

EDUCATION AS COMMODITY AND THE REVOLVING DOORS OF JURISDICTION

Harshad Pathak^{1*}

ABSTRACT

The Consumer Protection Act, 1986 seeks to provide an assurance that consumer interests will receive due consideration at appropriate forums. However, over the past several years, Indian courts have shown a peculiar reluctance to recognizing educational institutes as service providers under the said Act. There is a visible trend of consumer forums' declining jurisdiction to entertain complaints concerning the provision of educational services. The said reluctance, which initially arose in the context of Education Boards and public institutions, is now being extended to private institutions as well, with the thriving industry of engineering/ medical private coaching centres being the biggest beneficiaries. By means of the present paper, I intend to address the aforementioned trend with reference to the provisions contained in the said Act, the object it seeks to achieve, and the march of case law in this regard. On a conjoined understanding of these three aspects, I will put forth the argument that there does not exist any justifiable basis to exclude the commercial services offered by private coaching centres from the jurisdiction exercised by the hierarchy of consumer forums in terms of the Consumer Protection Act, 1986. *Per contra*, there is a dire need to remedy the flawed judicial understanding of the extent to which certain educational services may fall within the purview of the Act. After all, the supposed education as offered by private coaching centres for large sums of money is indeed a "commodity," the deficiencies of which must be determined before the appropriate consumer forums.

INTRODUCTION

The Consumer Protection Act of 1986 (*hereinafter* "CPA") was enacted to provide for the better protection of the interests of consumers.² Central to this objective was the recognition of a person's right to be heard, and to be assured that consumer interests will receive due consideration at appropriate

1 * Advocate, Associate (Dispute Resolution), Luthra & Luthra Law Offices, New Delhi.
Email address: harshadp91@gmail.com.

2 The Consumer Protection Act, 1986.

forums.³ It is for this reason that the CPA provides for establishment of a hierarchy of Consumer Disputes Redressal Agencies, ranging from the District Forum to the apex National Consumer Dispute Redressal Commission (*hereinafter* “NCDRC”);⁴ the latter being subordinate only to the Supreme Court of India as far as appellate remedies are concerned.⁵ In other words, “to serve the purpose of the Act, various quasi-judicial forums are set up at the District, State and National level with wide range of powers vested in them...to give relief of a specific nature and to award, wherever appropriate, compensation to the consumers...”⁶

Under the CPA, consumer forums are vested with the jurisdiction to entertain complaints alleging, *inter alia*, that “the services hired or availed of, or agreed to be hired or availed of by (the complainant) suffer from deficiency in any respect.”⁷ In this regard, Section 2(d)(ii) of CPA defines a “consumer” to mean 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;

Further, Section 2(o) of CPA defines the term “service” to mean:

service of any description which is made available to potential users and includes, but not limited to, the provision of facilities

3 *Supra* note 1, Statement of Objects and Reasons.

4 *Supra* note 1, at §9.

5 *Supra* note 1, at §23.

6 *See*, Fair Air Engineers (P) Ltd. v. N.K. Modi, (1996) 6 S.C.C. 385 (India).

7 *Supra* note 1, at §2(c)(iii).

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 service;

As such, for any consumer forum to have jurisdiction over a particular complainant alleging a deficiency in service, it is implicit that the complainant must constitute a “consumer,” and the opposite party alleged to have been deficient must amount to a “service” provider in terms of the definitions contained in the CPA.

Over the past several years, Indian courts have shown a peculiar reluctance to recognizing educational institutes as service providers under the CPA. Despite the expression “service” being defined broadly under the CPA, there is a visible trend of consumer forums declining jurisdiction to entertain complaints concerning the provision of educational services. The said reluctance, which initially arose in the context of education boards and public institutions, is in fact now being extended to private institutions as well, with the thriving industry of engineering/ medical/ law coaching centres being the biggest beneficiaries. In other words, consumer forums in India are today likely to decline jurisdiction over complaints like refund of admission fees paid in advance at the time of enrollment, publication of false or misleading advertisements to induce prospective students, lack of infrastructure/ amenities advertised in the prospectus by an educational institute, etc., The purported rationale behind the same is the belief that “education is not a commodity, and educational institutions are not providing any kind of service.”⁸ It is this particular trend, and the supporting reasoning, that I intend to address herein.

8 P. T. Koshy & Anr. v. Ellen Charitable Trust & Ors., Sp. Leave to App. (C) No. 22532 of 2012 (India) [*Koshy*].

In the *first* part, I will assess the judicial response to the issue of jurisdiction of consumer forums over educational institutes. The same will form the tool with which, in the *second* part, I will critique the exclusion of private coaching centres from the purview of the CPA, followed by a brief summarization of my conclusions.

EDUCATION AND CONSUMER FORUMS: JUDICIAL RESPONSE

The Indian judiciary has been rather inconsistent in its endeavour to address the complaints of deficiency and malpractice emanating from the education sector. Various courts, including the Supreme Court of India, have oscillated between addressing the complainants' grievances on the one hand, and declining to bring education within the purview of the CPA on the other.

Those advocating the former approach construe the relationship between a student and an educational institute as being contractual in nature, wherein the student avails educational services from the institute against a monetary consideration. From this lens, there does appear to be much doubt that the student availing the services is a consumer, and the educational institute is a service provider under the CPA. *Per contra*, the advocates of the latter approach prefer to interpret the very concept of education as something more than a mere provision of service so as to fall within the ambit of the Act. By equating education to a continuous uplifting of moral and mental capabilities, it questions the characterization of education as a tradable commodity. As such, provision of education is not considered to be akin to provision of services like financing, banking etc., so as to fall within the ambit of the CPA. As the subsequent discussion will reveal, at present, the pendulum appears to be inclined towards the latter approach.

(a) The Initial Approach

The question concerning the jurisdiction of consumer forums over educational institutions first arose before the High Court of Calcutta in the year 1992, in the case of *Smt. N. Taneja & Anr. v. Calcutta District*

*Forum & Ors.*⁹ Therein, an irate parent of a student, studying in one of the schools recognized by the West Bengal Board of Secondary Education, had approached the District Consumer Forum to claim compensation for an alleged deficiency in the services offered by a particular school teacher, and seek her removal. Upon presentation of the complaint, the President of the concerned District Forum had issued a Show Cause Notice to the school teacher in question, along with certain interim directions, which were challenged before the High Court of Calcutta by way of a writ petition. Considering the severity of the issue, the High Court first sought to decide “whether the Consumer Protection Act, 1986 is applicable to education and also whether education comes within the purview of the Act...”¹⁰ Noting that education is not only confined to classroom instructions, but also includes an uplifting of mental and moral faculties, the High Court of Calcutta did not construe education as falling within the ambit of the CPA. It went on to reason that:

From the definition of Consumer and Service (under CPA)... it is abundantly clear that education does not come under the purview of this Act. The service rendered by a teacher is not a kind of service as described in S. 2(o) of the Act. It does not come under the purview of banking, financing, insurance, transport, processing, supply of electricity or other energy, board or lodging or both, entertainment, amusement or the purveying a news or other information...that imparting of education is in the nature of a mission or a noble vocation. A teacher educates children; he moulds their character, builds up their personality and makes them fit to become a responsible citizen. Children grow under the care of teachers the clerical work, if any they may do, is only incidental to their principal work of teaching...it becomes apparent that the relationship of teacher and student of an educational institution is not a service on hire because student is not such a consumer

9 Smt. N. Taneja & Anr. v. Calcutta District Forum & Ors., A.I.R. 1992 Cal. 95 (India) [*Taneja*].

10 *Id.* at ¶19.

which is linked any way with the buyer of any economic goods and hire has not been linked with education, teacher and student. The contract as referred to in S. 2(g) certainly is not the contract as defined in S. 2(o) because the very conception of the contract cannot be forced into the Consumer Protection Act so far as education, teacher and student are concerned.¹¹

As evident, the High Court of Calcutta preferred to give an expansive interpretation to the process of “education,” and emphasize the object it sought to achieve. On such basis, it refused to view the relationship between a school teacher and her student from a purely contractual lens so as to be governed by the provisions contained in the CPA.

The said question again arose before the High Court of Madras in 1994, in *The Registrar, University of Madras & Anr. v. Union of India*.¹² This time, disgruntled with the withdrawal of the affiliation granted to several courses being offered by the University, a number of students had filed complaints before the consumer forum claiming refund of their fees, alleged capitation fees, as well as damages on account of an alleged deficiency in service. Again, the High Court in its appellate jurisdiction sought to determine if the provision of education could be equated with the status of a trader and a consumer, so as to bring it within the ambit of the CPA. Answering the said question in the negative, the High Court cited a number of instances where disputes between a student and a University, such as those pertaining to re-evaluation of answer sheets and issuance of degree, were not considered to constitute consumer disputes, to conclude that educational institutes like Universities did not fall within the purview of CPA.

A decade later, the High Court of Madras came to the rescue of the Board of Matriculation Examination in a similar context, in *The Secretary,*

¹¹ *Id.* at ¶13.

¹² *The Registrar, University of Madras & Anr. v. Union of India*, (1995) 2 M.L.J. 367 (India) [*Registrar*].

*Board of Matriculation Examination & Ors. v. S.R.C. Bhandari & Ors.*¹³ While setting aside the District Forum’s order to grant compensation on account of the Board’s failure to provide the complainant with a copy of his Matriculation Examination Certification, the High Court opined that the Board of Matriculation Examination was a Governmental authority, exercising its sovereign power. As such, the High Court refused to characterize the functions exercised by the Board of Matriculation Examination in the same mould as a trade or commercial activity, and therefore, a “service” under the CPA.¹⁴

Considering the line of opinion endorsed by various High Courts, it was only natural that the said issue eventually knocked the doors of the Supreme Court of India in 2009 on two occasions, albeit leading to two contrasting conclusions. The first occasion pertained to *Buddhist Mission Dental College & Hospital v. Bhupesh Khurana & Ors.*,¹⁵ wherein the Appellant institution had preferred an appeal against the NCDRC’s order directing it to refund to the complainants the admission expenses along with interest, as well as a compensatory sum for the expenses defrayed on purchase of books, mess expenses etc., and for the loss of two academic years due to non-conduct of any examination. In particular, the NCDRC had held that:

Imparting of education by an educational institution for consideration falls within the ambit of “service” as defined in the Consumer Protection Act. Fees are paid for services to be rendered by way of imparting education by the educational institutions. If there is no rendering of service, question of payment of fee would not arise. The complainants had hired services of respondent for consideration so they are consumers as defined in the Consumer Protection Act.¹⁶

13 *The Secretary, Board of Matriculation Examination & Ors. v. S.R.C. Bhandari & Ors.*, 2004-1-L.W. 463 (India).

14 *Id.* at ¶10.

15 *Buddhist Mission Dental College and Hospital v. Bhupesh Khurana & Ors.*, (2009) 4 S.C.C. 473 (India).

16 *Id.* at ¶32.

Aggrieved by such findings, the Appellant institution had raised a contention “that imparting education cannot amount to trade and, therefore, the Consumer Forum lacks jurisdiction to deal with the complaint.”¹⁷ However, repelling the said contention, the Supreme Court of India chose to agree with the impugned order, and held that the actions of the Appellant institution fell within the purview of CPA, and the NCDRC had rightly construed the same to be deficient.¹⁸

Barely seven months post the aforementioned judgment, the Supreme Court of India had another occasion to assess the present issue, albeit in a slightly different context. In *Bihar School Examination Board v. Suresh Prasad Sinha*,¹⁹ the Supreme Court was asked to decide whether the functions performed by the Bihar School Examination Board fell within the purview of the CPA. Therein, the complainant student had sought to hold the Bihar School Examination Board responsible for its failure to publish his result for the Bihar Secondary School Examination in 1998; thereby, constraining him to re-appear for the same examination again after the loss of one academic year. However, after considering the statutory nature of the functions performed by the Bihar School Examination Board, the Supreme Court of India noted that the process of holding examinations, evaluating answer scripts, declaring results, and issuing certificates are different stages of a single statutory non-commercial function. Therefore, when an Examination Board conducts an examination to discharge its statutory functions, neither does it provide any service to the students undertaking the said examination, nor do such students hire or avail any service offered by the Examination Board.²⁰ On such basis, the Supreme Court held that:

[T]he [CPA] does not intend to cover discharge of a statutory function of examining whether a candidate is fit to be declared as having successfully completed a course by passing the

17 *Id.* at ¶28.

18 *Id.* at ¶33-34.

19 *Bihar School Examination Board v. Suresh Prasad Sinha*, (2009) 8 S.C.C. 483 (India) [*Bihar School*].

20 *Id.* at ¶10.

examination. The fact that in the course of conduct of the examination, or evaluation of answer-scripts, or furnishing of mark-sheets or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a service-provider for a consideration, nor convert the examinee into a consumer who can make a complaint under the Act. We are clearly of the view that the Board is not a “service provider” and a student who takes examination is not a “consumer” and consequently, complaint under the Act will not be maintainable against the Board.²¹

Evidently, while deciding the scope of jurisdiction exercised by consumer forums under the CPA, the Supreme Court of India drew a distinction between educational institutions in the form of University Colleges, and Statutory Educational Boards. While the latter fell outside the scope of CPA for discharging only a statutory function, education sought to be imparted by the former clearly constituted “service” under the CPA; thereby, falling within the domain of consumer law. In fact, the said distinction was implicitly affirmed by the Supreme Court in its 2010 decision in *Controller, Vinayak Mission Dental College & Anr. v. Geetika Khare*,²² wherein it directed the Appellant institution to refund the entire fee deposited by the complainant student on account of her withdrawal from the institution due to its lack of recognition, and certain other deficiencies. However, mere ten days after the decision in *Geetika Khare*, a bench comprising B. S. Chauhan and Swatanter Kumar, J.J. of the Supreme Court of India set in motion a sequence of precedents that nullified the well thought-out distinction between the University Colleges and Educational Boards as far as the jurisdiction of consumer forums was concerned. In this process, the lives of numerous unsuspecting students, especially those attached to private coaching institutes, were adversely altered.

21 *Id.* at ¶11.

22 *Controller, Vinayak Mission Den. Col. & Anr. v. Geetika Khare*, (2010) 12 S.C.C. 215 (India).

(b) Where the Supreme Court went wrong

The question of jurisdiction of consumer forums over educational institutes first reached the doorsteps of B. S. Chauhan and Swatanter Kumar, J.J. of the Supreme Court of India in 2010 in *Maharshi Dayanand University v. Surjeet Kaur*.²³ Therein, the Hon'ble Bench was asked to decide the issues arising from a complaint filed by the Respondent student against the Appellant University's refusal to confer her with a degree of Bachelor of Education due to the alleged violations of the University's General Rules of Examination. However, prior to examining the merits of the complaint, the Bench addressed the issue of competence of the District Forum, and also the hierarchy of the Tribunals constituted under the CPA to entertain the same. Surprisingly, the Bench chose to ignore the precedent laid down by the Supreme Court in *Buddhist Mission Dental College & Hospital* in identical facts and circumstances, and instead relied upon the decision in *Bihar School Examination Board* in relation to Statutory Education Boards. Relying upon the latter, the Bench exclaimed that the issue of jurisdiction of consumer forums over educational institutions was no longer *res integra*, before concluding that:

...[T]he respondent as a student is neither a consumer nor is the appellant rendering any service. The claim of the respondent to award B.Ed. degree was almost in the nature of a relief praying for a direction to the appellant to act contrary to its own rules. The National Commission, in our opinion, with the utmost respect to the reasoning given therein did not take into consideration the aforesaid aspect of the matter and thus, arrived at a wrong conclusion. The case decided by this Court in *Bihar School Examination Board* clearly lays down the law in this regard, with which we find ourselves in full agreement with. Accordingly, the entire exercise of entertaining the complaint by the District

23 *Maharshi Dayanand University v. Surjeet Kaur*, (2010) 11 S.C.C. 159 (India).

Forum and the award of relief which has been approved by the National Commission do not conform to law...²⁴

As evident from above, in *Maharshi Dayanand University*, the Supreme Court overlooked its previous decisions to place Educational Boards and University Colleges at the same pedestal. In this process, it also laid the foundation for excluding the entire education sector from the purview of the CPA.

In 2012, the Bench comprising B. S. Chauhan and Swatanter Kumar, J.J. of the Supreme Court of India was again faced with the same issue in *P. T. Koshy & Anr. Ellen Charitable Trust & Ors.*²⁵ However, instead of remedying its mistakes, the Bench passed a two-paragraph order that not only consolidated its erroneous interpretation of existing precedents, but also sounded a death knell to the object sought to be achieved by the CPA. While dismissing the Special Leave Petition before it, the Bench cited its previous decision in *Maharshi Dayanand University*, before callously concluding that:

In view of the judgment of this Court in *Maharshi Dayanand University vs. Surjeet Kaur*, 2010 (11) SCC 159 wherein this Court placing reliance on all earlier judgments has categorically held that education is not a commodity. Educational institutions are not providing any kind of service, therefore, in matter of admission, fees etc., there cannot be a question of deficiency of service. Such matters cannot be entertained by the Consumer Forum under the Consumer Protection Act, 1986.²⁶

Accordingly, in a startling reversal, the Supreme Court overlooked the context in which its previous decisions were rendered to determine that no educational institution, Education Boards and University Colleges alike, provides any kind of “service” that may fall within the ambit of CPA.

24 *Id.* at ¶20.

25 *Koshy*, *supra* note 7.

26 *Id.* at ¶1.

Interestingly, while the Supreme Court took the pains to elaborate that issues concerning admission, fees etc. in educational institutions will no longer receive due consideration before the appropriate forums established under the Act, it did not attempt to define and/or elaborate as to their interpretation of the term “education.” Over time, this absence of a precise explanation as to what may be construed as education, and what not, has been consistently exploited to shield a number of educational institutes that earlier fell within the jurisdiction of the consumer forums. Subsequent to the above decisions, barring a few notable exceptions,²⁷ the NCDRC largely deemed itself incompetent to adjudicate complaints regarding the functioning of Universities.²⁸ However, more worryingly, the above lapses on part of the Supreme Court, as well as the sheer weight of precedent, enabled myriad private coaching centres across India to wriggle out of the jurisdiction of consumer forums under the CPA.

THE CURIOUS CASE OF PRIVATE COACHING CENTRES:

As iterated above, the Supreme Court of India in *P. T. Koshy* had held that education was not a commodity, and therefore, educational institutions did not provide any service, the deficiencies of which can be complained of before consumer forums. Since neither the said decision nor the CPA defines the term “education,” this ambiguity allowed an army of private coaching centres to exclude themselves from the jurisdiction of the consumer forums, which had earlier remained flooded with several complaints in relation to the unfair trade practices and deficiencies in the services provided by them. In other words, private coaching centres, which merely assist students to prepare for the competitive examinations for disciplines like engineering, medicine, law, etc., in consideration for large sums of money,

27 *See*, *Shri Dhirendra Kumar & Ors. v. M. R. Sarangapani & Ors.*, Original Petition No. 255 of 2001 (India).

28 *See*, for instance, *Regional Institute of Co-op. Management v. Naveen Kr Chaudhary*, III (2014) C.P.J. 120 (NC) (India); *University of Rajasthan v. Nitin Jain*, IV (2015) C.P.J. 34 (NC) (India); *Institute of Hotel Management v. Ajay Kumar Prasad*, Revision Petition No. 627 of 2015 (India); *Haryana State Pharma Council v. Sheela Devi*, II (2015) C.P.J. 658 (NC) (India).

now conveniently classify their services as a form of education; thereby, depriving the consumer forums of the jurisdiction that they once exercised over them. The decisions to this effect are available in plenty.²⁹ However, such an understanding is not only contrary to the object and purpose of the CPA, but also stands at loggerheads with what the original intentions of the Supreme Court of India.

The march of case law detailed above clearly elucidates that the initial preference to keep educational institutions outside the ambit of CPA stemmed from two considerations – *first*, an expansive understanding of what “education” meant, and *second*, that the discharge of statutory functions by certain institutions operating in the domain of education, which is in regulated by the relevant provisions of the concerned statute, cannot be equated with provision of “service” of a nature as contemplated under the CPA. While both reasons emanate from valid concerns, it is equally true that neither consideration holds relevance when it comes to private coaching centres. In other words, neither do private coaching centres provide any education *per se*, nor do they discharge any statutory function that is regulated by an applicable statute.

With respect to the *first* consideration, the High Court of Calcutta in *Smt. N. Taneja* had succinctly explained as to what it had meant by provision of education. It noted that “[e]ducation is not only the instructions confined to schools and colleges but education includes moral and intellectual training as well as uplifting of mental and moral faculties. It is not only confined to the improvement and cultivation of mind but also of cultivation of one’s’ religion and moral sentiments as well as physical faculties.”³⁰ Similarly, the High Court of Madras in *The Registrar, University of Madras*, after referring to varied literary sources, elaborated upon the meaning and purpose of education in the following manner:

29 See, for instance, FIITJEE Ltd. v. Harish Soni, Revision Petition No. 2054 of 2013 (India); Mayank Tiwari v. FIITJEE Ltd., Revision Petition No. 4335 of 2014 (India); FIITJEE Ltd. v. Daya Chand Prasad, Revision Petition No. 4634 of 2012 (India); FIITJEE Ltd. v. Pushpender Verma, Appeal No. 861 of 2013 (India).

30 *Taneja*, *supra* note 8, at ¶14.

In this country, education has never been a commercial commodity, Saint Thiruvalluvar in his immortal work Thirukkural said that numbers and letters are the two eyes of mankind, and that the learned alone can be said to possess eyes while the unlettered have but two sores in their head... The term “educate” has been defined in Webster’s Third New International Dictionary... to mean: “to develop (as a person) by fostering to varying degrees the growth or expansion of knowledge, wisdom, desirable qualities of mind or character, or physical health, or general competence especially by a course of formal study or by instruction.” It takes its origin in the Latin term “educate” meaning to rear, bring up, and educate. The function of a teacher is not merely to deliver lectures in a class room, but to bring out the talents of the students, build up his character and develop him into a full person. That is why it said that a person blossoms into a full man only by the blessings of a teacher... Educational institutions should be interested in developing the personality of the students. The relationship of “alma mater” and the “alumni” can never be equated or even compared to that of a trader and a consumer... It may be that unscrupulous men might have attempted to make a business out of education and convert the institutions into teaching shops. But the Indian Legislature has never attempted to do so: nor has the judiciary ever allowed it...³¹

Evidently, the above-named High Courts interpreted the term “education” as something more than a formal training or instruction, but a process of fostering the physical, mental as well as moral growth of a student that not only enhances his/her talent and competence, but also brings out his/her personality and character. To put it simply, education was construed as the process by which a young student develops into a “full person.” When viewed from this perspective, it certainly becomes difficult to comprehend how private coaching centres, which train students by means of instruction

31 *Registrar, supra* note 11, ¶ 28.

for appearing in competitive examinations for different professions, perform any educative purpose as envisaged above. Therefore, to treat such coaching centres at par with public schools or colleges overlooks the blatantly obvious commercial nature of their “parallel education system”,³² and does injustice to those who succumb to their exploitative practices. For instance, as per an article published in January 2016:

...Roughly 1.6 lakh (sic) teenagers from the surrounding states flock to Kota’s coaching institutes every year, paying between 50,000 and a lakh for annual tuition. Some begin early, as coaching centres also run ghost schools where they enrol middle-school students...Neither coaching centres nor hostels have exit policies or refunds, so for students who borrow money to come to Kota, the stakes are even higher.³³

In fact, the above-stated distinction between educational institutes and private coaching centres has found support with the NCDRC as well in *FIITJEE Ltd. v. S. Balvignesh*,³⁴ wherein the Bench had acknowledged that “there may be merit in the contention that a coaching institute such as FIIT JEE cannot be equated to institution such as a University since it is only assisting student in competing for admission... by providing coaching to them.”³⁵ Accordingly, to exclude private coaching centres from the ambit of CPA on the pretext that they provide education, and to ignore the true nature of this thriving industry, is incompatible with the ostensible intention of the Supreme Court of India, and the core purpose for which a hierarchy of consumer forums was established in India in the first place.

As regards the *second* aspect, it is pertinent to note that the Supreme Court had rendered its decision in *Bihar School Examination Board* in context of the functions exercised by a Statutory Board in the domain of

32 Legal Correspondent, *Cry in apex court to rein in coaching institutes*, THE TELEGRAPH, 3 January 2014.

33 Akhilesh Singh, *Why Kota is so killing*, THE TIMES OF INDIA, 3 January 2016.

34 *FIITJEE Ltd. v. S. Balvignesh*, III (2015) C.P.J. 112 (NC) (India).

35 *Id.* at ¶8.

education, and not the services offered by an educational institution per se. Accordingly, it is crucial to read the decision in its appropriate context. This assertion only gets elevated if one considers that at that time, the Supreme Court in *Buddhist Mission Dental College & Hospital*, and the High Court of Delhi in *Dr. Alexander Educational Foundation v. Union of India & Ors.*,³⁶ had already affirmed that educational services offered by University Colleges fell within the jurisdiction of consumer forums.

Ironically, in its decision in *Bihar School Examination Board*, the Supreme Court of India had itself cautioned of the visible “danger of mechanical application of an observation without ascertaining the context in which it was made.”³⁷ While doing so, it had placed reliance on the principles enunciated by the Supreme Court in *C.I.T v. Sun Engineering Works (P) Ltd.*,³⁸ and advised that:

It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be complete “law” declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasoning...³⁹

36 *Dr. Alexander Educational Foundation v. Union of India & Ors.*, W.P. (C) No. 2455 of 1993 (India).

37 *Bihar School*, *supra* note 18, at ¶14.

38 *C.I.T v. Sun Engineering Works (P) Ltd.*, 1992 (4) S.C.C. 363 (India).

39 *Id.* at 39.

Applying the aforementioned principles to the controversy in question, it is evident that the Supreme Court's decision in *Bihar School Examination Board* was intended to exclude merely those institutions that performed a statutory function, and not those which imparted education *per se*. Accordingly, as private coaching centres undoubtedly do not exercise any statutory function, but are merely profit-oriented commercial entities, their subsequent exclusion from the purview of the CPA is premised upon a trembling edifice of judicial misconstruction.

Thus, it is apparent that unlike statutory boards and institutions which impart education in its normative sense, there is no cogent basis whatsoever to hold that the private coaching centres, which are merely commercial entities, do not fall within the jurisdiction exercised by consumer forums under the CPA. Consequently, to assert that consumer forums are not competent in law to adjudicate upon matters of admission, fees etc., concerning such coaching centres denies justice to a large section of consumers, who are exploited year after year by alluding to a brighter and respectable future.

CONCLUSION

A scrutiny of the decisions passed by varied judicial authorities on the issue concerning the jurisdiction of consumer forums over educational services does not paint a pleasant picture, with the Supreme Court of India being the chief culprit. While a preference to keep Statutory Boards outside the purview of the CPA is indeed sound, the understanding of the Supreme Court, as well as the Calcutta and Madras High Courts, as to what is meant by "education" needs questioning. The said Courts display a rigid fixation to a normative understanding of the concept of education, which appears to be disjoint from reality. In fact, it is this tendency that resulted in the Supreme Court of India's decision in *P. T. Koshy* that provides private coaching centres a *carte blanche* to evade the jurisdiction of consumer forums.

Consequently, as far as consumer interests and the object affording them due consideration at appropriate forums is concerned, there is a dire need to remedy the flawed judicial understanding of the extent to which certain educational services may fall within the purview of the CPA. I, for one, am of the firm opinion that the supposed education offered by the private coaching centres for large sums of money is indeed a “commodity,” the deficiencies of which must be determined before the appropriate consumer forums.