



Consumer Remedial Jurisprudence in India and Consumer Rights – An Analysis

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ABSTRACT

Regarding the protection of consumers, remedies provided by the legislation need to be reviewed. Therefore, a study has been made on the remedies of the consumers under the consumer protection legislation. By reading the provisions relating to remedies provided by the legislation, it is able to see that the goals of the legislation are how far they can be fulfilled or achieved. Definitions for the term consumer, complaint, complainant, informant, unfair trade practices, and restrictive trade practices have been gone through to find a solution for the legal issues and appropriate remedies on violation of the same. The study further focuses on how far the protection of consumers has been provided under the consumer protection law in India. Consumers' rights are identified for the protection to be provided to them, and the scope pertaining to their harmoniousness needs attention for the focus. Emerging as common law remedy and reaching the present system focused remedy by statutory means and still at tilt in constituting a common law remedy in certain cases in view of standing between the crime and civil injury as a tort i.e. civil wrong and in the standing-foot of judiciary, the remedies for the consumers are being provided in accordance with the statutory law and in some other cases in accordance with the common law. Therefore, in throwing a knowledge-light on this aspect, the provisions relating to the rights of the consumers and the remedies available to the consumers under the



Consumer Protection Act, 1986, are the reading arena to find and analyse the fundamental legal principle-based protection system for the consumers

Introduction

The remedial jurisprudence generally appears in two forms, among them, one is the common law remedy and the other is the equity remedy. The civil and criminal remedial jurisprudence is thus differentiated in this line of basic aspects as to penal liability and civil liability. The civil liability stands in two senses, one of which is civil remedies other than compensation, and the other is tortious remedies, which are suited to compensation as the appropriate remedy. The legislation for consumer protection has been enacted in order to provide remedies for consumers who are cheated by manufacturers, sellers, and service providers in the market. Thus, it suits tortious liability and the main remedy, which is fit to be as proper, is compensation since it forms part of the common law. It is significant to travel back to the origin or the historical background of remedies, such as common law and equity, that find suitable here. In this sense, the law on consumer protection has been enacted to support consumers from being exploited in various aspects, such as unjustified costs, quality of goods, quantity of goods, etc. Further, it is quite appropriate to discuss here that the statute for consumer protection in India provides for rights of consumers and remedies for consumer injuries.

Objectives

It is taken as the objective in this study to relate the remedies for the consumer and the injury which is violated and viewing the same with reference to the statutory remedy as provided under the law in force for the protection of consumers.

Consumer Protection

The protection for the consumers could be guaranteed by providing appropriate remedies to suit the injury that is being violated. Remedies are nothing but a stand in the foot of protection to the consumers. Therefore, injuries are to be identified for the remedies to be sought. Thus, identifying the remedies against the injuries that seek redressal is significant in the legal sense. The statutory remedy that provides protection to consumers is based on the source of common law and also has the features of equity remedies in some contexts. The basic principle for providing remedies that are necessary to be provided to the consumers is based on the legal maxim, which is *ubi jus ibi remedium*, the meaning in English is, where there is right, there is remedy. Maxim called, *caveat emptor; qui ignorare non debuit quod jus alienum emit*, which means, Let buyer be careful, since they won't be unaware that they are buying someone else's rights is taken as the exception to strengthen the consumers' rights to be claimed and *caveat venditor*, which means the seller of the goods must be aware and he has to take care or provide against it if the goods are found to be different in kind or quality in future.



Consumer Protection Law

The law for the consumers' protection was passed to protect consumers, and the law has ensured that this happens. The Act passed in the year 2019 has set up DCDRC (District Consumer Disputes Redressal Commission), SCDRC (State Consumer Disputes Redressal Commission), and NCDRC (National Consumer Disputes Redressal Commission) to help customers get what they need. To resolve consumer disputes, it is necessary to examine the definitions of consumers, services, product defects, service deficiencies, unfair trade practices, restrictive trade practices, and remedies established by the Act 2019.

Role of consumer protection legislation should be looked at first, while keeping in mind consumer protection. Consumer Protection Act of 1986 was in effect before; however, it has since been repealed. Consumer Protection Act of 2019 is a law right now. Consumer protection laws are being passed because there is a need to defend interests of consumers. Goals of Consumer Protection Act of 2019 are as follows: An Act to protect consumers' rights and interests by creating authorities to quickly and fairly handle and settle conflicts between consumers and other parties.

Consumer Protection Law and Torts

Salmond says that Common Law is all of English law, or the comprehensive corpus Juris Angliae, with three exceptions: Statute law, Equity, and Special law in its many forms. Torts are a part of common law by history, and the customary way to fix them is by compensation or damages. Consumer Jurisprudence is generally characterized as common law jurisprudence, given that the primary remedy is damages. And even other remedies that the law provides usually fall under the torts as a mix of equity remedies because common law courts and equity courts merged.

The definition of torts is that if someone breaks the trust of another person, it is a tort, and the person who did it is responsible for paying the plaintiff for the damage they caused. A tort is a civil wrong that isn't just breaking a contract or a trust. Compensation is the remedy, and it is what common law relief is all about. Section 39 of the Act of 2019 says that compensation is the right way to fix a problem with goods or a lack of service. There are no laws in India that say that compensation is the only way to fix a violation of rights. Statutes do not constitute common law; so, legislation that includes compensating remedies does not embody their essence. The laws are the main point of contact between crime and wrong. For example, a civil wrong could be fixed by paying damages. The Specific Relief Act of 1963, which is the law for civil relief in India, did not give compensation as a way to fix any civil rights violations.

A fundamental principle of common law stipulates that a claimant is entitled to "that sum of money which will restore an injured party to position they would have occupied had wrongful act not occurred for which they are now seeking compensation or reparation."



In civil law regimes, this concept is accepted as the basis for compensation, with the goal of returning an injured party to condition they would have been in had unlawful act not occurred. Concepts of compensating damages are more prevalent in both common law as well as civil law jurisdictions.

Consumer Rights

The rights of consumers have been provided in the Act of 35 of 2019, *inter alia*, which protects consumers from unfair business practices and ensures they can get goods, products, or services at fair prices. It also provides consumers a place to voice their concerns alongside a way to get back at businesses that engage in restrictive trade practices, unfair trade practices, or dishonest consumer exploitation.

There is a well-known Latin phrase for lawyers, *ubi jus ibi remedium*, meaning of which is “where there is a right, there is a remedy”; therefore, it is fundamental to remedial jurisprudence by which remedy follows the infringement of a right. Therefore, the statute which aims at protecting certain things needs to address the rights attached to it and, in case of violation of the same, needs to provide a solution as a remedy. In this line, Consumer Protection Act, 2019, presents consumer protection law that is in force now (including earlier consumer protection laws), which provides certain rights available to consumers.

Injury and Harm to Consumers

It is general to say that any violation of rights of consumers which are provided under Consumer Protection Law will be dealt with as an infringement of the rights. Where there is infringement of rights, it is said to be the injury that results from a harm. However, any loss to the consumers is treated as harm. The Law of Torts comprises a lot of regulations that clearly spell out what rights and duties people have and what they can't do, and these rules are based on what is best for the public and what is most convenient. It is important to remember that the main parts of torts are still harm and damage caused by not following the law.

The term ‘harm’ has been defined under the Act as an inclusive definition, and it is related to product liability. According to Consumer Protection Act, 2019, harm is any damage to property, illness, personal injury, or death, along with any emotional or mental pain or suffering that comes with illness, personal injury, or damage to property. Term "product liability" denotes the obligation of product maker, seller, or service provider to indemnify consumer for any injury resulting from a defective product or inadequate service associated with it. The Act connects the word "injury" to personal injury and defines it as any harm done to a person, their body, mind, or property that is against the law. A product liability action is when someone asks for money to make up for the harm done to them and files a complaint with the grievance redressal authority under the Act.

The definition of injury states the harm as its cause, but the meaning of harm is defined with certain limitations, for instance, relating to product liability and does not include economic loss to consumers. One of the



losses that consumers may face is a flaw in the goods they bought, as well as a loss of money. Harm and injury are defined for a specific purpose, making it difficult to relate the rights of the consumers to the definitions.

Remedies – Nature

The remedy of compensation is designed to reimburse the claimant for losses incurred due to the unjust actions of another party. The losses that consumers experience can be either pecuniary or non-pecuniary. Pecuniary losses happen when the things they buy are defective, the prices are unfair, or the services they employ are inadequate. Non-monetary losses happen when they feel mental pain. The losses that consumers suffer are a mix of monetary and non-monetary harms. There is a point to consider the law applicable to damages in order to determine the conditions for awarding damages, categories of damages illustratively, whether liquidated or unliquidated, and guiding provisions for awarding and determining the cost of damages. Along this line of law of damages, the consumer protection law provides all those principles and also fixes the maximum statutory limit on the ground of pecuniary jurisdiction.

Rights and Remedies – Statutory in Nature

Even remedies are traced as either the common law or equity, the remedies provided under the statutes stand as statutory remedies. And further, the statute itself points out certain rights and provides remedies for the same, which are viewed as statutory rights and statutory remedies. In case of remedies without violation of rights and *vice versa* (rights and their violation without remedies), under the statute is a point for analysis. Noticing the rights which are provided under the section that has not provided the appropriate remedies could be viewed as opposed to the fundamental principles of remedial jurisprudence. Therefore, from this standpoint, it is necessary to discuss the remedies available to the consumers as provided under the statute, whether sufficient to meet the required remedies.

Statutory Protection for the Consumers

Consumer jurisprudence thus developed with an exception to maxim of caveat emptor, contributory negligence, doctrine of mitigation, etc. The principles mentioned above differ between common law and civil law countries. In this regard, there is discrepancy between common law as well as civil law countries. So, law's goal is to protect consumers from whatever losses they could suffer because of what dealers, manufacturers, and others do.

Therefore, in constituting the injury caused to the consumers, it is appropriate to base it on the issue of technical defects of goods, deficiency in service, negligence, etc. The statute only provides all the measures for the protection.

Statutory Remedies – The Consumer Protection Act



Act of 2019 gives following remedy: other party must fix the problems with the goods, replace them with new ones, return the money, pay damages, stop unfair trade practices by preventing them from happening again, not sell dangerous or unsafe goods, take back those goods, issue a corrective advertisement in the case of a misleading advertisement, and stop issuing any misleading advertisement. The remedy against restrictive trade practices is not found under Section 39 of the Act. And this must be given due attention: Section 39(1)(k) states that it must pay an amount that it thinks is fair if it thinks that a lot of consumers who are hard to find have lost or been hurt; however, this clause has a condition that the minimum amount of money that must be paid cannot be less than 20% of value of the defective goods sold or service provided, as a case might be, to those consumers. Discussion on the remedies provided under a consumer protection law has raised some issues relating to rights and remedies.

Concluding Remarks

From the foregoing readings, it is clear that there must be a relationship between the rights and remedies as per the fundamental principles of remedial jurisprudence. There exists a difference between certain principles of remedies in regard to common law countries as well as civil law countries. Indian consumer protection law exists in the nature of a statutory one, which provides the rights and remedies for the violations of rights, and also has the issue of providing remedies not for certain rights. Therefore, it is rightly concluded that even though there is a difference between the principles of remedies between common law countries as well as civil law countries, Indian consumer jurisprudence stands in the statutory form for protecting the consumer's needs to focus on the harmonious relationship between the rights and the remedies.

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