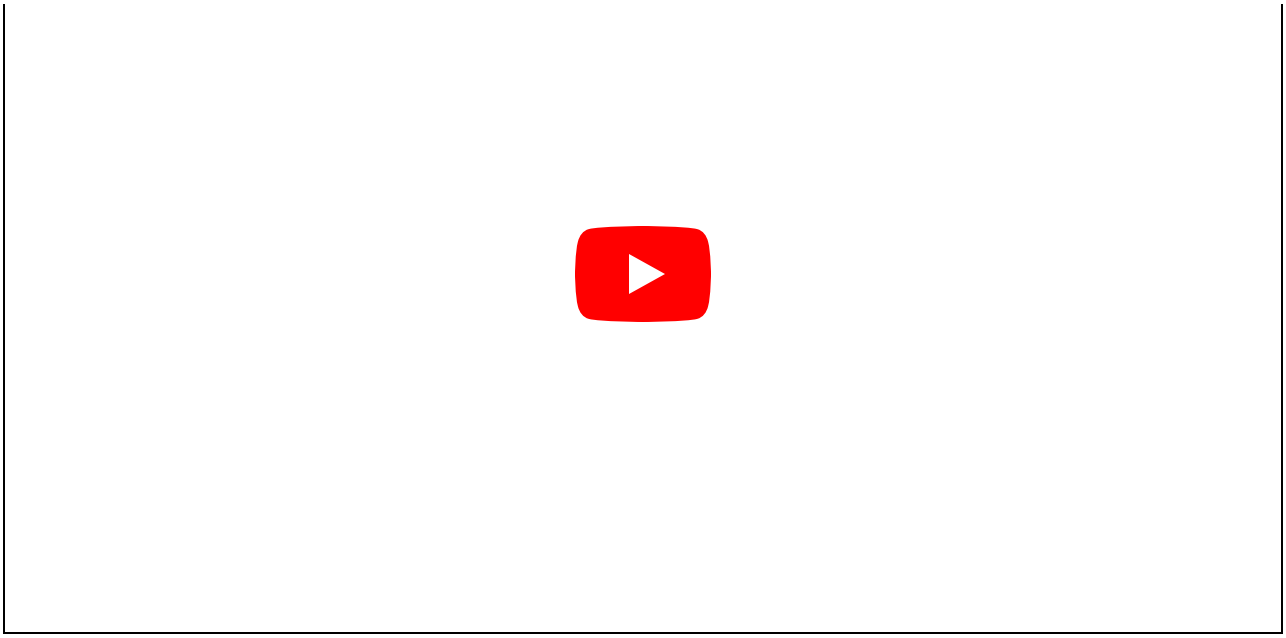
Should medical professionals be protected from consumer court proceedings? SC to reconsider 1995 ruling

On Tuesday, the Supreme Court ruled that lawyers were not liable under the Consumer Protection Act. This judgment, however, is at odds with a 1995 verdict of the apex court which answered the same question regarding doctors

Medical professionals can be sued under the Consumer Protection Act, the Supreme Court had ruled in 1995. (Express photo by Partha Paul/Representational)

Almost 30 years before the Supreme Court, on Tuesday (May 14) held that lawyers, as 'professionals', **could not be subjected to legal proceedings** for providing faulty 'service' under the Consumer Protection Act, 2019 (CPA), the apex court rejected similar arguments for those in the medical profession.

In *Indian Medical Association vs V P Shantha* (1995), a Bench of Justices S C Agarwal, Kuldip Singh, and B L Hansaria ruled that medical professionals provide a "service" as defined in older CPA (containing an identical definition of "service" as the current one), and could thus be sued in consumer court for providing faulty service. After Tuesday's ruling, this decision has now been referred to a larger bench for reconsideration.



Here is a recall of the 1995 ruling — and the court's logic behind it.

Medical professionals provide a 'service'

In 1995, the court acknowledged that professional occupations are often "skilled" work that require "mental rather than manual" effort, and differ from other occupations as success often depends on factors "beyond the professional man's control". Senior Advocate Harish Salve, representing the Indian Medical Association, argued that a medical practitioner cannot be judged based on fixed

However, the court held that a doctor still owes certain duties to their patients — duties of care in deciding whether to treat the patient, what treatment to give, and how the treatment is administered. If the doctor does not exercise a "reasonable degree of care" and breaches one of these duties, the court held that they can be liable for deficiency in service.

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The Bench of Justices Bela Trivedi and Pankaj Mithal, in 2024, appeared to be more sympathetic to the notion that medical practicioners, as "professionals", should not be held to the same standard as other occupations. They held that the purpose of the CPA was to protect consumers from "unfair trade practices and unethical business practices only" and that the legislature never "intended to include the Professions or the Professionals within the purview of the Act".

Complexity not a bar against consumer court proceedings

Legal proceedings under the CPA are heard by Consumer Redressal Commissions which are constituted at the District, State, and National levels. Under the 1986 version of the CPA, which was applicable in 1995, the President of each Commission would be a person who was, or is qualified to be, a judge at the District, High Court, and Supreme Court respectively. The rest of the members (two at the district and state level, and four at the national level) would be individuals who have the knowledge, experience, or capacity to deal with "problems relating to economics, law, commerce, accountancy, industry, public affairs or administration".

The petitioners in the V P Shantha case argued that since there is no requirement for commission members to have knowledge in medical matters, they are not suited to deal with complex medical issues that would arise in cases dealing with the services of medical practitioners.

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The court, however, disregarded this concern, holding that requiring members to have knowledge and experience that is specifically relevant to each case "would lead to impossible situations", such as District Commissions being able to deal with cases that the State Commission would be barred from purely because the former has a member with knowledge and experience that is relevant to the case at hand. The burden is instead on the parties to provide the necessary evidence and material to allow the members to make an informed decision.

Even if serving free of charge, medical professionals can still be liable

The definition of service in the CPA (both the 1986 and 2019 iterations) is expansive, but it explicitly excludes two types of services — those that are free of charge and those which are given under a "contract of personal service".

Regarding the medical profession, the court carved out three types of service — services given free of charge to everybody, services where everybody pays, and services which exempt certain categories of people, who cannot afford them, from paying. The first is not a service under the CPA and the second is a service. The

people are exempted.

By exempting only the services provided free of charge in the third category, the court observed that the protections under the CPA would only be available to consumers who could afford to pay for medical services, and it is “difficult to conceive” that this is what the lawmakers intended. Further, this would result in hospitals and doctors giving better medical services to those who could afford it, whereas those who can’t will be relegated to receiving services of “inferior” quality. To avoid this inequity, the court held that hospitals and doctors falling under the third category whill fall under the definition of ‘service’ regardless of whether it is free or not.

The court also held that medical care is not provided as a ‘contract of personal service’ as such contracts are limited to situations where there is an employer-employee or a “master and servant” relationship between the two parties. Therefore, “since there is no relationship of master and servant between the doctor and the patient the contract between the medical practitioner and his patient cannot be treated as a contract of personal service”.

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