
Liability under Consumer Law in India: A Socio-Legal Analysis

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The Guidelines provide a framework for Governments to use in elaborating and strengthening consumer protection policies and legislation. One of the major objectives of the Guidelines is that Governments should establish or maintain legal and administrative measures to enable consumers to obtain redress through formal and informal procedures that are expeditious, fair, inexpensive and accessible. Another objective is to encourage all enterprises to resolve consumer disputes including advisory services and through informal complaint handling mechanisms. The third objective is that the information on available redress and other dispute resolution procedures should be made available to the consumers on a regular basis. In India, until the Consumer Protection Act (COPRA) was enacted in 1986, consumers had to rely upon a number of legislations but none provided an effective remedy against violation of their rights. COPRA was designed with the specific purpose of protecting consumers' rights and providing a simple quasi-judicial dispute resolution system for resolution of complaints. The purpose of the Act is to take the system of redressal to the peoples' doorstep.

Furthermore, COPRA envisages the establishment of Consumer Protection Councils at the Centre and in the states whose main objective is to promote and protect the rights of consumers. These Councils are advisory bodies and meet once a year with a generalized agenda. Under COPRA, three-tier quasi-judicial machinery at the National, State and District levels has been established. Apart from the COPRA, redressal mechanisms are incorporated under the MRTP Act, 1969, Indian Arbitration Act, 1940, and through complaint mechanisms provided by various businesses. However, despite the existence of such a holistic law, the situation in India with respect to consumers' redressal, is constrained with problems like delays in judgment, non-compliance with orders etc. The first and foremost problem is that most State Governments do not evince the requisite enthusiasm and attention in promptly implementing the provisions of COPRA by carrying out their mandatory obligation of establishing District Forums and State Commissions. Secondly, even with the existence of a justice delivery system, the system is plagued by systemic problems resulting in inordinate delays. Apart from these, consumers are also reluctant to make use of the redressal system. One major reason is the non-availability of proper guidance from voluntary consumer organizations and fear of exploitation by lawyers. Lately the redressal system has become overloaded with inordinate delays in taking decisions, including at the point of admission of a complaint. However, due to very poor compensation packages, good people are not attracted to these positions. In the case of retired judges or civil servants wishing to be appointed, it is not such a problem because the allowances that they get are in addition to their pensions. However, in many cases the appointments of the State Commission Presidents do not last for more than two years on an average,

Role of Non-Governmental Organizations: Non-Governmental Organizations (NGOs) are those associations of people which aim at promoting the welfare of the public without any profit motive. They are voluntary bodies having a Constitution and rules of their own, and are free from Government interference. They depend on donations and partly on Government assistance. NGOs dealing with consumer problems are known as consumer associations or consumer organizations. The role of NGOs has become increasingly more significant over the last two decades. There are now more than 800 such organizations in India. These organizations are registered under the Societies Registration Act or the companies Act or as Charitable Trusts. NGOs have undertaken various activities as part of the consumer movement. They perform several functions, like:

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- Create awareness about consumer rights and educate the general public about consumer problems and remedies through seminars, workshops and training programs
- Provide legal aid to consumers by way of assistance in seeking legal remedy.
- Undertake advocacy of consumers' point of view as representative members of consumer protection councils and other official boards.
- Arrange comparative testing of consumer products through their own testing apparatus or accredited laboratories so as to evaluate the relative qualities of competing brands and publish the test results for the benefit of consumers to become informed buyers.
- Publish periodicals and journals to disseminate information among readers about consumer problems, legal reporting and other emerging matters of interest. Most of these periodicals do not accept advertisements from business firms.
- Make suggestions and recommend steps which Government authorities should consider in policy making and administrative measures adopted in the interest of consumers.
- Some NGOs have successfully used Public Interest Litigation (PIL) to enforce consumer rights in several cases. In other words, NGOs have filed cases in law Courts in the interest of the general public, not for any individual
- **Consumer Institutions for Health Safety:** According to the guidelines issued by the United Nations for the protection of the consumers the following institutions/Councils have been established for the purpose of health safety.
- **Consumer Coordination Council (CCC):** Established in 1993 under the Societies Registration Act 1860, Consumer Coordination Council (CCC) has been a stalwart proponent of good governance. In 1996, CCC launched a national campaign on citizens' charter to implement transparency, accountability, standards of service and a public grievance redressal system at the Government level. CCC has made notable achievements in influencing the making of laws, Governmental policy decisions, and providing administrative infrastructure for protecting consumer interest. It also serves as an umbrella organization for all other consumer NGOs in India.
- **Consumer Guidance Society of India:** Consumer Guidance Society of India (CGSI) was founded in 1966 to eliminate all possible forms of consumer exploitation. It is one of the oldest consumer organizations in the country and has been instrumental in lobbying the Government to pass a Consumer Protection Act, 1986. It has been a member of Consumers International for several years and 70% of the consumer complaints received by it have been resolved. CGSI has been instrumental in promoting consumerism by publishing its flagship monthly periodical "Keemat", performing product testing, providing consumer education at the grass root level such as schools, and giving legal guidance to consumers with grievances. It won the national award for consumer protection in 1991 for its long, dedicated and effective services to consumers.
- **Citizen Consumer and Civic Action Group:** Established on October 7, 1985, Citizen Consumer and Civic Action Group (CAG) has grown out to be one of the country's leading consumer advocacy groups. Instrumental in running campaigns for greater access to information, improved functioning of public utilities, greater transparency and accountability in Governmental and private sector functioning, and protection of our open spaces and natural environment, CAG plays a vital role in the growth of consumerism in our country. CAG specializes in attending issues that affect the common man's life such as lack of hygiene, pollution of our natural resources, inaccessible healthcare facilities, corruption and lack of accountability for the Government revenue from tax sources. CAG has been a member of Consumers International since 1990.
- **Association for Consumers Action on Safety and Health:** Association for Consumers Action on Safety and Health (ACASH) is a consumer organization that focuses on health-related consumer issues. It has programs aimed at the general public promoting consumer rights and overall dispersion of information regarding consumer safety. Founded by a group of doctors, lawyers and other eminent personalities, ACASH today helps consumers in India through education and awareness, training, developing IEC (Information, Education and Communication) material, networking, advocacy and lobbying and follow-up action. A member of Consumers International since 1990, ACASH is also a member of Global link, International

Network of Women Against Tobacco (INWAT), International Baby Food Action Network (IBFAN), International Lactation Consultant Association (ILCA), World Alliance for Breastfeeding Action (WABA), Health Action International (HAI), Breastfeeding Promotion Network of India (BPNI), All India Drug Action Network (AIDAN), Bureau of Indian Standards (BIS) and Voluntary Health Association of India (VHAI).

- **Consumer Education and Research Centre:** Consumer Education and Research Centre (CERC) protects consumer interest in India through consumer research, campaigns through media, creation/monitoring/enforcement of effective consumer laws, consumer advocacy and information dissemination. An apolitical outfit, CERC has research facilities recognized by the Indian Government, and the United Nations has approved CERC as an NGO. CERC's mission includes environmental protection, creating transparency and accountability in the public and private enterprises and agencies in our country, resolving individual consumer complaints, ensuring consumer safety through product research, consumer education, awareness campaigns and product test results dissemination.
- **Consumer Protection Council:** Not to be confused with the Governmental bodies established as per the Consumer Protection Act 1986, the Consumer Protection Council (CPC) is a consumer organization that is non-affiliated to any statutory agency. Instituted in Ahmadabad, the CPC has been instrumental in undertaking consumer issues such as consumer safety, traffic safety and pedestrian safety. It has effectively and successfully pursued legal battles against Governmental agencies when they neglect or fail to carry out their duties to the tax payers. CPC has been a member of Consumers International since 1986.
- **Consumer Unity and Trust Society:** Consumer Unity and Trust Society (CUTS) originated from a rural background in Rajasthan. It operates five program centers in India, an advocacy center in New Delhi, and resource centers in several international locations. CUTS's consumer work is focused on consumer protection and consumer safety. With about 20,000 square feet office space, 140 employees, and affiliation to / recognition from major national and international consumer agencies, CUTS is truly equipped to be the champion of consumer causes in our country. It publishes a monthly 'Gram Gadar' which has been effective in ensuring justice for oppressed social masses. CUTS has been a member of Consumers International since 1990.
- **Consumers Association of India:** Consumers Association of India (CAI) was established on the world consumer rights day to be a powerful lobby for the consumer. It has successfully and determinately taken up the mission to spread awareness among consumers, educate them about their responsibilities and rights and to ensure that the consumers' voices can be heard. In the past six years, CAI has successfully settled over 98% of the 7500 complaints it has received through arbitration. For the remaining 2% CAI has supported the consumer in pursuing the complaint through the Indian legal system. CAI has been a member of Consumers International since 2003.
- **Consumers' Forum:** Consumers' Forum is one the consumer organizations that existed in India long before the Consumer Protection Act 1986 was passed. The mission of the organization, at its start, was to promote consumerism by making aware, training and educating the consumers on their rights. This was particularly necessary when there were no stalwart laws in our country to protect the consumers. The forum provides free advice to consumers, conducts brain storming sessions on matters related to consumer protection and ensures the representation of consumers in national, State and district level consumer Courts and legally mandated consumer protection councils. Consumer Forum has been a member of Consumers International since 1996.
- **Mumbai Grahak Panchayat:** Mumbai Grahak Panchayat (MGP), or Bombay Consumer Forum, started as an agitation against the increase of consumer prices near festival season for fair and free distribution of consumer goods. The distribution system that flourished was registered under the Indian Societies Registration Act 1960 and Indian Public Trust Act 1950 in the name of MGP. MGP promotes consumerism by bringing the consumer to the forefront of the logistics and supply chain of consumer goods as decision makers, executors and monitors. MGP's primary objectives include organizing the consumers for common causes, educating them and protecting consumer interest through legal and other means.

- **VOICE Society:** Voluntary Organization in Interest of Consumer Education (VOICE) strives to be the voice of and for the consumer that the Governments and other statutory / regulatory bodies of the country seldom hear. The primary focus of this NGO is to establish informed consumers in India. Information dispersed to consumers through VOICE includes corporate negligence / misconduct on issues such as consumer safety or customer satisfaction, your rights as a consumer to get value for your money, and the recourse that can be taken if your consumer rights are defied. Founded by students and teachers of the University of Delhi in 1983, it was registered as charitable public trust in 1986, the same year the Consumer Protection Act, 1986 came into being.
- **Grahaak Shakti:** Grahaak Shakti works towards creating consumer awareness by organizing various programs, street plays and on shows such as ‘Hello Geleyere’. The organization has undertaken a number of surveys like the one on spurious drugs in coordination with the Drugs Control Department – Government of India. Its campaign on credit cards and effective liaison with the regulator was an effective way to warn the erring bankers to conduct business ethically. It also participated in joint raids in coordination with the Department of Legal Metrology and some oil companies to check malpractices related to weights and measurement, adulteration and pilferage.

LIABILITY UNDER THE CONSUMER PROTECTION ACT

In 1995, the Supreme Court decision in *Indian Medical Association Vs. VP Shantha* brought the medical profession within the ambit of a 'service' as defined in the Consumer Protection Act, 1986¹. This defined the relationship between patients and medical professionals as contractual. Patients who had sustained injuries in the course of treatment could now sue doctors in 'procedure-free' consumer protection Courts for compensation. The Court held that even though services rendered by medical practitioners are of a personal nature they cannot be treated as contracts of personal service (which are excluded from the Consumer Protection Act). They are contracts for service, under which a doctor too can be sued in Consumer Protection Courts. A 'contract for service' implies a contract whereby one party undertakes to render services such as professional or technical services to another, in which the service provider is not subjected to a detailed direction and control. The provider exercises professional or technical skill and uses his or her own knowledge and discretion. A 'contract of service' implies a relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its mode and manner of performance. The 'contract of service' is beyond the ambit of the Consumer Protection Act, 1986, under *Section 2(1)(o)* of the Act. The Consumer Protection Act will not come to the rescue of patients if the service is rendered free of charge, or if they have paid only a nominal registration fee. However, if patients' charges are waived because of their incapacity to pay, they are considered to be consumers and can sue under the Consumer Protection Act.

LIABILITY UNDER TORT LAW

Under civil laws, at a point where the Consumer Protection Act ends, the law of torts takes over and protects the interests of patients. This applies even if medical professionals provide free services. In cases where the services offered by the doctor or hospital do not fall in the ambit of 'service' as defined in the Consumer Protection Act, patients can take recourse to the law relating to negligence under the law of torts and successfully claim compensation. The onus is on the patient to prove that the doctor was negligent and that the injury was a consequence of the doctor's negligence². Such cases of negligence may include transfusion of blood of incorrect blood groups³, leaving a mop in the patient's abdomen after operating⁴, unsuccessful sterilization resulting in the birth of a child⁵, removal of organs without taking consent⁶, operating on a patient without giving an anaesthesia⁸, administering wrong medicine resulting in injury⁷, etc.

LIABILITY UNDER CRIMINAL LAW

In certain cases, negligence is so blatant that it invites criminal proceedings. A doctor can be punished under *Section 304A* of the Indian Penal Code (IPC) for causing death by a rash or negligent act, say in a case where death of a patient is caused during operation by a doctor not qualified to operate. According to a recent Supreme Court decision⁹, the standard of negligence required to be proved against a doctor in cases of criminal negligence (especially that under *Section 304A* of the IPC) should be so high that it can be described as 'gross negligence' or 'recklessness', not merely lack of

necessary care. Criminal liability will not be attracted if the patient dies due to error in judgment or accident. Every civil negligence is not criminal negligence, and for civil negligence to become criminal it should be of such a nature that it could be termed as gross negligence. Very rarely can a doctor be prosecuted for murder or attempt to murder as doctors never intend to kill their patients, and hence do not possess the required level of guilty intention. When doctors administer a treatment involving the risk of death, they do so in good faith and for the patient's benefit. A doctor can also be punished for causing hurt or grievous hurt under the IPC. However, *Sections 87, 88, 89 and 92* of the IPC provide immunity from criminal prosecutions to doctors who act in good faith and for the patient's benefit. But the defence must prove that the doctor acted in good faith and for the patient's benefit. For example, a doctor who consciously or knowingly did not use sterilized equipment for an operation cannot be said to have acted in good faith.

LIABILITY UNDER CIVIL LAW

The aggrieved patients can file a case against the doctor for monetary compensation for which the patient to pay Court fees that depends upon the compensation sought. Probably, due to near acceptance of medical negligence as inevitable by the patients and their relatives or local settlements, not many cases have reached the Apex Court of law in the past. The legal remedies are based on the law of Torts, *Section 1-A* of the Fatal Accidents Act, 1855 and the *Section 357* of Cr. P.C., 1973. But to avail it, an aggrieved patient have to wait for years and spend considerable amount of money on litigations. The Civil Court cases take care the route of Sub-Court, District Court, High Court and Supreme Court.

Monopolies and Restrictive Trade Practices Act (MRTP), 1969

This Act is the precursor of Consumer Protection Act, 1986. Before the advent of Consumer Protection Act, 1986, this Act was the only resource to consumers against the unfair trade practices. The commission that looks into the disputes brought under MRTP Act based in New Delhi.

Public Interest Litigation (PIL)

An aggrieved patient can directly approach the High Court or the Supreme Court when his/her grievances was not properly redressed. PILs are usually resorted when public health programmes are not implemented properly. Some of the landmark judgments on Supreme Court on health are the result of PILs.

The Fatal Accidents Act, 1855

Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such, as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime. A physician can be charged with criminal negligence when a patient dies from the effects of anesthesia during, an operation or other kind of treatment, if it can be proved that the death was the result if malicious intention, or gross negligence. Before the administration of an anesthesia or performance of an operation, the medical man is expected to follow the accepted precautions. In such cases, the physician should be able to prove that he used reasonable and ordinary care in the treatment of his patient to the best of his judgment. He is, however, not liable for an error judgment.

The law expects a duly qualified physician to use that degree of skill and care which an average man of his qualifications ought to have, and does not expect him to bring the highest possible degree of skill in the treatment of his patients, or to be able to guarantee cures. It has long been recognized that criminal liability of a physician may result from a high degree of negligent conduct. What the law calls criminal negligence is largely a matter of degree; it is incapable of a precise definition. To prove whether or not it exists is like chasing a mirage. It requires that any of the following to be established in a case of criminal medical negligence. “Gross Lack of competency or gross inattention, or wanton indifferences to the patient’s safety, which may arise from gross ignorance of the science of medicine and surgery or through gross negligence, either in the application and selection of remedies, lack of proper skill in the use of instruments and failure to give proper attention to the patient.”

CONCLUSION

Every member of society, young or old, rich or poor is a consumer of some goods or services from the time of his/her birth to death. It is therefore necessary that every consumer not only gets a full measure of the value for money he/she spends, but also that his/her interests are fully safeguarded in terms of goods without defects are safe for use and services without any deficiency. It is recognized internationally and nationally that the providers of goods and service whose major aim is to understand their profits, often do so at the cost of consumer either by selling defective or substandard goods or provide services which are not up to expectations but deficient in some way or other. Empowering them implies strengthening them both individually and collectively against malpractices. Also from national and international scenario, consumer, education, health, information, law and rights are interlinked with each other and these concepts are very much essential to build a society of critically aware consumers from patient perspective

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