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Deficiency In Service In Various Professions

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• **Abstract –**

When a service is found deficient by a consumer, they can lodge a complaint under the Consumer Protection Act, 2019. Thus, the prime requirement is that the matter must fall within the “definition of service”, and it must entail a deficiency as per the requirements provided under the Consumer Protection Act, 2019.

• **What Is “Deficiency Of Services –**

1. According to the definition under Section. 2(11) of Consumer Protection Act 2019 ("the Act"), any sort of imperfection, or defect in the feature, quality, amount, worth, authenticity, its capacity or potential, 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, is known as deficiency.
2. Willful and deliberate concealment of important information, omission or negligence of acts by seller which may lead to injury or loss to the consumer(s), also comes under the ambit of deficiency of service.
3. Any act(s), which a prudent seller is supposed to do or is supposed to omit, but deliberately does the contrast, such actions amount to 'deficiency of service'.

Deficiency of service can be witnessed in any service sector where there is buyer-seller relationship, such as, railways, banks, legal aid, electricity, construction, education, transportation, aviation, hospitality, restaurants, entertainment etc. Deficiency of service can have minor to grave consequences, ranging from inconvenience or harassment to mental or physical injury to death, thereby leading to legal consequences.

The Consumer Protection Act (both old and new) is a legislation enacted in India with the sole purpose of protecting and safeguarding the interests of consumers. The Consumer Protection Act, 2019, which came into effect on July, 20 2020,

not only covers within its ambit physical platforms for buyer-seller relationship but also recognizes services provided by E-commerce platforms.

- **Keywords –**

Deficiency, Services, unfair trade, Consumer.

- **What Is 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. Legal consultation is a service where a lawyer is a service provider.
2. A medical check-up is a service where a doctor is a service provider.
3. Teaching is a service where the teacher is a service provider.
4. Internet facility is a service.

- **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.

● **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.

● **Deficiency In Service In Various Professions-**

1. **Deficiency in Insurance Services –**

Deficiency in Insurance Services under Consumer Protection Act 1986 - A Critical View & Challenges Abhay Butle Assistant Professor S.P. College of Law Chandrapur Maharashtra (India) The State was interested in diverting insurance funds for developmental purpose or at least to stop insurance companies from investing the funds in other business enterprises, which might affect prospect of the insured people and property. However, effective the law might be, the control over the funds used and their investment was difficult.

Despite prescribing the goals, objectives and directives, it was not possible for the government to supervise the investment and control the funds of insurance companies. The advantages of insurance are being increasingly realized by people all over the world. For instance everybody is aware that life insurance not only inculcates the habit of saving but also provides protection and security to the insured. With the phenomenal growth of trade commerce and industry the modern day entrepreneur also believes that it is in his own interest to have and insurance cover .The business of insurance has undoubtedly developed at a fast pace over the year. It needs however to be seen whether side by side the insurance companies have also achieved consumer satisfaction .It is perhaps of the term service in the Consumer Protection Act 1986 the intention undoubtedly was to provide cheap and expeditious redresses to the aggrieved consumers presumably resenting judicial scrutiny of their actions. The public sector insurance corporations as well as the private insurance companies also challenged the jurisdiction of consumer redressal agencies set up under the Consumer Protection Act 1986 to entertain disputes relating to Insurance service. The act however restricts the ambit and scope of the power of the redressal agencies to award compensation to the aggrieved policy holder. It is only when there is deficiency in the service rendered to him and he has suffered any loss or injury due to the negligence of the insurers that relief by way of compensation can be granted to him. In other words the consumer is entitled to relief under the Act if and only if he establishes that he hired the service complained of for consideration and that the service provided to his has a deficiency.

2. Deficiency In Banking And Finance Services -

A person who has applied for shares is a consumer, contrary to the general misconception that an applicant for shares prior to their allotment cannot be a consumer. The reason for this misconception is the judgement of the Supreme Court in the case of Morgan Stanley where the Supreme Court interpreted the provisions of the Consumer Protection Act prior to its amendment in June 1993, and held that an applicant cannot enjoy the status of a consumer prior to allotment. Fortunately, the CP Act, was amended in 1993 so that prospective consumers, who have agreed to purchase any goods, would also have a right to file a complaint.

Applications for shares are mostly made by tendering the application to specified banks appointed by a company for that purpose. These banks are required to process the applications by presenting the applicants cheque for clearance and then crediting the proceeds to the companys account. Subsequently,

the company allots the shares or sends the refund order in accordance with the scheme of allotment.

Many times, during this processing, the bank misplaces or loses some application forms. In other cases, the bank appoints some computer agency for processing the data. Due to a mistake in feeding the details, some cheques are returned for re-presentation after correcting the relevant mistakes. Instead for making the necessary correction and re-presenting the cheque, the bank sleeps over the matter, and by the time the applicant comes to know of this fact, the issue has already closed.

In such cases, the applicants money has not been received by the company floating the shares, and hence he would not be entitled to allotment of shares by the company. Here, action would lie against the bank and not against the company. Can the bank take a stand that the applicant has not paid any service charges to the bank for accepting and processing the application and hence the services rendered being free are outside the ambit of the Consumer Protection Act No, the bank cannot wriggle out by raising such an excuse.

The bank is doing this work on a commercial basis and is being paid by the company to accept applications on its behalf. Hence, even though the applicant may not be paying service charges to the bank, the service is not free. The applicant thus becomes a beneficiary of the services hired by the company, and hence is entitled to file a complaint against the bank for its negligence and deficiency in service. A complaint against the bank can be filed in the District Forum having jurisdiction over the District in which the application was tendered, or where the bank concerned has its branch office. This makes it convenient for the consumer.

Many people are not aware of this, and waste time and money by filing a complaint in the wrong forum. The law on this subject has been settled by the National Commission in the case of Rajaram Corn Producers Punjab Ltd v/s Suryakant Nitin Kumar Gupta (HUF) [I-1996 (1) CPR 35] as well as in the case of Haryana Urban Development Authority v/s Vipin Kumar Kohli [VII-1995 (2) CPR 499]. This interpretation about the territorial jurisdiction unfortunately causes considerable hardship because many a time the amount of the investment would not be worth the cost of litigating in a distant forum. In such cases, the small and medium investors are the worst hit.

You must be aware of your rights and fight for them. At the same time you should also be aware of the law so that you do not waste time and money filing a complaint in a forum which does not have the necessary territorial jurisdiction.

- **Indian Judiciary On “Deficiency Of Services” Under Consumer Protection Laws :**

Indian Medical Association v. V.P. Shanth-

In this case, the Hon'ble Supreme Court through this case included medical profession and medical negligence, within the scope of the Consumer Protection Act. Consequently, empowering the aggrieved (due to medical negligence) to sue for damages for deficiency in services by a medical professional or medical institution, in a Civil Court.

Gurshinder Singh vs. Shriram General Insurance Co. Ltd and Ors. 2020-

In this case, the Hon'ble Supreme Court while reiterating the verdict passed in the case of *Om Prakash v. Reliance General Insurance and Anr. Civil Appeal No. 15611/2017* held that insurance claims should not be declined on technical grounds, if the reason behind it is satisfactorily explained and proved. It was further opined by the Court that if the insurance claim is declined by the Insurer because of untimely intimation of occurrence of theft/robbery, it would be considered as a technical ground of rejection and the same would be unjust and not fair, if the respective claim in question has already been verified. Hence, it was held by the Court that, mere delay in intimating the insurance company about the theft must not act as a valid ground to decline or repudiate the insurance claim, which has already been proved to be genuine.

- **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.