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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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ANALYSIS ON DEFICIENCY OF SERVICE **UNDER CONSUMER PROTECTION ACT 2019**

AUTHORED: NARAYAN DNYANOBA SASTE

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1. INTRODUCTION:

There is discrepancy with the quality or amount of the product or deficiency in the Services by the Service provider which amounts to disputes. These disputes are between Consumer and product seller or Service provider.

There is cutthroat competition in the market and in order to survive the traders indulge in various kinds of malpractices like overcharging, deficient supply of goods and services, unfair trade practices, defective goods and so on. These factors have given rise to put consumer protection under active consideration and it has to step to ensure the protection and welfare of people. [Consumer Protection Act, 2019](#) (hereafter referred to as 'the Act') enables the redressal of disputes arising out of the transactions between the consumers and goods or services provider. Under this Act, This Act enable to curb negligent activities by providing justice to the consumers who have suffered loss or injury.

2. Deficiency in services:

2.1 What is a service?

Service is an intangible benefit availed by the consumer from the service provider. On a daily basis, we all humans hire different services. Term service is defined under Section 2(42) of the Consumer Protection Act, 2019, which include facilities related to banking, financing, insurance, telecom, processing, transport, etc. Service doesn't include any free service, it should be in paid form.

Illustrations:

1. Various companies are providing Internet service these companies are called service provider.
2. In many industries Housekeeping services are being provided by the House keeping companies These companies called as service provider.
3. Lawyer is providing his service to the client they are called as Service Provider.
4. Hospitality Services are being provided by the Hospital in case of patient.

2.2 What is a deficiency?

According to Section 2(11) of the Consumer Protection Act 2019 (“the Act”), deficiency is any sort of fault, imperfection, shortcoming or defect in the feature, quality, amount, nature, worth, authenticity, capacity and standard which is obligatory to be maintained and regulated as per the laws and statutes in function or any agreement/contract claimed by the seller, with respect to the products and goods. Including any act of negligence, omission or commission by the seller which causes loss to the consumer, which a prudent seller is supposed to do or is supposed to omit, but deliberately does the contrary, such actions amount to ‘deficiency of service’. These definitions help to understand the clear meaning of deficiency in services. Whenever there is any sort of deficiency in services, the customer is exploited which impacts and causes loss of money. Any kind of negligence or omission or commission can cause injury to consumers.

2.3 What is the deficiency of services under the Consumer Protection Act, 2019?

In today’s era, services hired or availed of by the consumers have assumed the most important place for the people globally. The Act applies to all goods and services as expressly provided in any service sector where there is a buyer-seller relationship, such as the hospitality, entertainment, maintenance, railways, banks, electricity, construction, legal aid, telex, courier, insurance, education, transportation, aviation, hospitality etc. Deficiency of service can have minor to grave consequences, ranging from negligence, inconvenience or harassment to mental or physical injury to death, thereby leading to legal consequences. The services for consideration offered whether by a private person, firms, companies or by the government or the corporate bodies, act as the factor for growth and development of the country and any deficiency in these services would lead to action under the Act. The sole purpose of the Consumer Protection Act, 2019, is to protect and safeguard the interests of consumers. It not only covers within its ambit physical platforms for a buyer-seller relationship but also recognizes services provided by e-commerce

platforms.

Examples of deficiency of services:

1. Inappropriate treatment done by a doctor leading to an increase in patient's suffering is the deficiency in service.
2. A customer buys a ticket for an AC bus. But the AC of the bus does not work, which is a deficiency of service.

3.0 Analysis of deficiency of services under the Act:

The Act imposes strict liability on the manufacturer, distributors, suppliers and retailers for causing injurious harm by its defective products or services. Notwithstanding any contractual obligations and limitations of the liability, if a product or any of its components fails to comply with the necessary standards and therefore causing a defect in the product, shall make the manufacturer of the product directly liable for damages under the Act or the common law of negligence. Subsequently, the action can be brought for injury, death or any damages caused to a person or property under the Act due to a defect of the product. This means that there is no need for consumers to prove that the manufacturer was negligent for filing the suit against the manufacturer. The consumer only needs to prove that the defect in the product, the damage or injury was caused to the consumer by the product or service only.

4.0 Unfair trade practice:

Unfair trade practices refer to the use of various deceptive, fraudulent, or unethical methods to obtain business and promote its sale of goods and services. The manufacturer, seller and distributor use illegal and illicit means which includes, false advertising, misrepresentation or false representation or misleading of a good or service, deceptive pricing, false free prize or gift offers and noncompliance with manufacturing standards. An unfair trade practise is sometimes referred to as "deceptive trade practices".

According to the Consumer Protection Act, 2019, [E-Commerce Rules](#) on unfair trade practice are laid down under the Consumer Protection E-Commerce Rules. These rules are applicable to all marketplaces, inventories, e-commerce portals and other entities including foreign entities which are situated outside India but supply goods and services to Indian customers. The professional and non-professional activities are exempted from the applicability of these Rules.

As per these rules, e-commerce entities are mandatorily required to dispense information such as payment options, warranty, refund policy, exchange rules, tracking information, shipment details etc. Herein, if the goods or products sold are not up to the mark or quality as portrayed, then sellers are liable to take them back or exchange them accordingly. If any issue arises it is mandatory to answer any query or complaint filed by a consumer within 48 hours and shall provide proper redressal to such consumer complaint within the period of 1 month from the date of receipt.

5.0 Consumer complaint redressal mechanism:

The consumer can approach Consumer Courts constituted under the Act, in case of any deficiency in services. The complaint can be filed according to the procedure established under the Consumer Protection Act, 2019. A complaint consists of written allegations for claiming liability against the manufacturer, the seller, the product, or the service provider. Such complaints can be filed by one consumer or more than one consumer, any registered voluntary consumer association, heirs, or the legal representatives of the consumer, the central or state government. In the case of a minor, his/her parents or guardians can file the complaint on behalf of the minor.

Nowadays, consumer complaints can be registered electronically. The whole adjudicating procedure has been simplified by permitting electronic filing and also empowering and authorizing District and State Consumer Forums to address to review applications and also advise mediation.

In India, there is a 3-tier system of Consumer Courts, such as National level, State level and District level. Wherein the aggrieved consumers can approach as per the valuation of matter in concern, for redressal and adjudication of disputes. After recognizing the matter in dispute, the further step is to understand the pecuniary jurisdiction of the case.

5.1 The pecuniary jurisdiction of the consumer cases:

- District Consumer Disputes Redressal Forum: Rs. 1 Crore or less.
- State Consumer Disputes Redressal: Between Rs. 1 Crore to Rs. 10 Crore.
- National Consumer Disputes Redressal Commission: More than Rs. 10 Crore.

6.0 Recent cases of deficiency in services:

6.1.1 Manu Sharma And Another vs Dr. Kulwant Singh And Another on 16 April, 2021

Opposite parties alleging medical negligence and **deficiency in service** on the part of opposite parties No.1 to 5, resulting into death of their daughter ... opposite parties No.1 to 5 amount to medical negligence and **deficiency in service**. Hence, the present complaint. Defence of the Opposite Parties.

State Consumer Disputes Redressal Commission:

Although, the loss suffered by the complainants due to **deficiency in service** and medical negligence of opposite parties No.2 to 5 cannot be compensated in terms of money, yet in view of law [laid down by](#) the Hon'ble Supreme Court in above referred authority, age of the patient, and the totality of facts and circumstances of the case, we award lump sum compensation of ₹33,00,000/- (Rupees Thirty Three Lac only) to the complainants, along with interest at the rate of 7% per annum from the date of filing of the complaint till realization, due to **deficiency in service** and medical negligence and **deficiency in service** on the part of opposite parties No.2 to 5 and resultant mental agony, harassment, avoidable pain, sufferings caused to the complainants and her family members, including medical expenses and loss of their beloved child. However, the apportionment of the compensation/liabilities of opposite parties No.2 to 5, as per the extent of their **deficiency in service** and medical negligence, will be detailed in the conclusion and relief part of this judgment.

6.1.2 M/S. Anamika Real Estate Pvt. Ltd. & 2 ... vs Tanuja S. Shetty & Anr. on 9 October, 2019

That the Opposite Party University has indulged in **deficiency of service** and unfair trade practice by inducing them and false assurances that the University ... seeking a direction to the Opposite Party to compensate for the **deficiency of service** and the unfair trade practice indulged in by the Opposite Party.

National Consumer Disputes Redressal:

For the unfair trade practice (alone) [and not for '**deficiency in service**'], the builder co. and its Director Nitin Mehta are put to stern advice of caution through imposition of cost, jointly and severally, of Rs.25,00,000/- (rupees twenty five lakh), out of which Rs. 15,00,000/- (rupees fifteen lakh) shall be deposited with the Consumer Legal Aid Account of the State Commission and Rs. 10,00,000/- (rupees ten lakh) shall be paid to the complainants (equally) within four weeks of pronouncement of the reasoned judgment.

The payment to the complainants, made specifically and only for the 'unfair trade practice' under the Act 1986, shall be independent and separate of and without prejudice to seek remedy (refer paras 12, 13 and 14 above) in a civil court and / or to agitate their case before any competent authority.

7.0 Conclusion:

As the world is on the track of development there is a rampant rise in disputes too. Law must keep pace with the needs and demands of society. Deficiency of service can have small or grave consequences, ranging from negligence, inconvenience, injury or death, thereby leading to legal consequences. Subsequently, the manufacturer, seller, distributor and providers can also be liable for deficiency of services. The Consumer Protection Act, 2019 grants a remedy to the consumers against any deficient service or goods provided by the seller or service provider by providing relief in terms of compensation as per the Act.

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