

Emerging Trends of Consumer in Education Sector

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Abstract: *In India, since inception till now there is huge expansion in the consumer' protection act. This expansion is made by the judiciary by delivering number of judgements. Consumer courts by its judgements includes students as consumer The students do fall under this concept. A decade ago no heed used to be paid against the demands of students for seeking remedy against their exploitation at the hands of educational institutions. Though RTI brought accountability but the respite was provided by the Consumer Protection Act, 1986. In this paper the author has focused on the emerging trends of consumer in the education sector. The author has tried to analyze this era or changes with the help of decided cases and has suggested relevant changes in it.*

Keywords: Consumer and educational institutions

INTRODUCTION

National commission while expanding the scope of the consumer law held in the case of BhupeshKhurana and others VishwaBudhaParishad and others related to the education system that education is also come within the ambit of the service as enumerated in the consumer protection act of 1986. Court said that student become consumer when he hires the services of the institution on the payments of the fee and that fee is accepted by the institution. Great move is taken by the courts as many five stars schools and institution is growing day by day and these institutions are charging huge amount of fees. Mainly most of the colleges and schools are running only for the commercial motives and flee after giving degrees and fetching hefty amounts.

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The term Service is defined CPA 2019 Act as “service of any description, which is made available to potential users, including the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service³”.

It is clear from the definition of service that any kind or nature that is rendered in exchange of consideration comes within the ambit of service. Some service which is explicitly mentioned but some definition of service is not limited only to those mentions in the definition. Like service by doctor or medical service is not directly mentioned in the definition. But there are number of judgments which enumerated that medical treatment and facility associated with it is mentioned and clarified as the ‘services’ defined under the CP Act. So there is clear view that a student comes under the scope of this Act.

Does educational institution fall under the purview of the act?

State and consumer forum delivered various decisions which safeguard the right of the student related to fees, allotment of wrong roll number, delay in result, wrong information about affiliation etc. so from the judgments of the consumer court we can say that student is consumer and educational institution falls within the ambit of service provider. But there is requirement to understand that the cordial relationship between an institution and pupil cannot be compared with the relationship as a manufacturer and the purchaser of the goods.

Consumer Protection Law and Students

Universities while conducting examination, as taking fee structure and giving admission to particular subject are doing their statutory function which is not service under consumer protection act. So student by saying that he is a consumer cannot claim to be admitted into the universities to pursue a particular degree on a particular subject it is the matter of the universities to decide. It is the matter of universities to decide the course duration, fee

³2(42) of the Consumer Protection Act 2019
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structure and the availability of seats and autonomy of the university cannot be challenged in the consumer forum. It is not in the jurisdiction of the consumer forum to determine whether particular rule in the prospectus are illegal or not, but they can be questioned if they defy the particular service. Number of cases which come before the national commission Supreme Court held that providing education is a service.

Critical Analysis of University Students Relationship in the Context of Consumer Protection.

As we discuss earlier student is consumer because he avails services of the university in consideration of the fee to the university but relationship of the student with the university is not as that of the buyer and seller. There are various acts, rules and regulations by which statutory duty of the universities is fixed. A student can claim its entitlement as a consumer of service provided by the university only after complying the requirements fixed by the university.

Support Available in Case laws in Favour of Students as Consumer.

There are some decisions of the court which enumerated that students are treated as consumer and university as the service provider.

A. Jai Kumar Mittal v. Brilliant Tutorials⁴

In this case it is held that if institute supply defective study material come within the scope of deficiency in service and institute is liable for the same.

B. Sonal Matapurkar v. Niglingappa Institute⁵

In this case admission is made by the dental institute over and above the seats sanctioned by the university due to that reason students were not allowed to participate in the exam by the

⁴(2005) SCC online NCDRC 23; (2005) 4 CPJ 156 (NC); (2006) 1 UC 43.

⁵1997(2) CPJ 5 (NC)

university in which that institute is affiliated. As huge donation as well as investment of time and energy is wasted by the student. National commission enumerated that there is deficiency in service by the institute under the consumer protection act 1986. Court made decision in favour of the complainant and allow return of donation fee award compensation with interest along with cost of the proceeding.

C.Birla Institute of Technology & Science v. Abhishek Mengi⁶

In this case national commission said it amounts to unfair trade practice by the institute if institute forfeit the fee without imparting education to the students.

D.VaibhavSaxena v Indian Institute of Aeronautics.⁷

In this case institute claimed that it is approved from distance education council (DEC), but later on it is proved wrong. Court order to the institute to refund the complete fee to the student. Court further stated that we cannot imagine that how much trauma is caused to the students who lost their two precious year as well as loss of the money.

Kanishk Sharma v. brilliant tutorials⁸

In this case consumer forum held that if student leave the coaching institute midway on account of deficiency service, it is the duty of the institute to refund the half fee atleast.If coaching institute refused to pay the fee while saying that fee once paid not refundable is come within the ambit of unfair trade practice.

F. O.N. Kanubhai v. Apple Industries⁹

The national commission held here that private educational institute it means institute which has been established and run in accordance with the statute and can further may be termed as a service provider and if we interpret this relationship properly then this relation do comes under the purview of the CP Act. Here, to take admission in the medical coaching center,

⁶BIT v. Abhishek Mengi Accessed from <https://indiankanoon.org/doc/95613546/>

⁷<https://www.tribuneindia.com> visited on 26.7.2019

⁸Kanishk Sharma v. brilliant tutorials accessed <https://indiankanoon.org/doc/159612311/>

⁹(1992) 1 CPR 736.

petitioner has to pay a lump sum fee within six month for two years. On account of deficiency in the service complainant had to left the course midway but the tuition institutions totally declined to return the leftover part of amount paid or pending. The commission here referred to the judgments and precedents of national commission and referred that for the duration of entire course, the institutions imparting education cannot ask for the whole of the fees at once, if institution or coaching centre take such extra fee, on account of deficiency in service if student drop out such extra fee should be returned by the coaching centre. If the contract includes any similar terms and conditions in the agreement should be considered to be totally void as here the rules of natural justice are not followed that refers to the concept that equal chance to be given to both the parties and here it can be called as a standard form of contract. Thus the national commission also awarded exemplary damages in this case.

Decision of the Court which Restrict the Scope of Consumer Protection Act with respect to Educational Activity.

Bihar School Examination Board v. Suresh Prasad Sinha¹⁰

In this case issue was that same roll number is issued to the different students by the Bihar board and due to that factor result of one of the candidate was not declare. Supreme Court held consumer protection act 1986 is not applicable with respect to the statutory functions of the statutory bodies. Court further enumerated that board is a statutory unit and board conducting examination is discharging its statutory function. So no service is provided by thebihar board and examination fee is not considered as consideration by the court.

B. Maharishi Dayanand University v. Surjeetkaur.¹¹

In this case a student enrolled two courses simultaneously one was full time course and another was correspondence course. So university directed her to unenroll from one of the courses because such enrollment was being in contravention of the rules. After getting such direction she leave correspondence course. But despite the cancellation of her enrolment she

¹⁰AIR 2010 SC
¹¹(2010) 11 SCC 159
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gave supplementary exam in respect to the correspondence course and clears it. University refused to deliver the degree to her on the ground that as her enrolment in correspondence course is cancelled by the university so giving exam in this case being in contravention of the university rules. As we knew that university is state under article 12 of the constitution so it has power to enact laws, make rule and regulation for the functioning of the university. If any act of the student is against the existing rules of the university in such a case student is liable to face the consequences as per the rule. In such a case consumer cannot claim under the consumer protection act 1986 as a consumer of service. We should take in mind that there should not be any contravention between statutory law of the university and the consumer protection law. Both are enacted to make the functional activity of the university effective as well as to protect the right and interest of the student so these two laws should reinforce each other to protect the interest of both university and the student.

Guideline Given by the Supreme Court

In the case of **Usmania Islamic Academy vs. State of Karnataka** Supreme court held in the year 2003 that educational institution or universities have to discuss every aspect in providing education to students before the consumer court or in other words institution is answerable before the consumer court in matter of education. Supreme Court further directed (UGC) to frame rule on the basis of this order. Accordingly UGC made guideline for universities that is

- In case student leaves the institute, institute cannot retain more than Rs 1000 as proportionate fee.
- Original document cannot be retained by the institute.
- Fee cannot be demanded by the institute for the entire course, they can ask fee for the one term.

Conclusion: if university or educational institute provides any service, in such a case student are direct consumers or main beneficiary of such service. All the activities or services provided by the university does not be classify as marketable service because of the nature of the such service but it does not mean that university is totally exempt from

the scope of consumer protection act. If university is exempted then it will convert the education into a business sector. Consumer protection act work as a check point to balance the business activity of the university or education institute and make the educational sector more accountable for serving the interest of the students. An activity which is mentioned in the statute of the university does not exempt it from the purview of the act of 1986. in the same way student cannot get any undue privilege in contravention of the exiting rule which is mentioned in the statute. So we can say that as long as complaint is genuine, it means when legal right of the student is prejudiced due to the inefficient and deficient service provided by the university and educational institution in such a case university and educational institution come within the ambit of the Consumer Protection Act.