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# ANALYSIS OF SIGNIFICANT CASE LAWS THAT HAVE SHAPED CONSUMER PROTECTION JURISPRUDENCE IN INDIA

AUTHORED BY - KANAV BHARGAVA

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## INTRODUCTION

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“Consumer protection encompasses the strategies and procedures undertaken to prevent any dishonest or immoral malpractice against the consumers by sellers. It also provides a platform for the consumers to easily address their complaints”. The word “consumer” is a blanket term. It covers every human being purchasing any type of item or commodity for exchange or money in any type of mess, grocery or authorized ration shop for non-military or military services. The term ‘**consumer**’ under the **Section 2(7)**<sup>1</sup> of consumer protection act, also includes any person who avails of such goods with the consent of the purchasers though he is not a purchaser himself. Any person who engages himself in the purchase of such services even when availed at a fee, is a consumer for purposes of the **Consumer Protection Act, 1986**<sup>2</sup>. Hence, as has been defined, we are all consumers. They represent the greatest cluster of people in influencing and being influence by virtually all segments of the public and private economy.

In India Judiciary has many functions and it is not so rigid in its compartmental task. In a democracy, the role of the judiciary is very much complete. It is contained in the democratic process. It not only executes justice, it safeguards the interests of the people and operates as the defender and the translator of the constitution. Under the power of judicial review, it determines whether or not laws promulgated or decrees issued are constitutional. It can declare such laws and decrees which are unconstitutional.

Consumer protection, in regard to rulers, was one of the duties that were present in the administration of India before independence, it was however carried out in other ways. However, a distinct, wholly consumer protection enabling statute was promulgated sometime in the year 1986 solely in India. Striking height of the consumer protection movement came in

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<sup>1</sup> Consumer Protection Act, 2019, § 2(7), No. 35, Acts of Parliament, 2019 (India)

<sup>2</sup> Consumer Protection Act, 1986, No. 68, Acts of Parliament, 1986 (India)

the early and mid-twentieth century which ensured that many countries had strong consumer protection laws in place. The Consumer Protection Act of 1986<sup>3</sup>, which was passed by **Parliament in 1986**, was in its content much more detailed, comprehensive and effective than the consumer protection laws in most countries and “*The last amendment was enacted in 2019*”<sup>4</sup>. This paper is an attempt to examine, analyze and review the statutory provisions and practice of consumer protection in the territory of India and look at the development from the angles and traditions of the different court cases on such development of the Consumer Protection Jurisprudence in India.

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## LITERATURE REVIEW

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⇒ “*Critical Appraisal of Judicial Creativity in the Development of Consumer Jurisprudence*” - by Christy Nameirakpam (2020)<sup>5</sup>

This research paper provides the types of themes of the consumer jurisprudence in India and tells more about the Consumer Protection Act.

⇒ “*Role of judiciary in the protection of consumer*” - by Nimmi (2020)

This research article speaks about how judiciary play an important role in framing and giving decisions according to the rules and regulations by providing different case laws and the validity of the laws enacted by judicial reviews.

⇒ “*Consumer Protection Jurisprudence: A Constitutional Perspective*” - by Manoj Kumar Padhy (2013)<sup>6</sup>

This provides the basic idea how the consumer protection jurisprudence has been involved in the Indian constitution and discuss about the consumer affairs by different perspectives.

⇒ “*An examination, review and analysis of Consumer protection and the Consumer Protection Act 1986 in India*” - by Sidharth Shankar Raju (October 2019)<sup>7</sup>

This article tells about the definition of the consumer as well as the brief introduction about the history of consumer protection in India in ancient and present time and explained the rights and the importance of consumer protection in India.

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<sup>3</sup> Consumer Protection Act, 1986, No. 68, Acts of Parliament, 1986 (India)

<sup>4</sup> Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India)

<sup>5</sup> <https://www.ijlsi.com/wp-content/uploads/Critical-appraisal-of-judicial-creativity-in-the-development-of-consumer-jurisprudence.pdf>

<sup>6</sup> <https://www.rostrumlegal.com/consumer-protection-jurisprudence-a-constitutional-perspective/> - :-:text=Consumer Protection under the Indian Constitution&text=It should be noted here,to secure to its citizens

<sup>7</sup>[https://www.researchgate.net/publication/336305848\\_An\\_examination\\_review\\_and\\_analysis\\_of\\_Consumer\\_protection\\_and\\_the\\_Consumer\\_Protection\\_Act\\_1986\\_in\\_India](https://www.researchgate.net/publication/336305848_An_examination_review_and_analysis_of_Consumer_protection_and_the_Consumer_Protection_Act_1986_in_India)

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## RESEARCH METHODOLOGY

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There are two specific research methods used to write a research paper:

- ⇒ the doctrinal approach and,
- ⇒ the non-doctrinal approach.

Research papers written by ‘utilizing the doctrinal method mean that the said research has been carried out resorting to the methods of use, reading and analysing works that have been in existence and are in possession of the general public, or such that can be accessed under certain restrictions. On the other hand, the non-doctrinal method takes a different approach in which a researcher goes out into the field and sources for the information they require through experiments or surveys inviting the use of primary information. In this however, the method employed is the doctrinal method which method has seen this paper present analysis of various rulings bodied in judgment, case law, articles and book chapters as well as newspapers.

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## RESEARCH OBJECTIVES

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- ⇒ To reflect the balance between consumer rights and the rights of businesses in India.
- ⇒ To understand recent case laws address emerging challenges in consumer protection.
- ⇒ To analyse the implications of significant judgements for future legislative developments in consumer protection law in India.
- ⇒ To understand significant case laws addressed issues of fraud and misrepresentation in consumer transactions.
- ⇒ To analyse the landmark judgements in India that have significantly influenced consumer protection laws and key principles they established.

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## ANALYSIS

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Consumer protection is a practice that concerns the role of the state and business in ensuring that the consumers and their reasonable satisfaction is taken care of. The role is primarily that of state who is mandated to safeguard the rights and interests of the consumers through appropriate policy, legal and institutional arrangement. This includes the specific acts and laws that were put in place to safeguard the consumers.

The Idea of providing consumer redressal Is as ancient as the civilization has been. Putting It concisely, protecting the purchaser’s rights is one of the main aims of doing business. People

of Gandhi's views consider every business person a servant while the customers are the masters whose single aim is to be served and in certain interpretations of some Indian traditions a customer /consumer is considered God. But the profit motive of marketers, sellers and dealers is causing consumer exploitation through '**unfair trade practice**' under the **Section 2(47)<sup>8</sup>** of consumer protection act . Given the fact that consumers remain as the leading economic group, they are defined as sneers for the economic productivity and therefore, treated and given an overbearing consideration when it comes to disturbing the conventional format of doing business. It is not contradictory to state that consumer protection is an issue of profound importance and delicacy, yet in India, there is no statutory provision which deals with consumer affairs protection or mentions consumer affair as a matter of concern.

India has a separate judicial forum known as the Consumer Court, which adjudicates matters related to consumer disputes and grievances. The primary purpose of this institution is to ensure protection against unfair trade practices by the sellers towards consumers. Within India, there are three forms of dispute redressal mechanisms. These are:-

- **National Consumer Dispute Redressal Commission (NCDRC)**
- **State Consumer Disputes Redressal Commission (SCDRC)**
- **District Consumer Disputes Redressal Forum (DCDRF)**

Getting knowing the importance of consumer protection and the role of judiciary and case laws in shaping this field, we will examine the key judgements that has influenced the consumer rights in India, through Consumer Protection Jurisprudence in India. In **Laxmi Engineering Works Ltd v. P.S.G. Industrial Institute<sup>9</sup>** District Forum, State Commissions and National Commission are Quasi- judicial Tribunal created for the expeditious and cost effective relief to the consumers. Filing a petition is very simple, whereby, any consumer can go and file a complaint and there is no need to comply with the court's requirements. The purpose was to assist the consumers in the legal aspects of purchasing health and other services within a market that is largely guided by big business and concerned with peoples safety. Indeed, the entire Act revolves round the consumer and intends to put the stake of the consumer.

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<sup>8</sup> Consumer Protection Act, 2019, § 2(47), No. 35, Acts of Parliament, 2019 (India)

<sup>9</sup> Laxmi Engineering Works Ltd v. P.S.G. Industrial Institute, 1995 SCC (3) 583

**⇒ DEFICIENCY IN SERVICES AND MEDICAL NEGLIGENCE**

The case of *Indian Medical Association vs V.P. Shantha*<sup>10</sup> is helpful in understanding the scope of the Consumer Protection Act of 1986 with respect to the medical profession in India. Some questions like could the hospitals, doctors and medical practitioners be treated as rendering “services” (Section 2(42)<sup>11</sup> of 2019 act) under COPRA were raised because of the increasing incidents of medical malpractices. This ambiguity was sought to be clarified by filing a Public Interest Litigation (PIL) in the Supreme Court under Article 32<sup>12</sup> of the Indian Constitution. The Supreme Court in *Indian Medical Association vs V.P. Shantha*<sup>13</sup> said that the term “service<sup>14</sup>” as defined under COPRA has a wider connotation and would therefore extend to healthcare and medical services. It construed the Act to mean that the services of doctors and medical practitioners come under its purview for paid activities, whether on a fee basis or through insurance.

Nonetheless, if such provisions are applied without consideration of payment and are therefore of a charitable nature, it does not fall within the contours of ‘services’. Initially, this ruling was a landmark in the area of consumer protection making the medical profession liable within the framework of COPRA. This judgement in the *Indian Medical Association vs V.P. Shantha*<sup>15</sup> won clarity on the legal aspect of medical negligence in the country and made it likely that medical professionals and medical establishments would be liable for negligence though the consumer forum.

In the case of *H.U.D.A, the Chief Administrator v. Shakuntla Devi*<sup>16</sup> plot it was proved that even after making the full payment towards the consideration of the plot as per the terms of the allotment letter, possession of the plot was not given to the respondent by the appellant. In respect of that, the State Commission stated that the respondent has proved deficiency in the service by the Appellants since there was a delay in handing over possession of the plot and hence warranted compensation. The National Commission retained the order of the State Commission in appeal to it. The Supreme Court remarked, made the critical remarks, which are very basic as well as critical while passing an order of compensation, the amount of

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<sup>10</sup> Indian Medical Association vs V.P. Shantha, 1995 SCC (6) 651

<sup>11</sup> Consumer Protection Act, 2019, § 2(7), No. 35, Acts of Parliament, 2019 (India)

<sup>12</sup> INDIA CONST. art. 32, amended by The Constitution (Forty-second & Forty-third Amendment) Act, 2000

<sup>13</sup> Indian Medical Association vs V.P. Shantha, 1995 SCC (6) 651

<sup>14</sup> Consumer Protection Act, 2019, § 2(7), No. 35, Acts of Parliament, 2019 (India)

<sup>15</sup> Indian Medical Association vs V.P. Shantha, 1995 SCC (6) 651

<sup>16</sup> H.U.D.A, the Chief Administrator v. Shakuntla Devi, AIR 2017 SUPREME COURT 70

compensation in relation to the protection of consumers in relation to the real estate.

1. That injury or loss sustained by the consumer because of the negligence of a person or institution against which the compensation is sought is the fundamental requirement for the admissibility of claims or requests for compensation. Then, if the Consumer Forum was satisfied with that condition, then it would have to consider the issue on the alleged availability of the compensation for the consumer.
2. In any such direction, it appears that there remains a duty on the part of the Redressal Agencies themselves to evaluate all such factors as are relevant in deciding the amount of compensation that is to be awarded.
3. The Supreme Court in the case of *Charan Singh v. Healing Touch Hospital and Others*<sup>17</sup>, also considered in this paper, the apex court held that there cannot be factors incapable of being incorporated within a compartment or watertight compartment.
4. The Consumer Forum should grant reasonable, fair and proper compensation after taking into account all the aspects of the case.
5. In the case *Ghaziabad Development Authority v. Balbir Singh*<sup>18</sup>, the Apex Court held that the benchmark for the judgment in awarding the compensation is not the same in all the cases and varies across different cases since the compensation cannot be uniform.

In the case of *State of U.P. through Principal Secretary and others v All U.P. Consumer Protection Bar Association*<sup>19</sup>, the Apex Court held that there is also need of paying and providing the same service conditions to all states and union territories. The Central Government issued the following orders: The orders which were given to the Central Bureau were as follows:

1. To approve appointments against newly created posts so as to increase productivity. Only one-fourth of the staff sanctioned by the Government is found in ordinary organisations as reported by the Staff Inspection Unit.
2. To make provisions to arrange greater filing space as the number of cases being filed is expected to increase by 300% and space urgency.
3. To declare approval on an amendment concerning Rule 11 of the Consumer Protection Rules, 1987 concerning National Forum's wages, honoraria, and other compensation.

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<sup>17</sup> Charan Singh v. Healing Touch Hospital and Others, AIR 2000 SUPREME COURT 3138

<sup>18</sup> Ghaziabad Development Authority v. Balbir Singh, 2004 AIR SCW 2362

<sup>19</sup> State of U.P. through Principal Secretary and others v All U.P. Consumer Protection Bar Association, 2017 (1) SCC 444

⇒ **CONSUMERS OF ELECTRICITY**

Deficiency in electricity service sector also is covered by the Consumer Protection Act, 1986<sup>20</sup>. An electricity service is a prerequisite towards helping a country's developmental process. The measure of the welfare of a nation must be assessed on the amount of energy produced and consumed by its citizens. Hence, there is a necessity to come up with law that will enable enhancement of energy saving strategies. In the famous case of *Punjab State Electricity Board Ltd. V. Zora Singh & Ors*<sup>21</sup>. The respondents herein with a view to obtain supply of electricity energy filed applications and the Board asked them to deposit the security amount. As despite even after deposits of such security amount and compliance of other formalities electric energy was still not supplied to the Respondents, there were complaints brought to various District Forums for deficiency in service of the Board. The respondents herein are agriculturists. The Supreme Court endorses provision and distribution of Electric supply as a service that is public in nature.

When a public utility is presented for public use and the grant of a monopoly is provided to it in return, one such necessary burden placed on it by law is that it should provide service to the public who receives it in an efficient and adequate manner, at fair and reasonable terms and without any discriminatory policies to all those who fall within the sphere of activity of the public utility and who seek such service and accept reasonable terms of the public utility.

⇒ **CONSUMER IN BANKING SECTORS**

With increase in the growth of the banking industry and technology, the relationship between the banker and customer becomes one of service, where timely and efficient courtesy is warranted in transactions. These rights are protected by the law. For example, it was determined in *Abdul Razak & Anr. V South Indian Bank Ltd.*<sup>22</sup> that any person with an account with any bank is essentially that bank's customer. Romance is presumed to and may be inconclusive in the establishment of banker and customer relationship, there must be quantifiable intensity of business dealings before such relations are discontinued, this view discarded by Kerala High Court in *Joseph Zacharia v Joseph Kuriakose*<sup>23</sup> and laid down that, person who has a bank account in his name and for whom the banker undertakes to provide the services as a banker is

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<sup>20</sup> Consumer Protection Act, 1986, No. 68, Acts of Parliament, 1986 (India)

<sup>21</sup> Punjab State Electricity Board Ltd. V. Zora Singh & Ors., 2005 (6) SCC 776

<sup>22</sup> Abdul Razak & Anr. V South Indian Bank Ltd., III(2003)CPJ20(NC)

<sup>23</sup> Joseph Zacharia And Ors. vs Joseph Kuriakose And Anr., AIR1992KER103

considered a customer. In *Malti Bhat v. State Bank of India*<sup>24</sup> however, the consumer was a student who was going to write the AMIE examination and therefore made a payment of Rs. 200/- through a bank draft as application charges and exam form. This application was rejected because the Manager's signature was a requirement for endorsement of the draft. After that, his examination that was planned consequential to the application summons was never done thus when the case reached the National Commission<sup>25</sup>, a sum of Rs. 35000/- was granted against the student.

In *Ganga Nagar Central Co – operative Bank Ltd. v. Pupsha Rani & Anr*<sup>26</sup> respondent opened an account with the bank and deposited some money however after sometime his money was no more in account and was returned by the bank. The District Forum awarded compensation for the deficiency in the service and the same was upheld by the Apex Court with the appeal being against the District Forums orders.

#### ⇒ CONSUMER IN EDUCATION SECTORS

Here, it would be appropriate to open argument on whether education is trade or businesses in the sense it is for-profit endeavour. Broadly declared as non-profit activity. And this country has never been engaged in commercial education. In *Unni krishanan v State of Andhra Pradesh*<sup>27</sup> this was held. But cloak of commercial in educational institutions underscores deeper disadvantage to students. The latter received clearer direction in *Abel Pacheco Gracias v Principal Bharati Vidyapeeth College of Engineering*<sup>28</sup> where the college was required to understand that fees ought to be refunded to the complainant who was previously admitted to the government college.

Again in the succeeding case of court of *Maharshi Dayanand University, Rohtak v Shakuntala Chaudhary*<sup>29</sup> there was also recovery that correction of this mistake had economic consequences. The magistrate wasted no time in issuing such relief and this was given under the wrongful injurious act. In that matter substantially changed by in *Bangalore University v Dattatri S.*<sup>30</sup> where the University released result after examination which was noticed by the

<sup>24</sup> Malti Bhat v. State Bank of India, [2022] 6 SCC 1507

<sup>25</sup> 'NATIONAL COMMISSION' defines under the section 2(29)

<sup>26</sup> Ganga Nagar Central Co – operative Bank Ltd. v. Pupsha Rani & Anr., AIR 2008 SUPREME COURT 1908

<sup>27</sup> Unni krishanan v State of Andhra Pradesh, 1993 SCR (1) 594

<sup>28</sup> Abel Pacheco Gracias v Principal Bharati Vidyapeeth College of Engineering, 1992 (1) CPJ 105

<sup>29</sup> Maharshi Dayanand University, Rohtak v Shakuntala Chaudhary, (1993) I CPR 274 (Haryana CDRC)

<sup>30</sup> Bangalore University v Dattatri S., (2010) CPJ 111 (NC)

tabulator as wrong statement and a candidate who was declared fail after scoring adequate marks required to be above the class level. National Commission in that decision education related services could not be distributed in a manner that she claimed. Contrary to, advancements were extended for social welfare purpose did not have relevant relation with consumers who suffered issues concerning trade practices and it was impossible to sympathize and extend any measure of relief.

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## CONCLUSION

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Present era consumer movement has seen many changes too as it has fought for its Constitutional object; Justice, Liberty and Equality in the society which this consumer movement aimed for. Such lies the worth of the act in elevating the life of the members of the society by allowing the consumer to fully engage in the market. It appeals to avert powerlessness of a consumer, which is what the customer gets when they are in the hands of intense commercialism in business. This Act is geared towards the protection of the consumers' economic wellbeing. It is a landmark in the chronological progression of socio economic laws and policies for the good of the people. There is an extent of commercialization in many areas and the satisfaction of justice in a degree or diploma from a recognized institution is still outstanding. By knowing and analysing the different sectors and the judgements of different cases that has describes and explained the value, importance, and relations between the past and present scenario of consumer protection jurisprudence in India.

This ensures that all the practices that have been laid down in these rulings will be relied to advance consumer protection practices to not only be theoretical but also bear fruits on the ground for the effective protection of consumers in the country. This is because when consumers are enlightened and legal protection adequate, traders will not be engaging in unfair trade practices since they are likely to be punished by the market and hence a balanced market will be created. The media in itself was also able to create awareness among the people about such regulation through advertisements such as '**Jago Grahak Jago**' on the ground level. The amending justice that is contained in the constitution has been realized because of the consumers movement within the last two to three decades.

