

JURISDICTION OF CONSUMER COURTS IN INDIA: DISCOURSE IN REFERENCE TO THE CONSUMER (PROTECTION) ACT 2019

AUTHOR – VAIBHAV KARTIKEYA AGRAWAL, ADVOCATE & GRADUATED FROM HIDAYATULLAH NATIONAL LAW UNIVERSITY

BEST CITATION – VAIBHAV KARTIKEYA AGRAWAL, JURISDICTION OF CONSUMER COURTS IN INDIA: DISCOURSE IN REFERENCE TO THE CONSUMER (PROTECTION) ACT 2019, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 5 (8) OF 2025, PG. 308-318, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT:

The consumer protection laws have been enacted to provide immediate and inexpensive relief to the consumers and regulate the law and order in business transactions from shopkeeper to consumer. These laws are primarily not concerned with commercial deficits or profits instead are destined to redress the grievances of common man. This paper endeavours to explore the contours of jurisdiction of the Consumer forums. The paper states the circumstances in which a welfare function of the State Government could be challenged before a consumer forum. It also explores the circumstances which entitles a businessman to take recourse to the consumer forums for redressal. The paper is doctrinal and will definitely add to the jurisprudence of Law.

KEYWORDS: Consumer; Jurisdiction; Commercial; Self-employed;

INTRODUCTION:

The consumer protection laws have been enacted to provide immediate and inexpensive relief to the consumers and regulate the law and order in business transactions from shopkeeper to consumer. These laws are primarily not concerned with commercial deficits or profits instead are destined to redress the grievances of common man. This paper endeavours to explore the contours of jurisdiction of the Consumer forums. The paper states the circumstances in which a welfare function of the State Government could be challenged before a consumer forum. It also explores the circumstances which entitles a businessman to take recourse to the consumer for their redressal. The paper is doctrinal and will definitely add to the jurisprudence of law.

DEFINITION OF CONSUMER IN THE CONSUMER PROTECTION ACT 2019:

Section 2(7) of the Consumer Protection Act 2019 defines the term 'consumer':

Section 2(7) "consumer" means any person who—

- (i) buys any goods 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 user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (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.

Explanation.—For the purposes of this clause,—

(a) 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;

(b) the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;

In *LDA v. MK. Gupta*³⁷¹, Court observed:

"Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behavior before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law. Each hierarchy in the Act is empowered to entertain a complaint by the consumer for value of the goods or services and compensation..."

SCHEMES OR SERVICES SUBJECT TO THE COMPETENCE OF CONSUMER FORUMS:

This section provides some of the instances wherein a person can take recourse to the consumer forums for redressal of their grievances. These are:

1. Liability in case of welfare functions:

In *Labour Commissioner v. Kesar Lal*³⁷², the point for determination was, whether a construction worker who is registered under the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 and is a beneficiary of the Scheme made under the Rules framed pursuant to the enactment, is a 'consumer' within the meaning of Section 2(d) of the Consumer Protection Act 1986. Hon'ble Supreme Court observed that though the jurisdiction of consumer Courts extend in case of claims pertaining to the welfare functions of the Government, these do not constitute consumer disputes when a cess is levied in general from the workers and the services are rendered from the funds specifically allocated by the government. Court observed:

"(v) Undoubtedly, where the state for its multifarious functions, charges a fee and services are rendered on a quid pro quo basis, the activities of the State would be amenable to the jurisdiction of a consumer forum when a complaint of deficiency of service is made;

(vi) On the other hand, where the State commits itself to welfare schemes and a negligible amount is charged in token of the services which are rendered, the beneficiary of a service is not a 'consumer' within the meaning of Section 2(d) of the Consumer Protection Act 1986. Such services are primarily financed out of budgetary allocations. In the present case, though a service is rendered by the Board, the expenditure on the welfare scheme is defrayed from the cess which is collected and hence, is not a 'service' within the meaning of Consumer Protection Act 1986;"

This observation of the Court has been re-affirmed in *Punjab Urban Planning and Development Authority v. Vidya Chetal*³⁷³, wherein the Supreme Court observed at paragraph 20:

"Therefore, it is a clearly established principle that certain statutory dues, such as

³⁷¹ (1994) 1 SCC 243.

³⁷² (2023) 13 SCC 799.

³⁷³ (2019) 9 SCC 83.

fees, can arise out of a specific relation. Such statutory dues might be charged as a quid pro quo for a privilege conferred or for a service rendered by the authority. As noted above, there are exactions which are for the common burden, like taxes, there are dues for a specific purpose, like cess, and there are dues in lieu of a specific service rendered. Therefore, it is clear from the above discussion that not all statutory dues/exactions are amenable to the jurisdiction of the consumer forum, rather only those exactions which are exacted for a service rendered, would be amenable to the jurisdiction of the consumer forum.” Thus, the welfare services of the State government are not within the jurisdiction of consumer forums for the reason that these are funded exclusively by a specific fund allocated by the Government either at the Centre or the States. Even if a premium is levied by the beneficiaries, the premium cannot fulfill the economic expenses for the benefits accrued, thus those beneficiaries are not consumers and cannot avail jurisdiction of the consumer forums. Instead, if the scheme is wholly funded by the fees levied on the consumers, any breach of the services from such welfare schemes can be redressed by the consumer Courts.

2. Liability in case of service related benefits:

In *Labour Commissioner v. Kesar Lal*³⁷⁴, Court further observed that a government servant cannot obtain redress for service benefits from the consumer forum because service related benefits are a transaction between the employer and the employee and are not subject to deposit of a charge in lieu of the benefit. This observation holds in cases where a certain premium is charged for the benefit of an employee for a welfare related scheme and services are rendered to the employee from the funds of the employer or an allied organization like the insurance companies. Similarly, in *Ministry of Water Resources v. Shreepat Rao Kamde*³⁷⁵, it has been held that a government

servant who makes a contribution to the General Provident Fund lies outside the purview of the Consumer Protection Act 1986;³⁷⁶

Court referred its judgment in *Jagmittar Sain Bhagat v. State of Haryana*³⁷⁷, paragraph 20 :

“...it is evident that by no stretch of imagination can a government servant raise any dispute regarding his service conditions or for payment of gratuity or GPF or any of his retiral benefits before any of the forum under the Act. The government servant does not fall under the definition of a “consumer” as defined under Section 2(1)(d)(ii) of the Act. Such government servant is entitled to claim his retiral benefits strictly in accordance with his service conditions and regulations or statutory rules framed for that purpose. The appropriate forum, for redressal of any of his grievance, may be the State Administrative Tribunal, if any, or the civil court but certainly not a forum under the Act.” (Emphasis added) These observations were referred and reaffirmed in *Union of India v. Shreepat Rao Kamde*³⁷⁸.

ARBITRATION CLAUSE DOES NOT OUST JURISDICTION OF CONSUMER COURTS:

In *M. Hemlatha Devi v. B. Udayasri*³⁷⁹, an application for appointment of arbitrator has been dismissed by the High Court of Telangana on the ground that an appropriate application can be filed under Section 8 of the Arbitration and Conciliation Act 1996 before the District Consumer Disputes Redressal Forum where the complaint is pending. On dismissal of the application, the appellant builder filed review petition which was dismissed contending that already an order has been passed by the District forum thus, the High Court’s order need not be reviewed. The appellant challenges orders by the District Consumer Forum for giving the possession of the plot and constructed villa and with a compensation of Rs. 15,00,000 and a cost of Rs. 1,00,000. The

³⁷⁴ *Supra* note 2 at 806-807.

³⁷⁵ (2013) 10 SCC 136.

³⁷⁶ *Supra* note 2 at 824.

³⁷⁹ (2024) 4 SCC 255

³⁷⁴ *Supra* note 2 at 807.

³⁷⁵ CA /8472/ 2019, Supreme Court referred in *Vidya Chetal, Supra* note 2.

appellants contended that there was an arbitration clause, hence the dispute was arbitrable and the consumer forums did not have jurisdiction to decide the same. In *Fair Air Engineers (P) Ltd. v. N.K. Modi*³⁸⁰, Hon'ble Supreme Court observed in reference to the jurisdiction of consumer forums:

"It would, therefore, be clear that the Legislature intended to provide a remedy in addition to the consented arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure. Thereby, as seen, Section 34 of the Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under the Act. It is a matter of discretion. Considered from this perspective, we hold that though the District Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, in view of the object of the Act and by operation of Section 3 thereof, we are of the considered view that it would be appropriate that these forums created under the Act are at liberty to proceed with the matters in accordance with the provisions of the Act rather than relegating the parties to an arbitration proceedings pursuant to a contract entered into between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the forums on their own and on the peculiar facts and circumstances of particular case, come to the conclusion that the appropriate forum for adjudication of the disputes would be otherwise those given in the Act." Court observed in *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy*³⁸¹ that a purchaser of defective seeds could prosecute but has to avail jurisdiction of consumer courts for compensation and damages.

Thus, the Court refrained from interfering in the orders of the District Commission and held that

an arbitration clause cannot prohibit filing of a case before the consumer Courts.

FREE MEDICAL SERVICES CANNOT DEPRIVE JUDICIAL REMEDIES:

In *Ashish Kumar Chauhan v. Indian Army*³⁸², the appellant was a radar operative who alleges the Indian Army hospital to have contaminated Human Immuno deficiency virus when he took their treatment. Hon'ble Supreme Court deciphered on the amenability of consumer forums to the treatments of government hospitals particularly the Army hospitals and observed in reference to the Indian Medical Assn. v. V.P. Shantha:

"This Court has dealt with all aspects of the medical profession from every angle and has come to the conclusion that the doctors or the institutes owe a duty to the patients and they cannot get away in case of lack of care to the patients. Their Lordships have gone to the extent that even if the doctors are rendering services free of charge to the patients in government hospitals, the provisions of the Consumer Protection Act will apply since the expenses of running the said hospitals are met by appropriation from the Consolidated Fund which is raised from taxes paid by the taxpayers. Their Lordships have dealt with the definition of "service" given in Section 2(1)(o) of the Consumer Protection Act, 1986, and have observed as follows:

"The services rendered free of charge to patients by doctors/hospitals, whether non-government or government, who render free service to poor patients but charge fees for services rendered to other patients would, even though it is free, not be excluded from definition of service in Section 2(1)(o). The Act seeks to protect the interests of consumers as a class. To hold otherwise would mean that the protection of the Act would be available to only those who can afford to pay and such protection would be denied to those who cannot so afford, though

³⁸⁰ (1996) 6 SCC 385

³⁸¹ (2012) 2 SCC 506

³⁸² (2023) 15 SCC 165.

they are the people who need the protection more....”³⁸³

Court referred *Kishore Lal v. ESI Corporation*,³⁸⁴ wherein it observed:

“Service rendered in the hospital to the insured person or his family members for medical treatment is not free, in the sense that the expense incurred for the service rendered in the hospital would be borne from the contributions made to the insurance scheme by the employer and the employee and, therefore, the principle enunciated in Conclusion (11) in para 55 in *Indian Medical Assn. [(1995) 6 SCC 651]* will squarely apply to the facts of the present case, where the appellant has availed the services under the insurance policy which is compulsory under the statute. Wherever the charges for medical treatment are borne under the insurance policy, it would be a service rendered within the ambit of Section 2(1)(o) of the Consumer Protection Act. It cannot be said to be a free service rendered by the ESI hospital/dispensary.

14. The service rendered by the medical practitioners of hospitals/nursing homes run by ESI Corporation cannot be regarded as a service rendered free of charge.”³⁸⁵

Thus, the services rendered by a medical practitioner whether at a government hospital or an independent dispensary/ or hospital is amenable to the jurisdiction of Consumer Courts.

REAL ESTATE ACT 2016 DO NOT OUST JURISDICTION OF CONSUMER COURTS:

In *Pioneer Urban Land and Infrastructure Limited v. Union of India*³⁸⁶, Supreme Court observed:

The fact that RERA is in addition to and not in derogation of the provisions of any other law for the time being in force, also makes it clear that the remedies under RERA to allottees were intended to be additional and not exclusive

remedies. Also, it is important to remember that as the authorities under RERA were to be set up within one year from 1st May, 2016, remedies before those authorities would come into effect only on and from 1st May, 2017 making it clear that the provisions of the Code, which came into force on 1st December, 2016, would apply in addition to the RERA.³⁸⁷

The Statement of Objects and Reasons of the Real Estate (Regulation and Development) Act 2016 recognizes the need for a separate independent judicial forum for adjudication of disputes pertaining to the commercial transactions of purchase of flats from different builders and the consequences of breach of contract. The Statement of Objects and Reasons state, ‘Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.’ Section 71(1) of the RERA Act protects the interests of the allottees or consumers of building and flat purchases by providing an alternative remedy to withdraw the complaint filed before the Consumer Protection Act prior to the enforcement of the RERA Act 2016 and file an application in reference to the provisions contained in the RERA Act, 2016. However, *Hon’ble Supreme Court in Pioneer Urban Land and Infrastructure Limited v. Union of India*³⁸⁸ held that the jurisdiction under the RERA Act 2016 is concurrent with those under the Insolvency and Bankruptcy Code 2016 and the Consumer (Protection) Act 2019. The RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over the RERA. Remedies that are given to allottees of flats/apartments are therefore

³⁸³ *Id* at 179, para 51.

³⁸⁴ (2007) 4 SCC 579.

³⁸⁵ *Id* at 181.

³⁸⁶ (2019) 8 SCC 416.

³⁸⁷ *Id* at 473.

³⁸⁸ *Id* at 525, para 100.

concurrent remedies, such as allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.

In *Rohit Chaudhary v. Vipul Ltd.*³⁸⁹, the appellant purchased a commercial space from respondent builders and sued them before the National Consumer Redressal Commission at New Delhi for delay in giving possession of the premises. Hon'ble Supreme Court on appeal against dismissal, awarded the amount invested for purchase of the flat at the rate of 12 percent interest with the observation that the premises were being purchased for office purposes and not for commercial purposes so the dispute was amenable to the jurisdiction of the consumer Courts.³⁹⁰ Thus, if the dominant purpose of purchasing the goods or services is for a profit motive and this fact is evident from record, such purchaser would not fall within the four corners of the definition of 'consumer'.³⁹¹

In *Samruddhi Cooperative Housing Society Ltd. v. Mumbai MahaLaxmi Construction (P) Ltd.*³⁹², the members of the appellant housing society sued the respondent company for non-availability of electricity and water. The National Consumer Disputes Redressal Commission held that these services are provided by the municipal authorities and not by the respondent company, hence the complaint is not tenable before the consumer Commission. However, Hon'ble Supreme Court held that the respondent was required to obtain occupancy certificate from the municipal authorities and for their failure, the respondents are liable for breach of contract in the consumer forum.

DIFFERENCES BETWEEN COMMERCIAL TRANSACTIONS AND SELF-EMPLOYMENT:

In *Shrikant G. Mantri v. Punjab National Bank*³⁹³, Court provided some illustrations to

demonstrate what constitutes a commercial transaction for the purposes of Consumer Protection Act and restrain a genuine consumer from obtaining redress from the consumer courts. Court observed at paragraph 41:

“a person who buys a typewriter or a car and uses them for his personal use is certainly a consumer but a person who buys a typewriter or a car for typing others' work for consideration or for plying the car as a taxi can be said to be using the typewriter/car for a commercial purpose. A person who purchases an auto-rickshaw to ply it himself on hire for earning his livelihood would be a consumer. Similarly, a purchaser of a truck who purchases it for plying it as a public carrier by himself would be a consumer. A person who purchases a lathe machine or other machine to operate it himself for earning his livelihood would be a consumer. (In the above illustrations, if such buyer takes the assistance of one or two persons to assist/help him in operating the vehicle or machinery, he does not cease to be a consumer.) As against this a person who purchases an autorickshaw, a car or a lathe machine or other machine to be plied or operated exclusively by another person would not be a consumer. This is the necessary limitation flowing from the expressions “used by him”, and “by means of selfemployment” in the explanation.

“In the case of *Cheema Engineering Services vs. Rajan Singh*³⁹⁴, this Court held that the manufacture and sale of bricks in a commercial way may also be to earn livelihood. As such, the question as to whether the complainant used the machinery for the manufacture of bricks alone or with members of his family and as to whether the same was for earning his livelihood, were the questions of fact to be decided on the basis of evidence.”³⁹⁵

Court referred its judgment in *Paramount Digital Color Lab, v. Afra India (P) Ltd.*³⁹⁶, wherein the

³⁸⁹ (2024) 1 SCC 8

³⁹⁰ *Id* at para 22.

³⁹¹ *Id* at para 18.

³⁹² (2022) 4 SCC 103

³⁹³ (2022) 5 SCC 42 at 56.

³⁹⁴ (1997) 3 SCC 36.

³⁹⁵ *Id* at para 44.

³⁹⁶ (2018) 14 SCC 81, paragraph 12-13.

term 'self-employment' was illustrated' and the Court observed:

'13. "Selfemployment" necessarily includes earning for self. Without earning generally there cannot be "selfemployment". Thus, if a person buys and uses the machine exclusively for the purposes of earning his livelihood by means of "selfemployment", he definitely comes within the definition of "consumer". In the matter on hand, the quality of ultimate production by the user of the machine would depend upon the skill of the person who uses the machine. In case of exigencies, if a person trains another person to operate the machine so as to produce the final product based on skill and effort in the matter of photography and development, the same cannot take such person out of the definition of "consumer".'

In *Shrikant G. Mantri v. Punjab National Bank*³⁹⁷, Court held at para 40 of its judgment:

40. This Court, on facts in the said case, found that the appellants therein were unemployed graduates and had bought the said machine for their own utility, personal handling and for their small venture, which they had embarked upon to make a livelihood. This Court further found that this was distinct from largescale manufacturing or processing activity carried on for huge profits. It was, therefore, held that the appellants therein would be consumers within the meaning of Section 2(1)(d) of the said Act.

Court also referred *Lilavati Kirtilal Mehta Medical Trust*³⁹⁸ wherein provided guidelines for determining whether a transaction or activity is a commercial purpose for the purposes of the Consumer protection Act:

'19. To summarise from the above discussion, though a strait jacket formula cannot be adopted in every case, the following broad principles can be culled out for determining whether an activity or transaction is "for a commercial purpose":

19.1. The question of whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case. However, ordinarily, "commercial purpose" is understood to include manufacturing/industrial activity or business to business transactions between commercial entities.

19.2. The purchase of the good or service should have a close and direct nexus with a profit-generating activity.

19.3. The identity of the person making the purchase or the value of the transaction is not conclusive to the question of whether it is for a commercial purpose. It has to be seen whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary.

19.4. If it is found that the dominant purpose behind purchasing the good or service was for the personal use and consumption of the purchaser and/or their beneficiary, or is otherwise not linked to any commercial activity, the question of whether such a purchase was for the purpose of "generating livelihood by means of selfemployment" need not be looked into."

In *Canara Bank v. United India Insurance company*³⁹⁹, Court observed:

'"Taking the issue of privity of contract, we are of the considered view that as far as the Act is concerned, it is not necessary that there should be privity of contract between the insurance company and the claimants. The definition of consumer under Section 2(d) quoted hereinabove is in 2 parts. Sub-clause (i) of Section 2(1)(d) deals with a person who buys any goods and includes any user of such goods other than the person who buys such goods as long as the use is made with the approval of such person. Therefore, the definition of consumer even in the 1st part not only includes the person who has purchased but includes any user of the goods so long as

³⁹⁷ (2022) 5 SCC 42 at 56.

³⁹⁸ (2020) 2 SCC 265.

³⁹⁹ (2020) 3 SCC 455

such user is made with the approval of the person who has purchased the goods. As far as the definition of the consumer in relation to hiring or availing of services is concerned, the definition, in our view, is much wider. In this part of the section, consumer includes not only the person who has hired or availed of the services but also includes any beneficiary of such services. Therefore, an insured could be a person who hires or avails of the services of the insurance company but there could be many other persons who could be the beneficiaries of the services. It is not necessary that those beneficiaries should be parties to the contract of insurance. They are the consumers not because they are parties to the contract of insurance but because they are the beneficiaries of the policy taken out by the insured.”

Thus, even if a person is not a party to a contract of insurance or a contract of welfare scheme, the beneficiaries will become entitled to claim benefits provided those benefits are being rendered from the sum already levied by the promisor to such a contract.

Similarly, if a person provides goods⁴⁰⁰ or services for his self-employment, the impropriety of goods or services obtained by him could be challenged in the Consumer Courts. This is possible even if the person avails those services or purchases goods for re-sale to earn a profit for self-employment. If the same person hires another to provide a service or shop for consumers, the hirer cannot obtain redress from the consumer forum. Also, the hired or the promisee to the contract of hire cannot sue its consumers for deficit of sale consideration. This is for the reason that the promise works to perpetuate the business of his promisor who owns a commercial venture, thus, they can file suit for recovery or the claim for

breach of contract, etc. before the appropriate civil Courts or commercial Courts of competent jurisdiction. Instead, the person who availed the services of such an agency can sue them in the consumer forum and obtain redress against the services rendered or the goods purchased by them.

Therefore, the definition provided in Section 2(7) of the Consumer Protection Act 2019 is destined to protect the rights of the consumer but do not provide same remedy to an entrepreneur who provides those services or goods to the consumer. In *Rajiv Shukla v. Gold Rush Sales and services Ltd.*⁴⁰¹, the appellant filed a consumer complaint against delivery of a car used for test ride purposes which already ran 10,000 Kms constituting a breach of contract. Though the respondent car agency became liable to replace the car and indemnify the appellant, in a case filed by the appellant, the agency do not have competence to do so in a fresh suit before the Consumer courts. In case of the agency, which provided the services or goods to the consumer, they become a commercial enterprise out of the purview of the Consumer Protection Act 2019 and thus not amenable to the jurisdiction of the consumer Courts. Hence, though an agency possesses redress before a Court of law for the commercial transaction, they stand on a different footing than a consumer who enjoys their goods or services and are thus amenable to the jurisdiction of the Civil Courts and Commercial Courts of competent jurisdiction. Similarly, in *Utpal Trehan v. DLF Home Developers Ltd.*⁴⁰², the flat builder was held amenable to the jurisdiction of the consumer Court and was held liable to disburse compensation for the delayed allotment of flat to the appellant purchaser.

ADVOCATES CANNOT BE SUED IN THE CONSUMER FORUMS:

The role of lawyers in Indian independence struggle has been highlighted by the Hon'ble

⁴⁰⁰ Section 2(33) of the Consumer Protection Act 2019 defines the term 'product':

(33) "product" means any article or goods or substance or raw material or any extended cycle of such product, which may be in gaseous, liquid, or solid state possessing intrinsic value which is capable of delivery either as wholly assembled or as a component part and is produced for introduction to trade or commerce, but does not include human tissues, blood, blood products and organs;

⁴⁰¹ (2022) 9 SCC 31

⁴⁰² (2022) 10 SCC 409.

Supreme Court in *R. Muthukrishnan v. High Court of Madras*⁴⁰³:

“It cannot be gainsaid that lawyers have contributed in the struggle for independence of the nation. They have helped in the framing of the Constitution of India and have helped the Courts in evolving jurisprudence by doing hard labor and research work. The nobility of the legal system is to be ensured at all costs so that the Constitution remains vibrant and to expand its interpretation so as to meet new challenges.”⁴⁰⁴In *D’Orta-Ejebauje v. Victoria Legal Aid*⁴⁰⁵, the High Court of Australia emphasized on the need of exclusion of profession of Advocacy from the ambit of Consumer forums observing that:

“To remove the advocate’s immunity would make a significant inroad upon what we have earlier described as a fundamental and pervading tenet of the judicial system. That inroad should not be created. There may be those who will seek to characterise the result at which the Court arrives in this matter as a case of lawyers looking after their own, whether because of personal inclination and sympathy, or for other base motives. But the legal principle which underpins the Court’s conclusion is fundamental. Of course, there is always a risk that the determination of a legal controversy is imperfect. And it may be imperfect because of what a party’s advocate does or does not do. The law aims at providing the best and safest system of determination that is compatible with human fallibility⁴⁰⁶. But underpinning the system is the need for certainty and finality of decision. The immunity of advocates is a necessary consequence of that need.”

In *Bar of Indian Lawyers v. National Institute of Communicable Diseases*⁴⁰⁷, the respondent hired the services of appellant Bar of Indian

Lawyers (representative of the Advocate) to file a case under Section 138 of the Negotiable Instruments Act 1882. The cheque amount in dispute of Rs. 20,000 has been delivered to the complainant but the appellant demanded litigation fee of Rs. 5,000 and later on filed a suit for recovery of the same in the Court of Small Causes. Aggrieved thereby, the respondent filed a complaint before the District Consumer Disputes Redressal Forum, Delhi. The District Forum rejected the plea that Advocates are not amenable to the jurisdiction of the consumer forums. However, the State Consumer Commission contended that Advocates cannot be sued in the consumer courts. The National Consumer Commission affirmed the jurisdiction of consumer Courts in reference to the services rendered by the Advocates. Hon’ble Supreme Court referred *State of U.P. v. U.P. State Law Officers Association*⁴⁰⁸ wherein it observed:

“Legal profession is essentially a service-oriented profession. The ancestor of today’s lawyer was no more than a spokesman who rendered his services to the needy members of the society by articulating their case before the authorities that be. The services were rendered without regard to the remuneration received or to be received. With the growth of litigation, lawyering became a full-time occupation and most of the lawyers came to depend upon-it as the sole source of livelihood. The nature of the service rendered by the lawyers was private till the Government and the public bodies started engaging them to conduct cases on their behalf. The Government and the public bodies engaged the services of the lawyers purely on a contractual basis either for a specified case or for a specified or an unspecified period. Although the contract in some cases prohibited the lawyers from accepting private briefs, the nature of the contract did not alter from one of professional engagement to that of employment. The lawyer of the Government or a public body was not its employee but was a professional practitioner engaged to do the

⁴⁰³ (2019) 16 SCC 407.

⁴⁰⁴ *Id* at 424-426; quoted in *Bar of Indian Lawyers v. National Institute of Communicable Diseases*, (2024) 8 SCC 430 at 452.

⁴⁰⁵ (2005) 223 CLR 1; 2005 HCA 12 (Aust).

⁴⁰⁶ *R v Carroll* (2002) 213 CLR 635 at 643 [22] per Gleeson CJ and Hayne J; *The Amphill Peerage* [1977] AC 547 at 569 per Lord Wilberforce; *Erinford Properties Ltd v Cheshire County Council* [1974] Ch 261 at 268 per Megarry J.

⁴⁰⁷ (2024) 8 SCC 430 at 452.

⁴⁰⁸ (1994) 2 SCC 204.

specified work. This is so even today, though the lawyers on the full-time rolls of the Government and the public bodies are described as their law officers. It is precisely for this reason that in the case of such law officers, the saving clause of Rule 49 of the Bar Council of India Rules waives the prohibition imposed by the said rule against the acceptance by a lawyer of a full-time employment.”

Supreme Court referred to the Directive 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 25-10-2011 on consumer rights where it has been said that provisions of the said Directive should not apply to regulated professions. Court also referred the statutes of Quebec, United States, Maryland, Columbia, etc. to emphasize that the professional services rendered by the lawyers are excluded from the jurisdiction of Consumer forums and held that in India also the services of professionals more particularly that of lawyers have to be excluded from consumer protection law.⁴⁰⁹

CONCLUSION:

Consumer Protection Act is destined to provide immediate redress to the common man who have already fulfilled the terms and conditions of a contract of service or have satisfied the consideration for a sale but could not avail the goods or the desired services. These are inexpensive for they do not levy any Court fee and are devoid of procedural bounds of a civil suit. This paper endeavours to state that the consumer forums have jurisdiction in cases of welfare functions of the State only if those functions are preceded by a fee levied for them and the fee so levied constitutes part and parcel for the services provided. To obtain redress against breach of welfare scheme before a consumer forum, the scheme must not necessarily be funded from the funds appropriated specifically by the State or the Central Government. All the sale transactions and service breaches come within the domain of consumer courts provided that if a service

provider or the seller of goods wants to avail remedy, they must be persons selling or providing services to consumers for self-employment are not persons commissioned by any agency nor persons who operate various business ventures operated by different persons commissioned or hired by them.

The Real Estate (Regulation and Development) Act 2016 has been enacted to provide adequate and efficient relief to the purchasers of house and buildings, however, the Supreme Court specifically affirmed jurisdiction of consumer Courts in Real Estate sector. Though medical profession is amenable to the jurisdiction of consumer Courts, the judicial services are not. Hon'ble Supreme Court affirmed the jurisdiction of Consumer Courts even in the arbitration disputes.

This paper will definitely ensure that the cases are not dismissed due to filing in improper forums or due to lack of jurisdiction and thus protect rights of the litigants at large.

REFERENCES:

STATUTES REFERRED:

1. Real Estate (Regulation and Development) Act 2016
2. Arbitration and Conciliation Act 1996
3. Consumer (Protection) Act 1986
4. Consumer (Protection) Act 2019
5. Employees State Insurance Corporation Act
6. Advocates Act 1961.

CASE LAWS REFERRED:

1. LDA v. MK. Gupta, (1994) 1 SCC 243.
2. Labour Commissioner v. Kesar Lal, (2023) 13 SCC 799.
3. Punjab Urban Planning and Development Authority v. Vidya Chetal, (2019) 9 SCC 83.
4. Jagmittar Sain Bhagat v. State of Haryana, (2013) 10 SCC 136.
5. Shrikant G. Mantri v. Punjab National Bank, (2022) 5 SCC 42 at 56.

⁴⁰⁹ Bar of Indian Lawyers v. National Institute of Communicable Diseases, (2024) 8 SCC 430 at 464, para 80.



6. Paramount Digital Color Lab ,v Afra India (P) Ltd., (2018) 14 SCC 81, paragraph 12-13.
7. Cheema Engineering Services vs. Rajan Singh, (1997) 3 SCC 36.
8. Lilavati Kirtilal Mehta Medical Trust, (2020) 2 SCC 265.
9. Canara Bank v. United India Insurance company, (2020) 3 SCC 455
10. Rajiv Shukla v. Gold Rush Sales and services Ltd., (2022) 9 SCC 31
11. Utpal Trehan v. DLF Home Developers Ltd., (2022) 10 SCC 409.
12. Ministry of Water Resources v. Shreepat Rao Kamde, CA/ 8472/2019.
13. Pioneer Urban Land and Infrastructure Limited v. Union of India, (2019) 8 SCC 416.
14. R. Muthukrishnan v. High Court of Madras, (2019) 16 SCC 407.
15. Ashish Kumar Chauhan v. Indian Army, (2023) 15 SCC 165.
16. Bar of Indian Lawyers v. National Institute of Communicable Diseases, (2024) 8 SCC 430
17. D'Orta-Ejebauje v, Victoria Legal Aid, (2005) 223 CLR 1: 2005 HCA 12 (Aust).
18. State of U.P. v. U.P. State Law Officers Association, (1994) 2 SCC 204.
19. Kishore Lal v. ESI Corporation (2007) 4 SCC 579
20. Rohit Chaudhary v. Vipul Ltd (2024) 1 SCC 8
21. Samruddhi Cooperative Housing Society Ltd. v. Mumbai MahaLaxmi Construction (P) Ltd. (2022) 4 SCC 103
22. M. Hemlatha Devi v. B. Udayasri, (2024) 4 SCC 255.