



**Annual Consumer Protection Compendium 2023**  
**January – December 2023**



This Compendium consolidates the relevant case laws and regulations framed under the Consumer Protection Act, 1986, as well as those circulated as JSA Prisms/Newsletters during the calendar period from January 2023 till December 2023.

### Complaints involving highly disputed questions of facts, tortious acts or criminality cannot be adjudicated by consumer commissions established under the Consumer Protection Act, 1986

A 2 (two) judge bench of the Supreme Court of India (“**Supreme Court**”) in its judgment ‘**The Chairman & Managing Director, City Union Bank Ltd & Anr v. R Chandramohan**<sup>1</sup>’ has held that complaints involving highly disputed questions of facts, tortious acts or criminality cannot be adjudicated by the consumer commissions under the Consumer Protection Act, 1986 (“**CP Act**”).

The Supreme Court has reiterated the settled position that the proceedings before consumer commissions, being summary in nature, cannot permit examination of highly disputed factual questions or cases involving tortious acts or criminality under the CP Act. Reasserting this position, the Supreme Court has explained the scope of ‘deficiency in service’ under Section 2(1)(g) of the CP Act and demarcated the matters which fall outside the jurisdiction of consumer commissions and those which must be left to be adjudicated by forums such as civil or criminal courts.

For a detailed analysis, please refer to the [JSA Prism of April 3, 2023](#).

### Supreme Court holds that the definition of “consumer” under the Consumer Protection Act, 1986 includes a commercial entity consuming goods or services for non-business purposes

The Supreme Court in its decision of **National Insurance Co. Ltd. v. Harsolia Motors & Ors.**<sup>2</sup> held that the definition of “consumer” under Section 2 (1)(d) of the CP Act includes a commercial entity provided that the goods purchased, or services availed are not linked to any profit generating activity. The Supreme Court further clarified the scope of the restrictive term “for any commercial purpose” appearing in Section 2 (1)(d) of the CP Act.

This decision restricts the scope of the term “for any commercial purpose” under Section 2 (1)(d) of the CP Act and expands the definition of a consumer. This judgment is likely to have an effect on the way fresh matters instituted under the Consumer Protection Act, 2019 (“**CPA 2019**”) are decided. The definition of a ‘consumer’ under Section 2 (1)(d) of the CP Act is similar to the definition of a ‘consumer’ under Section 2 (7) of the CPA 2019 and also includes the exclusionary term “for any commercial purpose”. Given this position, there could be an exponential increase in consumer complaints instituted by corporates under consumer protection law.

For a detailed analysis, please refer to the [JSA Prism of April 21, 2023](#).

### A Special Leave Petition to the Supreme Court against an order passed by the National Consumer Disputes Redressal Commission in its appellate jurisdiction is not maintainable

The Supreme Court in **M/s. Universal Sompo General Insurance Company Limited v. Suresh Chand Jain & Anr.**<sup>3</sup> held that a petition filed before the Supreme Court under Article 136 of the Constitution of India (“**Constitution**”) seeking special leave to appeal against an order passed by the National Consumer Disputes Redressal Commission (“**NCDRC**”) in its appellate jurisdiction is not maintainable.

The Supreme Court has clarified the contours of Article 136 of the Constitution in the context of consumer disputes and orders of the NCDRC. Importantly, the

<sup>1</sup> Civil Appeal No. 7289 of 2009

<sup>2</sup> 2023 SCC OnLine SC 409

<sup>3</sup> Special Leave Petition (Civil) No. 5263 of 2023

Supreme Court held that its findings in this judgment (which was passed in relation to the provisions of the CP Act) would equally apply to cases filed under the CPA 2019.

For a detailed analysis, please refer to the [JSA Prism of August 4, 2023](#).

### Supreme Court lays down test for medical negligence



The Supreme Court in the case of *M.A. Biviji v. Sunita & Others*,<sup>4</sup> reiterates the requirement of a higher burden to establish medical negligence. Every case of occupational negligence cannot be compared with professional negligence.

The ruling is a welcome step in the right direction as there is a rampant tendency to impute unfounded liability upon medical professionals. Thus, the emphasis of the court to ensure safety to the rights of medical professionals is a significant step to ensure that they are able to freely discharge their duties without undue fear or pressure.

For a detailed analysis, please refer to the [JSA Prism of November 3, 2023](#).

<sup>4</sup> 2023 SCC OnLine SC 1363. Judgment dated October 19, 2023.

### A consumer cannot be compelled to arbitrate; Consumer Protection Act, 2019 is a special legislation and provides a special remedy



The Supreme Court, in the case of *Smt. Hemalatha Devi & Ors. v. B. Udayasri*,<sup>5</sup> held that the CPA 2019 is a special legislation and the remedies provided therein are special remedies. After analyzing various precedents, the Supreme Court held that if a consumer forum was mandated to refer matters to arbitration simply based on the presence of an arbitration agreement, then the very purpose of a beneficial legislation such as the CPA 2019 would be defeated.

The decision of the Supreme Court in the present case is detailed and analytical, and rightly concludes that the CPA 2019 is a special and beneficial legislation and that the remedies provided therein are special remedies. The Supreme Court also concludes, and rightly so, that a consumer cannot be deprived of such remedies. Having said that, this principle should be confined in its application to 'consumer disputes' alone. As in the present case, the grievance of the respondent pertained to the delay in handing over and the subsequent termination of the agreement between the parties. The inordinate delay by the appellants in handing over the constructed house / villa may perhaps qualify as an unfair trade practice and thereby bring the dispute within the purview of a 'consumer dispute'. However, there may also be disputes of some other nature which can be arbitrated and may not require the protection afforded by special legislations such as the CPA 2019. Therefore, application of this principle must be on a case-to-case basis, because a definitional categorization on the basis of rationae

<sup>5</sup> Civil Appeal Nos. 6500 – 6501 of 2023 decided on October 5, 2023, decided by Justice Sanjay Kishan Kaul and Justice Sudhanshu Dhulia.

personae alone may render arbitration clauses redundant.

For a detailed analysis, please refer to the [JSA Prism of November 9, 2023](#).

### Supreme Court reiterates the 'dominant purpose' test to hold that if goods are purchased for a profit motive, the purchaser will not be a consumer

The Supreme Court in the case of *Rohit Chaudhary & Anr. v. M/s. Vipul Ltd.*,<sup>6</sup> upheld the 'dominant purpose' test and held that if the dominant purpose for purchasing the goods or services is for a profit motive and this fact is evident from the record, such purchaser will not fall within the definition of the term 'Consumer'.

In coming to its conclusion, the Supreme Court took note that there cannot be any defined formula with mathematical precision to examine on facts whether a complainant is falling within the definition of the term 'Consumer'. Each case must be examined on its own facts and circumstances. This view is in keeping with a long line of precedents of the apex court. While each of these decisions agrees with the view that no single straight-jacket formula can be developed, some judicial precedents have developed tests other than the 'dominant purpose' test. For instance, in another recent case, the apex court relied on the 'close and direct nexus' test along with the 'dominant purpose' test to arrive at the conclusion that the act of taking out policy of insurance did not have a close and direct nexus with the profit generating activity and therefore, the insured will qualify as a 'consumer'<sup>7</sup>.

1. The decision in the present case was rendered under the CP Act. Noticeably, the definition of the term 'Consumer' under the CPA 2019 is akin to that under the CP Act. Even the CPA 2019 does not define the term 'commercial purpose'.
2. While the facts in the present case were fairly simple, it will be interesting to see:
  - a) how the courts apply these tests in a more complex factual matrix, one where there is no

clear delineation of the purpose for which the goods purchased were being used; and

- b) how this test is applied in cases where consumer complaints are filed by corporations using goods in the course of their business or other profit generating activity.

For a detailed analysis, please refer to the [JSA Prism of November 9, 2023](#).

### Doctor must reveal possible side effects of medication, manufacturer not liable

The Supreme Court of India ("Supreme Court") in the case of *Prakash Bang v. Glaxo SmithKline Pharma Ltd*<sup>8</sup>, has upheld the order of National Consumer Disputes Redressal Commission ("NCDRC") citing a lack of mention of side-effects on the packaging and subsequent damage in the form of myositis as an adverse reaction to the vaccine 'Energix-B'. The Supreme Court held that it is the duty of the doctor who prescribes such a drug to reveal the side effects.

### Medical negligence in case expert committee finding is in favour of doctor



In the recent case of *Dr. Vijay Singh v The State of Jharkhand*<sup>9</sup>, the Jharkhand High Court held that proceeding further on a protest petition when the expert committee finding in a medical negligence case is in favour of the doctor, amounts to abuse of the legal process.

The Jharkhand High Court clarified that whenever a complaint is received against a doctor or hospital by

<sup>6</sup> Civil Appeal No. 5858 of 2015 decided on September 6, 2023, decided by Justice S. Ravindra Bhat and Justice Aravind Kumar.

<sup>7</sup> National Insurance Co. Ltd. v. Harsolia Motors and Others, 2023 SCC Online SC 409.

<sup>8</sup> Civil Appeal No. 6791 OF 2013 (SC)

<sup>9</sup> Cr. M.P. No. 588 of 2013 (Jharkhand HC)

the consumer forum (whether district, state or national) or by the criminal court, then before issuing notice to the doctor or hospital against whom the complaint was made, the consumer forum or the criminal court should first refer the matter to a competent doctor or committee or doctors specialized in the field relating to which the medical negligence is attributed. In the event the doctor or committee reports that there is *prima facie* a medical negligence, should a notice be issued to the concerned doctor/hospital. The Jharkhand High Court further held that “*it is well known that in spite of best efforts made by the doctor sometimes they are not successful, and this does not mean that doctor must be held guilty*”. The Jharkhand High Court came to the conclusion that the case of the petitioner is fully covered with the 2 (two) judgments of the Supreme Court in the case of *Martin F. D’Souza v. Mohd. Ishfaq*<sup>10</sup> as well as *Jacob Mathew v. State of Punjab*<sup>11</sup>, and hence quashed the criminal proceedings against the petitioner.

### Central Consumer Protection Authority (“CCPA”), issues Guidelines for Prevention and Regulation of Dark Patterns, 2023

The CCPA in exercise of its powers under Section 18 of CPA, 2019 notified the Guidelines for Prevention and Regulation of Dark Patterns, 2023 (“**Guidelines**”) on November 30, 2023. The Guidelines were notified after conducting stakeholder consultation and seeking

comments from public on the earlier released draft Guidelines.

In the prevailing digital age, where online commerce is an integral part of our daily lives, consumers and users fall prey to nefarious practices such as use of dark patterns by businesses that raise long term concerns









related to data privacy and consumer autonomy. The Guidelines intend to prohibit the use of dark patterns in designing User Interface (“**UI**”) and User Experience (“**UX**”) that manipulate users. Further, the Guidelines urge entities to retain users and drive sales using ethical and consumer-centric approaches. For a detailed analysis, please refer to the [JSA Prism of December 5, 2023](#).

### Consumer Protection (Direct Selling) (Amendment) Rules, 2023

The definition of ‘network of sellers’ is inserted to mean a network of direct sellers formed by a direct selling entity to sell goods or services for the purpose of receiving consideration solely from such sale.

<sup>10</sup> Civil Appeal No. 3541 of 2002 (SC)

<sup>11</sup> Appeal (Crl.) No 144-145 of 2004 (SC)

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| <p>18 Practices and<br/>25 Ranked Lawyers</p>   | <p>13 Practices and<br/>38 Ranked Lawyers</p>  | <p>19 Practices and<br/>19 Ranked Lawyers</p>   |
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