



# Applicability Of Consumer Protection Laws In The Light Of Law Of Tort

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## Abstract

In the process to make quick money, moneymakers often neglect the simple interest of the customers. In doing so the buyers get a defective product and this led to legal injury. In such case there is a violation of a right of the customer and he is entitled to file a suit to claim damages. But, this process came to be expensive, time consuming and not friendly for claims of small amounts. Furthermore, these suits were decided and based on maxim "ibi jus ubi remedia" which means where there is a right, there is a remedy. A Law of Tort principle. In these decisions the man got remedy but after a long battle in court. In this background the legislatures realized the need of a special law particularly for the consumers to gain remedy in speedy way and in more effective, efficient manner. This paper is one made during the course study of law which goes through the history of laws available to buyers to get remedy and how with change in time the consumer got the remedy of civil suit and how there were deficiency in such remedy, leading to development of Consumer Protection Act in India.

## Introduction

The 2019 Act has brought in some major changes and provides for more protection to the consumers in pari-materia to the earlier 1986 Act which can be seen from the comprehensive definition provided for the term 'Consumer' and 'Unfair Trade Practice'. The 2019 Act expands the scope of the definition of Consumer so as to include the consumers involved in online transactions and it now squarely covers the E-commerce businesses within its ambit. The 2019 Act has also widened the definition of Unfair Trade Practices as compared to the 1986 Act which now includes within its ambit online misleading advertisements; the practice of not issuing bill/memo for the goods and services; failing to take back defective goods or deactivate defective services and refund the amount within the stipulated time mentioned in the bill or memo or within 30 days in the absence of such stipulation; and disclosing personal information of a consumer unless such disclosure is in accordance with law.

The 2019 Act has also introduced the concept of 'unfair contract' which includes those contracts, which favour the manufacturers or service providers and are against the interest of the consumers such as contracts requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; imposing any penalty on the consumer for a breach of the contract, which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; refusing to accept early repayment of debts on payment of applicable penalty; entitlement of a party to the contract to terminate

such contract unilaterally, without reasonable cause; permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; and imposing on the consumer any unreasonable charge, obligation or condition which puts such a consumer to any disadvantage. Such unfair consumer contracts are now covered under the 2019 Act and a complaint in this regard can now be filed by a consumer. This would help to keep a check on businesses including banks and e-commerce sites that take advantage of their dominance in the market and mandatorily require the helpless consumers to sign such unfair contracts and accept their standard terms before selling them goods or providing services.

Consumer Protection Act, 2019 is an Act of the Parliament of India. It replaces the Consumer Protection Act, 1986. The Consumer Protection Bill, 2019 was introduced in the Lok Sabha on 8 July 2019 and passed by Lok Sabha on 30 July 2019 and later passed in Rajya Sabha on 6 August 2019. The Act came into force on 20 July 2020, while certain other provisions of the Act like establishing the Central Consumer Protection Authority came into effect from 24 July 2020. This act was introduced by the by the Minister of Consumer Affairs, Food and Public Distribution, Ram Vilas Paswan. This act explains the various measures to aware the consumers regarding consumer rights and policies. The Consumer Protection Act, 2019 is an important piece of legislation enacted to provide effective safeguards to consumers against various types of exploitations and unfair dealings. The consumer protection act has developed a well organizational setup at the central, state level and district level for the redressal of consumer grievances and promotion of standard of goods and services etc. and introduced ADR mechanism for settlement of consumer disputes. To spread consumer awareness the government has established consumer protection council. The paper analyses the changes introduced in the CPA 2019.

Another major introduction in the 2019 Act is the concept of Product Liability which covers within its ambit the product manufacturer, product service provider and product seller, for any claim for compensation. The term 'product liability' is defined by the 2019 Act as the responsibility of a product manufacturer or product seller, of any product or service, related to the product to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating to the product. Also, since the product seller has now been defined to include a person who is involved in placing the product for a commercial purpose and as such would include e-commerce platforms as well. Therefore, the ground commonly taken by E-commerce websites that they merely act as 'platforms' or 'aggregators' will now not be tenable before the court anymore. There are increased liability risks for manufacturers as compared to product service providers and product sellers, considering that under the 2019 Act, manufacturers will be liable in product liability action even where they successfully prove that they were not negligent or fraudulent in making the express warranty of a product. However, certain exceptions have been provided under the 2019 Act from liability claims, such as, that the product seller will not be liable where the product has been misused, altered or modified

Making money quickly is a very appealing proposal. Businesses, companies, shopkeepers, retailers, and sellers are all interested in maximizing their profits. In doing so fairly often they neglect the simplest interests of the customer. Many times a buyer gets a defective product or a product that fails to perform as promised. Besides losing money put in purchasing a product sometimes thanks to defects within the product the customer is injured also. Although such cases there's a violation of a right of the customer and he's entitled to sue the vendor. Before enactment of the Consumer Protection Act, 1986 filing a civil suit for damages was the only option available to an aggrieved buyer. However such a suit is very expensive and time consuming because of which buyers were not able to use this tool for relatively smaller amounts. This gave a field day to the traders because making substandard products or not delivering on promises was a cheap option to make quick money since very few buyers would go to court. A common man was completely helpless because of no control and penalty over unethical sellers.

### **Consumer Protection:**

As per Section 2(7) of the 2019 Act, a consumer denotes a person who buys goods or avails any service for a consideration and includes any user except for the person who has availed such services or goods for the purpose of resale or commercial use.

The Oxford Dictionary denotes a 'consumer' as a person who becomes the purchaser of goods or other services. In other words, a 'consumer' is a person who purchases some property, whether movable or immovable, or hires any service at his discretion.

But in the present socio economic scenario, we find that a consumer is a victim of many unfair and unethical tactics adopted in the marketplace. Therefore, a gullible consumer stands no chance against a businessman, who markets goods and services on an organized basis, and hence the consumer often ends up getting exploited.

The consumer who was once popularly known as the 'King of the market' has now become a victim of it. He is not supplied with adequate information so as to the characteristics and performance of many consumer goods and suffer due to unfairness of many one sided standard forms of contracts.

Modern times and advanced practices have changed the notion of 'freedom of contract' largely, and have made it a matter of fiction and concern for many consumers. The consumers need protection by law when goods fail to live up to their promises or indeed cause injury.

#### **Consumer Protection Act, 1986**

The Indian legal system underwent transformation with the enactment of the Consumer Protection Act of 1986 which was specifically formulated to protect the interests of the consumers. The Consumer Protection Act, 1986 was enacted with the objective to make justice less formal for the consumers which involves less paper work and gives justice with minimum delay.

It was enacted to provide simple yet quick redressal to consumer grievances. The Act encourages protecting the consumer interests against defects and deficiency in goods and services. It also seeks to secure the rights of a consumer against unfair trade practices, which may be practiced by manufacturers and traders. The Act applies to all goods and services unless specifically exempted by the Union Government and covers all sectors, whether private, public, or cooperative.<sup>1</sup>

The consumers, under this law, are now not required to pay high sums of legal fees as it earlier used to deter consumers from approaching the courts. Hence, the hardships of court procedures have been replaced with simple procedures which helps in quicker redressal of the grievances. The Consumer Protection Act thus provides redress to a consumer where the goods purchased are defective or the services provided are subject to some deficiency.

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<sup>1</sup> Consumer Protection, Rajasthan Registration Centre (last visited on October 31, 2021).

## Consumer Protection Act, 2019

The Consumer Protection Act, 1986 was revised and formulated after more than three decades and was replaced by the Consumer Protection Act, 2019. The Act came into force on 20<sup>th</sup> July 2020 and it aims at revamping the settlement and administration process by imposing stricter penalties on offenders. The Consumer Protection Act, 2019 has thus been enacted with an aim to widen the scope of consumer rights which would now also cover the field of e-commerce, direct selling, tele-shopping and other multi levels of marketing in this age of digitalization.

Basis	Consumer Protection Act, 1986	Consumer Protection Act, 2019
Jurisdiction	Complaints could be filed in a consumer court nearby the seller's office.	Complaints can now be filed in a consumer court nearby the complainant's residence or workplace.
Admissibility of Complaint	Complaints were earlier to be decided within twenty-one days. But, its enforceability remained under question.	Complaints are still decided within twenty-one days. But, if the issue is not resolved within the stipulated time, then the complaint shall be deemed to have been admitted.
Ambit of the definition	All goods and services excluding free and personal services.	Includes all goods and services, including telecom and all modes of transactions.
Product liability	No Provision was included. Only the cost of the product was awarded. To seek compensation a separate suit in a civil court.	Claims for product liability can now be made against the manufacturer, service provider or the seller. Compensation can be asked by proving any one of the several specified conditions in the Act.
Unfair contracts	No Provision was included	Defined as contracts that cause significant change in consumer rights.
Regulator	No Provision was included	This Act establishes the Central Consumer Protection Authority (CCPA) to safeguard the rights of consumers.
Pecuniary jurisdiction of Commissions	District: Up to Rs 20 lakh State: Between Rs 20 lakh and up to Rs 1 crore National: Above Rs 1 crore.	District: Up to Rs 1 crore State: Between Rs 1 crore and up to Rs 10 crores. National: Above Rs 10 crores.
Composition of Commissions	District: Was previously headed by any current or former District Judge and two members. State: Was previously headed by any current or former High Court Judge and two members. National: Was previously headed by any current or former Supreme Court Judge and by four members back then.	District: It is now headed by a president and at least 2 members. State: Is now headed by a president and four members. National: Headed by a president and at least four members

Appointment	The Selection Committee recommended members for all the Commissions.	The Central Government now appoints members through notification.
Alternate dispute redressal mechanism	No Provision was included.	Mediation cells are now attached to the District, State, and National Commissions
Penalties	If a person didn't comply with orders of the Commissions, he was subjected to imprisonment between one month and three years or fine between Rs 2,000 to Rs 10,000, or both.	If a person doesn't comply with the orders of the Commission, the person may end up facing imprisonment up to three years, or a fine not less than Rs 25,000 which could extend up to Rs 1lakh, or even both in some cases.

## Law of Tort and Consumer Protection

Under the ambit of common law, tortious remedies are made available to consumers additionally to the numerous laws protecting consumers.

Contractual remedies are not provided under the ambit of torts because no privity of contract exists between the parties, namely the consumer and seller. Nevertheless, remedies are available to the consumers specifically against offenders who committed the wrong.

The roots of tortious remedy dates back as early as the *Donoghue Vs Stevenson*<sup>2</sup> Consumer Protection, Rajasthan Registration Centre (last visited on October 31, 2021).case, which struck the principle that a producer owes a reasonable duty of care to the consumer of his product and allowed the consumer to bring an action against the manufacturer. It further ensured that the consumer was entitled to damages for any loss that may arise from the following circumstances-

- On grounds of negligence on the part of the defendant.
- Where the defendant has defrauded the plaintiff; or where he has committed a wilful act.
- An aggrieved can recover damages for the fraud that the defendant commits.

## Landmark Judgements

- *Manjeet Singh Vs National Insurance Company Ltd. & Others*<sup>3</sup>. The insurance company was asked to pay.

In this case the consumer had purchased a vehicle under a Hire Purchase agreement and got it insured by the National Insurance Company. An issue arose when the driver of the truck gave a passenger a lift as the passenger brutally assaulted the driver and fled away with the truck. However, the company citing the grounds of breach of terms of the insurance policy rejected the claim of compensation

<sup>2</sup> *Donoghue Vs Stevenson* [1932] AC 562.

<sup>3</sup> *Manjeet Singh Vs National Insurance Company Ltd. & Others* AIR 2017 SC 5795.

## Judgment

The Supreme Court ruled that the driver was not at fault. It considered it as a breach of the policy, but not as a fundamental breach which could terminate the insurance policy. The insurance company was asked to pay 75% of the insured amount along with 9% interest p.a. along with Rs. 1,00,000 as compensation to the victim.

- National Insurance Company Ltd. Vs Hindustan Safety Glass Works Ltd. & Others<sup>4</sup>. The Court ordered the company to compensate.

In this case the insurance company refused to make good to the respondent of a damage caused to victim. It was pleaded on the basis of one of the conditions of the policy which stated that the National Insurance could not be held liable for the loss especially after 12 months of the event and hence could not be asked to make good for the loss or damage to the insured.

## Judgment

The National Commission held the injured person's claim as actionable under law. It also added that the goods were insured at the time of event and the claim for the same was made the very next day. The Court ordered the company to compensate for an amount of Rs. 21,00,100 on an interest rate of 9% per annum.

- Karnataka Power Transmission Corporation (KPTC) Vs Ashok Iron Works Private Limited<sup>5</sup> A private company came well within the definition of a 'Person.'

The respondents, a private company which manufactured iron, had applied for seeking electricity from the Karnataka Power Transmission Corporation (hereinafter KPTC) for efficiently increasing its iron production. However, the supply didn't begin until ten months later, as agreed upon earlier, despite of paying charges and obtaining confirmation for the supply of the energy as demanded. This delay resulted in a huge loss for the iron company. Legal argument by KPTC was that. They argued that the company was engaged in procuring iron and used it for commercial consumption which is excluded under the Act. It was also argued that the complainant was not a 'person' as specified under Section 2(1)(m) of the Act, 1986.

## Judgment

The Supreme Court rejected the plea which sought the complaint as unmaintainable as per the Consumer Protection Act, 1986. It held that a private company came well within the definition of a 'Person.' It was also held that the supply of electricity was covered under the purview of 'service.' And in this case, there was a deficiency in services provided.

## Judicial Approach:

Often the deficiency in service or defect in goods is the outcome of negligence of the service providers or the manufacturers, suppliers, producers of the goods. A few important sectors wherein consumers face problems have been discussed in the following case laws.

In Mahanagar Telephone Nigam vs. Vinod Karkare,<sup>6</sup> it was held that if a telephone complaint remains unattended for over 6 months that amounts to deficiency in service. In such a situation, the telephone department has been held liable to pay compensation and also give refund in the telephone charges. In this

<sup>4</sup> National Insurance Company Ltd. Vs Hindustan Safety Glass Works Ltd. & Others AIR 2017 SC 1900.

<sup>5</sup> National Insurance Company Ltd. Vs Hindustan Safety Glass Works Ltd. & Others AIR 2017 SC 1900.

<sup>6</sup> Mahanagar Telephone Nigam vs. Vinod Karkare, II (1991) CPJ 655 (India).

case the claim was allowed in favor of user of the telephone although he was not the subscriber of the telephone. It was further held that the remedy under the CPA for negligence of the telephone authorities was not under section 9 of the Indian telegraph act. Billing of telephone for a period when the phone was not in use as it was in the shifting process due to delay in disconnecting the phone is deficiency in service. Also giving average bill due to negligence would attract the provisions of the Consumer Protection Act, 1986. It is therefore noticed that complaint of any nature relating to telecommunication due to negligence of the telecommunication department is redressible under the Consumer Protection Act, 1982<sup>7</sup>

In *Sankar vs. Branch Manager, Vijaya Bank*<sup>8</sup>, the negligent dishonor of a cheque issued by the complainant was held to be deficiency in service and the compensation was awarded to the complainant. A complainant alleged that he had issued stop payment orders to the bank with respect to a cheque issued by him for a sum of Rs.1,00,000/- in favor of a CoOperative Society but the bank cleared the same. This was considered to be a deficiency in service and the complainant was held entitled to compensation of Rs.1,00,000/- with interest @ 18% per annum from the bank.

In *Union of India vs. Ashok Kumar Singh*<sup>9</sup> the train timing was changed according to the established railway practice. The complainant an advocate who had purchased 1st class tickets from Saharsa to Hazipur missed the train. The National commission held that the complainant being an educated person was negligent in watching his interest and enquiring from the enquiry as new timings was to come into force with effect from 1/5/90. Thus, the railways were not held liable.

In *Express Travels vs. M.R. Shah*<sup>10</sup>, cancellation of flight without notice and refusal to refund the amount was considered to be the deficiency in service. In *Indian Airlines vs. S.N. Sinha*, a metallic wire was found in the food served by the Airlines. In the process of chewing the food the passenger's gum was injured. He was held entitled to a compensation of Rs.2000/- for the negligence on part of the opposite parties.

In *Harjot Ahluwalia vs. Spring Meadow Hospital*<sup>11</sup>, Harjot the complainant, a minor only child of the parents had high fever and was brought to the hospital. There he was given certain medicines and intravenous chloroquine injected by an unqualified nurse without prior test. Immediately thereafter the child collapsed and suffered cardiac arrest. No oxygen was given, as gas cylinder was not available. The child suffered irreparable brain damage, making the child into a vegetable state for the rest of his life. The national commission held that there was deficiency in service on the part of the O.P. It awarded compensation of Rs.12.5 lac to minor, Harjot Ahluwalia and Rs5 lac to his parents.

## Conclusion

The courts in India are ready to amend laws in order to provide any injured person with a remedy, especially where there are no statutory coverages. It is a subject which is approximating law to the legal ideal that 'wherever there is a wrong there must be a remedy.' To an injured person, the whole colossal legal system is a failure if his issues remain unredressed. Therefore, it is important to instil a sense of trust among the public

<sup>7</sup> Dr. R.K Bangia, Law of Torts (Allahabad Law Agency, 23rd edn. 2013).

<sup>8</sup> *Sankar vs. Branch Manager, Vijaya Bank*, I (1996) CPJ 137 (Karnataka, SCDRC) (India).

<sup>9</sup> *Union of India vs. Ashok Kumar Singh, III* (1995) CPJ 13 (N.C) (India).

<sup>10</sup> *Express Travels vs. M.R. Shah*, (1992) CPJ 62 (N.C) (India).

<sup>11</sup> *Harjot Ahluwalia vs. Spring Meadow Hospital, II* (1997) CPJ 98 (N.C) (India).

about the justice system as nothing is capable of bringing about more social satisfaction in the society than the care shown to an aggrieved person, particularly when he needs it the most.

While, the Law of torts, in-general, acts as a caretaker of private and social wrongs, its knowledge therefore becomes important not only to the educated, but also to the general public. To widen the field of consumer protection law, another important piece of social legislation has been added to it, which is known as the Consumer Protection Act.

When it comes to the relation between Law of Torts and consumer protection, it may be pointed out that law of torts has always been reactive to the legal injury and moved on the principles of “ibi jus ubi remedia” which means where there is a right, there is a remedy. This maxim used in the situations of consumer protection is self-explanatory, i.e. when there was no Consumer Protection Act, 1986 the tortious remedies were available to the consumers. Even though there were some difficulties in finding remedy from the regular civil courts. But ever since the implementation of the Consumer Protection Act, a most forceful, growing and welfare oriented law has brought a noticeable transformation in protecting consumers against deficiency in service and defect in goods helping them claim in quicker and easier and cheaper way some remedy. The provisions of this Act are in addition to and not in abrogation of any other law being in force which means that alternate remedy if available may also be claimed by the consumers under other law other than the Consumer Protection Act. This paper has examined some cases in specific sectors for explanation of the enforcement of the Consumer Protection Act in relation to the tort of negligence. It has been found that most of the cases have resulted due to negligence be it deficiency in service or defect in goods. In deciding such cases the essentials of the tort of negligence have mainly occupied the minds of the courts.

