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Development of Consumer Protection Laws through Law of Tort

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ABSTRACT

In the process to make quick money, moneymakers often neglect the simple interest of the customers. In doing so the buyers get a defective product and this led to legal injury. In such case there is a violation of a right of the customer and he is entitled to file a suit to claim damages. But, this process came to be expensive, time consuming and not friendly for claims of small amounts. Furthermore, these suits were decided and based on maxim "ibi jus ubi remedia" which means where there is a right, there is a remedy. A Law of Tort principle. In these decisions the man got remedy but after a long battle in court. In this background the legislatures realized the need of a special law particularly for the consumers to gain remedy in speedy way and in more effective, efficient manner. This paper is one made during the course study of law which goes through the history of laws available to buyers to get remedy and how with change in time the consumer got the remedy of civil suit and how there were deficiency in such remedy, leading to development of Consumer Protection Act in India.

I. INTRODUCTION

Making money quickly is a very appealing proposal. Businesses, companies, shopkeepers, retailers, and sellers are all interested in maximizing their profits. In doing so fairly often they neglect the simplest interests of the customer. Many times a buyer gets a defective product or a product that fails to perform as promised. Besides losing money put in purchasing a product some times thanks to defects within the product the customer is injured also. Although such cases there's a violation of a right of the customer and he's entitled to sue the vendor. Before enactment of the Consumer Protection Act, 1986 filing a civil suit for damages was the only option available to an aggrieved buyer. However such a suit is very expensive and time consuming because of which buyers were not able to use this tool for relatively smaller amounts. This gave a field day to the traders because making substandard products or not delivering on promises was a cheap option to make quick money since very few buyers would go to court. A common man was completely helpless because of no control and penalty over

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unethical sellers.²

In this background the Consumer Protection Act, 1986 gave power in the hands of the buyer by allowing an easier and cheaper way to redress their complaint thereby holding the sellers responsible for their actions more often. It provides redress to a consumer when the purchased product is defective or when there is a deficiency in service.³ The following are aims and objectives of the Act: -⁴

1. The most important objective of this act is to provide a fast and cheap way for consumers to hold the sellers responsible for their products or services.
2. Justice to consumers.
3. Protection of consumers from fraudsters or companies selling substandard products and services.
4. Penalty to sellers for substandard product or service.
5. Check on sellers and service providers.

Besides the above objectives Section 6 also provides certain rights as objectives to the consumers. These are -⁵

1. Right to be protected against goods that are hazardous or dangerous to life and property.
2. Right to be informed about the quality, quantity, purity, standard and price of a product and service.
3. Right to competitive pricing.
4. Right to be heard and to be assured that consumer interest will receive due consideration at appropriate forum.
5. Right to redressal against unfair trade practices and exploitation of consumers.
6. Right to consumer education.

It is an entire code within the sense that it provides complete details of the constitution and jurisdiction of the commission and procedure for filing the complaint and appealing the outcome. It doesn't depend upon Civil Procedure Code, 1908 and therefore, the cases are often finalized completely under this act. Consumer Disputes Redressal Agencies provide complete process for justice including a final appeal to the Supreme Court and so are outside the scope

² <http://hanumant.com/CPA1986.html> (visited on 19th March, 2016).

³ Ibid.

⁴ The Consumer Protection Act, 1986 (68 of 1986), Acts of Parliament, 1986 (India).

⁵ The Consumer Protection Act, 1986 (68 of 1986), Acts of Parliament, 1986 (India).

of High Courts. Also HCs can't entertain writ petitions against their judgments.⁶ Under **Section 9** of this Act three agencies are established to hear consumer complaints: -⁷

1. A Consumer Disputes Redressal Forum in each district (For amounts up to 20 Lakhs)
2. A Consumer Disputes Redressal Commission in each state. (For amounts from 20 Lakhs to 1 Cr)
3. A National Consumer Disputes Redressal Commission in the center. (For amounts above 1 Cr)

In this paper we will see what was the historical background of CPA 1986 and how it evolved from law of torts. Also we will see various case laws explaining the working of CPA 1986.

II. HISTORICAL BACKGROUND

It may be said that the consumer protection jurisprudence of India as understood and developed in modern times owns its development to the ancient period and the concept of providing protection to consumers through laws relates back to the time immemorial.⁸

Ancient Period:

In Ancient India, “VEDAS” were considered the words heard from the mouth of God himself and were considered the supreme and sacred that governed the entire society during the ancient period.⁹ This ancient literature reveals various commands supervising different aspects of trade and activities affecting consumers and providing sanctions in the form of punishment in the case of their violation.¹⁰

In Manu Smriti the social, political and economic conditions of ancient society is described. Manu had also written on ethical trade practices. A code of conduct to traders and specified punishments to those who committed certain crimes against buyers was given. For example, he referred to the problem of adulteration and according to him any impure commodity should not be sold as pure nor a bad one as good. Nothing less than the quantity or weight should be sold.¹¹

Manu has also described the principles of competency for parties to enter into a contract. According to him a contract made by an intoxicated person, by insane person, by a minor or infant or by an unauthorized person to contract is invalid. There was also a tool to

⁶ <http://hanumant.com/CPA1986.html> (visited on 19th March, 2016).

⁷ The Consumer Protection Act, 1986 (68 of 1986), Acts of Parliament, 1986 (India).

⁸ http://shodhganga.inflibnet.ac.in/bitstream/10603/7831/10/10_chapter%202.pdf (visited on 18th March, 2016).

⁹ http://shodhganga.inflibnet.ac.in/bitstream/10603/7831/10/10_chapter%202.pdf (visited on 18th March, 2016).

¹⁰ http://shodhganga.inflibnet.ac.in/bitstream/10603/7831/10/10_chapter%202.pdf (visited on 18th March, 2016).

¹¹ <http://www.lawctopus.com/academike/consumer-protection/> (visited on 18th March, 2016).

control prices and punish wrongdoers.¹² King decided the rates for the purchase and sales of all marketable goods. All the measures show us the importance of managing the wrongs of market to safeguard interests of consumer living in Ancient society. Thus, Manu Smriti effectively dealt with various consumer matters many of which remain of great concern in modern legal systems.¹³

Kautilya's Arthashastra describes the role of the State in controlling trade and its duty to safeguard interests of the consumers. Several measures were taken to take care of official standards of weights and measures. Goods were not to be sold directly from factory. There were markets made for sale where the dealer had to declare particulars as to the quantity, quality and the prices of the goods that were examined and registered in the books. There were severe punishments for smuggling and adulteration of goods. Thus, the State had a heavy responsibility for protecting the public against unfair prices and fraudulent transactions. The king was the central power to provide justice. These shows how effective were the redressal system in the ancient time.¹⁴

Medieval Period

In the medieval period consumer protection continued to be of most important concern of the rulers. The legal principles of Muhammadan laws were introduced in the Indian judicial system. During Muslim rule an oversized number of units of weights were used in India. During the Sultanate period the costs used were determined by local conditions. During the rule of Alauddin Khalji strict controls were established in the market place. In those days, there was unending supply of grain to the town and grain-carriers sold at prices fixed by the Sultan. There was a tool for price enforcement in the market. Similarly, shopkeepers were punished for under weighing their goods.¹⁵

Modern Period

In the modern period the British system replaced the old traditional legal system of India.¹⁶ The common law system of administration of justice was also inserted and during 17th, 18th and first half of 19th centuries the rights and interest of consumers were mainly controlled and protected by common law of Tort or Law of Contracts.

The British institutions and rules were combined with the separate rules like to Dharma and

¹² <http://www.lawctopus.com/academike/consumer-protection/> (visited on 18th March, 2016).

¹³ <http://www.lawctopus.com/academike/consumer-protection/> (visited on 18th March, 2016).

¹⁴ <http://www.lawctopus.com/academike/consumer-protection/> (visited on 18th March, 2016).

¹⁵ http://www.jtexconsumerlaw.com/V11N3/JCCL_India.pdf (visited on 17th March, 2016).

¹⁶ http://www.jtexconsumerlaw.com/V11N3/JCCL_India.pdf (visited on 17th March, 2016).

native custom and private laws for different religions. Some of the laws that were passed during the British rule concerning consumer interests are:

1. The Drugs and Cosmetics Act of 1940
2. The Indian Contract Act of 1872
3. The Indian Penal Code of 1860
4. The Usurious Loans Act of 1918
5. The Sale of Goods Act of 1930
6. The Agriculture Procedure (Grading and Marketing Act) of 1937.

These laws provided specific legal protection for consumers.¹⁷

III. EVOLUTION OF CONSUMER PROTECTION ACT, 1986

Entering the 20th century there was a huge hesitation to change: tort was based on moral duties and the courts were very hesitant to open up to allow greater change to arise from finding innovative duties, especially duties that spread across to consumers generally. It took a really evolving decision by the English courts at that time to succeed in the stage for the development of consumer protection law for much of the remainder period of the 20th century. It was the famous English House of Lords decision in *Donoghue vs. Stevenson*¹⁸ that is a famous case in the development of the common law that recognized that manufacturers have a duty to consumers to provide goods of a certain quality. *Donoghue v Stephenson* was of great significance marking a very considerable change in the law of negligence.¹⁹

The facts of the case are: -

Ms. Donoghue was given a bottle of ginger beer, which had been purchased by her friend in a café. The bottle was made of dark opaque glass and closed with a metal cap. Donoghue consumed some of the content. Later the remaining content was poured into a tumbler on which it was discovered to contain a decomposing snail. She later fell ill and a physician diagnosed her with gastroenteritis. Donoghue subsequently took legal action against Mr. David Stevenson, the manufacturer of the ginger beer. She lodged a writ with the Court of Sessions, Scotland's highest civil court, seeking £500 damages.

Donoghue couldn't sue Stevenson for breach of contract, because someone else had purchased the drink for her. Her lawyers claimed that Stevenson had breached a duty of care to his

¹⁷ <http://www.lawctopus.com/academike/consumer-protection/> (visited on 17th March, 2016).

¹⁸ *Donoghue vs. Stevenson*, (1932) A.C. 562, 579 (U.K).

¹⁹ <http://stage6.pbworks.com/f/Consumer+Law.pdf> (visited on 20th March, 2016).

consumers and had caused injury through negligence – an area of civil law that at the time was largely untested. The judgment delivered by Lord Atkin in 1932 established that Stevenson should be responsible for the well being of individuals who consume his products given that they could not be inspected.²⁰

Lord Atkin proposed the following rule in this case that had gained acceptance:

‘You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.’²¹

Negligence. The House of Lords have confirmed that negligence is a tort. A plaintiff can take legal action against a respondent, if the respondent’s negligence causes the plaintiff injury or loss of property. Previously the plaintiff had to show some contractual arrangement for negligence to be proven such as the sale of an item or an agreement to provide a service. Since Donoghue had not purchased the drink she could prove no contractual arrangement with Stevenson – yet Lord Atkin’s judgment established that Stevenson was still responsible for the honesty of his product.²²

Duty of care. The case established that manufacturers have a duty of care to the consumers or users of their products. As per Lord Atkin’s *ratio decendi*, “a manufacturer of products which he sells... to reach the ultimate consumer in the form in which they left him... owes a duty to the consumer to take reasonable care”. This precedent has developed and now forms the basis of laws that protect consumers from infected or faulty goods. These protections began as common law but many have since been codified in legislation, such as the Trade Practices Act (Commonwealth, 1974).²³

Neighbour principle. He defined neighbour as person so closely and directly affected by my act that I ought reasonably to have them in mind when I am considering these acts or omissions. In Donoghue’s case she had not purchased the ginger beer but had received it as a gift; she was a neighbour rather than a party to the contract.²⁴

IV. JUDICIAL APPROACH: CASE LAWS

Often the deficiency in service or defect in goods is the outcome of negligence of the service providers or the manufacturers, suppliers, producers of the goods.²⁵ A few important sectors

²⁰ <http://lawgovpol.com/case-study-donoghue-v-stevenson-1932/> (visited on 20th March, 2016).

²¹ Dr. R.K Bangia, Law of Torts (Allahabad Law Agency, 23rd edn. 2013).

²² <http://lawgovpol.com/case-study-donoghue-v-stevenson-1932/> (visited on 20th March, 2016).

²³ <http://lawgovpol.com/case-study-donoghue-v-stevenson-1932/> (visited on 20th March, 2016).

²⁴ Dr. R.K Bangia, Law of Torts (Allahabad Law Agency, 23rd edn. 2013).

²⁵ <http://docplayer.net/673648-Law-of-torts-medical-negligence-and-consumer-protection.html> (visited on 20th March, 2016).

wherein consumers face problems have been discussed in the following case laws.

1. In *Mahanagar Telephone Nigam vs. Vinod Karkare*,²⁶ it was held that if a telephone complaint remains unattended for over 6 months that amounts to deficiency in service. In such a situation, the telephone department has been held liable to pay compensation and also give refund in the telephone charges. In this case the claim was allowed in favor of user of the telephone although he was not the subscriber of the telephone. 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. Billing of telephone for a period when the phone was not in use as it was in the shifting process due to delay in disconnecting the phone is deficiency in service. Also giving average bill due to negligence would attract the provisions of the Consumer Protection Act, 1986. It is therefore noticed that complaint of any nature relating to telecommunication due to negligence of the telecommunication department is redressible under the Consumer Protection Act, 1986²⁷

2. In *Sankar vs. Branch Manager, Vijaya Bank*²⁸, the negligent dishonor of a cheque issued by the complainant was held to be deficiency in service and the compensation was awarded to the complainant. A complainant alleged that he had issued stop payment orders to the bank with respect to a cheque issued by him for a sum of Rs.1,00,000/- in favor of a Co-Operative Society but the bank cleared the same. This was considered to be a deficiency in service and the complainant was held entitled to compensation of Rs.1,00,000/- with interest @ 18% per annum from the bank.

3. In *Union of India vs. Ashok Kumar Singh*,²⁹ the train timing was changed according to the established railway practice. The complainant an advocate who had purchased 1st class tickets from Saharsa to Hazipur missed the train. The National commission held that the complainant being an educated person was negligent in watching his interest and enquiring from the enquiry as new timings was to come into force with effect from 1/5/90. Thus, the railways were not held liable.

4. In *Express Travels vs. M.R. Shah*³⁰, cancellation of flight without notice and refusal to refund the amount was considered to be the deficiency in service. In *Indian Airlines vs. S.N. Sinha*, a metallic wire was found in the food served by the Airlines. In the process of chewing

²⁶ Mahanagar Telephone Nigam vs. Vinod Karkare, II (1991) CPJ 655 (India).

²⁷ Dr. R.K Bangia, Law of Torts (Allahabad Law Agency, 23rd edn. 2013).

²⁸ Sankar vs. Branch Manager, Vijaya Bank, I (1996) CPJ 137 (Karnataka, SCDRC) (India).

²⁹ Union of India vs. Ashok Kumar Singh, III (1995) CPJ 13 (N.C) (India).

³⁰ Express Travels vs. M.R. Shah, (1992) CPJ 62 (N.C) (India).

the food the passenger's gum was injured. He was held entitled to a compensation of Rs.2000/- for the negligence on part of the opposite parties.

5. In *Harjot Ahluwalia vs. Spring Meadow Hospital*³¹, Harjot the complainant, a minor only child of the parents had high fever and was brought to the hospital. There he was given certain medicines and intravenous chloroquine injected by an unqualified nurse without prior test. Immediately thereafter the child collapsed and suffered cardiac arrest. No oxygen was given, as gas cylinder was not available. The child suffered irreparable brain damage, making the child into a vegetable state for the rest of his life. The national commission held that there was deficiency in service on the part of the O.P. It awarded compensation of Rs.12.5 lac to minor, Harjot Ahluwalia and Rs5 lac to his parents.³²

V. CONCLUSION

When it comes to the relation between Law of Torts and consumer protection, it may be pointed out that law of torts has always been reactive to the legal injury and moved on the principles of "*ibi jus ubi remedia*" which means where there is a right, there is a remedy. This maxim used in the situations of consumer protection is self-explanatory, i.e. when there was no Consumer Protection Act, 1986 the tortious remedies were available to the consumers. Even though there were some difficulties in finding remedy from the regular civil courts. But ever since the implementation of the Consumer Protection Act, a most forceful, growing and welfare oriented law has brought a noticeable transformation in protecting consumers against deficiency in service and defect in goods helping them claim in quicker and easier and cheaper way some remedy. The provisions of this Act are in addition to and not in abrogation of any other law being in force which means that alternate remedy if available may also be claimed by the consumers under other law other than the Consumer Protection Act. This paper has examined some cases in specific sectors for explanation of the enforcement of the Consumer Protection Act in relation to the tort of negligence. It has been found that most of the cases have resulted due to negligence be it deficiency in service or defect in goods. In deciding such cases the essentials of the tort of negligence have mainly occupied the minds of the courts.

³¹ *Harjot Ahluwalia vs. Spring Meadow Hospital*, II (1997) CPJ 98 (N.C) (India).

³² Dr. R.K Bangia, *Law of Torts* (Allahabad Law Agency, 23rd edn. 2013).