

A Critical Analysis of Deficiency in Services under Consumer Protection Act, 1986

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GENERAL

A complaint can be filed under consumer protection act in respect of unsatisfactory services. If the forum is convinced that any of the allegations contained in the complaint about the services are proved, it can provide any of the applicable types of remedy specified in the Act. The consumer has to prove that the services suffered from a deficiency. The term “service” is defined in S.2 (1) (o)¹ as follows:

“**Service**” means service of any description which is made available to potential users and includes the provision of facilities 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 a news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

The term “deficiency” is defined in S. 2 (1) (g)² as follows:

“**Deficiency**” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

The consumer protection act applies to all goods and services save as expressly provided. When mention is made of ‘consumerism’ the common man would limit his thinking to the demand for supply of goods and the defects in the goods supplied to the consumers. However, in modern times, ‘services’ hired or availed of by the consumers have assumed most important place for the people in the world and India is not an exception. For example, the maintenance and supply of electricity, banking, insurance,

¹ The Consumer Protection (Amendment) Act, 2002

² *ibid*

transport, telephone, telex, courier etc. is a 'service' rendered by concerned authorities for a price.

If telephones, telex, teleprinter services stop functioning for a day, not only the trade and industry comes to a virtual halt but the ordinary citizen is also affected. Thus the 'services' for consideration offered whether by a private person(s), firms or companies or by the government or corporate bodies act as blood for the proper growth and development of the country and any deficiency in these services would attract an action under Consumer Protection Act. (The provisions of this Act cover 'Products' as well as 'Services'.)

There is cut throat competition in the market and in order to survive the traders indulge in various kinds of malpractices like:

1. Overcharging
2. Deficient supply of goods and services
3. Unfair trade practices
4. Defective goods
5. Passing off

The consumer exploitation has now become a universal phenomenon; several factors have contributed toward s this in India some of which are:

1. Scattered consumer

2. Lack of consumer organizations
3. Ignorance of law
4. Tolerant attitude - Indian public opinion is tolerant and usually people ignore things. Spirit of forget and forgiveness still dominates our lives.
5. High cost of litigation
6. Delay in disposal of cases

These factors have put the consumer protection under the active consideration of the government and it has to step in now to ensure the protection and welfare of people.

Consumer consciousness has begun to grow. Law must keep pace with needs and demands of society. While codifying the branch of law of tort, the consumer protection act provides relief to those who have suffered loss either for the defects in the goods purchased or hired for consideration or for deficiency in service which is made available to potential users for consideration. This is the most important piece of legislation in the field of consumer protection.

Another aspect of consumer protection is the problem of claiming compensation against large producers where the goods or services are defective. Adjudication of complainants by consumer forums expeditiously, cheaply and

relatively, informally would surely encourage the small claims. At the same time adequate care should be taken so that the consumer protection act may not open a floodgate of litigation.

RIGHTS TO A CONSUMER UNDER CONSUMER PROTECTION ACT

1. Right to Safety

Means right to be protected against the marketing of goods and services, which are hazardous to life and property. The purchased goods and services availed of should not only meet their immediate needs, but also fulfill long term interests.

Before purchasing, consumers should insist on the quality of the products as well as on the guarantee of the products and services. They should preferably purchase quality marked products such as ISI, AGMARK, etc.

2. Right to be informed

Means right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices.

Consumer should insist on getting all the information about the product or service before making a choice or a decision. This will enable

him to act wisely and responsibly and also enable him to desist from falling prey to high pressure selling techniques.

3. Right to Choose

Means right to be assured, wherever possible of access to variety of goods and services at competitive price. In case of monopolies, it means right to be assured of satisfactory quality and service at a fair price. It also includes right to basic goods and services. This is because unrestricted right of the minority to choose can mean a denial for the majority of its fair share. This right can be better exercised in a competitive market where a variety of goods are available at competitive prices.

4. Right to be heard

Means that consumer's interests will receive due consideration at appropriate forums. It also includes right to be represented in various forums formed to consider the consumer's welfare.

The Consumers should form non-political and non-commercial consumer organizations which can be given representation in various committees formed by the Government and other bodies in matters relating to consumers.

5. Right to Seek Redressal

Means right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers. It also includes right to fair settlement of the genuine grievances of the consumer.

Consumers must make complaint for their genuine grievances. Many times their complaint may be of small value but its impact on the society as a whole may be very large. They can also take the help of consumer organizations in seeking redressal of their grievances.

6. Right to Consumer Education

Means the right to acquire the knowledge and skill to be an informed consumer throughout life. Ignorance of consumers, particularly of rural consumers, is mainly responsible for their exploitation. They should know their rights and must exercise them. Only then real consumer protection can be achieved with success.

CONCEPT OF DEFICIENCY IN SERVICE

A complaint can be filed under Consumer protection act in respect of unsatisfactory services. If the forum is convinced that any of the allegations contained in the complaint about the services are proved, it can provide any of the applicable types of remedy specified in the act. The consumer has to prove that the services suffered from a deficiency. The term ‘Service’

is defined in S. 2 (1) (o) and term “Deficiency” is defined in S. 2 (1) (g) of *The Consumer Protection (Amendment) Act, 2002*.

The Act applies to all goods and services save as expressly provided. When mention is made of consumerism; the common man would limit his thinking to the demand for supply of goods and the defects in the goods supplied to the consumers. However, in modern times, services hired or availed of by the consumers have assumed most important place for the people in the world and India is not an exception. For example, the maintenance and supply of electricity, banking, insurance, transport, telex, courier etc. is a service rendered by the concerned authority for a price. The services for consideration offered whether by a private person, firms, companies or by the Government or the corporate bodies, they act as blood for the proper growth and development of the country and any deficiency in these services would attract an action under the Act.

Service as defined by Section 2(1) (o) of the act of 1986 means service of any description made available to potential users and includes;

1. Banking,
2. Financing insurance,
3. Transport,
4. Processing,
5. Supply of electrical,

6. Board or lodging,
7. Entertainment..

Under the present definition of the term 'service' a wide area is covered but two categories have been kept out specifically:

1. Any service rendered free of charge
2. Service under contract of personal service.

Deficiency in Services as a whole has not been defined in the Act of 1986 but a "consumer" with respect to services has been defined in Section 2 (1) (d) (ii). As a layman it means that there is a shortcoming in services promised by any person, manufacturer, insurance company, transport company etc. to a consumer for consideration. If there is any shortcoming, which in normal course of that service being offered is promised/agreed then it is termed as deficiency in services. When certain types of services are promised to be rendered to a customer and when such services are not given to that consumer, this leads to deficiency of services. Deficiency in literal termlogy means something short of the exact thing. As a part of increasing consumerism worldwide this subject has received its due share under Indian context and adequate legislation have been enacted to protect the rights and interest of the consumer.

In *HUDA v. Sunita*³, the Supreme Court detailed what is not deficiency in services. Court said' statutory obligation of development authority under relevant acts and the regulations are not acts and omissions constituting "Deficiency in Service" within the meaning of consumer act.

Supreme Court In *Indian Oil Corporation v. Consumer Protection Council, Kerala*⁴ held that any complaint about deficiency in services would require some privity of contract between the person rendering the services and the consumer, although the words used in the definition are whether the services are performed 'in pursuance of a contract or otherwise'. The complaint was by a consumer of liquefied Petroleum Gas (LPG) cylinders and regulator who happened to be a member – secretary of a voluntary consumer organization. The complaint was about the failure of the distributor of the Indian Oil Corporation (IOC) to regularize the irregularity in supplies of Cylinders.

Supreme Court reversed the matter as observed by National Commission. Mohan, J. accepted the contentions of the oil corporation that their distributors are independent principal agencies and not the working agents of the corporation

³ 2005(2) SCC 479

⁴ (1994) 1 SCC 397

and, therefore, the corporation is not liable for their misdeeds and that the consumer in this case had bought not through regular channels but through other methods. For these two reasons, there was no privity of contract between the corporation and the consumer. In reference to the contention that the consumers have been receiving replacement cylinders from the dealers, the learned judge noticed that the name of the corporation's authorized dealer was "K Gas Agencies" and that the consumer had been receiving his replacement cylinders from "K Gas Agencies". The court was not provided with a valid document such as receipt of subscription voucher issued by "K Gas Agencies". Thus it was an unauthorized connection and violation of the control order by both parties. The corporation as a mark of punishment for unauthorized dealings temporarily suspended the supplier's license and the consumer must suffer for his illegality without any relief.

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