

VICTIMOLOGICAL ASPECT OF “CONSUMER VICTIMS” IN THE LIGHT OF CONSUMER PROTECTION ACT, 1986

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Abstract

This paper aims to bring out a vivid picture of the victimological perspective of Consumer Victims in India. Victimology in general means the scientific study of victimization including the relationships between victims and offenders, the interactions between victims and the criminal justice system. Compensatory relief to victims of crime is essentially an outcome of the victimological developments in the realm of criminal justice system. However, the term victimology is not restricted to the study of crime-victims alone but it may extend to other forms of human rights violations that are not necessarily crimes. Consumers of various goods and services are quite often the victims of unscrupulous practices of manufacturers, traders, contractors and members of other professional and occupational groups. Though there are number of civil and criminal laws in addition to warranties and guarantees given to protect the consumer, the interests of consumers still remain neglected. The Consumer Protection Act, 1986 is the most significant and recent legislation hailed as the ‘Magna Carta’ in the field of protection of consumers. It is very comprehensive and all kinds of goods and services are brought under its purview. This paper covers the yeomen service rendered by the consumer disputes redressal agencies (FORA) with its noteworthy feature of the functioning of the redressal and compensation machinery with adequate illustrations. The study also carries analysis on the compensatory reliefs available to the consumer victims and checks on the adequacy of various legal remedies available to such victims. This paper is analytical and descriptive in nature.

Key Words: Victim, Victimology, Victim Compensation, Consumer, Consumer Victim, Goods, Services, Defect, Deficiency, Consumer Disputes Redressal Agencies.

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INTRODUCTION

In the administration of criminal justice, there has been much emphasis on bringing the criminal to the book but there has been little attention towards the problems of victims. With the emphasis gaining on victim reparation, the Victimology has developed as a new branch of criminology which deals with the victim-offender relation, the societal, administrative, legislative and judicial reaction and the legal measures for restitution, compensation and rehabilitation of the victims.

MEANING OF VICTIM & VICTIMOLOGY AND TYPES OF VICTIMS:

The term 'Victim' in general parlance refers to all those who experience injury, loss or hardship due to any cause and one of such causes may be crime. Therefore, victimology may be defined as a study of people who experience injury or hardship due to any cause. In broad sense, Victimology may be defined as the scientific study of victimization, including the relationships between victims and offenders, the interactions between victims and the criminal justice system. It also includes connections between victims and other social groups and institutions, such as the media, businesses and social movements. However, the term victimology is not restricted to the study of crime-victims alone but it may extend to other forms of human rights violations that are not necessarily crimes.

Victimology is a sub-discipline of Criminology. Criminology is concerned mainly with the causation of crime, victimology is primarily concerned with the study as to why people fall a victim to crime and how they can be helped and assisted against abuse of power or criminal acts of offenders through access to criminal justice system.

Definition of 'Victim': Victim is a person who suffered directly or threatened physical, emotional or pecuniary harm as a result of commission of a crime, or in the case of a victim being an institutional entity, any of the similar harm by an individual or authorized representative of another entity or group who are essentially covered under civil or constitutional law and deserves assistance by the criminal justice system.¹

Types of Victims: The types of victims may be more in number according to the nature of the offence or harm but victims may be classified as follows: Victims of crimes against human body, victims of collective violence, victims of terrorism, victims of sexual offences,

¹ S. 2(wa), Criminal Procedure Code, As per 2008 Amendment of Cr.P.C

victims of crimes against property, victims of offences against Food and Drug Adulteration, victims of environmental pollution, victims of industrial hazards, victims of cyber crimes, victims of corruption, victims of offences against reputation, victims of offences against reputation, victims of societal taboos, **victims of consumer crimes**, victims of sex determinations, victims of domestic violence, victims of police torture, victims of administrative authority, victims of dilatory judicial system, identifiable and unidentifiable victims, primary, secondary and tertiary victims, latent victims, participating and non-participating victims, victims of politics etc

CONSUMER VICTIMS:

The industrial revolution and the development in the international trade and commerce has led to the vast expansion of business and trade, as a result of which a variety of consumer goods have appeared in the market to cater to the needs of the consumers and a host of services have been made available to the consumers like insurance transport, electricity, housing, entertainment, finance and banking, hospital, etc. Consumers of various goods and services are quite often the victims of unscrupulous practices of manufacturers, traders, contractors and members of other professional and occupational groups. Though there are number of civil and criminal laws in addition to warranties and guarantees given to protect the consumer, the interests of consumers still remain neglected.

CONSUMERISM AND DEVELOPMENT OF CONSUMER LAWS:

In the beginning the 'Caveat Emptor' (buyer beware) rule prevailed when people used to buy goods in open markets. It was the duty of the buyers to examine the goods and ensure that the goods were fit for their use. If the goods were found defective after purchase the buyer could not complain it to the seller nor could hold the seller liable for it. Later, it became necessary to take adequate steps to ensure the protection of interests of consumers and to bind the seller and those providing services with similar rules. As a first step towards consumerism, the age old doctrine of 'caveat emptor' (buyer beware) was transformed into 'Caveat Venditor' (seller beware) under which a seller or service providers before making the goods available for sale or service rendered to consumer is expected to make sure that it is free from any defect or deficiency and it is fit and worthy of consumption. The era of consumerism can be traced with **Donhogue Vs Stevenson**², Lord Atkin observed that by

² (1932 AC 562)

applying the age old doctrine of 'caveat emptor' the interests of the consumers are cannot be protected and they shall not be entitled for any relief, thus 'caveat venditor' rule was applied and held there is obligation of duty of care imposed on every manufacturer, not to supply obnoxious and hazardous product/substance intending to be consumed by the ultimate buyers/consumers and thereby disregarded the defence of lack privity of contract between the parties, caveat emptor rule etc. contended by the defendants. By the end of 20th century the awareness of consumer rights and protection got its impetus which led to worldwide consumerism.

In India, before the adoption of Constitution, some efforts were made by old laws to protect the interest of consumers. In this connection, Civil Procedure Code, 1908, Indian Evidence Act, 1872, Sale of Goods Act, 1930, Indian Penal Code, 1860, Transfer of Property Act, 1882 etc deserve special mention. Through Indian Constitution, people of India determined to establish a sovereign democratic republic so that among other things social, economic and political justice to the citizens could be ensured. Later, on the words 'socialist' and 'secular' were also added. The Directive Principles of State Policy lay down the foundation of the welfare state. In connection with the enforcement of Directive Principles of State Policy several legislations were enacted for the protection of the interests of the consumers as a part of social control. To name a few, Prevention of Food Adulteration Act, 1955, Essential Commodities Act, 1955, Indian Standards Institution (Certification of Marks) Act, 1956, Specific Relief Act, 1963, Drugs and Cosmetics Goods Act, 1964, Weights and Measures Act, 1976, Motor Vehicles Act, 1988, Trade Marks Act, 1958, Monopolies and Restrictive Trade Practices Act, 1969, Water Pollution (Prevention and Control) Act, 1974, Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 etc which contributed much towards the protection of interests of consumers. But the most importance Act in the field of protection of consumer is the Consumer Protection Act, 1986 which came into force in 1987 in the whole of India (except the State of Jammu and Kashmir). This Act has been hailed as the 'Magna Carta' in the field of protection of consumers.

OVERVIEW OF CONSUMER PROTECTION ACT, 1986:

The enactment of the Consumer Protection Act, 1986 is a milestone in the history of socio-economic legislation in India. It is one of the most progressive and comprehensive legislation enacted for the protection and welfare of consumers. The Act is modeled on the

U.N. General Assembly guidelines³ for the protection of consumers issued on April 9, 1985 which were formulated after an extensive discussion and negotiation with different member countries. These guidelines were placed under four heads, namely, i) objectives, ii) general principles, iii) guidelines, and iv) international co-operation.

Main Objectives of the Act: An Act to provide for better protection of the interest of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith. Its main objective is to ensure simple, speedy and inexpensive redressal of consumer's grievances. The Act seeks, inter alia, to promote and protect the rights of consumers such as:

- a) The **right to be protected** against marketing of goods which are hazardous to the life and property;
- b) The **right to be informed** about the quality, quantity, potency, purity, standards and price of goods to protect the consumer against unfair trade practices;
- c) The **right to be assured**, wherever possible, access to an authority of goods at competitive prices;
- d) The **right to be heard** and to be assured that consumers interests will receive due consideration at appropriate forums;
- e) The **right to seek redressal** against unfair trade practices or unscrupulous exploitation of consumers; and
- f) **Right to consumer education.**

The Act is primarily intended to provide better protection to the consumers. Unlike other laws which are mostly punitive or preventive in nature, the provisions of the Act are mainly compensatory in nature. It focuses on redressal of consumer's problems and grievances providing them reliefs of a specific nature and award of compensation. The Act has been amended from time and again in order to extend its coverage and scope and to enhance the powers of the redressal agencies. The Act is in addition to any provisions and not derogatory to any other law for the time being in force.

³ U.N. General Assembly Resolution No. 39/248 dt. 9-4-1985. These guidelines were based on Draft guidelines prepared by UNESCO in 1983.

CONSUMER DISPUTES REDRESSAL FORA:

A three-tier system of consumer redressal agencies has been adopted for addressing the woes and problems of consumers and ensuring their protection against malpractices usually adopted by manufacturers, producers or sellers of goods or services. This Act provides for the establishment of a District Consumer Forum in each district, a State Commission in each State and National Commission exercising supervisory control over the State Commission and District Forum.

COMPENSATORY RELIEFS AVAILABLE TO CONSUMER VICTIMS:

The consumer redressal forum or Commission, may order once or more of the following relief's to the complainant consumer depending on facts stated in the complaint:

- i) Removal of defect in goods or services;
- ii) Replacement of goods;
- iii) Refund of the price paid;
- iv) Award of compensation for the loss or damages suffered;
- v) Discontinuance of unfair trade practice or restrictive trade practice or direct not to repeat them;
- vi) Withdrawal of hazardous or spurious goods from being offered for sale;
- vii) Award of costs to parties;

DEFINITIONS:

S.2(1)(d)-Consumer means any person who-

- i) Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- ii) Hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the

first mentioned person but does not include a person who avails of such services for any commercial purpose;

Explanation:- for the purpose of this clause, 'commercial purpose' does not include use by a person of goods bought and used by him and services availed by him exclusively for the purpose of earning his livelihood by means of self-employment;

S.2(1)(e)-Consumer Dispute means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

S.2(1)(f)-Defect means any fault, imperfection or short-coming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods;

S.2(1)(g)-"Deficiency" means any fault, imperfection, short coming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

S.2(1)(i)-Goods means goods as defined in the Sale of Goods Act, 1930;

S.2(1)(o)-Service means service of any description which is made available to potential users and includes but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding/lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

CASELAWS AND JUDICIAL INTERVENTION:

Defect(s) in Goods:

Illustrations for defect in goods may be noted in Books, Bricks, Camera, Car, Cement, Chocolate, Computer, Concrete Building Blocks, EPBAX System, Flooring, Gas Cylinder, Machinery, Medicines, Motor Vehicle, Newspaper, Packaged Drinking Water, Photo

Copiers, Printer, Pressure Cooker, Refrigerator, Saree, Scooter, Seeds, Soft Drinks, Tiles, Tractor, T.V., Walkman, Washing Machine etc

- 1) **Jaidev Prasad Singh Vs. Auto Tractor Ltd⁴**: Serious defects notices in the tractor supplied – State commission directed supplier to repair the tractor thoroughly, also awarded Rs. 10,000/- as compensation. The National Commission on the basis of records in favour of the Complainant confirmed the State Commission's order.
- 2) **Synco Textiles Pvt. Ltd/ Vs. Greaves Cotton & Co. Ltd⁵**: National Commission expounded the scope of 'commercial purpose' in S. 2(1)(d) – Consumer and distinguished it from commercial production and commercial activity thereby held that buyers of goods or commodities for self-consumption in economic activities in which they are engaged/self employed to earn one's livelihood would be 'consumers' as defined in the Act.
- 3) **M/s. Jyoti Marketing & Projects Ltd. Vs. M. Pandian & Another⁶**: Complainant purchased the motor pumpset to irrigate agricultural land and found it defective. State commission directed supplier to replace the defective pump and also awarded Rs. 15,000/- as compensation and this order was upheld by National Commission and thereby excluded self employment to earn one's livelihood from the purview of Commercial Purpose in the definition of Consumer.
- 4) **Indian Oil Corporation Vs. L.S. Lalitha⁷**: Both the Indian Oil Corporation and its distributor cum servicing agent held jointly responsible for supply of defective LPG cylinder. State Commission awarded compensation of Rs. 97,837 for causing fatal accident in the family and this order was further upheld by the National Commission.
- 5) **Jose Philip Mapillil Vs. Premier Automobiles Ltd⁸**: Supreme Court held that in case of defect in car the liability to repair the car would be joint and several of the manufacturer and the dealer.
- 6) **India Seed House Vs. Ranji Lal Sharma and another⁹**: National Commission observed that if there is any manufacturing defect in a vehicle, or machinery or defects in production of seeds, it is a settled law that the producer/manufacturer and dealer are jointly and severally responsible.

⁴ I(1991)CPJ 34

⁵ I(1991)CPJ 499

⁶ I(1992)CPJ 337

⁷ II(1992)CPJ 479

⁸ AIR 2004 SCC 1529

⁹ 2008 CTJ 696 (NC)

- 7) **Blue Chip India Vs. Dr. Chandrashekara Patial**¹⁰: National Commission directed to refund the cost of the computer with interest at 12percent per annum as the opposite party failed to remove the defects during the warranty period.
- 8) **Krishnan Kumar Gupta Vs. Bisleri International Pvt. Ltd.**¹¹: The complainant noticed a thick layer of foreign particles and green scale at the bottom of jars of Bisleri drinking water and the State Public Health Laboratory on testing the sample found the water to be unfit for drinking purpose. The State Commission awarded compensation of Rs. 15,000/- to the complainant.

Deficiency in Service:

Illustrations for deficiency in service may be in Profession (Advocate, Engineer, Medical etc), Airlines, Banking, Boarding and Lodging, Carriers, Chit Funds, Courier Services, Education, Electricity, Financial Establishments, Hire Purchase, Gas Supplying Services, General Insurance, Health Insurance, Housing Services, Internet Service Providers, Life Insurance, News Paper, Passport, Postal Services, Provident Fund Services, Railways, Road Transport, Telephone Service, Tours & Travels, Miscellaneous.

Professional Services: MEDICAL SERVICES:

Indian Medical Association Vs. V.P. Shanta,¹² a landmark judgment squarely bringing hospitals and doctors who provide medical services for consideration under the purview of the Consumer Protection Act for negligence etc, on their part would constitute deficiency in service within the meaning of the Act. The Supreme Court held that the doctors are disciplined by Medical Council Act, advocates by the Advocates Act, 1961 and the Chartered Accountants by Chartered Accountants Act, 1949. The fact that these professional bodies exercise disciplinary control does not exclude the jurisdiction of the Consumer Forums.

Dr. Sr. Louie & Another Vs. Smt. Kannolil Pathumma & Another,¹³ National Commission held the Hospital liable to pay compensation of Rs. 50,000/-(for death of mother), Rs. 25,000/-(for untimely death of the new born), Rs. 2,000/-(towards hospital expenses) to the Complainant for deaths of his daughter during labour due to negligence of

¹⁰ 2007 (I)CPJ 131 (NC)

¹¹ 2007 CTJ 68 (Orissa)

¹² AIR 1996 SC 550

¹³ II (1993) CPJ 30 (NC)

the Doctor. **Chinnaiyan Vs. Sri Gokulam Hospital,**¹⁴ the complainant was suffering from bleeding of uterus. She was given two units of blood transfusion which was contaminated with HIV virus which was in violation of Rule 66(A) of the Drugs and Cosmetics Rules. Moreover consent was given only for hysterectomy and not for blood transfusion. The Complainant was awarded Rs. 4 lakh as compensation with interest at 6percent per annum for proved deficiency in service.

Advocate: P. Leela, Advocate Vs. Aneja Financial Consultancy Services,¹⁵ it was held that once the opposite party (Advocate in this case) charges commission or fees and undertakes to render services and look after the interests of the complainant, the complainant is a consumer who has hired the services of the opposite party for consideration to render service. Therefore, in case of deficiency in service, the complainant is entitled to claim relief as a consumer.

Banking Service: Punjab National Bank, Bombay Vs. K.B. Shetty,¹⁶ National Commission upheld the order passed by the State Commission for award of Rs. 1,26,017/- against the bank for the loss of complainant's ornaments kept in the locker hired from the bank amounting to deficiency in service due to negligence.

Housing Service: M.K. Gupta Vs. Lucknow Development Authority,¹⁷ Complainant paid full cost of M.I.G flat to the Lucknow Development Authority in time, the flat got registered in his name but there was considerable delay in handing over possession. National Commission increased the reliefs awarded by State Commission and ordered that Rs. 44,560/- to be paid to the complainant along with interest at 16percent per annum and compensation of Rs. 10,000/- for the suffering undergone by the Complainant.

Carriers: Patel Roadways Vs. Birla Yamaha,¹⁸ Supreme Court held that the liability of the common carrier that arises under the Carriers Act, 1865 is not contractual. The provisions of Contract Act relating to bailee are not applicable to a common carrier. It ruled, a) the liability of a common carrier is that of an insurer, b) the plaintiff need not establish negligence of

¹⁴ III (2007) CPJ 228 (NC)

¹⁵ II (1994) CPJ 640 (AP)

¹⁶ II (1991) CPJ 639

¹⁷ I (1992) CPJ 66

¹⁸ AIR 2000 SC 1461

carrier, c) it is notwithstanding a special contract, d) S.9 of the Carriers Act is applicable to consumer fora. This was approved by the Constitution Bench of the Supreme Court in **M/s. Economic Transport Organisation Vs. Charan Spinning Mills Pvt. Ltd.**,¹⁹

Education: S. Ajit Vs. Dr. M.R. Sridharan Nair,²⁰ Admitting the students to an institute without affiliation to any university is unfair trade practice. **Paradigm Info Ways (P) Ltd. Vs. Rajesh Kumar Khatri**,²¹ where a computer coaching institute advertised a six-month course and promised 100% placement but extended the course period, failed to supply the required material, frequently changed the managers and faculty members and the computers became inoperative, it was a clear case of deficiency in service. Full refund of fees paid was ordered.

Electricity: N. Kunchi Babu Vs. A.P. Transco,²² Electric wires were touching the balcony of complainant's house as a result of which his minor daughter was electrocuted and became physically disabled. Held, the deficiency in service proved on the part of Electricity Supply Board, hence complainant was entitled to compensation, cost and also medical expenses of his daughter.

Insurance: United India Insurance Co. Ltd. Vs. Imperial Gift House,²³ the roof of insured building collapsed due to torrential rainfall, the insurer denied liability on the ground the risk was not covered under the policy terms, i.e. the policy risk covered risk only for those loss due to 'flood' or 'tornado' and not heavy rainfall. The commission gave liberal interpretation to the term flood and tornado thereby including heavy rainfall within its purview and held the insurance company liable to pay damages as assessed by the surveyor.

Railway: Bala Chandrakant Vs. Northern Railway,²⁴ the railway administration was held liable for ornaments of a passenger sitting at window of the compartment being snatched by a person standing on foot-board of adjacent exit door. The State Commission awarded Rs. 5,000/- as compensation which was enhanced to Rs. 25,000/- by the National Commission on appeal before it.

¹⁹ 2010 CPJ 4 (SC)

²⁰ 1998 (2) CPR 32 (Ker.)

²¹ 2003 (4) CLD 573 (Del)

²² I (2005) CPJ 778 (AP)

²³ I (2007) CPJ 6 (NC)

²⁴ II (2008) CPJ 370 (NC)

Telephone Service: Nayan Kumar Shah Vs. Assistant Accounts Officer, Ahmedabad Telephone Revenue,²⁵ the action of the telephone department disconnecting telephone without due notice to the defaulter will amount to abuse of this legal power. In **District Manager, Telephones, Patna Vs. Lalit Kumar Bajila,**²⁶ the telephone remained dead for about a week despite repeated complaints to the telephone department, it caused great deal of inconvenience and hardship to the consumer subscriber. The State Commission awarded compensation of Rs. 200/- to the complainant which was upheld by the National Commission.

Unfair Trade Practices: Society of catalysts Vs. Star Plus Television,²⁷ the Star Plus and Bharti Airtel Ltd. Issued advertisements on television stating that prizes would be distributed out of money collected through SMS. The total money of Rs. 13.92 crores was collected but only Rs. 1.04 crore was distributed as prize money fo the contest, leaving the gross profit of Rs. 12.88 crores. The National Commission helld that the TV channels were liable for unfair trade practice and therefore, were ordered punitive damages of one crore jointly and severally. In **Ganesh Salian Vs. PEPSI Foods (P) Ltd.,**²⁸ the chips packets of the opposite party were found to contain only 15gms of chips against 60gms as printed on the packet. The evidence had proved use of unfair trade practice and therefore, the manufacturer was ordered to pay Rs. 5000/- as compensation to the complainant.

In **Bonn Nutrients (P) Ltd. Vs. Jagpal Singh Dara,**²⁹ the complainant purchased the bread manufactured by the appellat for Rs. 10/- containing ‘scratch and win’ coupon (meant that every purchaser of bread had an implied guarantee to win a prize), complainant scratching on every packet of bread found ‘please try again’ written on it but no prize. The state commission ordered for compensation of Rs. 5000/- to the complainant for unfair trade practice but on appeal the National Commission held that compensation for unfair trade practice must be exemplary and enhanced it to Rs. 50,000/-.

²⁵ I (1992)CPJ 235 (Guj)

²⁶ I (1992) CPJ 189 (NC)

²⁷ IV (2008) CPJ 1 (NC)

²⁸ I (2007) CPJ 306 (Kant)

²⁹ IV (2005) CPJ 108 (NC)

CONCLUSION:

Consumers of various goods and services are quite often the victims of unscrupulous practices of manufacturers, traders, contractors and members of other professional and occupational groups. Though there are number of civil and criminal laws in addition to warranties and guarantees given to protect the consumer, the interests of consumers still remain neglected. The working of the Consumer Protection Act, 1986 for more than three decades has shown that it has proved to be a boon for the consumer victims and greatly helped in solving their problems, at the same time providing speedy justice to them. The Court as also the consumer redressal FORA have always adopted a liberal approach while resolving consumers' dispute. These redressal agencies have played a significant role in protecting consumers against exploitation and arbitrary decisions of insurance companies, banks, house-building societies or builders, corporate bodies and public sector undertakings such as railways, roadways, airlines, gas and petrol agencies etc., besides the manufacturers, producers and seller of goods and services.