

A STUDY OF CONSUMER PROTECTION LAW FOR BANKING SECTOR

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ABSTRACT

According to the constitution of India justice is an important part for protection of banking customers. There are so many laws were passed by the Indian Parliament but they didn't able to complete their task. At the end Consumer Protection act was passed to protect the interest of Banking Customer. The Consumer Protection Act, 1986 is once of the significant socio-economic legislation which has been enacted for protecting the interests of the consumers in India. The Act is intended to provide simple, speedy and inexpensive redressal to the consumers' grievances, and relief of a specific nature and award of compensation. The statute has been enacted to provide for better protection of the interests of consumers and for that purpose to make provisions for the establishment of consumer councils and other authorities for the settlement of consumer's disputes and for matters connected therewith. In this article, I try to deal with the negligence and deficiency in service of banks in relation to shares and investments and what are rights and remedies as a consumer. I try to discuss some cases related to the topic in my paper.

KEYWORDS: Consumer, Redressed, Disputes, Remedies

In the constitution of India, there are number of legislation were passed by the Indian Parliament such as Drugs act , 1950 , Prevention of Food Adulteration Act, 1954; Essential Commodities Act, 1955; Essential Services Maintenance Act, 1968; Trade and Merchandise Marks Act, 1958; MRTP Act, 1969, etc. But all the acts were failed to protect the interest of customers. The procedures for applying this act were typical, costly & time consuming. Finally in 1986 Indian Parliament passed the Consumer Protection Act, 1986, as the name suggests, to protect the interest of the consumers and to provide them a service for easy, quick and cheap redressal of grievances against the mighty and unscrupulous producers/ traders and service providers.

Consumer Protection Act

The Consumer may following matters complain as per section 2(1) (c), of the Act which is useful to resolve the problem of consumer.

1. An unfair trade practice or a restrictive trade practice
2. Defective Goods purchased
3. Deficiency in service
4. Over-charging of price

Find the below definitions provided in this act.

Service

According to the section 2(1) (o) the service of any description and includes the provision of facilities in

connection with banking, financing, insurance, transport, processing, supply of electrical or other energy etc.

Deficiency

The term deficiency [section 2(1) (g)], means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance required to be maintained under any law or in pursuance of a contract or otherwise.

Consumer

The term consumer section 2(1) (d) of the Act, A consumer is a person belonging to the following category –
a) One who buys the goods for a consideration which has been paid or promised or partly paid and partly promised under any system of deferred payment. 'Commercial purpose' does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.

Applicability to Banking Sector

According to the act, "Consumer", section 2(1) (d) of the Act, includes a person who hires or avails of any service for a consideration. Therefore in banking transactions, a customer of a bank who has a bank account with the bank or a person who purchases a bank draft, hires locker facility or obtains bank guarantee from a bank are all "consumers" and can prefer complaints under the Act for "deficiency in service" on the part of the bank or for "restrictive trade practice" or "unfair trade practice" adopted by the bank.

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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 judgment 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.

Procedure of Filing Compliant

A complaint shall be lodged in the District Forum within the local limits of whose jurisdiction the opposite party or the defendant actually and voluntarily resides or carries on business, or has a branch office or personally works for gain at the time of institution of the complaint provided that the other opposite party/parties acquiescence in such institution or the permission of the Forum is obtained in respect of such opposite parties; or the cause of action arises, partly or wholly. In the same manner if consumer is not satisfied with the Judgment of the District Forum, he/she can file an appeal to the State Commission. Similarly, appeal against an order of a State Commission lies before the National Commission. Appeal against an order of the National Commission has to be filed before the Supreme Court of India.

Landmark Cases regarding Consumer Protection Act in Banking Industry

The word consumer, the following cases are there in the court got the result in the favour of customer:

1. Punjab and Sind Bank vs. Manpreet Singh it was held by the Punjab State Commission that a savings bank account holder is a consumer under the Act. It was observed that difference in the lending and borrowing rates is the consideration for rendering services by the bank. It was also noted that even if the bank does not charge for providing cheque facility to the account holder, it cannot be said that the same is given without consideration. Actually, the cheque book facility is obtained by the depositor in consideration of his putting funds at the disposal of the bank.

2. Vimal Chandra Grover vs. Bank of India In this case it was argued before the Supreme Court on behalf of the bank that the appellant, who took overdraft facility from the bank by pledging shares, is not a consumer within the meaning of the consumer Protection Act. The Supreme Court repelled the arguments of the bank and held that bank is rendering service by providing overdraft facilities to a consumer, which is not without consideration. Bank is charging interest and other charges as well in providing the service. Provision for overdraft facility is certainly a part of the banking and falls within the meaning of "service" as provided in section 2(1) (o) of the Act.

Rights & Remedies available to Consumers

- Copies of the award shall be sent to the insurer and the complainant.
- Complainant shall furnish to the insurer within one month, a letter of acceptance that award is in full and final settlement of his claim.
- Insurer shall comply with the award within 15 days from the receipt of the acceptance letter and intimate compliance to the Ombudsman.

Various remedies for the Policyholders under the following acts:

1. Protection of Policyholders Interest.
2. Consumer Protection Act 1986.
3. Insurance Ombudsman.

Protection of Policy Holders' Interests

Under the provisions of Protection of Policyholder's Interest the procedure is defined for the insurance companies to be followed at the time of issue of policies and the documents required at the time of claim and how the disputes are to be resolved.

Procedure before the Sale of product

A prospectus of any insurance product shall clearly state the scope of benefits, the extent of insurance cover and in an explicit manner explain the warranties, exceptions and conditions of the insurance cover and, in case of life insurance, whether the product is participating (with -profits) or non-participating (without-profits). The allowable rider or riders on the product shall be clearly spelt out with regard to their scope of benefits, and in no case,

the premium relatable to all the riders put together shall exceed 30% of the premium of the main product.

Proposal for Insurance

Except in cases of a marine insurance cover, where current market practices do not insist on a written proposal form, in all cases, a proposal for grant of a cover, either for life business or for general business, must be evidenced by a written document.

Grievance Redressal Procedure

Every insurer shall have in place proper procedures and effective mechanism to address complaints and grievances of policyholders efficiently and with speed and the same along-with the information in respect of Insurance Ombudsman shall be communicated to the policyholder along-with the policy document and as may be found necessary.

Claim Procedure in Respect of a General Insurance Policy

An insured or the claimant shall give notice to the insurer of any loss arising under contract of insurance at the earliest or within such extended time as may be allowed by the insurer. On receipt of such a communication, a general insurer shall respond immediately and give clear indication to the insured on the procedures that he should follow. In cases where a surveyor has to be appointed for assessing a loss claim, it shall be so done within 72 hours of the receipt of intimation from the insured.

CONCLUSION

Consumer Protection Act can be explained as common man's civil court. The Act is designed to make available cheap and quick remedy to a consumer. The object of the act is to protect the consumer from the exploitative and unfair trade practices to provide

inexpensive, easily accessible and speedy remedy. Analysis of the various judgments of the Consumer Courts reveals that they have not only been awarding the value of the goods or services for the defect and deficiency in service but also the compensation for the mental agony and harassment. It is seen that in these cases against the injustice consumers are in problem against the bank. But the justice seems to have prevailed under the aegis of the Consumer Protection Act. It has been found that there is a positive justice to the consumers against the faulty banking services.

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