

● SERVICES FROM THE LENS OF CONSUMER PROTECTION WITH SPECIAL REFERENCE TO EDUCATION AS SERVICE



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Abstract

The new Consumer Protection Act 2019 has brought a ray of hope for those huge number of students who are paying hefty amount of fees to those large corporate educational institutions for the courses. The quality of educational services that are rendered suffers from deficiencies and therefore the availability of remedy under the Consumer Protection Act 2019 has been in debate. The paper explores the possibility and extent of relief under the consumer protection laws to the students for the quality of educational services.

Key words

Services, Deficiency, Consumer, Relief, Student as consumer,

Introduction

Consumer issues and concerns have undergone paradigm shift leading to enactment of Consumer Protection Act 2019. The Consumer Protection Act, 2019 came into force on 20th July, 2020. This statute was made to make the Indian consumer laws in conformity with the global standards of legislation that provided for more power to the executive officers under the consumer protection laws and also provisions relating to e-commerce. *In Neena Aneja & Anr. v. Jai Prakash Associates Ltd.,¹ the Apex Court analyzed and remarked on consequences of Consumer Protection Act, 2019 on the matters that have been brought under Consumer Protection Act, 1986. The court interpreted numerous verdicts as far as the impact of amendments brought under consumer protection laws on the current proceedings. They also deliberated on the intention of parliament in bringing Consumer Protection Act, 2019 and the monetary jurisdiction of various forums under Consumer laws such as National state and District commission.*

Certain weaknesses were met under the old consumer protection Act due to which the said Act had to be revised to provide certain benefits to the consumer which includes an alternative approach or solution to the concern under law, the 1986 Act prohibited them from approaching the Consumer Forum. It was sad that a consumer could only come to the Forum if he had suffered a loss or harm as a result of an unfair commercial conducts or a service defect. The Act dealt with dangerous or hazardous commodities, but it did

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¹AIR 2021 SC 1441.

not hold the seller of such goods liable. It also never went into detail on product safety requirements or permissible amounts of hazardous compounds².

The 2019 Act, which was notified on July 15, 2020 and went into force on July 20, 2020, instituted consumer councils to resolve consumer grievances and related issues. This Act was enacted primarily to address an accumulation of consumer complaints that had been pending in Consumer Forums and Courts around the country. The Consumer Disputes Redress Commission's jurisdiction was outlined by the Act.

Now National Consumer Disputes Redress Commission has the jurisdiction to decide claim up to 10 crores and state Consumer Disputes Redress Commission takes up the matters involving amount less than 10 crores. The matter worth value up-to 1 crores are decided by district Consumer Disputes Redress Commission.

Services under Consumer Protection Act, 2019

The concept of services as defined under Consumer Protection Act, 2019 has tried to offer as comprehensive definition of services as possible including e commerce services.

By virtue of section 1 (4) all goods and services are covered apart from those that are specifically excluded through notification of central govt. The phrase hire service refers to providing customer with service in exchange for payment of some sort. A service cannot be considered as a "service" if money has not been paid. Services covered under the Act are: Professional services, Services of Advocate, Accepting deposit from public, Share broker services, Telecom sector, Electricity sector, Transport service, Medical services etcetera. The various manifestation of how services have been interpreted under consumer laws is interesting to see and highlights the approach of the courts.

In case of *Lucknow Development Authority v. M K Gupta*³, court concluded that if consideration is paid for services and is not a contract of personal service would be called service within the purview of the Act. It was held in this case that construction of house is service, even though this is connected to real estate."

In *Shaila Construction v. Nainital Lake Development III*⁴, the court held that if the sale of the immovable property is complete, there is no question of hire for services. Though deficiency in services is possible and there is no denial to complaint in such cases. Thus, the definition given in the Consumer Protection Act, 2019 has an exclusionary part that contracts of free services and personal service cannot be questioned under the Act." The amount of tax submitted by tax payers to government is not a payment as it is used by the government. In such a case if after paying house tax a complaint of inadequate water supply by the corporation is filed then such a case cannot be filed as the corporation is discharging its statutory duty which is not covered by Consumer Protection Act. As the state provides services without any charges therefore a government officer is not allowed to complain against state as consumers. Similarly the medical facility that are offered in Government hospitals is rendered without any charge therefore the same is outside the purview of the Act and patients do not qualify to be called as consumer and

²Ankur Saha & Ram Khanna Sr., "Evolution of Consumer Courts in India: The Consumers Protection Act 2019 and Emerging Themes of Consumer Jurisprudence" 9 IJCLP 115(2021).

³1994 SCC (1) 243

⁴(1996) CPJ 11 (NCDRC),



whatever nominal charges are paid it will not be called for services hired. Here the charges paid are considered as for universal purposes of the state and not any services rendered. Thus, there is no question of services being hired by the patients. But the consumer is not rendered remedies in case there is patent negligence. The remedy through civil suit is always available⁵.

Further, Contract of personal services are excluded from definition of service. National Consumer Disputes Redress Commission in *Cosmopolitan Hospitals v. Vasantha P Nair*⁶ concluded that medical services are including under Consumer Protection Act. The rationale lies in the fact that contract of service is different from contract for service. As far as contract of service is concerned servant can be dictated by the master as to what is to be done and the manner in which it is to be done. This is termed as contract of service and hence not covered under Consumer Protection Act because the services of servant can always be terminated and thus, he can't complain about his services being deficient. On the contrary contract for service indicates that no order can be given as regards what and how is to be done. For eg attorney client relationship falls in this category. Many professional services are covered in this category. For instance, cloth for stitching given to tailoring shop, services of doctor is also under category of contract for service. Further the distinction was made more clear in *Indian Medical Association v. V P Shantha*⁷, here court explained that contract for service can be understood as any professional or technical services in whose performance no detailed direction is given nor any control is exercised rather technical expertise and knowledge is used with his personal discretion. On the other hand contract of service is more like a master servant relation where the servant is duty bound to obey the orders regarding what is to be done and methods of its performance⁸.

Education as services and students as consumer under the Consumer Protection Act

Imparting education has been considered as a noble profession and its very nature has been contested as being considered as services in commercial sense and thereby objection still holds good for students being considered as consumer to get relief. There is conflicting opinion expressed by courts as well as consumer forums regarding education being treated as services under Consumer Protection Act. This paper tries to understand the judicial approach towards the same as well as implications of education being treated as services as under Consumer Protection Act. The necessity to determine the nature of education as Consumer Protection Act, consumer is essential to allow relief to students under Consumer Protection Act for any deficiency of any services from the educational institutions. To determine the applicability, the student who has paid fees and taken admission in the educational institution has to be equated with consumers under the consumer protection laws. As a legal corollary, educational activities rendered in the institutions has to be equated with services as mentioned in

⁵Unity Trust Society v. State of Rajasthan, (1992) 1 CPJ 259 (NC).

⁶(1992) CPJ 302 (NCDRC)

⁷1995 SCC (6) 651

⁸Ibid.

the consumer protection laws. If these criteria are fulfilled, then in any case of complaint against the educational institutions, the student can directly approach the consumer forum, qua the presence of territorial and pecuniary jurisdiction, for reliefs under the relevant laws.

Section 2(a) (d) of the Consumer Protection Act, 1986 defined "consumer". Consumer is defined as a person who-

(I) "buys any goods for consideration that has been either paid, or partly paid and partly promised or bought under a system of deferred payment and includes the user of such goods when such use is made with the approval of first mentioned person. It is provided that the definition does not include the person who has obtained the goods for resale or for any commercial purpose".

(ii) "hires or avails of any services for a consideration which has been paid, promised, partly paid and partly promised or under any system of deferred payment. The beneficiaries of the services are also included within the definition of consumer when the beneficiaries use the services with the approval of the first mentioned person. The definition excludes any person who makes use of such services for any commercial purpose".

The explanation provides that the definition would not include any person who has bought the goods or which is used by him/her exclusively for the purpose of attaining self-employment⁹. This means that if the goods or services is used by the consumer for any commercial purpose then it will remove the person from the ambit of the consumer under the provision. The 2019 Act that repealed the earlier Act, the definition of consumer is the same except for the fact that the explanation has been amended in respect of the e-commerce transactions. The amended explanation now includes offline or online transaction through electronic means or by teleshopping or multi-level marketing¹⁰.

In the case of *International Airports Authority of India v. Solidaire India Ltd*¹¹, the National Commission was of the view that a person is a consumer who hires or avails of any service rendered by the opposite party for consideration.

In the case of *Punjab University v. Unit Trust of India*¹², the Supreme Court of India was of the view that "so as to be a consumer, a person has to hire or avail service for consideration but such hiring or availing shall not be for the purpose of commercial purpose unless the commercial purpose is for the earning of livelihood". The meaning of service has been provided in a Supreme Court Judgment as, "The term service may mean any benefit or any act resulting in promoting interest or happiness"¹³. It may be either contractual, professional, public or statutory. The definition of service is very wide. The inclusion of service depends on the context in which it is used in an enactment.

⁹Consumer Protection Act, 1986 expl. to s.2(a) (d).

¹⁰Consumer Protection Act, 2019 expl. b to s. 2(a) (d).

¹¹2015 SCC OnLine NCDRC 2715.

¹²AIR 2014 SC 3670.

¹³AIR 1994 SC 787.



In *Bihar School Examination Board v. Suresh Prasad Sinha*¹⁴, "the son of the complainant was losing a year of his academic career because of deficiency of services on the part of BSEB (Bihar School Examination Board). The question before the court was can a student be considered a consumer under Consumer Protection Act? The Supreme Court was of the view that conduction of the examination, evaluation of answer scripts, declaring results and issuing certificates etc. do not come under the purview of the consumer protection laws because these are the sovereign functions of the educational institutions. Thus, when a statutory body conducts an examination, it does not offer any services for consideration. It provides that this is the statutory function of the statutory body. The court was of the firm opinion that even if consideration is taken for such activities, they do not come under the purview of the consumer protection laws and the beneficiaries of the activities are not consumers. The Court in this case was dealing with a categorical issue whether a statutory body conducting examination comes under purview of the Consumer Protection Act, 1986 or not? The Court further held that fees paid by the student are not a consideration for availing the services of the conduction of examination and the publication of results."

Again in *Buddhist Dental Mission v. Bhuprsh Khurana*¹⁵ "the Supreme Court of India dealt with the issue that the appellant educational institution did not have the requisite affiliation and was not recognized by the Dental Council of India and it admitted the respondent into the course. The issue before the Court was whether the appellant was liable for deficiency of services. The preliminary issue in this case was, whether the appellant was liable under the consumer protection laws for the deficiency of service. The Court was of the view that without any proper affiliation or the requisite sanctions by the Board, the appellant has started the educational institution and had included the students in the course. This amounted to deficiency of service."

Under the provisions of the Consumer Protection Act, 2019, a person has the right to file a complaint against deficient services provided by the service providers. In order to prove deficiency in service, the first essential is that the person alleging deficiency should prove that the person comes under the definition of consumer of the service that is provided by the service provider.

In the case of *Bhaskar Golla v. Ramakrishna Vidyashrama*¹⁶, the National Commission was of the view that "As regards the deficiency in providing services of boarding and lodging in the hostel is concerned, the deficiencies are writ large on the face of it. The evidences on record clearly show that no warden was appointed in the hostel. These all point to the facts that there was deficiency of service in relation to the boarding and lodging in the hostel."

The wider ambit of protection under Consumer Protection Act covers unfair trade practices as well. In the case of *HCMI Education v. Narendra Pal Singh*¹⁷, the National Commission was of the view, in a case where an educational institution which was based in Phillipines, had made misleading statement that they had the requisite

¹⁴(2009) 8 SCC 483.

¹⁵2009 (2) Scale 685.

¹⁶2019 SCC OnLine NCDRC 1181.

¹⁷(2013) 3 CPJ 121.

permission for the course they were offering and they were made liable for the unfair trade practice in this regards. In the further case of *Shaheed Bhagat Singh Public School v. Anoop Singh*¹⁸, the National Commission was of the view that the false and misleading advertisement as regards the affiliation would bring home the allegation of unfair trade practices.

DEFICIENCY IN SERVICES

Consumer protection laws also provide the penalty for the purpose of punishing any deficiency of service or any unfair trade practice practiced in terms of the educational institutions. "The Consumer Protection Act aims to protect the consumer interests"¹⁹ The element of profit is pertinent to draw the commercial aspect of goods and services. But there has to be different removal and compensation of the defects and deficiencies. The former requires replacement and repair whereas the later requires compensation for loss.

Deficiency has been defined under Section 2(11) of the Consumer Protection Act, 2019. It says,

Deficiency has been defined as "any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes:

- (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and
- (ii) deliberate withholding of relevant information by such person to the consumer."

This provision deals with the definition of deficiency in comprehensive way. It says that there may be any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of the performance which is to be maintained by the person who provides goods or services and any negligent act or omission or any deliberate concealment of information shall be excluded.

There are certain tests that must be adhered to determine if there is an issue of the deficiency in service on the part of the service provider. The tests are as follows-

1. Test of reasonable care and precaution- This test was devised by the courts in reference to the subject of medical negligence in the case of *Dr. Laxman Balakrishna Joshi v. Dr. Trimbak Bapu Godbol*²⁰, "in which the Court was of the view that the medical practitioner shall exercise reasonable degree of care, skill and knowledge in his/her medical practice. In the context of the educational institutions, the institution should also be liable to maintain this amount of reasonable care and protection so that the student who is studying under the educational institution is not prejudiced by the conduct of the educational institution."

¹⁸2012 SCC OnLine NCDRC 519.

¹⁹Ibid.

²⁰AIR 1968 SC 128.



2. Test of substantial commercial hardship- This test seems plausible in the context of the deficiency of service which was coined by the Court in the case of the *Sailesh Munjal v. AIIMS*²¹, "wherein the Court held that if at all the actions of the service provider has caused substantial monetary loss for the consumer, it will drag the case within the ambit of the deficiency of service and make the service provider liable for the same."

Under the provisions of the Consumer Protection Act, 2019, a person has the right to file a complaint against deficient services provided by the service providers. To prove deficiency in service, the first crucial aspect required is that the person alleging deficiency should prove that he is a consumer of the service that is provided by the service provider. A combined reading of the definition in the Act and taking the context of the educational institution, if there is any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance of the education or the related activities that are provided by the educational institution, it may be regarded that the educational institute is liable for the deficiency of services. If services as defined under the Consumer Protection Act, 1986²² is analyzed and it is shown that there is a failure to provide any service which is mandated for the discharge of his duties or function, it will amount to deficiency. Thereby, any deficiency or defect in the services provided by the educational institutions may be covered under this definition, hence any complaints, inter alia, regarding wrong allotment of roll numbers, delay in declaration of results, and admission in excess of the allotted quota can be filed before the consumer forum if the essential condition of jurisdiction is satisfied. Since educational institutions are being commercialized, there are complaints in the consumer forums regarding the misleading advertisements by such institutions²³.

It is equally important to see some of the rulings of National Commission which are on many occasions in sharp contrast with the Supreme Court decisions.

There was a case of failure to refund the fees. In the case of *Frankfinn Institute of Air Hostess Training and another v. Aashima Jarial*²⁴ the National Commission ordered a refund of fees and cost of litigation to the opposite parties. Because the order of the district forum was based on equity therefore complainant was held to be eligible for fee refund and litigation cost. As unwarranted delay was already caused by lower consumer forums, prompt compliance was ordered by the commission.

*Manu Solanki v. Vinayak Mission University*²⁵, "this was the case which dealt with the core issue regarding inclusion of education as services under C.P.A. Here the SC judgment of *P.T. Koshy v. Ellen Charitable Trust and ors*²⁶ was also referred which stated

²¹(2004) 3 CPR 27 (NC).

²²Deficiency, as defined under Section 2(11) of the Consumer Protection Act, 1986, "means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service."

²³S. Mehta, 'Consumer Protection and Educational Services' (2010) 4 MLJ 19.

²⁴2019 SCC OnLine NCDRC 380.

²⁵1 (2020) CPJ 210 (NC).

²⁶2012(3) CPC 615

that the education is not a commodity or a good and the educational institutions are not rendering any services when they provide education." The Commission considered the case of *Bihar Examination Board v. Suresh Prasad Sinha*²⁷ and tried to exclude conducting examination and the related activities from the purview of the consumer protection laws. It was asserted that the board is a statutory authority and statutory functions of the board amounted to the conduction of examination and any related services. It was negated that the consideration that was paid for the purpose of examination converted the statutory function into that of the commercial function. The commission in this case had held that mere payment of the examination fees would not take the functions into that of the commercial functions. Thus, they are not rendering any services and any deficiency of services would not be amenable to the jurisdiction of the consumer courts.

Another interesting case was of *Rajendra Kumar Gupta v. Virendra Swarup Public School*²⁸ here the father was the complainant whose son had dies during summer camp of the school with drowning in swimming pool. School claimed there was no negligence and deficiency in service. The national forum refused to treat school as covered under Consumer Protection Act. The initial objection was raised by the opposite party that complaint is not maintainable it was argued that complainant cannot be called as consumer as Consumer Protection Act does not applies to educational institutions.

In *M.P. Singh Rathore v. Little Flowers Public School and others*²⁹ the question was regarding deficiency of service by the school who failed the student deliberately in class IX and then in board exams and tempered with the records. The Commission in its judgment has analyzed all the other judgments in this regard and was of the view that "the Hon'ble Supreme Court in a series of its judgments has taken a view that the education is not a commodity and student is not a consumer as well as the educational institutions are not service provider".

In *University Of Karnataka v. Poonam G. Bhandari*³⁰, the National Commission in this case was of the view that when a person is appearing for any examination, evaluation of answer scripts, publication of the results of the university is not services provided to the candidate for which, in case of any discrepancies they cannot approach the consumer courts. Even if consideration is provided, then also such activities will not be considered as services. In this and many more such cases the court has made distinction between examination and other statutory work of educational institution which cannot be considered as services for the purpose of Consumer Protection Act.

In *Himachal Pradesh University v. Sanjay Kumar*³¹ here the candidate applied to appear for supplementary exams but the university failed to provide him roll number in due time and thereby the candidate failed to appear in exam. The loss of year was suffered by the

²⁷(2009) 8 SCC 483

²⁸First Appeal No. 852 OF 2016 (Against the Order dated 03/06/2016 in Complaint No. 29/2006 of the State Commission Uttar Pradesh) (17 April 2024) https://www.livelaw.in/pdf_upload/rajendra-kumar-gupta-vs-dr-virendra-swarup-public-schoolncdrc-389719.pdf.

²⁹(2020) CPJ 110 (NC).

³⁰FA No. 245 of 1992, decided on 16-9-1993.

³¹(2003) 1 CPJ 273 (NC).



student and it was held to be deficiency of service on the part of the University. This was one of such cases, where the Commission started discriminating between the conduct of the examination as such and the administrative activities that were connected thereto.

*FIITJEE Ltd. v. S. Balavignesh*³², in this case respondent joined the coaching and after paying all dues left the course. A clause in admission form provided no refund in such case as there was loss of the seat to the institution. But the commission agreed that coaching institutes are well covered under the Consumer Protection Act.

Conclusion

In the light of the contrast found in the decisions of the apex court and the highest body delivering consumer judgments National Consumer Disputes Redress Commission, it can be concluded that there are some factors which are required to be satisfied before an education could be considered a service in strict sense of the term specially under consumer laws. A same educational institution may render many kinds of services which sometimes may be amenable to jurisdiction of the National consumer forum and the same institution when conducting examination related activities will not be held liable for deficiency of services. Still there is a gap which need to be fulfilled by a more accurate and purposeful verdict from the authority of honorable Supreme court. We cannot be unsighted to the fact that these days mushrooming of educational institution and the faulty services they are providing to the students should be subject to effective and expeditious remedy at the disposal of consumer laws so that a more responsible behavior is ensured on the part of educational Institutions.

³²(2015) 3 CPJ 112 (NC).

