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## Legal Practitioners' Liability For Professional Negligence Under The Consumer Protection Law In India - An Analysis

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### Abstract

Legal profession is a profession of great honour and noble one. Generally, people approach an advocate not only for seeking justice or remedy against any unfairness they have faced but also to avoid taking law into their hands and fight on their own. In India with the opening up of the economy and globalization legal profession has grown and there are law firms in almost every city with individual advocates practicing on their own. The Advocates Act, 1961 deals with the legal profession and the Bar Council of India framed rules pertaining to standards of conduct and professional etiquette for advocates. Bar Councils are empowered to deal with disciplinary proceedings against an advocate who violates the rules and commits any professional or other misconduct. When a legal practitioner fails to discharge his duties properly towards a client, may be found to have been negligent. The Advocates Act does not deal with the disputes between the clients and the advocates if the clients seek a remedy of damages or refund of money paid to the advocates. In this circumstance the absolute immunity to the advocates for their professional negligence will not only affect the client's confidence in them but also society as a whole. Hence in this article the author, with perception of professional negligence of advocates in general, analysis how the existing remedies available to aggrieved clients are inadequate in dealing with negligence by advocates and the application of the Consumer Protection Act to legal practitioners. The author also makes suitable suggestions to provide remedy to the aggrieved clients in case of professional negligence by legal professionals without undermining the dignity of legal profession.

**Key words:** Advocate, Client, Legal, Negligence, Profession, Legal Practitioner, Legal Profession

## 1. Introduction

The legal profession is considered one of the noble professions and as Justice Krishna Iyer calls it “the most brilliant and attractive of peaceful professions, with responsibilities both inside and outside it, which no person carrying on any other profession has to shoulder”.<sup>1</sup> The profession of law is an honourable profession and any conduct which makes a person unworthy to belong to the noble fraternity of lawyers or makes an Advocate unfit to be entrusted with the responsible task of looking after the interests of the litigant, must be regarded as conduct involving moral turpitude.<sup>2</sup> The tendency of lawyers’ work to address congeries of problems associated with particular types of clients, organized the profession into types of lawyers.<sup>3</sup> In all contexts, the work of lawyers should be and in most cases, regulated. This regulation is necessitated by the fact that clients need to be able to rely on their lawyers for advice and representation, and tribunals, courts and other authorities need to be able to rely on lawyers’ integrity.<sup>4</sup> However lawyering is nothing but accountability.<sup>5</sup> While providing legal services like other professionals, lawyers invite liability for negligence or deficiency in services in various laws.<sup>6</sup>

The Consumer Protection Act, 1986 was enacted to protect the interest of the consumers on a common platform and to deal with issues of general concern and satisfactorily provide for speedy and inexpensive redress of consumers grievances. In *Indian Medical Association v. V. P. Shanta*,<sup>7</sup> Supreme Court affirmed the growing activity in the field of consumerism and consumer protection. The Court, in this momentous decision, resolved a long standing confusion, by declaring that medical practitioners were subject to the rules and mechanisms of the CPA, 1986. This decision has not only evoked strong protests from the medical community but also has brought many legal issues to light. People today ask the question, ‘If doctors can be made liable under the CPA, why not lawyers?’<sup>8</sup>

The Consumer Protection Act was enacted in India in 1986 and an amendment was passed in 2019. The Act as mentioned in the preamble, aimed at providing better protection of the interests of the consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers’ disputes and for matters connected therewith. So, the main aim of the Act was to protect the consumers from exploitation, educate them and make them aware of the right they have to seek redressal in case they are exploited. This article examines the application of CPA, 1986 and the CPA 2019 to legal Practitioners or advocates and their liability under the Consumer Law for their professional negligence.

<sup>1</sup> Krishnaswamy Iyer K.V., *Professional Conduct and Advocacy*, 2nd edn., London: Humphrey Milford Oxford University Press.

<sup>2</sup> *In re P an Advocate* AIR 1963 SC 1313

<sup>3</sup> Stewart Macauloy, “*Lawyers and Consumer Protection Laws*,” (Law and Society Review, Vol.14.No.1 (Autumn, 1979)). P.120

<sup>4</sup> By Michael Kagan, “*Setting Standards of Ethics, Competence and Accountability for Legal Aid in the Context of UNHCR RSD*,” Available @ kaganethicswpproposal.

<sup>5</sup> Dr. S. Mustafa Alam Nagui, “*Consumer Protection Act, 1986 and Professional Obligation*,” 1<sup>st</sup> ed., Faridabad: Allahabad Law Agency Law Publishers, 2005, P.150.

<sup>6</sup> B.S. Venugopal, “*Civil Liability of the Lawyers for Deficiency in Services : A Critical Analysis*,” JILI, Vol.53:2, 2011, P.275  
<sup>7</sup> (1995) 6 SCC 651

<sup>8</sup> “*Legal Ethics, COPRA and Lawyers*”, Available @ [www.legalsutra.com/wp-content/uploads/2010/copra-and-lawyers/cached](http://www.legalsutra.com/wp-content/uploads/2010/copra-and-lawyers/cached).

Further it is also discussed that the inclusion of legal service the Act imperative considering the existence of Advocates Act with the possible implications of inclusion. The author referred the terms 'Legal Practitioners, Lawyers and Advocates' interchangeably.

## 2. Legal Practitioners

According to Black's Law Dictionary, a lawyer is a person learned in the law, as an attorney, counsel or solicitor, a person who is practicing law.<sup>9</sup> According to Legal Practitioners Act, 1879, 'Legal Practitioner' refers to an advocate, vakil or attorney of any High Court, a pleader, mukhtar or revenue-agent.<sup>10</sup> The Legal Practitioners (Fees) Act, 1926, Section 2 (a) defines a 'Legal Practitioner' as 'an advocate and includes a mukhtar or a revenue agent'. The Advocates Act, 1961 states an advocate as "an advocate entered in any roll under the provisions of this Act" and a 'Legal Practitioner' means an advocate, vakil of any High Court, a pleader, mukhtar or revenue agent.<sup>11</sup>

The Legal Practitioners (Regulation and Maintenance of Standards in Profession, Protecting the Interest of Clients and Promoting the Rule of Law) Bill, 2010, defines "Legal Professionals" as 'the Advocates' as defined in the Advocates Act, 1961 and includes the qualified lawyers engaged in legal practice confined to their chamber, engaged in drafting and conveyancing; practitioner of income tax and sale tax and those appearing before the relevant authorities, giving advice to the clients for a fee, gain or reward in the areas of customs, immigrations, trademark and patent services and all other professional services where legal issues are involved;<sup>12</sup>

## 3. Consumer

Section 2 (d)(ii) of the Consumer Protection Act, 1986 defines 'consumer of services', as "any person who hires or avails of any services for consideration which has been paid or promised..."<sup>13</sup> Therefore to prove that a client of an advocate is a consumer, he has to satisfy the following criteria :

- a) **Services are hired or availed of:** Means if any person goes to advocate and hires or avail of his services, he is called a consumer. In other ways if it is established that a particular act constitutes

<sup>9</sup> Available @ [http://en.wikipedia.org/wiki/legal\\_practitioner](http://en.wikipedia.org/wiki/legal_practitioner)

<sup>10</sup> Sec.3 of The Legal Practitioners Act, 1879, Act No. 18 of 1879

<sup>11</sup> Sec.2 (a) & (i) of The Advocates Act, 1961

<sup>12</sup> Sec.2 (d) of The Legal Practitioners (Regulation and Maintenance of Standards in Profession, Protecting the Interest of Clients and Promoting the Rule of Law) Bill, 2010

<sup>13</sup> Sec.2 (d) (ii) provides "consumer Services" means any person who hires or avails of any services 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 services 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 services for any commercial purposes; Explanation.— For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;

hiring of services, the transaction falls within the net of the CPA and vice-versa.<sup>14</sup>

b) **Consideration must be paid or payable:** Consideration is regarded necessary for hiring or availing of services. However, its payment need not necessarily be immediate. It can be in installments. For the services provided without charging anything in return; the person availing the services is not a consumer under the Act.<sup>15</sup> For e.g.: A client hires an advocate to file a suit for recovery of money from his employer. He promises to pay fee to the advocate after settlement of the suit. That client is a consumer under the Act.

The C. K. Johnnny. Jaisundaram,<sup>16</sup> is an instance for the above reasons, where it has been held that “a client is a consumer as he has availed the service of the advocate for appropriate consideration.” The draft for Legal Practitioners (Regulation and Maintenance of Standards in Profession, Protecting the Interest of Clients and Promoting the Rule of Law) Act, 2010., also defines “Consumer of Legal Profession” includes the clients of legal professionals and anyone who might have recourse to legal services because of a legal issue and those who are using or may be contemplating using services provided by the legal professionals in relation to the legal services arising out of a legal issue.<sup>17</sup> In Srimathi v. Union of India,<sup>18</sup> the Supreme Court was observed that “the language in Clause 2 of Section 2(d) of the Act is very wide. It uses the expression “avails of any service for a consideration.” Therefore, it does not exclude clients from the definition.

According to Section 2 (7) (ii) of the Consumer Protection Act, 2019, a consumer is defined as any person who “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” The definition holds any person who hires or avails any service for consideration and does not include persons who avails services for commercial purpose. The provision also contains an explanation that says “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”. Therefore, clients can be included under this as there is no reason to exclude them. They avail services from an advocate in return of a fee they pay as consideration.

<sup>14</sup> Commentary on Consumer Protection Act, Available @ncdrc.in/1\_1\_2.html

<sup>15</sup> *Ibid* - Commentary on Consumer Protection Act, Available @ncdrc.in/1\_1\_2.html

<sup>16</sup> (1995) CPJ 311

<sup>17</sup> Legal Practitioners (Regulation and Maintenance of Standards in Profession, Protecting the Interests of Clients and Promoting the Rule of Law) Bill, 2010

<sup>18</sup> (1997) 5 CTJ 99

#### 4. Duties of Legal professionals towards Clients

A Lawyer, unlike other professionals, is placed in a very peculiar position while rendering legal services. The duties of an advocate can be classified into three viz., his duties towards the client, his duties towards the court and his duties towards the opposite party. A lawyer is not only called upon to represent the interests of his client, but he is also an officer of the court. This places an onerous obligation on him; on the one hand he has to represent his client to the best of his abilities, and on the other, he has to maintain a far greater degree of detachment than other professionals.<sup>19</sup>

The question as to the scope of the lawyer's duty to the client and the extent of duty of the lawyers to be honest in the representation of the client is not new. In equity, the relationship between a lawyer and client gives rise to various fiduciary obligations, which are enforceable at the suit of the client. The lawyer must avoid situations involving a conflict of interest between the lawyer's personal interest and his duty to the client, and refrain from using the fiduciary relationship as a conduit for personal gain.<sup>20</sup>

The Bar Council of India made rules under Section 49 (1)(c) of the Advocates Act, 1961 relating to the Standards of Professional Conduct and Etiquette for Lawyer in India. It states that: "An Advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and normal for a person who is not a member of the Bar, or for a member of the generality of the foregoing obligation, an advocate shall fearlessly uphold the interests of his client and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. These rules contain canons of conduct and etiquette adopted as general guides; yet specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned."<sup>21</sup> Therefore the essence of professional responsibility is that the lawyer must act at all times *uberima fidei*, with utmost good faith to the client.

In *Rondell v. Worsley*,<sup>22</sup> "immunity for barristers was held on the ground that advocates do not owe a duty only to his client, he also owes a duty to the court and must observe it, even if it to do so might appear contrary to the client's interest." However, in *K Vishnu v. National Consumer Dispute Redressal Forum*<sup>23</sup> it was observed that "even if the advocate is regarded as officer of the court and is a part of the justice system, he cannot be set free from his basic role of services to his client for the consolidation received."

<sup>19</sup> Raju Ramachandram, "Professional Ethics : Changing Profession, Changing Ethics," (New Delhi: Lexis Nexis, 2004), P.11

<sup>20</sup> G. Geethisha, "Disciplining the Lawyers : Law and Professional Ethics," (CWLR, Vol.27, Issue No. 1-2, 2003), P.191

<sup>21</sup> The section II, of this, specifically prescribed the duties of the advocates to the clients.

<sup>22</sup> (1969) 1 AC 191

<sup>23</sup> 2000 (5) ALD 367

## 5. Deficiency in service by Legal Professionals

A legal professional may not be responsible for the favourable outcome of a case, but he should be liable if there is a deficiency in rendering the promised services.<sup>24</sup> There is a need to examine the amplitude of the term 'deficiency in services' under this Act. The question whether all the acts or omission of the legal practitioners may constitute the deficiency in service as defined under the CPA, 1986, is to be answered.<sup>25</sup>

The basic facet of the legal profession is the lack of simplistic definition of negligence. The test of "a prudent man" as laid down in *Donoughue v. Stevenson*<sup>26</sup> is unknown to the legal profession, and mere negligence as understood above, unaccompanied by moral deficiency does not constitute professional misconduct.<sup>27</sup> A dictum of a special bench of Madras High Court has clearly held that neglect of duties would not amount to professional misconduct,<sup>28</sup> since the element of moral deficiency is the main ingredient of professional misconduct.<sup>29</sup> Section 2 (1)(g)<sup>30</sup> of the C.P.A. 1986 clearly defines the term 'deficiency in service'. Therefore the deficiency must be in relation to and always in term of a service which an advocate provides to the client. Thus if the grievance pertains to a matter which does not fall in the definition of service (Section 2 (1)(o)), the concept of deficiency would not apply.<sup>31</sup> In other way advocate would not be liable to the client under CPA, 1986.

The case of misappropriation or misuse of funds, purposeful delay to defeat the limitation period<sup>32</sup> and filing appeals without proper stamps inspite of repeated reminders<sup>33</sup> have been thought fit cases, because they are considered to be "immoral and shameful" and are supposed to "dishonor" the legal community at large. In *R.K.Kannappan v. K.P.K. Komalam*,<sup>34</sup> the professional fee was deducted from land acquisition compensation. Contention that 10% towards fee was deducted from the amount awarded by the Sub-Court as agreed between parties was not acceptable. Deficiency in service was proved. Complaint was rightly allowed by the forum. In *S. Mahendran v. Chirayinkil C. P. Badra Kumar*,<sup>35</sup> where advocate failed to file a suit; it amounted to a deficiency in service on the part of the advocate. The complainant was held

<sup>24</sup> Jeet Singh Mann, "Liability of the Legal Practitioners for Professional Negligence : A Critical Analysis," *JILI*, Vol. 51:3, 2009, Pp.393-394

<sup>25</sup> *Ibid* - Jeet Singh Mann, "Liability of the Legal Practitioners for Professional Negligence : A Critical Analysis," *JILI*, Vol. 51:3, 2009, Pp.393-394

<sup>26</sup> (1932) AC 562

<sup>27</sup> *P.D.Khandekar v. Bar Council of Maharashtra*, AIR 1984 SC 110

<sup>28</sup> AIR 1926 Nag.568

<sup>29</sup> Siddharth Tiwari, "Services of Lawyers under Consumer Protection Act: A Critical Analysis," (Vol. III, CPJ (Aug.) 2011, P. (55) 3

<sup>30</sup> Sec 2 (1)(g) of CPA, "deficiency" 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;

<sup>31</sup> Consumer Protection Act, Available @ [www.legalserviceindia.com](http://www.legalserviceindia.com)

<sup>32</sup> *In Re Pleader, Tirupur*, AIR 1945 Mad 55

<sup>33</sup> *C.Padmanabha Ayyangar, Advocate*, AIR 1938 Mad 1

<sup>34</sup> II (2005) CPJ 673 (TN).

<sup>35</sup> 1992 (2) CPR 667



entitled to costs fixed by the NCDRC and was directed to be paid by the opposite party to the complainant within one month.

In *Mukesh and Co. v. S.M. Bansal*,<sup>36</sup> cheating, misappropriation, breach of trust and forgery had been committed by opposite party (advocate), cheques were withdrawn from bank, sales tax was not deposited. They misrepresented and misguided the complainant that sales tax was regularly being deposited. Deficiency of service was proved. Opposite party was ordered to repay the amount with interest at the rate of 10%.

In *S.A. Ahmed and Co. v. Poonam A. Shah*,<sup>37</sup> complainant engaged an advocate for filing of suit for specific performance and paid court fee of Rs. 62,125 along with professional fees and litigation expenses. The O.P. (advocate), filed a suit for injunction instead of filing a suit for specific performance, by paying court fees of Rs.25/-. The Commission ordered the OP to refund of amount paid by the complainant along with compensation for mental agony and cost awarded by the forum and observed, “The profession of advocate is considered as a noble profession and an advocate is expected to protect the interest of his client and fight for justice. But in the case on hand, an advocate has played fraud on his client, which made the client suffer mental agony and hardship.”

## 6. Remedies to the Clients against Deficiency in Service under CPA, 1986

The professional accountability of an advocate may be fixed independent of Consumer Protection Act also. In a judgment of far reaching consequences, the Supreme Court in *Ramon Services Pvt. Ltd. v. Subhash Kapoor*,<sup>38</sup> has observed:

“the litigant who suffers entirely on account of his advocates non-appearance in court had also the remedy to sue the advocate for damages... If advocate claims that his right to strike must be without any loss to him but the loss must only be for his innocent client, such a claim is repugnant to any principle of fair play and canons of ethics. So when he opts to strike work or boycott the court, he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted the brief to that advocate with all confidence that his case would be safe in the hands of that advocate.”

However, to invoke the jurisdiction of Consumer Forum, the relationship of consumer and service provider must be established.<sup>39</sup> Lawyers receive remuneration for their service and any client who hires the services of a lawyer for consideration is a consumer. But a lawyer attracts liability under the CPA only for any deficiency in service rendered by him. Substantive law relating to negligence has not been changed.

<sup>36</sup> II (2005) CPJ 107 : 2005 (3) CLT 139(NC)

<sup>37</sup> II (2009) CPJ 367

<sup>38</sup> AIR 2001 SC 207

<sup>39</sup> *Ramesh Chandra Verma v. Chairman, District Forum Dholpur*, II 2004 CPJ 14 (Raj. SCDRC)

Therefore, all instances of breach of duty discussed above invite liability under the Act and the jurisdiction of the Consumer Commission can be invoked for the same.<sup>40</sup>

The Consumer Commissions are empowered to give appropriate relief according to Section 14<sup>41</sup> of CPA and also other reliefs like, a client can recover the fee paid to the lawyer for any deficiency in service. If it is yet to be paid, the lawyer forfeits his right to recover the fee. In C.S. Sarmav. P.v. Venkatswamy,<sup>42</sup> the complainant had paid fee for filing the suit but the lawyer did not file the suit. The lawyer was directed to pay fee with interest. Likewise, in Virender Kumar Gupta v. Anil Kumar Jain,<sup>43</sup> where in an execution proceeding, while representing the petitioner, the respondent (advocate) did not appear and the same was dismissed for default the petitioner was awarded Rs.1 lakh as compensation for mental agony and harassment caused by deficiency in service on the part of the respondent.

According to Section 1(11) of Consumer Protection Act, 2019 "deficiency 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 and includes— (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer ii) deliberate withholding of relevant information by such person to the consumer; consumer." However, the word 'negligence' is not precisely defined in law. In Jacob Mathews v. State of Punjab,<sup>44</sup> the court held that "The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession." The judge also cited the case Michael Hyde and Associates v. J. D. Williams where Sedley L.J. said "that where a profession embraces a range of views as to what is an acceptable standard of conduct, the competence of the defendant is to be judged by the lowest standard that would be regarded as acceptable." It was also observed in the case that "Judged by the standard, a professional may be held liable for negligence on one of two findings: either he was not possessed of the requisite skill which he professed to have possessed, or he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices.". Lawyers should not be held responsible for the unfavourable outcome of a case as the result/outcome does not depend only on the lawyers' services. But, if there is deficiency in rendering services promised, for which consideration in the form of fee is received by

<sup>40</sup> Supra note 5, P.304 - B.S. Venugopal, "Civil Liability of the Lawyers for Deficiency in Services : A Critical Analysis," (JILI, Vol.53:2, 2011), P.275

<sup>41</sup> Sec.14 of CPA,1986,

<sup>42</sup> I 1997 CPJ 425 (AP SCDRC)

<sup>43</sup> 2011 (3) CPJ 409 : 2012(1) CLT 180(NC)

<sup>44</sup> 2005 (6) SCC 1



him, then the lawyers can be proceeded against under the Consumer Protection Act.<sup>45</sup> Thus, it can be inferred that services must be considered to be negligently or deficiently performed only when they are not done in a manner in which a reasonable, competent person practicing the profession would do and not by if the cases were won or not. Because if this is considered a standard, every client who lost a case could sue his lawyer and there would be no point of the provisions itself. A lawyer does not tell his client that the client shall win the case in all circumstance. The only assurance that such a professional can give or can be understood to have given by implication is that he possessed the requisite skill in that branch of profession he is practicing and while undertaking the performance of the task entrusted to him, he would be exercising his skill with reasonable competence.<sup>46</sup>

## 7. Consumer Protection Act and Advocates Act

The Advocates Act was passed in the year 1961 to amend and consolidate the laws relating to legal practitioners and to provide for the constitution of the Bar Councils and an All-India Bar. According Section 2 (1) (a) of the Act advocate means “an advocate entered in any roll under the provisions of this Act.” The Act contains all the provisions regarding Admission and Enrolment of Advocates, the Right to Practice of Advocates, the Code of Conduct they are governed by and other provisions. Section 35 of the Act provides about punishments for misconduct by Advocates. However, the problem is the fact that the term ‘misconduct’ has not been defined under the Act. In the case *R. D. Saxena v. Balram Prasad Sharma*,<sup>47</sup> it was observed that “The section uses the expression misconduct, professional or otherwise. The word misconduct is a relative term. It has to be considered with reference to the subject matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct.” The judgment also refers to a passage at page 740, Volume 6 of *Corpus Juris Secundum*, which defines professional misconduct as the following “Professional misconduct may consist in betraying the confidence of a client, in attempting by any means to practise a fraud or impose on or deceive the court or the adverse party or his counsel, and in fact in any conduct which tends to bring reproach on the legal profession or to alienate the favourable opinion which the public should entertain concerning it.”

In *Noratanman Courasia v. M. R. Murali*,<sup>48</sup> it was held that, “It reiterated that the term “misconduct” is incapable of a precise definition. Broadly speaking, it envisages any instance of breach of discipline. It means improper behaviour, intentional wrongdoing or deliberate violation of a rule of standard of behaviour. The term may also include wrongful intention, which is not a mere error of judgment. Therefore, “misconduct”, though incapable of a precise definition, acquires its connotation from the context, the

<sup>45</sup> Supra note, 7, P.3 - From the order dated 10.3.2006 in Appeal No.1815/2000 of the State Commission, Delhi

<sup>46</sup> Supra note 13, P. 5 - 2005 (6) SCC 1 at P.5

<sup>47</sup> AIR 2000 SC 2912

<sup>48</sup> 2004 AIR 2440

delinquency in its performance and its effect on the discipline and the nature of duty.<sup>49</sup> Distinction was also drawn between 'misconduct' and 'negligence'. It was held in *P. D. Khandekar v. Bar Council of Maharashtra*<sup>50</sup> that "there is a world of difference between the giving of improper legal advice and the giving of wrong legal advice. Mere negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to professional misconduct." However, the Advocates Act punishes only for misconduct, where an intention is required along with negligence and mere negligence without a wrongful intention on the part of the advocate does not amount to misconduct.

According to Section 35 (3) of the Advocates Act, a person who is proven guilty of misconduct can be awarded the following punishments:

The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:-

- (a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;
- (b) reprimand the advocate;
- (c) suspend the advocate from practice for such period as it may deem fit;
- (d) remove the name of the advocate from the State roll of advocates.

However, it can be inferred from the section that an advocate who is held guilty for misconduct can only be given punishments in the form of disciplinary action, no civil punishments or compensatory damages can be given to the client considering the fact that he was affected due to the misconduct of the Advocate. This is further more important that due to the deficiency in service by some advocates, the common public may refrain from approaching the court for any injustice they may have faced. That is, it may cause the people to lose confidence in the judiciary, one of the important branches of the Government. Therefore, it is important to restrain people from losing the trust they have on advocates and the judicial system. The litigant suffering costs has a right to be compensated by his defaulting counsel for the costs paid. In appropriate cases the court itself can pass effective orders, for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system.<sup>51</sup> And for this to happen, it may be necessary for the legal profession to be brought under the purview of the Consumer Protection Act as the Advocates Act does not have the power to do so. Also, in *Kishore Lal v. Chairman Employee's State Insurance Corporation*,<sup>52</sup> it was held that "Jurisdiction of Consumer Forum has to be construed liberally so as to bring

<sup>49</sup> *State of Punjab and Ors. v. Ram Singh Ex. Constable* 1992 AIR 2188

<sup>50</sup> 1984 AIR 110

<sup>51</sup> *Ramon Services Pvt. Ltd v. Subhash Kapoor and Others* AIR 2001 SC 207

<sup>52</sup> (2007) 4 SCC 579

many cases under it for their speedy disposal. The Act being beneficial legislation, it should receive a liberal construction.”

In *Virendra Kumar Gupta v. Anil Kumar Jain*,<sup>53</sup> the advocate did not appear for an execution proceeding and so the case was dismissed for default. The petitioner was awarded Rs. One Lakh as compensation for mental agony and harassment caused due to the deficiency service on the part of the respondent advocate.

However, looking at the other side of the coin, bringing the advocates under the purview of the Consumer Protection Act may destroy one of the important purposes of the Act which was speedy disposal of cases. Clients who lost, may want to hold their lawyer responsible and sue him which will increase the number of cases filed before the forum. This may have two implications- one that it may burden the Consumer Redressal Commission and two, the clients who may have genuinely been affected may not be provided with proper justice.

A finer way of doing this is by including a clause in Section 35 (3) of the Advocates Act ordering the advocate to pay reasonable compensation as damages to the affected client in cases in which the judge thinks is necessary. This will not burden the consumer forum and will also help to accommodate a solution without any inclusion into another Act.

The Law Commission in its 226<sup>th</sup> Report recommended various amendments keeping in mind the current requirements and requirements that might arise in the future. One of this was to include the following clause in Section 35 (3) of the Advocates Act- “award a fair and reasonable compensation of such amount, subject to the maximum of Rs.5 lacs as it may deem fit, payable to the person aggrieved, if any, by the misconduct of the concerned advocate.” This would help in solving the issue without actually bringing advocates under the Consumer Protection Act.

## 8. Conclusion

The legal profession has always been considered a noble one. Legal profession is a noble calling. No other profession touches human life at so many points than law. It has always been held in high esteem and its members have played an enviable role in public life. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but the administration of justice as a whole. Thus a person practicing law has to practice in the spirit of honesty and not in the spirit of mischief making or earning money. When the client comes to the lawyer for defined

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<sup>53</sup> 2011 SCC OnLine NCDRC 242: [2011] NCDRC 241

services then it is the implied duty of the lawyer to exercise the requisite ordinary skills to meet the satisfaction of the client. If he breaches that duty then it becomes negligence or deficiency of services. The liability of lawyer like other professionals, to pay damages for deficient services, is nothing new. It has not been created for the first time by the CPA, 1986. They could always be sued for negligence. However, such actions are rare, both because of the heavy court fees required to be paid on a plaint and because of a dilatoriness of civil suits. By doing away with heavy court fees and by creating a speedy mechanism for redressal, the CPA makes professional accountability easily enforceable. The Supreme Court has brought the medical and many other professions under the purview of CPA. However there is a lot of controversy relating to the application of CPA to the legal profession. At present, the case is pending with Supreme Court to give a final mark for the same.

Presently legal professionals are not liable under the Consumer Protection Act. The Legal Professionals play a major role in maintaining social order. Generally, people approach a lawyer for seeking justice against any unfairness they have faced rather than take law in their own hands and fight on their own. This is due to the faith and confidence they have on the lawyers and the judicial system. Thus, there should be no impediment preventing them from getting the justice they deserve. Holding advocates liable for negligence or misconduct is not completely new. They could be called guilty of negligence by suing them in court or of misconduct through the Advocates Act. But the problem is suing them in court is a lengthy proceeding involving high costs and time while the Advocates Act does not have provisions to provide them with compensation. Therefore, there has to be a solution for this. One option is to bring them under the Consumer Protection Act. However, considering the nature of the profession and the fact that there is already a special Act governing the advocates, it will be a better option to include a clause in the Advocates Act that provides compensation to the affected parties.

