsibility of lawyers under the Consumer Protection Act (CPA) remains a subtle and challenging matter.

The unique standing of the legal profession in society demands that legal practitioners adhere to the highest standards of competence, integrity, and ethics. This is particularly important, given the trust clients place in their lawyers to navigate intricate legal issues on their behalf. Lawyers worldwide are specialized professionals who prioritize the interests of their clients above their own and strive to obtain respect for the rule of law. They have to combine a continuous update on legal developments with service to their clients, respect for the courts, and the legitimate aspiration to maintain a reasonable standard of living.⁵ On the other hand, opponents caution that subjecting legal professionals to the CPA could undermine their ability to serve their clients effectively, as it might lead to an increase in frivolous complaints and litigation. This duality reflects broader problems regarding the balance between safeguarding consumers and retaining the special nature of the legal profession, making it a subject of constant legal and ethical debate around the latest judgement.

Much of the questions that remained have been addressed in the latest Supreme Court ruling. The Court's decision has settled a long-standing issue, delineating the boundaries of consumer protection in the context of legal services and reinforcing the notion that hiring an advocate constitutes a personal service contract. However, despite this resolution, certain details and potential ambiguities remain. The judgment leaves room for interpretation, particularly regarding specific scenarios and the extent to which certain legal services might still fall under consumer protection laws, on which debates are still underway.

SC HOLDING IN BAR OF INDIAN LAWYERS V. D.K. GANDHI AND PS NATIONAL INSTITUTE OF COMMUNICABLE DISEASES AND ANR.

The Supreme Court's holding in **Bar of Indian Lawyers v. D.K. Gandhi and PS National Institute of Communicable Diseases and Anr.**⁶ represents a pivotal moment in the ongoing discourse surrounding the liability of legal professionals under consumer protection laws. This case tackles a fundamental issue that *whether a complaint alleging "deficiency in service" against Advocates practising Legal Profession, would be maintainable under the Consumer*

⁵ International Bar Association, *IBA International Principles on Conduct for the Legal Profession*, (IBA 2011) 5.

⁶ *Bar of Indian Lawyers v D.K. Gandhi and PS National Institute of Communicable Diseases*, SCC 2024 SC 928.

Protection Act, 1986 as re-enacted in 2019? In other words, whether a "Service" hired or availed of an Advocate would fall within the definition of "Service" contained in the C.P. Act, 1986/2019, so as to bring him within the purview of the said Act⁷

The appellant, an advocate, was hired by D.K. Gandhi to file a complaint against Kamal Sharma under Section 138 of the Negotiable Instruments Act, as Sharma's cheque for Rs. 20,000/- was dishonoured. During the case, Sharma agreed to pay Rs. 20,000/- plus Rs. 5,000/- in expenses. Gandhi alleged that the appellant received these payments but did not deliver them to him, instead demanding Rs. 5,000/- in cash. The appellant then filed a suit for the recovery of Rs. 5,000/- as his fees. Subsequently, the appellant handed over the Rs. 20,000/- DD/pay order and the Rs. 5,000/- cheque to Gandhi, but the cheque payment was stopped by Sharma at the appellant's instance. Gandhi filed a complaint with the District Consumer Disputes Redressal Forum, Delhi, seeking compensation for the stopped cheque and additional damages for mental agony and harassment. The appellant argued that the forum lacked jurisdiction, claiming advocates were not covered under the Consumer Protection Act (CPA). The District Forum ruled in favour of Gandhi, but the State Commission overturned this decision, stating legal services did not fall under the CPA. The NCDRC reversed the State Commission's ruling, leading to the present appeals by the Bar of Indian Lawyers, Delhi High Court Bar Association, Bar Council of India, and the appellant M. Mathias.

After hearing arguments from all sides, the Supreme Court held that the legal profession is *sui generis* in nature, meaning it is unique and cannot be compared with any other profession. As per **Black's Law Dictionary, 11th Edition**, "Profession" means "a vocation requiring advanced education and training; especially one of the three traditional Professions-Law, Medicine and the Ministry." "Professional" means "someone who belongs to a learned profession whose occupation requires a high level of training and proficiency."⁸ So, "*a Professional cannot be treated equally or at par with a Businessman or a Trader or a Service provider of products or goods as contemplated in the CP Act. Similarly, the services rendered by a Businessman or a Trader to the consumers with regard to his goods or products cannot be equated with the Services provided by a Professional to his clients with regard to his*

⁷ *Bar of Indian Lawyers v D.K. Gandhi and PS National Institute of Communicable Diseases*, SCC 2024 SC 928, 4.

⁸ Bryan A. Garner, *Black's Law Dictionary* (Thomson Reuters, 11th edn, 2011) 343.

specialized branch of profession."⁹ The legal profession cannot be equated with any other traditional professions. It is not commercial in nature and is a noble one considering the nature of duties to be performed and its impact on the society.¹⁰ The legal profession is different from the other professions also for the reason that what the Advocates do, affects not only an individual but the entire ministration of justice, which is the foundation of the civilized society.¹¹ Therefore, having regard to the role, status and duties of the Advocates as the professionals, the court are of the opinion that the legal profession is *sui generis* i.e unique in nature and cannot be compared with any other profession.

The next question that falls for our consideration through this judgement is whether a service hired or availed of an Advocate could be said to be the service under a "contract of personal service? The term 'Service' has been defined under CPA 2019, Section 2(42)¹² as "*service*" means 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.

As can be seen, the definition of 'service' is divided into three parts the first part is explanatory in nature and defines service to mean service of any description which is made available to the potential users; the second part is inclusionary part, which expressly includes the provision of facilities in connection with the specific services; and the third part is exclusionary part which excludes rendering of any service free of charge or under a contract of personal service.¹³

A "contract of personal service" implies a relationship characterized by a degree of personal trust and confidence, where the service provider is under the direct supervision and control of the person availing of the service. *The greater the amount of direct control exercised over the person rendering the services by the person contracting for them the stronger the grounds for holding it to be a contract of service, and similarly the greater the degree of independence of*

⁹ *Bar of Indian Lawyers v D.K. Gandhi and PS National Institute of Communicable Diseases*, SCC 2024 SC 928, 14.

¹⁰ *R. Muthukrishnan v The Registrar General of The High Court*, AIR 2019 SC 849.

¹¹ *Bar of Indian Lawyers v D.K. Gandhi and PS National Institute of Communicable Diseases*, SCC 2024 SC 928.

¹² The Consumer Protection Act 2019, ss. 2, 42.

¹³ *Lucknow Development Authority v M K Gupta*, AIR 1994 SC 787.

*such control the greater the probability that the services rendered are of the nature of professional services and that the contract is not one of service.*¹⁴

The relationship between an advocate and a client involves a significant degree of trust and confidentiality, where the advocate operates with a considerable degree of professional independence. This independence is fundamental to the advocate's ability to provide objective and unbiased legal advice, free from the direct control of the client. Thus, a considerable amount of direct control is exercised by the Client over the manner in which an Advocate renders his services during the course of his employment. All of these attributes strengthen our opinion that the services hired or availed of an Advocate would be that of a contract of personal service' and would therefore stand excluded from the definition of "service" contained in the section 2(42) of the CP Act, 2019.

The court further observed that a complaint alleging "deficiency in service" against advocates practicing the legal profession would not be maintainable under the Consumer Protection Act, 2019. The legal profession is a noble profession and not a business or trade. It is an extension of system of justice, and the success of judicial process depends on the independence of the Bar. *The Advocates Act, 1961 is a law dealing exclusively with the legal profession which provides a robust mechanism laying down professional standards for compliance and for determining professional misconduct. The Advocates Act being special law would prevail over the CP Act so far as the conduct of Advocates are concerned.*¹⁵

The court emphasized that the Advocates Act, 1961, already provides adequate remedies and disciplinary measures for addressing any grievances related to the professional conduct of advocates. The Bar Councils established under this Act are equipped with the necessary authority and expertise to handle such matters effectively. Thus, integrating consumer protection mechanisms into the regulation of legal professionals would be redundant and potentially disruptive.

Also, allowing consumer protection law to apply to the Advocates would open floodgates of unnecessary litigations and it would not be in the larger public interest to do so. It would also

¹⁴ *Simmons v Heath Laundry Company* (1910) 1KB 543.

¹⁵ *Bar of Indian Lawyers v D.K. Gandhi and PS National Institute of Communicable Diseases*, SCC 2024 SC 928, 6.

*lead to multiple proceedings before multiple forums, reagitating of issues decided by a judicial body including the Supreme Court with potentially conflicting decisions.*¹⁶

The court appointed the Senior Advocate Mr. V.V. Giri as the amicus curiae, who submitted a significant observation regarding the scope of the Consumer Protection Act (CPA) as it pertains to legal professionals. Giri argued that advocates engaged by clients outside the precincts of the court and outside the litigation process—those not engaged on the strength of a Vakala Nama but rather to provide legal services independent of court proceedings—should be considered as service providers. He contended that any deficiency or shortcoming in the professional services rendered by such advocates, completely outside the confines of the litigation process, would fall under the purview of the CPA.

This landmark judgment in *Bar of Indian Lawyers v. D.K. Gandhi* crucially reaffirms the unique, non-commercial nature of the legal profession, excluding it from the Consumer Protection Act's purview. By distinguishing professional services from consumer services, it upholds the independence and integrity of the legal profession, addresses the issue of overlapping jurisdictions, and prevents a potential influx of unnecessary litigations, ensuring grievances against advocates are addressed within specialized frameworks.

THE IMPLICATIONS OF THE SUPREME COURT'S JUDGMENT ON FUTURE LEGAL PRACTICE

The Supreme Court's judgment in *Bar of Indian Lawyers v. D.K. Gandhi* and *PS National Institute of Communicable Diseases and Anr.* has profound implications for the future of legal practice in India. By affirming that the legal profession is sui generis, the Court has reinforced the unique and non-commercial nature of legal services, distinguishing them from other types of services covered under the Consumer Protection Act (CPA). This verdict not only clarified the position of legal services under the Consumer Protection Act (CPA) but also overturned previous judgments regarding similar professional services. The decision of the three-judge bench in the case of *Indian Medical Association v. V.P. Shantha* has been revisited and referred to a larger bench for further consideration under the guidance of the Hon'ble Chief Justice of India.

¹⁶ *Bar of Indian Lawyers v D.K. Gandhi and PS National Institute of Communicable Diseases*, SCC 2024 SC 928, 7.

Reinforcement of Professional Standards

Further, the judgment underscores the importance of maintaining high professional standards within the legal community. By categorically stating that advocates are not subject to the CPA, the Court has highlighted the need for legal practitioners to adhere strictly to the professional and ethical guidelines laid down by the Advocates Act, 1961. Even, Chapter II, Part VI of the BCI Rules states that, “*Advocates, in addition to being professionals, are also officers of the courts and play a vital role in the administration of justice. An advocate shall, at all times, compose himself in a manner befitting his status as an advocate, an officer of the court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar may still be improper for an advocate.*”¹⁷ The Bar Council of India Rules prescribe at least four sets of duty that a lawyer has to oblige, viz., Duty to the Court, Duty to the Client, Duty to Opponent and Duty to Colleagues, in no particular order.¹⁸

Clarification of Client-Lawyer Relationship

The Supreme Court's decision clarifies the nature of the client-lawyer relationship, framing it as one based on trust and fiduciary duty rather than a typical service-provider dynamic. *One of the most basic principles of the lawyer-client relationship is that lawyers owe fiduciary duties to their clients. As part of those duties, lawyers assume all the traditional duties that agents owe to their principals and, thus, have to respect the client's autonomy to make decisions at a minimum, as to the objectives of the representation. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client.*¹⁹ This principle not only underscores the ethical commitment of lawyers to act in the best interests of their clients but also safeguards the integrity and trust inherent in the lawyer-client relationship.

Upon closer examination by the court, the distinct characteristics of the relationship between an Advocate and his client become evident and explicit:

- 1) “Advocates are generally perceived to be their client's agents and owe fiduciary duties to their clients.

¹⁷ Chapter II, Part VI of the BCI Rules

¹⁸ *Bar of Indian Lawyers v D.K. Gandhi and PS National Institute of Communicable Diseases*, SCC 2024 SC 928.

¹⁹ *Himalayan Cooperative Group Housing Society v Balwan Singh*, AIR 2015 SC 2867.

- 2) Advocates are fastened with all the traditional duties that agents owe to their principals. For example, Advocates have to respect the client's autonomy to make decisions at a minimum, as to the objectives of the representation.
- 3) Advocates are not entitled to make concessions or give any undertaking to the Court without express instructions from the Client
- 4) It is the solemn duty of an Advocate not to transgress the authority conferred on him by his client.
- 5) An Advocate is bound to seek appropriate instructions from the Client or his authorized agent before taking any action or making any statement or concession which may, directly or remotely, affect the legal rights of the Client.
- 6) The Advocate represents the client before the Court and conducts proceedings on behalf of the client. He is the only link between the court and the client. Therefore, his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment”²⁰

In conclusion, the client-lawyer relationship rests on a foundation of trust, fiduciary duty, and the lawyer's commitment to advocate solely in the client's best interests.

Grievance Redressal Mechanisms available to Clients

By excluding legal services from the purview of the CPA, the Court has reiterated that complaints against lawyers should be handled exclusively by the Bar Councils under the Advocates Act. This ensures that grievances related to professional misconduct are addressed by bodies with specialized knowledge of legal ethics and practice. Section 35²¹ of the Advocates Act, 1961, addresses the '*Punishment of advocates for misconduct.*' This provision empowers the State Bar Council to refer cases of professional or other misconduct to its disciplinary committee for inquiry. If an advocate is found guilty, the disciplinary committee has the authority to reprimand, suspend, or even remove the advocate from the roll.

Similarly, Section 36²² of the Advocates Act outlines the '*Disciplinary powers of the Bar Council of India.*' When a disciplinary committee of a State Bar Council refers a case to the Bar Council of India, or if the Bar Council of India itself deems it fit, the latter's disciplinary committee may inquire into the misconduct of advocates.

²⁰ *Bar of Indian Lawyers v D.K. Gandhi and PS National Institute of Communicable Diseases*, SCC 2024 SC 928, 26.

²¹ Advocates Act 1961, s.35.

²² Advocates Act 1961, s.36.

Bringing advocates under the purview of the Consumer Protection Act could potentially undermine one of the Act's primary objectives: the speedy disposal of cases. If clients who lose their cases start suing their lawyers, it could lead to a significant increase in the number of cases filed before the Consumer Redressal Forum. This situation could have two major implications. First, it would burden the Consumer Redressal Forum, slowing down the resolution process. Second, clients with genuine grievances might not receive the justice they deserve due to the forum's increased workload.²³

This is why empowering the Bar Councils and the provisions under the Advocates Act, 1961, with significant disciplinary powers is crucial. By ensuring that professional misconduct is addressed promptly and effectively within the legal profession, these measures help maintain public trust in the legal system. The Advocates Act and Bar Council of India provides just the specialized and efficient mechanism to do the same.

Clarifying Legislative Intent: The Exclusion of Professions from the CP Act

*The very purpose and object of the CP Act, 1986 as re-enacted in 2019 was to provide protection to the consumers from unfair trade practices and unethical business practices, and the Legislature never intended to include either the Professions or the services rendered by the Professionals within the purview of the said Act of 1986/2019.*²⁴ The ruling clarifies that the CPA's scope is limited to commercial and consumer services, distinctly excluding professional services provided by lawyers. This exclusion is rooted in the recognition of the unique nature of professional services, which involve a high degree of trust, fiduciary duty, and professional independence.

There was not a whisper in the statement of objects and reasons either of the CP Act, 1986 or 2019 to include the Professions or the Services provided by the Professionals like Advocates, Doctors etc. within the purview of the Act. It is very well accepted proposition of the fact that Professionals could not be called Businessmen or Traders, nor Clients or Patients be called Consumers. Including professional services within the ambit of the CPA would blur these lines, subjecting professionals to a consumer litigation framework that may not fully

²³ M. Parvathi Warriar, 'Liability of Legal Professionals under The Consumer Protection Act' (2020) 9 Pen Acclaims.

²⁴ *Bar of Indian Lawyers v D.K. Gandhi and PS National Institute of Communicable Diseases*, SCC 2024 SC 928, 15.

appreciate the nuances of professional ethics and responsibilities.

LAWYERS' LIABILITY ACROSS VARIOUS LEGAL FRAMEWORKS

With the recent Supreme Court judgment that excluded lawyers from the purview of the Consumer Protection Act (CPA) has significant implications for how lawyer liability is governed in India. This ruling necessitates a deeper examination of the various legal frameworks that regulate the conduct and accountability of legal professionals. With the CPA no longer applicable, other legal mechanisms, such as contract law, tort law, the Advocates Act, 1961, now take centre stage in ensuring that lawyers adhere to their professional responsibilities and maintain ethical standards.

Liability under Contract Law

Like other professionals engaged in a learned profession, the relationship between a lawyer and client is contractual in nature. The extent of a lawyer's obligation towards his client for breach of contract depends on the terms of the contract, express or implied. Generally, a lawyer renders his service with respect to legal matters. He is not bound to give any advice regarding any business matter. But, if he does so in accordance with the unequivocal instructions by the client, it will be at his peril, if the latter suffers any loss acting on such advice.²⁵

The extent of lawyer's obligation towards his client for the breach of contract depends upon the terms of the contract. 'Generally, a lawyer is retained to render services on legal matters. Obligation with respect to business matters can also arise if the lawyer accepts such unequivocal instructions by the client. It follows that nothing prevents a lawyer from contracting to render advice on a business question.²⁶ Under contract law, the relationship between a lawyer and their client is typically formalized through a retainer agreement. This agreement outlines the scope of services to be provided, the fees to be charged, and other relevant terms and conditions. Both parties are bound by the terms of this contract, and any breach can lead to liability. For instance, if a lawyer fails to perform their duties as stipulated in the contract, such as not filing necessary documents on time or failing to represent a client adequately in court, they can be held liable for breach of contract. The client, in such cases, has the right to seek remedies, which may include damages for any loss suffered due to the lawyer's

²⁵ Venugopal (n 2) 276.

²⁶ M. Parvathi Warriar, 'Liability of Legal Professionals under The Consumer Protection Act' (2020) 9 PenAcclaims.

non-performance.

There are situations when the performance of the contract must occur within the time frame specified or ascertained from the facts, in which case time may be of the essence. A lawyer exposes himself to responsibility if he neglects to fulfil his duty within the stringent time constraints set by the circumstances. Same happened in the case of **Stirling v. Poulgrain**²⁷ where, *a client instructed the lawyers to transfer two forms to a trust to reduce the estate duty. The revenue authority confirmed that estate duty could be reduced if the same could be affected within a particular date. But the lawyers failed to do so. In effect, there was an increase in the estate duty to be paid. The lawyers were held liable for breach of contract.*

Similarly, an advocate who breaches his commitments cannot escape responsibility. Adhering to professional obligations and responsibilities is crucial for advocates, as failure to do so may result in serious injury or loss for their clients.²⁸ The same was observed in the case of **S.A. Ahmed v. Poonam A. Shah**²⁹ where *the client hired an advocate to file a lawsuit for specific performance. However, the advocate brought an injunction lawsuit. Even though the lawyer had only sent Rs. 25 to the court, the client paid him Rs. 62,125 towards the court charge. She had also settled legal fees, professional fees, and an additional amount of Rs. 90,000/-. It was decided that there was a service shortfall. The advocate was instructed to give the client back the whole money he had received. Furthermore, he was instructed to cover the expense of the grievance and compensatory damages for psychological distress.*

Individuals engaged in public professions, such as common carriers and innkeepers, are obligated to enter into contracts with willing parties. This duty has been extended to advocates, who cannot refuse a case unless there are justifiable reasons. In this regard, the High Court of Allahabad in **Gokul Prasad v. Emperor**³⁰ observed that *it is imperative that men practicing law recognise that they are part of the public sector and that they commit to representing anybody who satisfies specific requirements.* As a result, if a client approaches them with the right instructions and is willing to pay a reasonable charge, and if they decline to take on a case similar to one, they are used to handling, they ought to be disciplined accordingly.

²⁷ *Stirling v Poulgrain*, (1980) 2 NZLR 402.

²⁸ *Venugopal* (n 2) 277.

²⁹ *S.A. Ahmed v Poonam A. Shah*, (2009) CPJ 367.

³⁰ *Gokul Prasad v Emperor*, AIR 1930 ALL 262.

There are circumstances under which a lawyer's retainer may be terminated. If a lawyer has good cause, they may terminate the retainer and provide the client fair notice. Should the dismissal be deemed unwarranted, the attorney could be held accountable. On the other hand, if the attorney doesn't live up to expectations, the client might choose to end the retainer. In these situations, the attorney is in charge of appropriately ending the business arrangement and could be held accountable for any losses that follow. To prevent legal and professional fallout, all parties must handle the termination procedure carefully.

Liability under Tort Law

The tortious liability of a lawyer for deficiency in service arises independent of a contract. He is bound to exercise reasonable care and skill, which is expected from a reasonably competent lawyer. It is neither the highest nor the lowest degree of the care. It cannot be denied that he should have knowledge of law. As law is an ocean, it is humanly impossible for any lawyer irrespective of his experience to know all the laws.³¹ The liability of legal professionals arises independent of a contract. In tort liability is mainly based on professional negligence.³²

In this regard, in **Mantriu v. Jefferies**³³, the court observed *that no attorney is bound to know all the law. God forbid that it should be imagined that an attorney, counsel, or even a judge is bound to know all the laws. But he is bound to know the substantive laws, statutes, and procedural laws pertaining to his sphere of practice, which a reasonably competent lawyer ought to have known, failing which he invites liability for negligence.*

When a client entrusts their legal problem to a lawyer, the client expects and trusts that the attorney is knowledgeable about the law. It is unacceptable for an attorney to assert ignorance. Should an attorney be unaware of a particular legal issue pertinent to a case they have accepted, it is their obligation to seek out the necessary information diligently. They are expected to know where and how to locate the relevant legal statutes within their practice area. If the situation demands that a lawyer of reasonable competence engage in research to obtain such information, the lawyer who fails to do so is liable for negligence.

The Indian Supreme Court in **M. Veerappa v. Evelyn Sequira**³⁴, held that a legal practitioner cannot claim exemption from liability in respect of any loss or injury suffered by the client due

³¹ Venugopal (n 2) 280.

³² Abhijit Sinha, B.Shravya, 'Professional Misconduct by Advocates: A Portrait of Malpractice' (2018) 3 PenAcclains, 12.

³³ *Mantriu v. Jefferies*, (1895) 2 C & P 113.

³⁴ *M. Veerappa v Evelyn Sequira*, AIR 1988 SC 506.

to any negligence in the conduct of his professional duties merely by reason of being a legal practitioner.³⁵ A lawyer's negligence must be ascertained regarding the general practice of the profession, which is considered the standard of care and skill. In certain exceptional situations, the usual professional practice of providing evidence to establish the standard of care cannot be used as the measure for determining negligence.

A lawyer's carelessness or breach of duty results from their failure to uphold either contractual or tortious commitments. This violation is usually evaluated using the criteria of a lawyer who is sufficiently competent. In the past, judges have found attorneys guilty of these violations in a variety of situations.³⁶ These include not following directions from clients, giving accurate legal advice, doing the required investigations, drafting legal papers correctly, or telling clients of crucial information in an efficient manner. Every case is evaluated by comparing the attorney's conduct to the standard that a qualified professional would exhibit in a comparable circumstance. If the attorney's conduct deviates from this norm, it may be deemed negligent and lead to further legal culpability.

Liability under Advocates Act, 1961

The Advocates Act, 1961, serves as the cornerstone of legal practice in India, governing the regulation, professional conduct, and accountability of advocates. This comprehensive legislation establishes the Bar Council of India (BCI) and State Bar Councils, which are tasked with maintaining professional standards and addressing grievances related to the conduct of legal practitioners.

The Advocates Act, 1961, empowers the Bar Council of India to frame rules governing the standards of professional conduct and etiquette for advocates. These rules are binding on all practicing lawyers and set the ethical and professional standards expected in the legal profession. Non-compliance with these standards can lead to disciplinary action, including suspension or disbarment. Section 35 of the Advocates Act³⁷, tells that professional misconduct encompasses a wide range of behaviours, including unethical practices, breach of professional duties, and any actions that undermine the integrity of the profession and holds the lawyers accountable for their actions.

³⁵ Sinha, Shravya (n32) 13.

³⁶ Venugopal (n 2) 284.

³⁷ Advocates Act 1961, s.35.

In the case of **Noratanman Courasia v. M. R. Murali**³⁸, the Supreme Court examined the scope of the term “professional misconduct” as outlined in Section 35 of the Advocates Act, 1961. The case involved an advocate who, although acting as a litigant rather than in his professional capacity as an advocate during a rent control proceeding, physically assaulted and threatened the complainant to deter them from continuing the case. The central issue was whether the advocate's conduct constituted misconduct that warranted disciplinary action by the Bar Council, despite not being in his professional role at the time. The Court ruled that an *advocate is expected to adhere to certain behavioural norms that inspire public confidence in him as an officer of the Court. Consequently, the advocate's actions, although not performed in his professional capacity, were deemed inappropriate for someone in his position, justifying the Bar Council's decision to initiate disciplinary proceedings.*

By holding advocates to stringent ethical norms and allowing for disciplinary actions even for actions taken outside their professional duties, the Act helps maintain the integrity and respectability of the legal profession. The enforcement of these standards by the Bar Council of India and State Bar Councils reaffirms their commitment to upholding justice and preserving the community's confidence in legal practitioners.

GLOBAL STANDARDS FOR LAWYER ACCOUNTABILITY AND CONSUMER PROTECTION

The recent Supreme Court judgment in India, which excluded lawyers from the purview of the Consumer Protection Act (CPA), has reignited the debate on how to best ensure lawyer accountability and consumer protection within the legal profession. This decision necessitates a closer examination of global standards and practices to understand how different jurisdictions balance these critical aspects. Across the world, various legal frameworks have been developed to regulate the conduct of legal professionals, uphold ethical standards, and protect consumers.

A notable global effort in this regard was the resolution passed the General Assembly of the United Nations passed a Resolution on April 9, 1985 adopting a set of guidelines for consumer protection to persuade the member countries to adopt policies and laws for better protection of the interests of the consumers. These guidelines provided a set of basic consumer protection

³⁸ *Noratanman Courasia v. M. R. Murali*, AIR 2004 SC 2440.

objectives upon which governments have agreed, thereby serving as a policy framework for implementation at the national level.³⁹ These guidelines have since become a cornerstone in the development of consumer protection laws globally providing a robust framework that nations can adapt to their unique circumstances.

Leaving aside India for the time being, if we consider the international practice regarding the inclusion of lawyer-client relationships within the ambit of consumer protection laws on the global stage, we would notice that the practice of common law countries evidences the exclusion of lawyers from the umbrella of consumer protection laws. It must be kept in mind that the consumer protection laws of almost all countries are based upon the same Resolution No. 39/248 of the United Nations General Assembly, which forms the foundation for framing the Consumer Protection Act in India.⁴⁰

In many common law jurisdictions, the relationship between lawyers and their clients is governed by specific professional and ethical standards rather than general consumer protection laws. This approach is rooted in the recognition of the unique nature of legal services, which often involve complex, fiduciary relationships that demand a high level of trust and professional integrity.

For e.g., *the legal professionals in the United Kingdom, for example, can be sued for negligence through regular civil action, but they are not liable under the laws dealing with consumer rights for trade or commercial activities⁴¹*. This distinction underscores the importance of specific legal frameworks tailored to professional services, which differ significantly from general consumer services. Similarly, Consumer Protection Act, 1999 enacted by the Parliament of Malaysia vide Section 2(2)(e)⁴² specifically provides that the said act shall not apply, inter alia, to services provided by professionals who are regulated by any law. It may be worth noting that the services of the professionals such as lawyers in Malaysia are governed by Legal Profession Act, 1976. Therefore, by virtue of the above Section 2(2)(e), the services provided by the professionals such as lawyers stand excluded from the application of the

³⁹ Department of Consumer Affairs Government of India, 'Consumer Handbook' (National Consumer, 2015) < https://consumerhelpline.gov.in/Consumer_Handbook.pdf > accessed 25 June 2024.

⁴⁰ *Bar of Indian Lawyers v D.K. Gandhi and PS National Institute of Communicable Diseases*, SCC 2024 SC 928, 29.

⁴¹ *Bar of Indian Lawyers v D.K. Gandhi and PS National Institute of Communicable Diseases*, SCC 2024 SC 928, 7.

⁴² Consumer Protection Act 1999, ss. 2, 2.

Consumer Protection Act of Malaysia.

This legislative intent of excluding regulated professions from the ambit of Consumer Protection Law has been continuing for over a considerable period of time now. Aspects of such exclusion find mention in the *DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 25 OCTOBER 2011*⁴³ on consumer rights where it has been said that provisions of the said directive should not apply to regulated professions.

Similarly, The Code of the District of Columbia, while highlighting the powers of the consumer protection agency in Title 28 Chapter 39 § 28- 3903 states in clause (c) that:

*"(c) The Department may not: (2) apply the provisions of section §28-3905 [Consumer Protection Complaints] to: (C) professional services of clergymen, lawyers, and Christian Science practitioners engaging in their respective professional endeavours"*⁴⁴ Overall, the consistent exclusion of regulated professions from consumer protection laws reflects a balanced approach aimed at ensuring robust professional standards, safeguarding client interests, and upholding the integrity of specialized services. By maintaining distinct regulatory frameworks tailored to professional practices, governments seek to foster accountability, ethical conduct, and public trust in professions critical to the functioning of society.

*It would be trite to mention here that the legal profession is a regulated profession in India. The Advocates Act, 1961 regulates the conduct of lawyers in India and is a complete code in itself. Given the regulation, India also needs to bring the working of its regulated. professions in alignment with international practices.*⁴⁵ In doing so, in India also the services of professionals more particularly that of lawyers have to be excluded from consumer protection law in accordance with the intention expressed in enacting the same.

CONCLUSION AND FUTURE RECOMMENDATION

The legal profession is widely regarded as a noble profession that plays a crucial role in upholding social order and justice within society. Presently, legal professionals are exempt from liability under the Consumer Protection Act, which reflects their integral role in

⁴³ European Parliament, 'DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL' (2011) 83 Official Journal of the European Union < <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0083>> accessed 25 June 2024.

⁴⁴ District of Columbia Code 2023, Title 28, ss. 39, 28.

⁴⁵ *Bar of Indian Lawyers v D.K. Gandhi and PS National Institute of Communicable Diseases*, SCC 2024 SC 928, 31.

facilitating access to justice. Individuals often turn to lawyers to seek redress for injustices they have encountered, opting for legal remedies instead of taking matters into their own hands or engaging in vigilante actions. This preference underscores the trust and confidence placed in lawyers and the judicial system to resolve disputes fairly and effectively.

Through an analysis of national and international laws, judicial precedents, and scholarly perspectives, this paper has explored the nuances of lawyer liability and consumer rights. The recent ruling in *Bar of Indian Lawyers v. D.K. Gandhi PS National Institute of Communicable Diseases and Anr.* underscores the importance of balancing legal immunity with consumer protection, highlighting the evolving jurisprudence in this area.

It is evident that while lawyers must adhere to professional ethics and standards, consumers also deserve robust protections against service deficiencies. The discussion has illuminated the need for a nuanced regulatory framework that clarifies lawyers' responsibilities while safeguarding consumer interests. Moving forward, achieving this balance will require collaborative efforts among legislators, legal professionals, consumer advocates, and stakeholders to ensure fair and effective legal services for all.

Furthermore, there is a pressing need for promoting consumer awareness and enhancing consumer education about their rights when engaging in legal services. Educational initiatives should focus on informing consumers about the scope and limitations of legal professionals' responsibilities and the available avenues for addressing service deficiencies. By equipping consumers with this knowledge, they can make informed decisions, better navigate potential legal issues, and advocate for their rights effectively. This approach fosters transparency and accountability within the legal profession, ensuring that consumers are aware of both their protections and the ethical obligations of their legal representatives. Strengthening ethical guidelines and continuing professional development programs for lawyers can also enhance service delivery standards and mitigate the risks of service deficiencies. Emphasizing ethical conduct and competence ensures that lawyers uphold their duties to clients while fulfilling their roles in the justice system.

Achieving a balance between legal immunity and consumer protection will require collaborative efforts among legislators, legal professionals, consumer advocates, and stakeholders. Through these collective endeavours, we can ensure fair, effective, and accountable legal services, thereby upholding the integrity of the legal profession and the rights

of consumers.

