



**EXCLUDING ADVOCATES FROM THE CONSUMER PROTECTION ACT: A
STUDY OF BAR OF INDIAN LAWYERS V. D.K. GANDHI**

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FACTS

The respondent Mr. D.K. Gandhi hired the appellant's services, an Advocate by profession, to file a case against Kamal Sharma under "Section 138 of the Negotiable Instruments Act"¹, as the cheque for Rs.20,000/- issued by Kamal Sharma in favor of the respondent was dishonored. Mr. Kamal Sharma paid the sum of Rs. 20,000/- for the dishonored cheque along with Rs. 5000/- for the expenses incurred by the complainant. The appellant received this amount and did not deliver the same to the respondent. Moreover, he filed a complaint in the Court, raising a plea that the sum was due to him as his fees. Subsequently, the appellant issued a pay order of Rs. 20,000/- and a cheque for Rs. 5,000/- to the respondent. However, the accused, Mr. Sharma, halted the cheque payment, acting on the appellant's instructions.²

The respondent subsequently lodged a complaint with the "District Consumer Disputes Redressal Forum" in Delhi, seeking compensation of Rs. 15,000/- in addition to the Rs. 5,000/- cheque amount and Rs. 10,000/- for mental agony and harassment, along with litigation costs. The appellant opposed the complaint, arguing that the forum lacked jurisdiction over the matter, as advocates do not fall within the scope of the Consumer Protection Act.³

The District Forum affirmed that it had the jurisdiction and decided to favor the respondent. Being aggrieved by the decision, the appellant appealed before the State Commission where the court reversed the order of the District Forum and held that "the services of lawyers/advocates did not fall within the ambit of "service" defined under section 2(1)(o) of

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¹ Negotiable Instruments Act 1881, s 138

² *BAR of Indian Lawyers through its President, Jasbir Singh Malik vs. D.K. Gandhi PS National Institute of Communicable Diseases and Anr.* (2024) SCC Online 928 (SC)

³ *Ibid*

the Consumer Protection Act, 1986”.⁴ The National Consumer Dispute Redressal Forum, however, affirmed the order of the District Forum.

Subsequently, appeals were filed in the Supreme Court.

ISSUES

1. “Whether the Legislature ever intended to include the Professions or services rendered by the Professionals within the purview of the Consumer Protection Act 1986 as re-enacted in 2019?”⁵
2. “Whether the Legal Profession is sui generis?”⁶
3. “Whether a Service hired or availed of an Advocate could be said to be the service under “A contract of personal service” to exclude it from the definition of “Service” contained in Section 2 (42) of the Consumer Protection Act 2019.”⁷

CONTENTIONS

The senior counsel and the learned counsel contended that “The Advocates Act 1961”⁸, regulates the legal profession in India, establishing standards for practice and addressing instances of misconduct, emphasizing its noble nature and need for autonomy to preserve democracy and a strong judiciary. Bar Councils hold disciplinary powers, and the Act prevails over the Consumer Protection Act for advocates' conduct, distinguishing them from other professionals. Advocates have multiple duties, including “Duty to the Court” (Paramount), “Duty to the Client”, “Duty to the Opponent”, and “Duty to Colleagues”, exercising judgment and upholding clients' interests while navigating complex ethical obligations.

Unlike medical professionals, advocates operate in a complex, unpredictable environment with no universal standards of care. The legal profession's unique aspects make it challenging to apply consumer protection laws, which could lead to unnecessary litigation and conflicting decisions. Thus, the legal profession's distinctive nature demands specialized regulation, separate from consumer protection laws.

⁴ *Ibid*

⁵ *BAR of Indian Lawyers through its President, Jasbir Singh Malik vs. D.K. Gandhi PS National Institute of Communicable Diseases and Anr.* (2024) SCC Online 928 (SC)

⁶ *Ibid*

⁷ *Ibid*

⁸ The Advocates Act 1961

Differentiating the decision of this Court in *Indian Medical Association vs. V.P. Shantha & Others*⁹ it was argued that there is a radical distinction between the legal and medical professions, including the nature of the relationship between professionals and their clients in each field.

RATIONALE

“The object of the Consumer Protection Act is for better protection of the interests of consumers as there was a marked awareness among the consumers of goods that they were not getting their money's worth and were being exploited by both traders and manufacturers of consumer goods.”¹⁰ Moreover, the aim of the act was “to protect consumers from unfair trade practices and unethical business methods, it did not intend to include professions or professionals within its ambit” as it would increase litigations in consumer commissions/forums where the remedy provided is inexpensive and summary in nature and defeats the purpose of the act meant to ensure prompt and efficient settlement of consumer disputes relating to unfair trade and business practices and crowd the system with conflicts, not within the system's purview.

The re-enactment of the Consumer Protection Act emphasized adapting to the complexities of the modern marketplace, which offers various products and services. The emergence of global supply chains, the surge in international trade, and the rapid growth of e-commerce have transformed the delivery of goods and services. These changes have expanded consumer choices and created new opportunities in markets worldwide. Court believed that the judgment of “*Indian Medical Association vs. V.P. Shantha & Others*, warranted reconsideration as it is well proposition of the fact that Professionals could not be called Businessmen or Traders, nor Clients or Patients be called Consumers.”¹¹

“The legal profession cannot be equated with any other traditional profession. It is not commercial and is a noble one considering the nature of the duties to be performed and its impact on society.”¹² The service to society is the very basis on which the legal profession has rested, where early lawyers even acted as spokespeople for those in need without any concern about making money. As litigation increased, the practice of lawyering became a person's

⁹ *Indian Medical Association vs VP Shantha & Others* (1995) 6 SCC 651 (SC)

¹⁰ *Common Cause, A Registered Society vs. Union of India and Others* (1997) 10 SCC 729 (SC)

¹¹ *Indian Medical Association vs. V.P. Shantha* (1995) 6 SCC 651

¹² *R. Muthukrishnan vs. Registrar General, High Court of Judicature at Madras* (2019) 16 SCC 407 (SC)

occupation and sometimes their only source of income. Initially, legal services were private; however, when government and public bodies employed lawyers to represent their interests, the nature of the service changed.¹³ It differs from other provisions because the work performed by advocates impacts not just individuals but also the overall administration of justice.

“Therefore, regarding the status and duties of the Advocates as professionals, the court held that the **legal profession is sui generis** i.e. unique and cannot be compared with any other profession.”¹⁴ “The Advocates Act, 1961”¹⁵, and the “Bar Council of India Rules” grant powers of disciplining advocates in case of misconduct to “State Bar Councils and the Bar Council of India”. Extensive provisions are made for punishments for professional or other misconduct by Disciplinary Committees.

Determining whether a relationship in any particular case constitutes a contract "for services" or "of service" is a complex legal issue that requires specific circumstances in each case to be able to give a definite answer, looking at the facts. “In the case of an Advocate-Client relationship, the client exercises direct control over the Advocate who is rendering his legal professional services to him. One of the most basic principles of the lawyer-client relationship is that lawyers owe fiduciary duties to their clients.”¹⁶

The advocate-client relationship involves the advocate acting as an agent for the client, owing a fiduciary duty, including recognitions of the rights of client autonomy, expressing instructions for concessions, not exceeding authority, seeking instructions before affecting client rights, and representation of a client in court but with fidelity to his instructions and without substituting his judgment for that of the client. Since a client has huge control over the services provided by an advocate during employment, it is considered a "contract of personal service". This characteristic feature is what makes the service rendered by advocates are exempted from the purview of the Consumer Protection Act, 2019, and hence, complaints of "deficiency in service" cannot be filed against them under this Act.

¹³ *State of U.P. and Others vs. U.P. State Law Officers Association and Others* (1994) 2 SCC 204

¹⁴ *BAR of Indian Lawyers through its President, Jasbir Singh Malik vs. D.K. Gandhi PS National of Communicable Diseases and Anr.* (2024) SCC Online 928

¹⁵ The Advocates Act, 1961

¹⁶ *Himalayan Cooperative Group Housing Society vs. Balwan Singh and Others* (2015) 7 SCC 373

ANALYSIS OF THE JUDGEMENT

The judgment reflects a positive approach to safeguarding professional ethics and self-regulation within the legal domain. The referral of broader questions to a larger bench reflects the judiciary's commitment to thoroughly examining the interplay between professional services and consumer rights, promoting a forward-thinking and inclusive legal analysis. The Court's overall approach of exempting legal professionals from consumer protection laws is based on a correct understanding of the unique nature of the legal profession by relevant points.

However, one of the possible outcomes of this judgment would be the reduced accountability of advocates toward their clients. The consumer forums are known for their simplicity, efficiency, and accessibility. They provide a user-friendly platform where individuals, often without legal expertise, can seek redressal for grievances at minimal cost and with relatively short resolution times. In contrast, complaints against advocates under "Bar Council of India Rules" may remain unresolved for extended periods, leaving aggrieved clients without timely recourse. Moreover, the court over-emphasized the traditional views of the profession and overlooked the evolving nature and contemporary context in which they are delivered. A more nuanced approach would have considered the evolving nature of the services, such as online legal services and providers of legal services from non-traditional sources.

This judgment has significant implications for various stakeholders. For advocates, it reinforces their autonomy and protects them from consumer disputes, enabling them to focus on their professional duties without the concern of being sued under the Consumer Protection Act for "deficiency in service." For clients, while they are precluded from seeking redressal against advocates in consumer forums, they can still file complaints with "Bar Councils", ensuring an avenue for addressing grievances. For the justice system, the exclusion of advocates from the Consumer Protection Act preserves the legal profession's ethical and professional standards while preventing consumer forums from being overwhelmed with cases outside their scope, thereby allowing these forums to remain focused on their primary objective of resolving consumer disputes efficiently.

CONCLUSION

This delineation by the Supreme Court helps reinforce the traditional understanding of professional services as distinct from trade or commerce, shielding lawyers from consumer litigation under this Act.

The services purveyed by advocates do not have the status of "services" as contemplated by the Consumer Protection Act 2019¹⁷, and hence such services are beyond the ambit of the consumer protection law. This is because it is peculiar to the legal profession, which is regulated by the Advocates Act, 1961, and its rules on the one hand and the "Bar Council of India Rules" on the other hand.

The relationship between the advocate and the client is categorized as a "contract of personal service and is not classified within the category of "service" under the Consumer Protection Act, 2019, so no claim can be made against advocates for complaints of "deficiency in service".

¹⁷ Consumer Protection Act 2019