

CONSUMER EXPLOITATION: CHANGING PARADIGMS OF CONSUMER JURISPRUDENCE

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Abstract

In this paper an attempt is made to find the different nature of consumer's exploitation in various areas. Consumers are cheated everywhere in the name of services. Study also revealed that criminal natures of business in the name of services (bad services) are committed by dealers and shopkeepers and thus company's images are spoiled. Under *Rylands Vs. Fletcher* (1866), *Priest Vs. Last* (1903), *Moody Vs. Cox* (1917) *Donoghue Vs. Stevenson* (1932) and *Anus Vs. Metron London Borough Council* (1978) were some guiding judicial decisions from England whose seldom enforced the claims of the consumers. Even The Constitution of India includes consumer justice in its Preamble and the Directive Principles of State Policy. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher degree. To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. In *Jacob Mathew Vs. State of Punjab* (2005) 6 SCC 1 Supreme Court did not deny prosecution for medical professionals which is itself evident that consumer matters are not purely civil. Even the judiciary has also pronounced in many of its decisions that consumer matters are not purely of civil nature and in many cases it has punished the guilty of consumer exploitation specially in the case of medical service provider. Thus, in several cases judgements are not always clearly treating its civil format in nature and interest of consumer matters which leads some kind of confusion. It may be seen that consumer cases are moving from its traditional civil nature to a different nature and the extracts reflect that it is shifting towards criminal nature. Study suggested that consumer exploitation must be treated as an offence.

Introduction

From the very moment when a person comes into this world, he starts consuming. He needs bread, clothes, house, milk, oil, soap, water, and many more things and these need keep taking one form or the other throughout life. Thus we all are consumers in the literal sense. At the same moment it also becomes important how to protect

consumers from their exploitation as there are many instances where a consumer is harassed or cheated in one way or another which caused the birth of "Consumer Jurisprudence". Therefore, consumer jurisprudence is that body of law which is concerned with market-place whereby varying interests of the predominant groups of sellers and consumers are reconciled, adjusted and balanced on the matrix of

business morality and well-being of the consumers by protecting them against abuses, impurities and misrepresentation of consumer goods. Here in this paper a study of such legal principles, precepts and judicial decisions which regulate, control and protect the interests of the consumers in the effective realization and administration of consumer justice is discussed.

Consumer jurisprudence is not merely a modern development as its traces can be found in ancient India, China, Rome, Greece, Egypt etc. In India during Harappan civilization, it seems that there existed a strong authoritarian Central Government, which regulated the economic life of the people. The graduated system of weights and measures, the granary at Harappa and Mohenjo-Daro and even the uniform size of bricks through all the phases of this culture scattered over hundreds of kilometers, corroborate this. But it is difficult to say what policies were taken by the Government in favour of consumers.

Vedic economy was completely rural economy. The ordinary transactions were carried on by means of barter. But people had a strong sense of duty and morality. Consumers were safe in the sense that they had no fear of being cheated. Prayers are offered to the Gods to hurl destructions upon thieves, robbers and those guilty of telling lies; sorcery, witchcraft etc. are denounced as criminals. The Ayurveda and its texts like Charka Samhita contain manifold references, evidences and documentation of unfair and unjust trade practices, abuse of health and purity related rules etc. It was during the Mauryans rule the first definite step in favour of consumers was taken by the Government. That the Mauryans had a strong grip over the economic life of the times is evident from Arthashastra as well as from accounts of classical authors. Kautilya's Arthashastra contain manifold

references, evidences and documentation of the entire gamut of unfair and unjust trade practices, provisions regarding abuse of health and purity, control and prevention of injurious drugs and alcoholic beverages etc. which can be said to be the consumer code of the ancient Indians.

During Medieval time, the first positive evidence of the cheapness of the commodities of the daily consumption comes from Alauddin Khilji's time. Merchants were heavily punished if even the slightest irregularity was detected. Public whipping, kicking them out of the markets, making up deficiency in weight by cutting an equal quantity of flesh, were some of usual punishments which is evident itself that consumer exploitation was strictly prohibited. These all prove that consumer jurisprudence was already present in India since long.

In the colonial rule the Indian Penal Code 1860 did enact a handful measures on consumer protection but Indian tolerance quality of its mass kept it dormant at all. Even after independence till 1986 the consumerism remained somehow sleeping due to lack of consumer awareness, absence of legislative and administrative will, a weak consumer movement, lengthy, expensive and time consuming legal process and above all a typical thinking that God will send the guilty in Hell.

Rylands Vs. Fletcher (1866), Priest Vs. Last (1903), Moody Vs. Cox (1917) Donoghue Vs. Stevenson (1932) and Anus Vs. Metron London Borough Council (1978) were some guiding judicial decisions from England whose seldom enforced the claims of the consumers. The Constitution of India too indirectly and in remote fashion appears to include consumer justice in its Preamble and the Directive Principles of State Policy. Government understood the needs to protect consumers from unscrupulous suppliers, and

several laws have been made for this purpose. Till date apart from the Indian Penal Code 1860 we have the following existing laws which are as follows - Indian Contract Act, 1872 ; Sale of Goods Act, 1930; Dangerous Drugs Act, 1930; Agricultural Produce (Grading and Marketing) Act, 1837; Drugs and Cosmetics Act, 1940; Drugs Control Act, 1950; Industries (Development and Regulation) Act, 1951; Indian Standards Institution (certification marks) Act, 1952; Drug and Magic Remedies (Objectionable Advertisement) Acts, 1954; Prevention of Food Adulteration Act, 1954; Essential commodities Act, 1955; Trade and Merchandise Marks Act, 1958; Hire and Purchase Act, 1972; Criminal Procedure Code, 1973; Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975; Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1980; Essential commodities (Special Provisions) Act, 1981; Multi-State Cooperative Societies Act, 1984; Standard of Weights and Measures (Enforcement) Act, 1985; Narcotic Drugs and Psychotropic Substances Act, 1985, and The Consumer Protection Act 1986. These all to some extent protect consumer interests. However, most of these laws require consumer to initiate action by way of a civil suit involving lengthy legal process which is very expensive and time consuming.

Discussion

The objective of the present research is to judge the nature of changing nature of jurisprudence regarding consumer's problem in India. When we talk about consumer laws, the above all mentioned laws blink in our mind and at the same time a picture of civil court comes in our mind with the words

“tarikh pe tarikh”. Now the question is whether these laws are having of civil nature under the section 9 of the CPC or not. The following cases are notable. Mr. Y. Kumar purchased an electric kettle having one year warranty but within a week it stopped working. Mr. Kumar went to the shopkeeper to complain about this but he refused its repairing. Further Mr. Kumar asked shopkeeper to give phone number of company with email to lodge complaints about the product, shopkeeper did not help at all. When Mr. Kumar informed him that repair should be done as per the warranty conditions prescribed otherwise he will move to the consumer court. Then after a long discussion shopkeeper agreed for repairing and asked to come after a week. When Mr. Kumar approached, shopkeeper had started terrible quarrelling with Mr. Kumar and asked for money incurred on repairing. When Mr. Kumar asked for bill shopkeeper again refused to hand over the bill and also denied to hand over the warranty card so that consumer could not proceed the matter to the consumer court or the company and finally matter was reported to police by Mr. Kumar.

The same happens when a seller uses non-standard equipment of weight and measure, police interferes in the matter under IPC and Cr.P.C. though it was consumer's exploitation and was under C.P. Act, 1986. Mr. Sanjeev Saraswat took house loan from SBI. He repaid the loan and demanded the documents of the house which was mortgaged for loan. When it was not returned after a long request, he filed complaint under section 406 IPC and succeeded.

The same cases we find with the private colleges where in the name of verification, original documents of students are taken and not returned back till completion of the course or deposition of

full fees even if due to dissatisfactory services student wants to quit the institution. Again it is a case of breach of trust (under 406 IPC) as well as illegal detention of one's property and punishable under IPC.

Under Prevention of Food Adulteration Act, 1954 a seller who sells adulterated goods, is under criminal liability having constructive mens rea though adulterated goods selling is the violation of consumers right of "Right to Safety", and it must be of civil nature. In the present world all business activities are done through companies. In other words goods and services are now provided by the companies and for faulty goods and services companies are now under criminal liability also. Even professionals like advocates, chartered accountants etc were held liable under criminal law for their frauds and misconduct while providing services. Using service of railways without ticket is also a matter connected to the consumer where again violation of rules is under criminal law. Bank providing loan not returning deeds though of civil nature but comes under 406 breach of trust.

Criminal Nature under the Consumer Protection Act, 1986- Section 27 says about the penalty, that [(1)] Where a trader or a person against whom a complaint is made 2[or the complainant] fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person ²[or complainant] shall be punishable with imprisonment for a term which shall not be less than one month but it may be extended up to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both. [(2)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Forum or the State Commission or the National Commission, as

the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973.

[(3)] All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be. Under this section presence of the guilty can be ensured by the issuance of bailable or even non bailable warrants.

Even the judiciary has also pronounced in many of its decisions that consumer matters are not purely of civil nature and in many cases it has punished the guilty of consumer exploitation specially in the case of medical service provider. Thus, in several cases Hon'ble Courts judgements are not always clearly treating its civil format in nature and interest of consumer matters which leads some kind of confusion. Thus it is pertinent to note that following decided referred cases may have some different direction in future if nature finds it.

1. Kohinoor carpets, Panipat Vs. Rajendra Arora, II (1993) CPJ 429 (435) (Har)

Section 27 confers a quasi criminal sanction for their enforcement by way of punishment with imprisonment or imposition of monetary penalties.

2. Faqir Chand Gulati Vs. Uppal Agencies Pvt. Ltd. & Anr (2008) 10 SCC 345

To determine whether or not the Landlord in spite of Collaboration Agreement is a consumer under the Provisions of the Consumer Protection Act is important, for the reason that the

remedy available under the consumer protection act is faster in comparison to the civil court, but the strict rules of Civil Procedure Code is not applicable in consumer courts and the expenses in pursuing the consumer litigation is minimal as compared to pursuing a litigation in the civil courts. Therefore, it will be a great sign of relief to the landlords who are entering into a collaboration agreement with the builder, if it is determined that the Landlord even though he has entered into a collaboration agreement with the builder is still a consumer for all purpose and intents.

3. Jacob Mathew Vs. State of Punjab (2005)6 SCC 1

In this case the Hon'ble Supreme Court explained about the liability of a medical professional for negligence. The main question was whether his negligence is under Torts or under IPC 304- A. Supreme Court held that a medical professional can be under criminal liability under Section 304-A IPC, if it is necessarily proved that the death was the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence.

To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which is in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent. The following guidelines will be in force which should govern

the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service qualified in that branch of medical practice that can normally be expected to give an impartial and unbiased opinion applying Bolam's test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner, unless his arrest is necessary for further investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested." In this case Supreme Court did not deny prosecution for medical professionals which is itself evidence that consumer matters are not purely civil.

4. Malay Kumar Ganguly versus Sukumar Mukherjee & Others (2009) 9 SCC 221

The Hon'ble Supreme Court held that the proceedings before the National Commission are although judicial proceedings, but at the same time it is not a civil court within the meaning of the provisions of the Code of Civil Procedure. It may have all the trappings of the Civil Court but yet it cannot be

called a civil court. Proceeding should be initiated both under the criminal law as also the tort law only against those who are specifically found to be guilty of criminal misconduct or medical negligence or deficiency in service and not against all.

If hospitals knowingly fail to provide some fundamentals amenities which are meant for the patients; would certainly amount to medical malpractice e.g. a hospital not having basic facilities like oxygen cylinders would not be excusable. Negligence is strictly nonfeasance and not malfeasance. It is the omission to do what the law requires, or the failure to do anything in a manner prescribed by law. It is the act which can be treated as negligence without any proof as to the surrounding circumstances, because it is in violation of statute or ordinance or is contrary to the dictates of ordinary prudence. It is, however, well settled that so far as the negligence alleged to have been caused by medical practitioner is concerned, to constitute negligence, simple lack of care or an error of judgment is not sufficient. Negligence must be of a gross or a very high degree to amount to Criminal Negligence. Medical science is a complex science. Before an inference of medical negligence is drawn, the court must hold not only existence of negligence but also omission or commission on his part upon going into the depth of the working of the professional as also the nature of the job. The cause of death should be direct or proximate. A distinction must be borne in mind between civil action and the criminal action.

The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher degree. To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do.

Conclusion

Thus, it may be concluded that consumer cases are moving from its traditional civil nature to a different nature and the extracts reflect that it is shifting towards criminal nature. Therefore, it may be suggested that consumer exploitation must be treated as an offence because if exploitation is done by TATA than damages ordered to be paid by it whether it is in lakhs or crores it will not be of much pain for TATA and like companies but if the CEO or any other is prosecuted for consumer exploitation, definitely it will compel the companies to be more careful while providing services and goods in fear of prosecution. Therefore, consumers' exploitation must be converted into the term 'Consumer Crimes' and criminal law principles should be applied in determining the disputes.

List of key words

CP Act - Consumer Protection Act- 1986, **CPC** - Civil Procedure Code 1908, **CrPC** - Criminal Procedure Code- 1973, **IPC** - Indian Penal Code 1860

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