PRIVATE EDUCATIONAL INSTITUTES UNDER THE CONSUMER PROTECTION ACT: NEED FOR RE LOOK AT THE PRESENT JURISPRUDENCE

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Abstract—In view of the recent judgments of the National Consumer Disputes Redressal Commission (NCDRC) in Manu Solanki v. *Vinayaka Mission University*[1] *& Rajendra Kumar Gupta* v. *Dr. Virendra Swarup Public School*[2]*, the debate about the unsettled issue of applicability of the Consumer Protection Act, 2019 (CoPRA) to education service has reopened and the Supreme Court before which the matter is currently pending, has been called upon to decide the issue and to settle the debate authoritatively.*

In this paper the authors discuss the issue of applicability of the CoPRA to education service by critically analyzing the jurisprudence in this area. The authors argue that the opinion of the NCDRC (Manu Solanki[3] *& later case of Rajendra Kumar Gupta v. Dr. Virendra Swarup Public School & Anr*[4]*.) is flawed and problematic in light of the factual matrix of the cases and that the cases especially Manu Solanki- the division judge bench decision was a missed opportunity where the Commission failed to convincingly settle this issue of law. Further, the Supreme Court before which the*

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1 2020 SCC OnLine NCDRC 7.Accessed on 10 April 2021.

2 2021 SCC OnLine NCDRC 24, Accessed on 10 April 2021.

3 *Supra* note 1.

4 *Supra* note 2.

matter is currently pending[5]*, should decide the case by keeping in view the nature & scope of this benevolent law, the existing jurisprudence in this field and the contemporary realities of the commercialization of private education sector. The authors also attempt to delineate which activities performed by an educational institute shall not be considered a "service" under the Act and which other shall attract the rigours of the Act.*

Keywords: Consumer Protection, CoPRA, Private Institutions, Educational Activities

I. INTRODUCTION

"In the case of the University or an educational institution, the nature of the activity is, ex hypothesi, education which is a service to the community. Ergo, the University is an industry."- Bangalore Water Supply and Sewerage Board v. *A. Rajappa*[6]

It is an almost irrefutable and a trite statement to make that education plays a central role in the intellectual development of an individual and the society at large, which makes it an important sector that requires attention specially in a young country like India, where it has been estimated that around 500 million citizens are between the age groups of 5-24(making it the country with the largest student population in the world), and is thereby home to one of the largest networks of higher education institutes across the globe, with 37.4 million of its student population alone receiving higher education.[7] However, despite the surging numbers, the public investment in education sector is scant and highly inadequate to cater to the demand of the parents and students alike for quality education[8]. Naturally, this mismatch in demand and supply has to be met by the private sector. This has directly resulted in a large number of

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5 "SC to Examine Whether Educational Institutions Come under Consumer Protection Act", *The Tribune*. Available at <https//www.tribuneindia.com/news/nation/SC-to-examine-whether-educational-institutions-come-under-Consumer-Protection-Act-159117> : The Tribune India (last accessed 4 October 2021).

6 (1978) 2 SCC 213.

7 Education Industry Analysis - Indian Education Sector | IBEF.

8 education-services.pdf (pwc.in).

private unaided educational institutes being set up across the nook and corner of the country and has resulted in privatization of higher education.[9]

In many instances, litigation has arisen against private educational institutes by aggrieved students on grounds of misleading advertisements, unfair trade practices, charging exorbitant fees, among others that has caused not only immense financial losses to them but also mental distress and loss of precious years in some case. However, the NCDRC and the Supreme Court have not been able to provide the much-needed relief to the students under the CoPRA, which was enforced by the Parliament with a view to secure the interests of the consumers against the economically powerful and exploitative business practices in the marketplace and to establish authorities for the effective administration and timely settlement of consumer disputes.[10]

The reason behind this is the inconsistent jurisprudence and the concomitant lack of judicial consensus on the question of whether activities of an educational institute can qualify as a "service" for the purposes of the CoPRA. Consumer fora and Supreme Court have taken different views upon this issue but largely, the consensus has tilted towards the negative. It is submitted that the existing body of jurisprudence leaves one point completely unaddressed: Whether all activities of an educational institute are immune from the extent of the CoPRA or is the same restricted only to core educational activities of an institute. In this regard, the judgment delivered by the NCDRC in *Manu Solanki* v. *Vinayaka Mission University*[11] is a missed opportunity where the Commission failed to convincingly settle this issue of law. The petitioners, who were victims of a malicious misleading advertisement issued by a medical college, have appealed against the judgment delivered by NCDRC before the Supreme Court, as the Commission dismissed the revision petition of the complainants for a relief on grounds of not being consumers under the CoPRA, finding that activities carried out by an educational institute cannot be construed as a service and the education sector therefore, is beyond the scope of the concerned Act. The Court admitted the appeal, in light of the divergent decisions in this matter[12] and its judgment in this regard is still pending.

For understanding the vexatious issue of the position of educational institutes under the Consumer Protection Laws, there is a need to engage with the existing case laws in this area. It is also important to understand that despite the unique nature and social purpose of education, it is not a legally sound

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[9] Anirban Sengupta, "Rapid Growth of Private Universities",Economic and Political Weekly, Vol.55, Issue22(May 2020).

[10] Statement of Objects and Reasons, Consumer Protection Act, 2019.

[11] 2020 SCC OnLine NCDRC 7.

[12] "SC to Examine Whether Educational Institutions Come under Consumer Protection Act", *The Tribune*. Available at <https//www.tribuneindia.com/news/nation/SC-to-examine-whether-educational-institutions-come-under-Consumer-Protection-Act-159117> : The Tribune India(last accessed 4October2021).

argument to completely place the sector beyond the purview of the CoPRA given the extent and scope of the applicability of the Act. Hence, the paper argues for a distinction to be made between the core teaching activities of a university or institute and the incidental activities of a commercial or administrative nature such as advertisements, collection of fees, facilities like canteen, issue of marksheets *etc* shall be treated as "services" under the Act. Furthermore, such an approach would be better suited to reflect the lived experiences of the class of citizens whom the CoPRA is meant to benefit.

Part I of the paper discusses the facts and reasoning employed by the NCDRC and argues why the judgment delivered was flawed and problematic. Part II of the paper attempts to establish that educational institutions ought to be covered under the CoPRA given its scope and extent of applicability and the principles of statutory interpretation. Part III of the paper suggests the legal approach that needs to be adopted to deal with disputes against activities performed by the educational institutes.

II. FACTUAL MATRIX AND RATIO OF MANU SOLANKI V. VINAYAK MISSION UNIVERSITY

At the outset, it would be beneficial to first refer to the facts in the *Manu Solanki* case to better appreciate the legal reasoning of the Commission for the order so passed. The complainants were students who had enrolled in the MBBS course of the respondent university in Thailand, under the representation made by the latter that the university was recognized by the Medical Council of India and that the petitioners would be conferred a Foreign Medical Degree. This representation was later discovered to be false due to which the complainants were barred from appearing for the necessary screening test in India. Thereafter, the complainants were orally assured by the University Vice Chancellor and the Registrar, that their fees would be refunded with interest in event of the respondent not getting a recognition from the Medical Council of India which too, was later reneged. The complainants, troubled by these events sought a remedy of compensation for the deficient services rendered to them which had caused them loss of finances, social standing, reputation, career opportunities and mental & physical agony.

In this background, both the parties relied upon precedents to argue for their case to prevail over the other. However, one crucial argument made by the petitioners to buttress their case was that while accepting that various judgments have come to the conclusion that consumer fora do not possess the jurisdiction to adjudicate upon complaints against educational institutions, none of them emphatically lay down whether the jurisdiction is barred for "all disputes" regarding "any activity" of the educational institute. In light of this contention, the primary point for consideration by the Commission

which it identified was whether all activities of an educational institute or only those that pertain to the imparting of academic knowledge and skills shall be included in the definition of "education" for the same to be construed as a "service" under the CoPRA.

It is the submission of the authors that the NCDRC, in its reasoning and analysis does not deal with this question adequately and rather only delves upon the existing precedents to rule that educational institutes do not fall within the definition of "service" for purposes of the CoPRA, therefore it omits to conclusively engage with the primary consideration in the dispute which it identifies for itself.

The NCDRC, in reaching upon this conclusion, relies upon a large number of precedents and the observations made by the Supreme Court on the nature of Education as an activity. It first relies upon the Supreme Court ruling in *Bihar School Examination Board* v. *Suresh Prasad Sinha*[13], which deals with the liability of a public examination conducting body under the Consumer Protection Law. The complainant was a candidate who had to reappear for his board examination due to non-publication of examination result despite several letters asking for the same. The Court, however denied any compensation to him, reasoning that the process of a board examination does not qualify as a "service" since it is meant for the successful completion of a student and the fees paid for the examination shall similarly not be a consideration but rather a "charge" paid for the privilege of sitting for the examination.

One can thus, observe that the judgment applied actually to examination conducting statutory bodies instead of educational institutions and was of very limited applicability considering facts of the present case (*Manu Solanki*). Nevertheless, the Commission while relying upon this judgment as a precedent, did not fixate its attention on one statement that was highly significant in this decision. The Court while commenting upon the nature of functions of a public examination conducting body, involving conducting examinations, declaration of results and issuing certificates were different stages of a *single, non-commercial, statutory function* which were incapable of being severed from one another as partly statutory and partly administrative for the erstwhile Consumer Protection Act,1986 to apply. In case of an educational institute, where such a demarcation can be drawn between activities of a commercial/ administrative or a statutory activity, this statement, a critical part of the Court's reasoning had to be accorded special consideration.

In another major precedent before the Commission, the Supreme Court, in *Maharshi Dayanand University* v. *Surjeet Kaur*[14], the Supreme Court found itself dealing with an issue which involved the appellant university not

[13] (2009) 8 SCC 483.
[14] (2010) 11 SCC 159.

conferring the B.Ed. degree to the respondent despite the latter having passed the requisite examination. The respondent further averred that the university had cancelled her result without following the principles of natural justice. The Court reversed the order passed by the NCDRC. It held that as per the objective of the Act, any service offered for consideration shall be *presumed* to be a commercial activity to fall within the contours of the CoPRA, thus interpreting the word "service" quite broadly and placing very little burden on the complainant to establish a certain commercial or quasi-commercial activity to fall within the ambit of the Act. However, relying upon the previous judgment of *Suresh Prasad Sinha*[15], it reiterated that the Act cannot be liberally interpreted to apply to the statutory function of a public university of conducting examinations to declare whether a candidate is fit to be declared as having successfully completed the course. Such an activity of evaluation of answer sheets and declaration of results, the Court held could not be considered a commercial activity performed in exchange of consideration due to the social purpose. Hence, the appellant university in question does not qualify as a "service provider" neither the candidate was a "consumer".

However, while such a reasoning is perfectly valid in case of conduct of examination by an educational institution, the judgment again loses its precedential value when facts suggest a private institute which displays an advertisement falsely claiming to be certified by the Medical Council of India and the Indian Government, making a representation that was false and *malafide* in nature and very telling of a commercial motive on part of the medical college not to offer any real education but rather to exploit the prospective students financially.

In later part of judgment, the Commission also referred to case laws which came to the conclusion that education not being an economic good cannot be considered a service as per the provisions of the CoPRA.

In *P.T. Koshy* v. *Ellen Charitable Trust*[16], the Court had approved the reasoning laid in *Maharishi Dayanand University case*[17] and held that any educational institution does not qualify as a "service provider" mainly because the process of imparting of education is a noble profession and cannot be considered as a business/commercial activity. The question of deficiency of service by an educational institute with respect to admissions, fees *etc.* therefore, did not arise. This was reiterated in *N. Taneja* v. *Calcutta Distt. Forum*[18], where it was ruled that section 2 (I) (o) of the Consumer Protection Act,1986 cannot be said to include education within its ambit as, by application of the rule of *ejusdem generis,* it cannot be compared with activities such as banking, finance,

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[15] *Supra* note 13.
[16] SLP (Civil) No.22532/2012 decided on 09.08.2012: MANU/SC/1324/2012;2012(3)C.P.C.615).
[17] *Supra* note 14.
[18] 1991 SCC OnLine Cal 241 :AIR 1992 Cal 95.

transport, insurance, boarding or lodging as the process of imparting education is not an economic good that can be considered as a conventional contractual relationship between a student and a teacher.

It becomes clear that the common thread running through the judgments barring the jurisdiction of the consumer fora regarding complaints against educational institutions is the 'social utility' of education that has been highlighted by courts& fora on many instances too. In *P.A. Inamdar* v. *State of Maharashtra*[19], education was defined as the intellectual process of development of and training the powers and capabilities of human mind which was limited not merely to the receipt of instructions at school or college but training the entire moral, physical and intellectual personality of the student.

Counsel for the complainants, however brought attention of the NCDRC to the judgment delivered by the Apex Court in the famous case of *Buddhist Mission Dental College and Hospital (1)* v. *Bhupesh Khurana*[20], which bears similar facts to the dispute that was actually before the Commission. The appellant college in this case had represented in a newspaper advertisement to be a "premier dental college" affiliated to a reputed public university (Magadh University) in Bihar and recognized by the Dental Council of India. It further stated that no capitation fee shall be required to be paid. The complainants, acting upon the representation so made, applied for admission to the college. However, they were later compelled to pay the capitation fee to the appellant college. After having attended classes, they further discovered that the college was neither affiliated to any university nor recognized by Dental Council of India, Additionally, the college lacked the facilities it claimed in the impugned advertisement. The complainants (students) also mentioned that contrary to what they were informed by the appellant, there was no regular qualified staff, no anatomy museum, library had hardly any relevant books, laboratory was ill- equipped, as most of the necessary instruments/equipments were either not available and those which were available were very few in number and were grossly inadequate for the students who were admitted in each session. Usually in the aforesaid course of four years, at the end of each year, the examination is supposed to be conducted, but the appellant did not conduct *any* examination at all by the end of 1994 and there was no hope of examination being conducted in the near future.

The Court dismissed the appeal of the appellant college and reasoned in its order that imparting of education by an educational institute for consideration falls under the scope of the Consumer Protection Act,1986. If the institute did not offer any service as understood by section 2(1)(o) of the Act, the question of payment of fees by complainants would not arise. This judgment clearly stands in a stark contrast to the general jurisprudence on this question of law.

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[19] (2005) 6 SCC 537.
[20] (2009) 4 SCC 484.

The reasoning was based on the previous judgment of the Court in *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa*[21], which had classified education as an industry. This was because, importantly, the Court determined that many activities of a University/School administration are incidental to its primary activity of teaching, and of a commercial nature. For instance, it might have its own printing press within campus premises or might operate a transport fleet. Additionally, it responded to the contention that education shall not qualify as an industry because it does not operate for a profit motive by holding that profit is *not* necessarily the primary objective to be achieved by an industry.

Finding itself with judgments adopting two different lines of reasoning, the Commission arrived at its judgment by turning to the settled proposition of law of precedents as laid down in *Amar Singh Yadav* v. *Shanti Devi*[22], where it was held by the Hon'ble Supreme Court that in case of any direct conflict between two precedents of Supreme Court of a coequal bench, the subordinate court shall follow the decision which more elaborately discusses the law on the proposition so contended. The Commission, found in its assessment that the decisions made by the Court in *Maharishi Dayanand University, PTKoshy, Smt. Taneja* and the like expounded the law more elaborately than the one delivered in *Bhupesh Khurana.* Moreover, the Court in the latter decision did not consider the former precedents and their reasoning. The Court also argued that the since judgment delivered in *Maharishi Dayanand University* was followed in a larger number of cases, it more accurately reflected the present legal position.

It shall once again be highlighted here that the primary issue (framed by NCDRC itself) for consideration before the Commission was - *whether there should be any segregation in the "core educational activities" of an educational institute that involve imparting knowledge between student and teacher and its incidental activities such as boarding, fee collection, advertisements etc. which are of a commercial nature.* Interestingly, the *Maharishi Dayanand University-PT Koshy* set of case laws did not deal with this issue at all. Nevertheless, the Commission, proceeding upon these case laws reiterated that education, being an activity with great social prestige does not qualify as a "service" and thereby, educational institutions were ultra vires the purview of the CoPRA. It further held that this immunity from the concerned Act extended to all types of activities, including the ones incidental to the purposes of the institution. Even though an educational institute may have wrongly represented itself as being affiliated with any University, it would still be excluded from the Act as long as it imparted education to the students.

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[21] (1978) 2 SCC 213.

[22] 1986 SCC OnLine Pat 203 :AIR 1987 Pat 191.

In *Rajendra Kumar Gupta* v. *Dr. Virendra Swarup Public School*[23], the NCDRC recently reiterated its stand that the CoPRA does not apply to educational institutions, and that cocurricular activities such as swimming do not fall within the scope of "service". Brief facts of the case are that the Appellant's son was studying in the Opposite Party-School. In 2007, the School offered various Summer Camp activities including swimming, and invited students to participate in it for which the students were required to pay a sum of Rs.1,000/-. The Appellant paid a sum of Rs.1000/- to the School for participation of his son in the Summer Camp. On 28.05.2007 during swimming activity, the Appellant's son died due to drowning in the swimming pool of the School. It was contended by the Appellant (father of deceased) that the child died due to drowning in the swimming pool due to negligence of the School therefore he was a 'Consumer' and that the case was a consumer dispute, as the Summer Camp conducted by the School was a *commercial* activity and not covered under imparting of education. Swimming training was optional in nature and therefore did not fall within the ambit of basic education. School, on the other hand, contended that this case is not covered under the Consumer Protection Act, 1986. Relying on judgment of the Hon'ble Supreme Court[24] and NCDRC in *Manu Solanki*[25], the Commission *inter alia* held that Educational Institutions do not fall within the ambit of the Consumer Protection Act, 1986 and activities which include co-curricular activities such as swimming, is not a "service" within the meaning of the Consumer Protection Act, 1986.

It is submitted that the summer camp activities involve *commercial* element as it is offered not only to student studying in the particular school which is offering the summer camp, but outsiders too can avail the facility and this is also well-known fact that swimming pool facility offered by school is also open to general public during summers with an intention to earn profit. If NCDRC judgment in *Rajendra Kumar Gupta*[26] is applied, would the outsiders (not students of the school) be debarred for filing a consumer complaint under CoPRA? This result is not in consonance with the reality of commercialization of certain services by educational institutes especially private institutions. There is a requirement of authoritative pronouncement in this area.

This shows how the cases of *Manu Solanki* & *Rajendra Kumar Gupta* are episodes of missed opportunity by the apex consumer authority- NCDRC to engage with a pertinent question of law which involved mechanistic reading of the precedents and interpreted the relevant provisions of the Consumer Protection Act very restrictively. In the next part of the paper, the authors shall attempt to establish that given the nature & purpose of the Consumer

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[23] 2021 SCC OnLine NCDRC 24.

[24] *Anupama College of Engg.* v. *Gulshan Kumar*, SLP(C) No. 17679 of 2017, decided on 30 October 2017 (SC).

[25] *Supra* note 6.

[26] *Supra*note 2.

Protection Act, the lived experiences of the class of consumers it seeks to cater and the changing realities of education sector and the settled principles of statutory interpretation, the consumer agencies & Supreme Court should not place the entire education sector beyond the contour of the Act and a line of separation shall be drawn to allow disputes regarding activities incidental to that of an educational institution, which involve a commercial element.

III. SCOPE OF THE CONSUMER PROTECTION ACT, 2019: A CASE FOR INCLUSION OF EDUCATIONAL ACTIVITIES UNDER THE ACT

Consumer Protection Act was first passed by the Parliament in 1986 with an aim to protect the interests of the consumers and for establishment of a speedy redressal mechanism for settlement of consumers disputes. It is thus, a very special piece of beneficial legislation meant for the benefit of common consumers. In the landmark judgment of *Lucknow Development Authority* v. *M.K. Gupta*[27], the Supreme Court observed that the Act is targeted at social welfare and hence, its provisions shall be interpreted expansively to the benefit of consumer. It further states that the word "protection" in the Long Title strongly indicates that the legislation was passed to secure them against unscrupulous businesses and public bodies and to provide a better redressal machinery to seek a speedy, inexpensive and easily accessible remedy which under the ordinary civil law had become ineffective, long drawn and burdensome. (emphasis supplied)

The Act defines a "consumer" very broadly as anybody who buys a good or avails or hires services for a monetary consideration but does not include one who buys them for the purpose of resale or any commercial use (it however includes a person who uses the goods/ services for earning his livelihood from such commercial use). Similarly, the definition of service[28] has a very wide meaning to including all services unless specifically excluded by notification of Central Government. As construed by Supreme court in aforementioned *Lucknow Development Authority case*[29], the term 'service' may mean any benefit or any act resulting in promoting interest or happiness. It may be contractual, professional, public, domestic, legal, statutory *etc.* The concept of service thus is very wide. Therefore, private education institution charging huge fees/ consideration fall within the ambit of 'Service' as defined in the Consumer Protection Act. Fees paid for services to the educational institutions amounts to consideration. Further, it is pertinent to mention that Sec 1 (4) of the Act states that 'save as otherwise expressly provided by the Central Government

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[27] (1994) 1 SCC 243 : AIR 1994 SC 787.
[28] S. 2(42), Consumer Protection Act,2019.
[29] *Supra* note 27.

by notification, this Act shall apply to *all goods and services.*[30] So far, no such notification to this effect has been promulgated by the Central Government to exclude educational activities from the contours of this Act.

From the previous section, it becomes clear that the underlying reason as to why courts have not construed educational activities to fall within the scope of definition of service is because unlike other activities that the statute mentions, education is not an activity which is conducted, or rather ought to be carried out for profit. It is a noble cause and is meant for the intellectual, emotional, mental and physical development of the children and for the well-being of the society. However, it shall be borne in mind that the existing jurisprudence on consumer disputes in India suggests that consumer protection laws have not been applied strictly to commercial enterprises operating with a profit motive. For instance, the Act has time and again been applied against public, statutory bodies whose primary motive was also not profit. In *Regional Provident Fund Commr.* v. *Bhavani*[31], where the complainant was a member of the Employees Provident Fund along with the Family Savings Scheme and had attained retirement but was not paid her pension by the Fund Commissioner. The Apex Court, found that the fund commissioner, was actually a "service provider" for the purposes of the Act as the complainant had paid consideration by regularly making contribution to the Scheme. Similarly, in *Kishore Lal* v. *ESI Corpn.*[32], it was contended that medical facility availed in a State-run dispensary cannot be regarded as a 'service'. The Supreme Court, however, allowed the appeal by setting a low bar for any activity to be a service. It ruled that charges incurred for availing the benefit of medical treatment amounts to consideration as defined in section 2 of the Consumer Protection Act. Even provisions of the Consumer Protection Act do not suggest a strict understanding of "service providers" as being commercial or for-profit undertakings. For instance, "advertisement" is defined as *any* representation, endorsement or pronunciation made by light, sound, gas, electronic media, internet *etc*[33]. It thus, defines advertisement made as any representation to the public, not necessarily for purpose of selling any goods or services or earning of profit. Similarly, as mentioned above, a reading of section 1(4) of the Act makes it explicit that the legislation shall apply to *all services* unless any notification to the contrary is issued by the Central Government. Currently, no such notification to exclude the education sector from the scope of the impugned Act has been promulgated.

Further, what becomes more problematic in the final decision in *Manu Solanki* case is that there may be disputes regarding an educational institute that involve activities of a commercial nature such as transportation or finance which are specifically listed as services within the Act. In a hypothetical case,

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[30] S. 1(4) of the Consumer Protection Act,2019.
[31] (2008) 7 SCC 111 :(2008) 2CPJ 9.
[32] (2007) 4 SCC 579.
[33] S. 2(1), Consumer Protection Act,2019.

there could be negligent driving of school bus or poor quality of canteen facilities to students contrary to what was promised. If one follows the judgment delivered in *Manu Solanki*, while these activities may otherwise qualify as a service, if it occurred in an educational institute, no jurisdiction of the consumer for a shall lie in such disputes. Students or parents would not be able to seek any remedy in this regard for poor quality of such services, causing them a loss of their hard-earned money. Quite evidently, it can be argued that such a legal position would lead to a highly restrictive application of the Consumer Protection Act and would be tantamount to frustration of the purpose for which the legislation was brought in place. This argument acquires more significance given that mischief rule of interpretation requires courts to give effect to the purpose for which a particular piece of legislation is brought into effect and cure the "mischief" which the legislators sought to remedy.[34]

In recent times, courts have also started to emphasize upon the fact that any reading of statute shall also reflect the contemporary realities and needs of the present times and circumstances. This principle was laid down by the Supreme Court in *Satyawati Sharma* v. *Union of India,*[35] where it held that with the lapse of time, if any the literal reading of any legislation becomes unreasonable and arbitrary, the courts shall accordingly interpret its provisions. The principle was reiterated recently by Allahabad High Court, in *Safiya Sultana* v. *State of U.P.*[36] while deciding upon the constitutionality of sections 5,6 and 7 of the Special Marriage Act,1954 that in order for meaningfully construing a certain statute, the courts shall account for the present situational changes. In present times, it has been acknowledged even by the legislature and a large number of Committee reports and working groups that education sector in this country has been impacted by commercialization. This has led private colleges to indulge in practices of misleading advertisements, demanding parents to pay high capitation fees for securing admissions, non-receipt of payment of fees, admission of students through suspicious means, deliberate and unreasoned withholding of degree certificates *etc.*[37] In response to such a menace, even State legislatures have come up with laws to address the same. Examples include the Maharashtra Educational Institutions (Prohibition of Capitation Fees) Act,1987 which was enacted with a view to prevent any "evil practices" that would cause commercialization of education and degrade the standards of higher education in the state. Other states too, in light of this reality passed such laws, the Karnataka Educational Institutions (Prohibition of Capitation Fees) Act, 1984 and Andhra Pradesh Educational Institutions (Prohibition of Capitation Fees) Act, 1983.

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[34] A.T.H Smith, *Glanville Williams: Learning the Law,* Sweet and Maxwell, Fourteenth Edition.

[35] 2002 SCC OnLine Del 930 :AIR 2002 Del 509.

[36] 2021 SCC OnLine All 19.

[37] Unfair Trade Practices and Institutional Challenges in India: An Analysis,CUTS International. Available at <http://www.cuts-ccier.org/pdf/Unfair_Trade_Practices_and_Institutional_Challenges_in_India-An_Analysis.pdf> (vssdcollege.ac.in).

It therefore, becomes imperative for courts to separate the *core* classroom teaching activities of an educational institute with the other 'commercial' elements of an institute's functioning such as collection of fees, advertisements *etc.* and activities incidental to its core purpose which include mostly functions of an administrative nature in order to fulfill the purpose for which the Consumer Protection Act was implemented and to ensure that students and parents are not left helpless and without an effective remedy due to the activities of an educational institute.

IV. THE PROPOSED APPROACH

This far, the paper has attempted to highlight how the judgment delivered in the case of *Manu Solanki* is deeply flawed and presented arguments as to why it would be legally untenable to place education completely beyond the rigours of the Consumer Protection Act. However, at the same time it is also submitted that it may also not be proper for every dispute pertaining to an educational institute to fall within the concerned Act. Disputes arising out of activities performed by an educational institute could be placed under the following categories- Statutory functions, which are performed by the institute in order to implement the statutory rules and regulations that bind them. Administrative functions, which could involve keeping a record of a student's fees payment, publication of examination result and others which are purely commercial, such as publication of advertisements, transportation services, swimming pool facility/ service *etc.* These functions are severable from each other while being performed by an educational institute.

In *Registrar(Colleges)*v. *Ruchika Jain*[38], the National Commission properly identifies and culls out these three activities of an educational institute. In its analysis of whether a college/university could be said to be providing a "service" under the Consumer Protection Act, the Commission held that statutory activities of an institute that involve awarding of degrees, framing eligibility criteria for examinations, conduct of examinations *etc.* do not fall within the scope of the Consumer Protection Act. This is because while a right to set up and run an educational institute exists, no such right to seek affiliation is vested with any citizen. Also, no private college is entitled to award any degree to a student unless recognized by appropriate authority of the State or any of the Universities as per the University Grants Commission Act,1956.

Therefore, the Commission (in *Ruchika Jain*) reasoned that fees paid by students for purposes of examinations conducted or awarding of degrees to them are aspects not covered under "service" rendered by an educational institute because the performance of a statutory function is actually an activity being performed on behalf of the State and is not a private act towards the

[38] 2006 SCC OnLine NCDRC 43 :(2006) 3CPR 18.

examinees as such. In cases where an educational institute is performing an activity to discharge some statutory function guided by some relevant statute, it is not an activity that was contingent upon the payment of fees by the student. Similar findings have also been made by the National Commission as well as the Apex Court with respect to any deficiency in discharge of statutory functions, as was held in *Bihar School Education Board* v. *Suresh Prasad Sinha*[39], where the statutory function of conduct of public examination was not considered as a service and fee paid for the purposes of appearing in examination was thus, not a consideration.

On the point of commercial activities like advertisements, the Commission accepted that education as an activity should be immune from commercialization but notably, the Commission shed light on how the sector had already been plagued by commercialization in recent times, where colleges and universities have demanded capitation fees and resorted to misleading advertisements for private ends and held that in light of these facts, it becomes necessary for the consumer fora to keep a check on such practices. It held that any institute, that *mala fide* represents itself as affiliated to some University but actually isn't, actually performs business under the garb of education. In such cases, remedy shall be made available to students suffering heavy financial loss and mental distress as a result of such a misrepresentation under the Consumer Protection Act and the impugned activity of the educational institute shall be considered as an unfair trade practice.(emphasis supplied)

Similarly, faults or imperfections that arise in the performance of administrative functions by private educational institutes (misleading advertisements, charging of capitation fee, issuing wrong marksheet, not issuing fee receipts *etc.* leads to causing irreparable loss to students including year loss in some cases) shall be considered to be within the scope of the Consumer Protection Act,2019 for being a contract *for* personal service as defined by the Supreme Court in the aforementioned *Indian Medical Association* case, as administrative functions are required for the daily functioning and therefore would be performed by an educational institute only upon the payment of the necessary fee by the students, which makes it a part of consideration under the Act.

Such a careful delineation of the different activities rendered by an educational institute would give effect to the widest possible interpretation to the provisions of the Consumer Protection Act,2019 to the benefit of the consumer in line with the principles of statutory interpretation and the current realities facing students and parents while dealing with private educational institutes.

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[39] (2009) 8 SCC 483.

V. CONCLUSION AND SUGGESTIONS

The judgments delivered by the National Consumer Disputes Redressal Commission in *Manu Solanki* and *Rajendra Kumar Gupta* are flawed as they were based upon a very restrictive reading of the Consumer Protection Act,2019 and do not uphold the beneficial nature for which the legislation was passed, which becomes all the more concerning given that much has already been written about the fact that growing privatization has led to commercial malpractices among private educational institutes that have caused immense loss to parents and students alike. Furthermore, the precedents that the Commission relied upon did not resemble the facts in the case before itself and in the process, failed to adequately engage with the question of law it had identified for itself. It shall be borne in mind that services offered by an educational institute are of diverse kinds, such as, *inter alia*, transportation, finances, advertisements *etc*, beyond teaching activities that are of a commercial or administrative nature and such activities, therefore fall under definition of service under CoPRA. Therefore, the application of applicability of CoPRA to educational services should be decided by looking into the nature of activity.

All disputes related to activities performed by an educational institute should *not* qualify under the scope of CoPRA. The activities performed by educational institutions are different in nature and shall therefore be treated differentially. Based on the opinion of Supreme Court and NCDRC in various cases, for application of CoPRA, the activities of educational institutes may be delineated in the following ways to reconcile the conflict of opinion in this area of law-

1. *Statutory functions* performed by educational institutes shall be excluded from the applicability of the Consumer Protection Act as these functions are performed by the educational institutes only to fulfill the duties and obligations imposed upon them by the statute. Thus, these duties are independent of the institute's relationship with the students and are actually performed on behalf of the State. Hence, these functions cannot be considered as "service" for the purposes of the Act.
2. Activities like deciding eligibility of applicants in entrance examinations by different Boards, test agencies and conducting board examinations by different state and central board of education doesn't fall within category of service under the Consumer Protection Act, 2019.
3. Similarly, activities like conducting examination; checking of the answer books; evaluation of the marks or declaring of results; with regard to deciding of eligibility criteria or for admission in the colleges or appearing in the examinations, *etc.* also falls in statutory services, hence outside the application of the Act.

4. *Core educational activities* and additional co-curricular &extracurricular activities *viz* educational tours, sports activities shall also not be covered by definition of "service" as these are activities that pertain to the imparting of academic knowledge and skill from a teacher to a student and in all practicality, would not lead to any severe commercial exploitation of students *per se*.

5. Other activities for example running/ managing of schools/ colleges / institutions by recovering fees is undoubtedly for commercial purpose. On occasions lakhs of Rupees are recovered from the students before granting admission to a particular course, even though, the Course is not recognised by the University or by the authority giving such recognition. For illustration: Medical Council of India has not recognised a medical course run by a particular institution. Yet, such institution gives admission by recovering large amount of fees. This would be trade, commerce or business.[40] It is submitted that in such cases, the students should be allowed to avail the speedy remedy under CoPRA.

6. Practices like misleading advertisements, charging exorbitant fees, not conducting classes or examinations false claims about affiliation with different state education boards/ universities/ recognition by bar council/ medical council for running educational institutions which causes huge monetary and mental harassment besides waste of years shall certainly fall under the definition of 'unfair trade practices'[41] and 'deficiency of Service'[42] under the Act.

7. In view of the reality of commercialization of certain services by educational institutes especially private institutions, the activities for earning profit which have no connection with education activity being run by educational institutes should be treated as service for the purpose of CoPRA. The summer camp activities (subject matter of the case of *Rajendra Kumar Gupta*) involve *commercial* element where the camp is offered not only to students studying in the particular school, which is offering the summer camp, but outsiders too can avail the facility, and this is also a well-known fact that swimming pool facility is offered by school members of general public during summers for earning profit.

For the past few years, services rendered by private educational institutes has seen a lot of litigation for their alleged activities that were carried out with a commercial motive. However, divergent verdicts in this regard by the Supreme Court and the NCDRC alike has denied any relief to the students which has only added to their collective miseries. In the context of Manu Solanki, it is submitted that judgment of Supreme Court in *Khurana* seems to be a correct precedent being on similar facts which should have been relied

[40] *Registrar (Colleges)* v. *Ruchika Jain*, 2006 SCC OnLine NCDRC 43 :(2006) 3CPR 18.
[41] S. 2(42), Consumer Protection Act,2019.
[42] S. 2(11), Consumer Protection Act,2019.

upon by the NCDRC to decide the revision petition in *Manu Solanki*. The fact that the Hon'ble Court has decided to settle the debate on this issue for once and all is a welcome step. It is hoped that the Court will take a flexible & nuanced approach towards this issue of law and will not place the entire education sector beyond the contours of the Act as per the scope and nature of the legislation, the current social and commercial realities in this field and the existing body of jurisprudence on the field of consumer laws in India as this judgment shall have the serious repercussions for the current commercialisation of private education in the country.