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## Accountability of Professionals under the Consumer Protection Act

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*This article aims to understand through various court rulings whether professions like education, healthcare, and legal profession fall under the definition of services under the Consumer Protection Act 2019.<sup>1</sup> The question is whether educational institutions, doctors, or advocates can be held accountable under the said act for deficiency in services. The legal position with regards to accountability of professionals under the Consumer Protection Act has seen quite a lot of changes throughout the years, it is important to understand what the current legal position is and what the recourse available to the consumers for deficiency in services when it comes to professionals. Depending on the facts and circumstances of each case, the court has given its reasoning and understanding of deficiency in services. This analysis will explore the nuances of these judicial decisions, aiming to provide a comprehensive understanding of the current legal framework and the protections available to consumers. It will consider landmark judgments and recent rulings to illustrate the evolving nature of consumer rights regarding professional services.*

**Keywords:** consumer protection act, consumers, professionals, deficiency in services, education, healthcare, legal profession.

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<sup>1</sup> Consumer Protection Act 2019

## INTRODUCTION

A fundamental understanding of the Consumer Protection Act 2019 is important before delving into the topic. When a consumer approaches the market, it expects value for the money paid, i.e. right quality, the right quantity, the right price, and the right information about the product. But we see that the motive of service providers is to maximize their profit which often results in exploitation of consumers as they are cheated and ill-treated. To protect the consumer from unfair trade practices, parliament enacted the Consumer Protection Act in 1986.<sup>2</sup> The Consumer Protection Act 1986, aims towards simple and quick access to the redressal mechanism of consumer grievances. It provided a machinery whereby the consumer can file complaints in the consumer forums, namely, the district consumer redressal forum, state consumer redressal forum, and national consumer redressal commission, provided with special powers to act against unscrupulous suppliers and to award possible compensation to the consumer for the losses suffered.

Consumer Protection Act 1986,<sup>3</sup> was indeed a relief to the consumers, yet it fell short of delivering complete justice. In the digital age, commerce, and branding have evolved significantly, bringing about a new set of consumer expectations and challenges. While digitization has enhanced convenience and has provided easy access to shopping and services, it also brought new challenges to Consumer Protection. Consequently, the Parliament repealed the old act and enacted the Consumer Protection Act 2019,<sup>4</sup> to address the shortcomings and gaps. The new act introduced significant changes, including the Central Consumer Protection Authority, coverage of e-commerce transactions, filing of complaints through an online platform, stricter penalties, and more.

## WHO IS A CONSUMER?

**Section 2(7) of the Consumer Protection Act, 2019,<sup>5</sup> defines a consumer as:** Any person who buys any goods or hires services for consideration that is paid, partly paid, promised, or under

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<sup>2</sup> Consumer Protection Act 1986

<sup>3</sup> *Ibid*

<sup>4</sup> Consumer Protection Act 2019

<sup>5</sup> Consumer Protection Act 2019, s 2(7)

a deferred payment system, when use is made of the goods or service with the buyer's or hirer's approval.<sup>6</sup> The person must be the one who uses the goods or services and does not include any person who buys goods or avails services for resale or commercial purposes.<sup>7</sup>

'Commercial purpose' does not include goods used exclusively for earning a livelihood through self-employment. Additionally, 'buys any goods' and 'hires or avails any services' include transactions conducted offline, online, through electronic means, teleshopping, direct selling, or multi-level marketing.

For this act, 'service' refers to any kind of service that is made available to users. This includes, but is not limited to, banking, finance, transport, insurance, supply of electricity, telecom, housing, and entertainment, however, it does not include any rendering of service without any charge or under a personal service contract.<sup>8</sup>

## **WHETHER DOCTORS, ADVOCATES, AND EDUCATION INSTITUTIONS BE HELD ACCOUNTABLE FOR DEFICIENCY OF SERVICES**

Deficiency is any fault, imperfection, shortcoming, or inadequacy in the quality of the goods or the service performance required by law or contract. It includes acts of negligence or omissions causing loss or injury to the consumer, as well as deliberate withholding of relevant information.<sup>9</sup>

### **DOCTORS**

The Supreme Court first time in 1995 in *V.P Shantha v Indian Medical Association*, held that services rendered by doctors are included in the definition of services in the Consumer Protection Act 1986,<sup>10</sup> and doctors can be held accountable for deficiency in services by the patients who avail these services.<sup>11</sup> The question came to the supreme court after two conflicting decisions, one by the Andhra Pradesh High Court, where it was held that the services provided

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<sup>6</sup> Consumer Protection Act 2019, s 2(7)(i)

<sup>7</sup> Consumer Protection Act 2019, s 2(7)(ii)

<sup>8</sup> Consumer Protection Act 2019, s 2(42)

<sup>9</sup> Consumer Protection Act 2019, s 2(11)

<sup>10</sup> Consumer Protection Act 1986

<sup>11</sup> *V.P Shantha v Indian Medical Association* (1995) 6 SCC 651

by private medical practitioners, nursing homes etc. are services for the Consumer Protection Act,<sup>12</sup> and the other by the Madras High Court which held that hospitals and doctors providing treatment of diseases by diagnosis or surgery would not be covered under the definition of services but those providing para-medical services would fall within this definition.<sup>13</sup>

In the Indian Medical Association case,<sup>14</sup> the medical practitioners contended that the matters related to doctors and medical practitioners are dealt with by the provisions of the Indian Medical Association Act 1956,<sup>15</sup> and the SC rejected this contention and held that only because medical practitioners belong to a profession does not affect the rights of people to seek redress under Consumer forum, the supreme court rejected this contention and held that only because medical practitioners belong to a profession does not affect the rights of people to seek redress under Consumer Protection Act,<sup>16</sup> and does not make the medical practitioners immune from claim against them for negligence. The Supreme Court determined on the fact that doctors or medical practitioners can be held accountable under the Consumer Protection Act<sup>17</sup> and thus rejected another contention that medical services could not be judged under a certain fixed norm. The court was further of the view that the consumer redressal mechanism provides speedy redressal to consumer issues and there is no reason why such issues involving deficiency in services by doctors shall not be included and further held that the redressal mechanism under the Consumer Protection Act is competent to deal with such questions, and if the complainant finds it suitable then they could also be asked to file a case in civil court.

The Supreme Court further differentiated between 'contract for service' which means when a person hires some professional or technician to render some services, and 'contract of service' (an excludable part of the definition of services under the Consumer Protection Act) which refers to a situation of a master-servant relationship between the one who renders the service and the one who avails those services. The Supreme Court concluded that healthcare and doctors fall

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<sup>12</sup> *A.S. Chandra v Union of India* 1992 (1) ALT 713

<sup>13</sup> *C.S. Subramaniam v Kumarasamy* 1995 SCC (6) 651

<sup>14</sup> *V.P Shantha v Indian Medical Association* (1995) 6 SCC 651

<sup>15</sup> Indian Medical Association Act 1956

<sup>16</sup> Consumer Protection Act 1986

<sup>17</sup> *Ibid*

within the service contract, as there does not exist any master-servant relationship between doctor and patient and hence it is included in the definition of services.

**Therefore, the Supreme Court held healthcare accountable in the following categories:**

- i. All independent dentists and medical professionals practising dentistry and medicine, unless they are offering services strictly free.
- ii. Private hospitals that bill each patient individually for the services rendered.
- iii. Hospitals that treat both paying and free patients and provide care from these facilities.
- iv. Doctors and hospitals that are compensated by an insurance company for patient care.

After this landmark judgement, many other judgments followed holding doctors accountable for deficiency in services under the Consumer Protection Act.<sup>18</sup>

In 1998, in an appeal from the judgment of the National Commission to the Supreme Court, the Supreme Court affirmed the decision of the National Commission and held that when a child suffers due to negligence of the hospital, both the child and his parents can be treated as consumers. And the parents could also get compensation for mental agony and loss suffered.<sup>19</sup> This further widened the ambit of the Consumer Protection Act<sup>20</sup> and its applicability for holding doctors and hospitals accountable for deficiency in services.

In *Nihal Kaur v Director*,<sup>21</sup> a pair of scissors was found by the relatives after the cremation of the dead person, the principle of *Res Ipsa loquitor* was applied and the hospital was held liable for medical negligence.

In *Pravat Kumar Mukherjee v Ruby General Hospital and Ors*,<sup>22</sup> the National Commission ruled that Ruby Hospital's refusal to continue emergency treatment due to non-payment, resulting in the patient's death was a serious deficiency in service, and ordered the hospital to pay Rs. 10

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<sup>18</sup> *Ibid*

<sup>19</sup> *Spring Meadows Hospital v Harjol Ahluwalia* (1998) 4 SCC 39

<sup>20</sup> Consumer Protection Act 1986

<sup>21</sup> *Nihal Kaur v Director* (1996) CPJ 112

<sup>22</sup> *Pravat Kumar Mukherjee v Ruby General Hospital and Ors II* (2005) CPJ 35 (NC)

lakhs for mental agony. The Commission emphasized that emergency patients are consumers under the Consumer Protection Act, regardless of immediate payment capability, and that in such situations, consent is implicit. Additionally, it clarified that a pending Motor Accident Claims Tribunal (MACT) case does not bar a complaint under the Consumer Protection Act, as the causes of action are distinct.<sup>23</sup> This decision underscored the need for a humane approach in medical emergencies, prioritizing patient care over financial considerations.

In *Maharaja Agrasen Hospital v Master Rishabh Sharma*,<sup>24</sup> the Supreme Court upholding the NCDRC order reiterated the earlier held position in *Balram Prasad v Kunal Sahu*,<sup>25</sup> that the hospital is vicariously liable for the medical negligence of its doctors and staff and allowed compensation to the consumers.<sup>26</sup>

Limiting the accountability of doctors, the Supreme Court held that, 'Every death in an institutionalized environment of a hospital does not necessarily amount to medical negligence on a hypothetical assumption of lack of due medical care.'<sup>27</sup>

After so many decades the question again, the question again arose in the courts as to whether doctors can be held accountable under the Consumer Protection Act. In the recent judgment, *Medicos Action Legal Group v Union of India*,<sup>28</sup> the petitioner in this case contended that the definition of services under the new act of 2019 does not include doctors. The petitioners supported their contention based on parliamentary debates regarding the Consumer Protection Bill 2018.<sup>29</sup> The Hon'ble Minister for Consumer Affairs has stated on the floor of the parliament during the discussion of the bill that 'healthcare' has been deliberately kept out of the definition of services.<sup>30</sup> The Supreme Court rejected this contention and reaffirmed what was earlier held by the Bombay High Court, that merely because the Consumer Protection Act 1986 was repealed and a new act was enacted in 2019, it does not change the position of the law. The earlier stance

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<sup>23</sup> *Ibid*

<sup>24</sup> *Maharaja Agrasen Hospital v Master Rishabh Sharma* (2020) 6 SCC 501

<sup>25</sup> *Balram Prasad v Kunal Sahu* (2014) 1 SCC 384

<sup>26</sup> *Maharaja Agrasen Hospital v Master Rishabh Sharma* (2020) 6 SCC 501

<sup>27</sup> *Devarakonda Surya Sessa Mani v Care Hospital, Institution of Medical Science* (2022) LiveLaw (SC) 753

<sup>28</sup> *Medicos Action Legal Group v Union of India* SLP (Civ) 9374/2021

<sup>29</sup> The Consumer Protection Bill 2018

<sup>30</sup> 'Parliamentary debate on consumer protection bill, 2018' (*Lok Sabha*, 30 July 2019)

<<https://loksabhadocs.nic.in/Synop/17/I/Syn-30-07-2019.pdf>> accessed 19 June 2024

held in the Indian Medical Association case<sup>31</sup> still stands. The court based its judgment on various case laws including, *Aswini Kumar Ghose v Arabinda Bose*,<sup>32</sup> and *State of Travancore-Cochin v Bombay Company*,<sup>33</sup> both of which held a similar view that the speeches made on the floor of the parliament do not give an extrinsic tool for interpretation of any statute.

The accountability of doctors under the Consumer Protection Act<sup>34</sup> is most beneficial for those who cannot afford expensive litigation. The Consumer Protection Act provides speedy and inexpensive redressal to consumer grievances as no court fee is required before the consumer courts.

## ADVOCATES

Regarding the accountability of advocates under the Consumer Protection Act<sup>35</sup>, there have been a number of cases having different stances. In some of the earlier judgments of the court, advocates were held accountable for deficiency in services but according to the recent judgment by the Supreme Court it was held that advocates cannot be held liable under the Consumer Protection Act 2019.<sup>36</sup>

The Tamil Nadu SCDRC in *T.C. Govinda Samy v B. Kasthuri*,<sup>37</sup> held an advocate accountable for deficiency in services for incorrectly drafting a sale deed. In the sale deed, the description of the property was incorrectly mentioned, when asked to correct it the advocate denied it and asked the clients to pay the extra money, it was held that incorrectly drafting the sale deed amounts to a deficiency in services and the advocate was directed to pay the complainants compensation.

In *S.A. Ahmed v Poonam A. Shah*,<sup>38</sup> the client paid the advocate court fee along with the professional fee and litigation fee, but the advocate misappropriated the court fee. The advocate

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<sup>31</sup> *V.P. Shantha v Indian Medical Association* (1995) 6 SCC 651

<sup>32</sup> *Aswini Kumar Ghose v Arabinda Bose* AIR 1952 SC 369

<sup>33</sup> *State of Travancore-Cochin v Bombay Company* AIR 1952 SC

<sup>34</sup> Consumer Protection Act 2019

<sup>35</sup> *Ibid*

<sup>36</sup> *Ibid*

<sup>37</sup> *T.C. Govinda Samy v B. Kasthuri* III 2003 CPJ 619

<sup>38</sup> *S.A. Ahmed v Poonam A. Shah* II 2009 CPJ 367

was held liable for deficiency in services and was directed to refund the complete amount to the client along with the damages for mental agony.

In *Sou Pratibha Waman Bhava v Yashwant Laxman Datar*, the national commission held that unjustifiably withdrawing VakalatNama without any reason by the advocate amounts to a deficiency in services under the Consumer Protection Act.<sup>39</sup> A lawyer was working under the name of the legal aid unit. By representing himself as the 'Official Legal Aid Organization,' he was deceiving people. The complainant, who believed him, paid the court costs in the amount of Rs. 7,500. However, the court cost was merely Rs. 30. The advocate was ordered by NCDRC to reimburse the money spent for the court charge.<sup>40</sup>

The discussion above makes clear that consumer forums are competent to hear clients' claims against legal professionals for misconduct or deficiency in services.

In *R. Muthukrishnan v Registrar General, High Court of Judicature at Madras*,<sup>41</sup> the high court held that the legal profession is not a commercial business, and it stated that there is no comparison between the legal profession and any other conventional occupation. Given the nature of the work to be done and its influence on society, it is a noble one and not of a commercial kind. To maintain the integrity of democracy and the strength of the court, the Bar Council's independence and the Bar's independence have been legally guaranteed. When an advocate fails to carry out their responsibilities independently and turns into a sycophant, the judges and the legal system as a whole are eventually criticized. Without an independent bar, a robust judicial system is impossible.

Recently the question came to the Supreme Court, whether advocates can be held liable for deficiency in services under the Consumer Protection Act,<sup>42</sup> or not, this came after a petition challenging the decision held by NCDRC in 2007 which stated that advocates can be held liable under the Consumer Protection Act for deficiency in services.

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<sup>39</sup> *Sou Prathibha Waman Bhava v Yashwant Laxman Datar I* 2007 CPJ 11 (NC)

<sup>40</sup> *G. Jambunathan v S. Velu Muthu II* 1995 CPJ 64 (NC)

<sup>41</sup> *R. Muthukrishnan v Registrar General, High Court of Judicature at Madras* (2019) 16 SCC 407

<sup>42</sup> Consumer Protection Act 1986



The Supreme Court in *Bar of Indian Lawyers through Its President Jasbir Singh Malik v D.K. Gandhi National Institute of Communicable Diseases*<sup>43</sup> held that advocates cannot be held liable under the Consumer Protection Act for deficiency in services on the grounds that the legal profession is sui generis and noble in nature, and it is important for providing easy access to justice for everyone.

The court further differentiated the legal profession of healthcare and stated that there are fundamental differences between the healthcare and legal profession, just like healthcare, there is no straightjacket formula or fixed norms to identify the standard of care, additionally the nature of the relationship between a client and an advocate differs completely with the nature of relationship between a patient and a doctor, just like relationship of a patient and doctor, the advocate client relationship cannot be understood as contract for services rather it is contract of services (i.e. the excludable part of the definition of services) because of the extent of control the client has over an advocate, the ultimate goal that is to be achieved is determined by the client, the advocate is serves and provides only a means to achieve that goal, the purpose of an advocate is to do whatever is best for his client.

Moreover, the court held that the Advocates Act 1961<sup>44</sup>, is an exclusive law dealing with the legal profession and provides recourse for professional misconduct, and the Advocate Act being a special law prevails over the Consumer Protection Act 2019,<sup>45</sup> which is a general law, and unnecessarily open the floodgates of cases leading to failure in providing speedy and inexpensive justice. Further, the purpose and the legislative intent of the Consumer Protection Act is to provide recourse to consumers from unfair practices in trade and business as also held in *Common Cause, A Registered Society v Union of India and Others* - *"The object of the legislation, as the Preamble of the Act proclaims, is "for better protection of the interests of consumers". During the last few years preceding the enactment there was in this country 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,"*<sup>46</sup> and the legal profession by no means is a

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<sup>43</sup> *Jasbir Singh Malik v D.K. Gandhi National Institute of Communicable Diseases* Civ App No 2649/2009

<sup>44</sup> Advocates Act 1961

<sup>45</sup> Consumer Protection Act 2019

<sup>46</sup> *Common Cause, A Registered Society v Union of India and Ors* (1997) 10 SCC 729

commercial profession, as also held by earlier judgements. Therefore, the court concluded that the object of the Consumer Protection Act is to safeguard from unfair trade practices provided by businessmen and traders and the services provided by the professionals could not be kept at par with the services provided by businessmen.

Hence the current legal position stands that the advocates cannot be held accountable under the Consumer Protection Act, 2019.<sup>47</sup> However, a suit can be instituted against an advocate under the Advocate Act 1961,<sup>48</sup> for professional misconduct.

### EDUCATIONAL INSTITUTES

There have been many conflicting judgments by the courts with regard to the inclusion of educational institutions within the framework of the Consumer Protection Act and providing students protection under it. While some judgements conclude that education falls within the definition of services, others conclude differently.

In the same year, two different judgments one of NCDRC and the other of Calcutta High Court gave conflicting judgments, the former held that private educational institutions, that is those that are not statutory can be classified as service providers and students as consumers,<sup>49</sup> while the other held that relationship between students and teachers cannot be classified similar to the relationship between service providers and consumers.<sup>50</sup>

In *Sonal Matapurkar v S. Niglingappa Institute*, the students in question were denied permission to take the university exam because the dental institute had admitted more students than the authorized number of seats. The National Commission determined that there was a deficiency in service and that the complainants were entitled to a refund of the donation in addition to reimbursement for interest and the cost of the proceedings because the students had made significant donations as well as time and energy sacrifices.<sup>51</sup>

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<sup>47</sup> Consumer Protection Act 2019

<sup>48</sup> Advocate Act 1961

<sup>49</sup> *Oza Nirav Kanubhai v Centre Head Apple Industries Ltd* (1992) 1 CPR 736

<sup>50</sup> *Taneja v Calcutta District Forum* AIR 1992 Cal 95

<sup>51</sup> *Sonal Matapurkar v S. Niglingappa Institute* 1997 (2) CPJ 5 (NC)

While the Supreme Court in *Bihar School Examination Board v Suresh Prasad Sinha*,<sup>52</sup> the question was regarding the conduct of examination and allotment of roll numbers by the Bihar school examination board. The Supreme Court held that the board is not a service provider but a statutory body and the conduct of examination is its statutory function hence concluded that it cannot be held accountable under the Consumer Protection Act,<sup>53</sup> and the education provided by them does not amount to service in the Act. It was also held that the examination fee paid by the students cannot be understood as consideration because the conduct of the examination is not a business or trade activity. However, the above judgment of the Supreme Court contradicts one of its previous judgments where the Supreme Court held that statutory bodies are not exempted from the definition of services in the Consumer Protection Act.<sup>54</sup>

Again, the same question came to the Supreme Court in the case of *Maharshi Dayanand Saraswati v Surjeet Kaur*,<sup>55</sup> whether students are consumers under the Consumer Protection Act,<sup>56</sup> the facts in question are that a student got enrolled in two courses simultaneously in a university. As being enrolled in two courses at the same time is against the university rules, the student was asked to get unenrolled from one of the courses and she did so but even though he was allowed to give supplementary exams of the unenrolled course, and she passed it. However, the university denied giving the degree to her. The student filed a case against the university under the Consumer Protection Act, and the Supreme Court held that the student is not a consumer under the Consumer Protection Act, neither is a university service provider and hence the university cannot be held accountable. The university has the right to make its own rules and regulations and control its implementation.<sup>57</sup>

In *P.T. Koshy and Anr. v Ellen charitable funds and Ors*,<sup>58</sup> the Supreme Court reiterated that educational activities performed by education institutions do not fall within the ambit of the

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<sup>52</sup> *Bihar School Examination Board v Suresh Prasad Sinha* (2009) 8 SCC 483

<sup>53</sup> Consumer Protection Act 1986

<sup>54</sup> *Lucknow Development Authority v M.K. Gupta* (1994) 1 SCC 243

<sup>55</sup> *Maharshi Dayanand University v Surjeet Kaur* (2010) 11 SCC 159

<sup>56</sup> Consumer Protection Act 1986

<sup>57</sup> *Ibid*

<sup>58</sup> *P.T. Koshy & Anr. v Ellen Charitable Trust & Ors* 2012 (3) CPC 615 (SC)

Consumer Protection Act.<sup>59</sup> When it comes to incidents that occurred during co-curricular activities conducted in schools, it happened in one of the cases where a student drowned while swimming activity in school, the court held that such activities would not amount to services for the purpose of the Consumer Protection Act, 1986.<sup>60</sup>

It can be understood from the above judgements that education institutions cannot be held accountable for deficiency in services under the Consumer Protection Act.<sup>61</sup>

## CONCLUSION

Through the above discussion we have understood that though the doctors or hospitals can be held accountable for deficiency in services under the Consumer Protection Act, 2019,<sup>62</sup> the advocates cannot be held accountable for the same. The difference in legal position with regard to both could lie in the nature of the relationship and the extent of control between the parties. The legal position with regard to the accountability of educational institutions is that providing education does not amount to rendering services under the Consumer Protection Act, 2019.

The author is of the opinion that there needs to be proper guidelines by the court explaining the scope of the Consumer Protection Act in dealing with the accountability of professionals, and in case there is any other recourse mechanism like the Advocate Act 1961 in matters dealing with professional misconduct by advocates, there needs to be a set of guidelines and directions how to bring a case under it. Due to the myriad of different approaches taken by the courts in different judgements, the sole purpose of the Act which is to provide an easy redress mechanism to the consumers is getting affected. There needs to be uniformity in the applicability of the Consumer Protection Act, it seems very unfair and arbitrary to hold doctors accountable under the Consumer Protection Act and not the advocates, even though there exists separate legislation dealing with both professions i.e. The Indian Medical Council Act and The Advocates Act 1961, respectively.

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<sup>59</sup> Consumer Project Act 1986

<sup>60</sup> *Manu Solanki. v Vinayaka Mission University* (2020) SCC OnLine NCDRC 7

<sup>61</sup> Consumer Protection Act 2019

<sup>62</sup> *Ibid*