
GUARDIANS OF JUSTICE: SCANNING THE SYMBIOSIS BETWEEN CONSUMER PROTECTION ODYSSEY WITH THE LAW OF TORTS

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ABSTRACT

The law of torts has been developed through various case laws. It is largely concerned with compensating victims of unjust civil actions. Conflicts of interest are certain to arise in a society where humans coexist, and they may occasionally inflict harm to each other. Eventually, it has developed through the decisions of the court. Other than fulfilling the basic necessities of human life, an individual buys various things in order to live in a society and to maintain standards, such as mobile phones, cosmetics, furniture, groceries, perfumes, among other things. Thus, in a society, every human being is a consumer today and there are might be some instances where us, the consumers can be cheated. Our government, in order to provide aid for the same has established various consumer redressal forums and the present research examines various laws and remedies provided to a consumer by the government of India. The Consumer Protection Act of 1986 was previously approved. The Consumer Protection Act of 2019 came into operation after being amended. The legislation was passed in order to provide consumers with a simpler and faster means of resolving their complaints and grievances. The legislation aims to promote and safeguard consumers' interests in the face of flaws and faults in goods and services.

INTRODUCTION

The concern for safeguarding customers' legitimate interests may be found in Tort Law, which itself is equally efficient and enforceable. The fundamental goal of the consumer protection legislation is to safeguard consumers against service and quality problems of the goods or service produced.. The producer, manufacturer or the seller owes his consumers a duty of care at all times, and if he fails to do so, he is held liable. In 1982, the first Consumer Protection legislation came into force in order to safeguard and promote consumer rights. After several amendments, the Consumer Protection legislation of 1986 took effect, recognizing changes in consumer behaviour. Due to a surge in instances involving online transactions and consumer wrongdoings, the new Consumer Protection Act of 2019 has entered into force. The majority of consumer protection issues that are settled through tort law arise due to defendant's negligence. Negligence, a civil tort, occurs when an individual fails in providing his duty of care to another, causing that the other person to suffer harm or face legal consequences. Negligence is defined as the failure to perform or the neglect to perform anything as a result of carelessness. Even when consumer protection laws were not in effect, tort law aided in the resolution of disputes. The present study, therefore aims to scan the consumer protection act in accordance with law of torts.

OBJECTIVES

The research paper aims -

- ☐ To understand the Consumer Protection Act in accordance with Tort Law.
- ☐ To know the basic rights of consumers in India.
- ☐ To study certain case laws where law of torts have helped in providing remedy for consumer protection.

HYPOTHESIS

With increase in demand of goods and services in the present era, the deficiencies, defects and unfair trade practices are growing in India and the country has certain laws and remedies to address

consumer grievances.

RESEARCH METHODOLOGY

The research is based on critical analysis and done with the available secondary sources. Various books, journal articles, newsletters, Case laws and journals have been referred for the study.

LITERATURE REVIEW:-

The researcher refers to the book written by Dr. R.K Bangia¹ whose information was the base of research paper.

The researcher also refers to certain research papers such as “Development of consumer protection laws through law of torts” written by Mehma Kaur to understand the consumer protection laws better.

The researcher also refers to various case laws of India along with significant journal articles related to consumer protection act in accordance with law of torts.

LAW OF TORTS AND CONSUMER PROTECTION.

It is mentioned that, in addition to the many consumer protection provisions in India, customers have access to common law tortious remedies. This is especially essential in situations where an aggrieved consumer of products cannot claim damages within contract act even if the items affect him despite of not being the original purchaser but a subsequent consumer. Since, there is absence of actual contract between the seller and the consumer, no contractual remedies are available for claim. Nonetheless, remedies of tort law are possible to claim against those who bear the tortuous obligations to the final users or consumers. The parties involved may be more than two of the distributor, retailer, supplier, importer or manufacturer. The case of *Donoghue VS Stevenson*² was the base of the theory that a producer owes some duty of reasonable care to each of his consumers

¹ Dr. R.K Bangia, (pg no.. 521-526) Law of Torts 26th edition,2021.

² Donoghue v Stevenson [1932] AC 562

and the final consumer himself can claim for the wrong against the producer or the manufacturer. The tort law, here protects the consumer and provides the remedy to the plaintiff.

The consumer (plaintiff) is allowed to claim for any loss done by any harmful, inappropriate or defective product. The responsibility or the liability can emerge in the following cases –

- ☐ The manufacturer , the producer (defendant) was negligent in his part.
- ☐ The seller or the manufacturer (defendant) has performed an intentional conduct.
- ☐ The plaintiff was deceived, mislead or defrauded by the defendant.

In case where the defendant has practiced fraud with the plaintiff, the tort of deceit permits the plaintiff to be compensated for the act or fraud perpetrated against him.

In case where the defendant is negligent, the tort of negligence gives the consumer the right to demand redressal for the losses he or she has experienced because of the dangerous, unsafe , faulty or defective goods.

Also, in case where the defendant failed to provide appropriate services, in case of service failure, the tort of negligence is available.

CONSUMER PROTECTION ACT, 2019.

According to Consumer protection act, 2019, both offline and online consumers are to be included while defining the term 'Consumer'. The terms "buys any goods" and "hires or avails any services" would cover both the modes of transaction (online and offline). (Kapoor, 2020)

I. Rights of a consumer –

The consumers of the country have various rights and they are mentioned below-

- ☐ Right to be assured, whenever feasible, of a diverse range of commodities, products or services at reasonable and competitive process.

- ☐ Right to be informed about everything related to the product purchased or the service acquired. The quality, quantity, purity, standards, among others to be mentioned by the manufacturer in order to protect consumers from unfair trade practices.
- ☐ Right to be assured that there problems and concerns will be taken into account in a suitable fora and the Right to be heard.
- ☐ Right to consumer awareness.
- ☐ Right to recourse for unfair business practices and Right to seek redressal against exploitation of various consumers.
- ☐ Consumers of the country have the right to be protected against promoting, marketing, advertising or selling of goods or services that endanger property or life of an individual.

II. Consumer Redressal Forums

In case of breach of right of any consumer and in order to protect consumers or customers and to provide redressal for their grievances , consumer redressal forums have been established in the act of 1986 at various levels for speedier recovery. After the amendment, the chapter IV section 42 of Consumer Protection act, 2019, various dispute redressal commissions are to be established at various levels.

1. District Consumer Dispute Redressal forum in every district of the country with jurisdiction of upto one crore.
2. State Consumer Dispute Redressal Commission in every state of the country except the state of Jammu and Kashmir, with jurisdiction between one crore and ten crores.
3. National Consumer Redressal Commission as the top tier body with jurisdiction above ten crores.

The commissions have the authority to declare the unfair terms and policies of the contract null and void.

III. Central Consumer Protection Authority-

Section 10 of the Consumer Protection Act mentions that the Central Consumer Protection Authority (CCPA) is to be established to encourage, safeguard and to start enforcing consumer rights. It will also probe, investigate and act immediately where there is need or requirement to protect and prevent harms caused to a consumer by unfair business practices and also to bring law suits, including attempts to enforce product returns, recalls or refund.

Assistance provided by CCPA -

1. (a) Under this Act, consumers' rights are protected, promoted, and enforced as a group, and violations of consumers' rights are prevented.
2. (b) CCPA will prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;
3. (c) CCPA will ensure that no false or misleading advertisement is made of any goods or services which contravenes the provisions of this Act or the rules or regulations made thereunder
4. (d) CCPA will ensure that no one participates in the publication of any incorrect or deceptive advertisement. (ministry, 2019).

IV. Mediation

The act of 2019 establishes a median option for the parties which is voluntary and non-binding in nature. The median will speed up the process by making it simpler and quicker to resolve conflicts. The Consumer Mediation Cell (CMC) will be connected to each district, state, and national level, which will be a difficult and time-consuming process due to the limited budget available to courts and the absence of infrastructure, particularly at the district level. (Nedumaran, Dr. G; Mehala, D; Baladevi, M;, 2020)

CASE LAWS: The judicial approach.

- ***Union of India vs Ashok kumar Singh***³ - In this case, the train's schedule was adjusted in accordance with standard railway procedure. The plaintiff, a lawyer, booked the train from Saharsa to Hazipur after buying first-class tickets and unfortunately missed it. The National Commission found that the complainant, as an educated individual, was negligent in monitoring his interests and inquiring from the investigation since new timings were set to take effect from May 1, 1990. As a result, the railways were not held responsible.
- ***Express Travels vs M.R Shah***⁴ - In this case, the termination of a flight without prior notification and the unwillingness to refund the money was considered to be deficiency in providing appropriate service from the defendant's part. Similarly, in the instance of ***Indian Airlines vs. S.N. Sinha***, a metal wire was discovered in the airline's meals. The passenger's gum was harmed throughout the chewing procedure. For the defendant's carelessness, he was awarded Rs.2000/- in compensation for the negligence.
- ***Harjot Ahluwalia vs. Spring Meadow Hospital***⁵ - In this case, the plaintiff, Harjot, minor and only child of his parents had high temperature and went to hospital with his parents. There, he was administered with some medications as well as intravenous chloroquine by an untrained and unqualified nurse without any previous testing. Following that, the youngster fell and suffered a heart attack. Because there was no gas cylinder accessible, no oxygen cylinder was delivered. The child's brain injury was irreversible. The national panel found that the hospital had failed to provide adequate service. Harjot Ahluwalia, the minor, received Rs.12.5 lakh in compensation, while his parents received Rs.5 lakh.
- ***Mahanagar Telephone Nigam vs. Vinod Karkare***⁶ – Any telephonic complaint that

³ Union of India vs. Ashok Kumar Singh, III (1995) CPJ 13 (N.C) (India).

⁴ Express Travels vs. M.R. Shah, (1992) CPJ 62 (N.C) (India).

⁵ Harjot Ahluwalia vs. Spring Meadow Hospital, II (1997) CPJ 98 (N.C) (India)

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

goes unanswered for more than six months is considered a failure in service, according to the ruling. In this case, the defendant (telephone department) was ordered to provide compensation as well as a refund of the phone charges. The claim was granted in this case in favour of the telephone user, notwithstanding the fact that he was not the direct customer (he was not the subscriber of the telephone service). 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. The telephone service provider was charging money for the period even when phone was not being used since it was in the process of relocation owing to the delay cutting the phone call is the main defect of the telephone service provider. Along with that, they gave an average bill for the whole period because of the carelessness of their employees which was against the Consumer Protection Act, 1982. As a result, any complaint connected to telecommunications that is caused by the telecommunication department's carelessness is redressable underneath the protection of Consumer Protection Act of 1986⁷.

CONCLUSION

Whenever it comes to the relationship between law of Torts and protecting the consumer rights, it's worth noting that torts was and still is responsive to legal damage, operating under the principles of "*ibi jus ubi remedia*," which implies "where there's a right, there's a remedy." This maxim is self-explanatory in consumer protection scenarios, i.e., tortious remedies were accessible to consumers prior to the Consumer Protection Act of 1986, despite certain challenges in obtaining relief from the normal civil courts. Nevertheless, since the enactment of the Consumer Protection Act, a powerful, expanding, and welfare-oriented law, there has been a noteworthy shift in safeguarding customers against service and product defects, allowing them to seek redress in a faster, easier, and less expensive manner. The provisions of this Act are in addition to, not in place of, any other legislation in effect, which means that consumers may seek an alternative remedy under a law other than the Consumer Protection Act if one is available. This research paper has reviewed a few examples in certain industries to see how the Consumer Protection Act is enforced. In connection to the tort of negligence, there is a Protection Act. The majority of the

⁷ Dr. R.K Bangia, (pg no.. 521-526) Law of Torts 26th edition, 2021

instances have been discovered to be have occurred as a result of carelessness, whether owing to a lack of service or a flaw in products. When making such a decision, the basics of the tort of negligence have occupied the thoughts of the judges in the majority of instances.

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