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LAWYERS IN THE CONSUMER PROTECTION ACT'S CROSSHAIRS

1. Introduction

- 1.1 The application of Consumer protection Act ('CPA') to professional services has been a subject of intense debate in India, particularly concerning the legal and medical professions.
- 1.2 This article analyses the recent exclusion of lawyers from the CPA and examines the continued inclusion of medical professionals.
- 1.3 The CPA was enacted to protect the interests of consumers and provide a mechanism for the speedy redressal of their grievances.
- 1.4 Under Section 2(42) of the CPA, "service" is defined to include any service which is made available to potential users, excluding any service rendered free of charge or under a "contract of personal service".
- 1.5 The definition is broad and encompasses a variety of services, including those provided by medical professionals.

2. The Bar of Indian Lawyers Case and Judicial Inconsistency:

- 2.1 The recent landmark judgment in Bar of Indian Lawyers v. D.K. Gandhi PS National Institute of Communicable Diseases 2024 INSC 410 has established that lawyers are excluded from the purview of the CPA.
- 2.2 The Supreme Court held that the legislature never intended to include professions or services rendered by the professionals under the Consumer Protection Act.
- 2.3 This judgement is in conflict with the 3-judge bench's ruling in Indian Medical Association v. V.P. Shantha AIR 1996 SC 550 wherein it was held that the medical professionals are within the purview of the CPA.

- 2.4 Despite referring the matter to the Chief Justice for constitution of a larger bench, given the issue's importance, the Court proceeded to provide an in arguendo judgment.
- 2.5 This dual approach contradicts Order 2 Rule VI of the Supreme Court Rules, which mandates referral of the entire matter to a larger bench when substantial questions of law are involved.
- 2.6 The rule does not permit partial reference of a matter to a larger bench, underscoring the procedural impropriety in adopting an in arguendo approach. This selective referring of issues and deciding others undermines the purpose of referral and binding nature of the judgment.

3. Examining the Set Precedent: Indian Medical Association v. V.P. Shantha

- 3.1 The landmark judgment in Indian Medical Association v. V.P. Shantha (1995) 6 SCC 651 brought medical services within the ambit of the CPA.
- 3.2 The Supreme Court held that the services rendered to a patient by a medical practitioner (except where the service is rendered free of charge or under a contract of personal service) fall within the definition of "service" under the CPA.
- 3.3 The new ruling would bring other Professional's such as doctor's outside the ambit of the CPA but excluding doctors from the ambit of the CPA would undermine the consumer protection framework established by V.P. Shantha. The reasons for inclusion of medical profession in CPA are as follows:
 - (a) Essential for ensuring accountability and providing patients a legal mechanism to address grievances in medical care.
 - (b) Patients, as consumers of medical services, have the right to seek compensation for deficiencies



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and negligence in service

- (c) CPA's summary procedure allows for faster dispute resolution, crucial in cases of medical negligence.
 - (d) Though often requiring expert testimony, complexity should not justify exclusion from the CPA.
 - (e) CPA permits cases to be transferred to civil courts if needed, ensuring procedural limitations do not impede justice.
 - (f) CPA balances expedient processes with thorough justice, reinforcing its role in upholding patient rights.
- 3.4 The question of whether the medical profession can be branded as a 'business' or 'trade,' or whether a patient can be reduced to a 'client' or 'consumer,' is inherently tied to the nature of services provided by medical practitioners.
- 3.5 The Supreme Court in V.P. Shantha clearly delineated that while the practice of medicine is a noble profession, the services rendered by doctors for a fee do possess commercial attributes that justify their inclusion under the CPA.

4. Implications for Medical Practitioners:

- 4.1 Inclusion of doctors under the CPA has significantly impacted the medical field.
- 4.2 Practitioners' work requires skill, judgment, and dedication, therefore, it should be exempt from the CPA's scope.
- 4.3 Treating medical services as commercial transactions, undermines the trust inherent in the doctor-patient relationship.
- 4.4 Medical professionals are already regulated by bodies like the National Medical Council (formerly 'MCI') and the Indian Medical Association, which set ethical standards and address professional misconduct.
- 4.5 Including doctors under the CPA does not diminish the role of these bodies, instead, it adds an additional layer of consumer protection, enhancing accountability.

5. Exclusion of Professionals from CPA:

- 5.1 The court noted that the primary objective of the CPA, re-enacted in 2019, is to protect consumers from unfair trade practices and unethical business practices.
- 5.2 The court emphasized that the CPA is designed specifically to safeguard consumer rights against these practices.
- 5.3 It found no indication that the legislature intended to include professions or professionals within the scope of the CPA.
- 5.4 The observation suggests a deliberate legislative choice to focus the CPA on commercial activities rather than professional services.
- 5.5 Court considered the issue of whether services rendered by Advocates practising the legal profession could be said to be service under '*a contract of personal service*' to exclude it from the definition of 'service' contemplated under the CPA.

6. Conclusion

- 6.1 The Court affirmed that the Advocates Act, as a specialized law, prevails over the CPA in matters related to advocates' professional conduct.
- 6.2 Clients can still sue advocates for civil or criminal liabilities arising from misconduct or negligence, ensuring accountability within the profession.
- 6.3 The Court distinguished between the legal and medical professions, noting the absence of a universal standard of care in the legal field.
- 6.4 This distinction highlights the unique nature of legal practice, where each case may require a tailored approach, making a single threshold for duty of care impractical.
- 6.5 The Court's decision reflects a nuanced understanding of the distinct standards and expectations within the legal and medical professions.