

PROTECTION OF CONSUMER RIGHTS: AN ANALYTICAL STUDY WITH SPECIAL REFERENCE TO THE RAILWAYS ACT, 1989

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ABSTRACT

Every human being is a consumer in one form or the other. The concept of Consumer is as old as the trade itself. Consumers' expectations of service and goods quality, performance, safety, and reliability have increased since the past times. The consumer is left in the lurch when the services and goods fail to give the desired results. The consumer has to face many problems products' failure and deficiency in services every day. Since the problems are manifold and arise daily, it is quite impossible to think of an Indian consumer moving to the court for the redressal of his problem. The same situation is faced by the consumer in the service industry also. The Consumer Protection Act, 1986 talks about several service sectors, and transportation are one of them. Transportation of passengers and goods is generally made by three modes i.e. by air, water, and land. So the transportation sector is a very vast area and the present paper is discussing the transportation of passengers through the railway. In this paper, the protection of consumer's rights of railway consumers and deficient services of railways are also discussed. Railway provides cheap, convenient, and easily available services. The railway in India is regulated by the Railways Act, 1989 but the non-implementation of law in this issue would render the consumer protection under the Railway Laws a myth.

KEYWORDS: *Consumers, Indian Railways, Services, Consumer Rights*

INTRODUCTION

In the present socio-economic scenario, every person is a consumer in one form or the other. To uplift, the living standard of a common man in any country, consumer protection rights has assumed great importance in modern Jurisprudence. Those days are over when in rural-based economies, the needs of human beings were very less and these needs were sought to be fulfilled through the exchange of goods and methods of self-reliance. With the emergence of the welfare state, it becomes the duty of the state to provide consumer rights to the general public with its effective implementation. The consumer law deals not only with the defective goods but also with the deficiency of services. A consumer is a person who purchases Goods and Services for personal use after paying some consideration. If any person buys or avails any service free of charge he will not come under the preview of the consumer. Consumer in literal sense means somebody who consumers certain goods or avails of certain services for which he pays. India is a welfare state where "Social Justice" is an ideal to be achieved the Constitution of India in its preamble and also in the Directive Principles of State Policy in Article 38(1) has professed to promote the welfare of the people by securing and protecting as effectively as it may a social order

permitted Justice social, economic and political.¹In general, consumer rights in India are listed below

- The right to be protected against all kinds of hazardous goods and services
- The right to be informed about the performance and quality of all goods and services
- The right to free choice of goods and services
- The right to be heard
- The right to seek redressal, whenever consumer rights have been infringed
- The right to consumer education²

In this paper, the emphasis has been laid upon one of the major service providers in India i.e. Indian Railways. The concept of service has assumed greater importance in present society as some of the services have become a necessity in the present time. Railways service is one of them. Indian Railways is the backbone of the Indian economy and the lifeline of modern India. It is one of the largest railway networks in the world.³ Millions of people travel or commute every day across India through railway and are directly and indirectly dependent on the railway. It provides cheap, convenient, and easily available services to passengers. As a major service provider, railways must provide quality of service to its consumers but in various instances, the railway failed to provide such quality of service. The Railways Act, 1989 was passed but no specific rights to the railway consumer as such were provided in the act. Only a few provisions regarding the carriage of passengers were given but these provisions are not enough to protect the rights of railway consumers. For the protection of rights as a railway consumer, one has to take recourse of the Consumer Protection Act, 1986. The Railways Act, 1989 with allied rules defines the responsibility of the railway towards its passengers. For deficiency in service passenger has right under Consumer Protection Act, 1986 because under the railway law, no mechanism is available to mitigate the problems faced by the railway consumers. That is why a consumer has to seek recourse of consumer forum in cases of deficient services. The reality in our country is that litigation for the common man is costly and time-consuming and hence, getting justice becomes a myth. The Consumer Protection Act, 1986 comes to the rescue of the common man. It provides a forum for extensive and speedy justice to the consumers almost at their doorstep. Some of the definitions given below should be read before studying the concept of protection of rights of Railway Consumer.

Consumer⁴

Consumer Means Any Person Who

- 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

¹ M. P. Jain, "Indian Constitutional Law", Lexis Nexis Haryana, 2014 p. 1407.

² S. R. Myneni, "Consumer Protection Law", Asia Law House, Hyderabad, 2015 p.161.

³ Sunil kumar, "Indian Railways: Ensuring Last Mile Connectivity", *Yojana*, November, 2015, p.29.

⁴ Section 2(d) of Consumer Protection Act, 1986.

- 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.

Deficiency⁵

Deficiency means any fault, imperfection, shortcoming 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.

Service⁶

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, board or 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.

Railway⁷

Railway means a Railway, or any portion of a railway, for the public carriage of passengers or goods, and includes-

- all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;
- all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway
- all electric traction equipments, power supply and distribution installations used for the purposes of, or in connection with, a railway
- all rolling stock, stations, offices, warehouses, wharves workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations staff dwellings and any other works constructed for the purpose of, or in connection with, railway;
- all vehicles which are used on any road for the purposes of traffic of a railway and owned, hired or worked by a railway; and
- all ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purposes of the traffic of a railway and owned, hired or worked by a railway administration, but does not include-
- a tramway wholly within a municipal area; and
- Lines of rails built in any exhibition ground, fair, park or any other place solely for the purpose of recreation.

⁵Section 2(g) of Consumer Protection Act, 1986.

⁶Section 2(o) of Consumer Protection Act, 1986.

⁷Section 2(31) of The Railways Act, 1989.

SERVICES PROVIDED BY INDIAN RAILWAYS

Indian Railways is providing two types of services as a carrier of goods and as a carrier of passengers. On this basis, one can differentiate responsibility of railway administration under two different heads as a responsibility of the railway as a carrier of goods and responsibility of railway as a carrier of passengers. In responsibility as a carrier of goods, provisions are given under the Railways Act, 1989. When the goods, parcels, and luggage are accepted for carriage, the responsibility of the railways for any loss, damage, destruction, deterioration or non-delivery is determined under the provisions of the Railways Act 1989.⁸ Section 93 to 104, 108 and 111 provides relevant provisions relating to the responsibilities of railway towards users. Section 93 provides the instances when such loss destruction etc. is proved to have occurred by any of the causes. This Section provides general liability of railway administration as a carrier of goods.⁹ Under these provisions, railway administration is liable for the loss, damage, destruction, deterioration or non-delivery, in transit of goods entrusted to it for the carriage. And in case of any deficiency in service in a carrier of goods, the user has right to move before railway claims tribunals which are established under the act of Railways Claims Tribunal Act, 1987 but in case of deficiency in service as a carrier of passengers no specific provisions are provided under railway act. The railway authorities always contended that if there is a deficiency suffered by passengers, they have to move the same claims tribunal because the railway does not come under the term of a service provider. But in the case of *Mahendra Kumar Routray v. Station Superintendent, Bhubneshwar*¹⁰, state commission repelling this argument, the state commission observed that railway ticket holder who pays charges for rail transport service and reservation is a consumer and if there is any deficiency in railway's service the passenger become a consumer and he can approach consumer fora.

RESPONSIBILITY OF RAILWAYS AS CARRIER OF GOODS

The responsibility of railways as a carrier of goods is different from the carrier of passengers. Chapter XI of Railway Act, 1989 talks about the responsibilities of railways as a carrier of goods. When luggage, parcel, or goods are accepted by railways, railways must take care of those goods. If there is any loss, destruction, damage, deterioration, or non-delivery of goods, the person who booked the good has the right to claim compensation from railways.

Loss

When railway authority is unable to deliver goods to the consignee, it amounts to a loss. When person/consignor books his goods for transit and if goods are not delivered to the consignee due to loss occurred from the possession of railways, the authority will be liable for such loss.¹¹ Loss may be occurred due to different reasons such as pilferage, theft, disappearance in the process of loading and unloading, or even for any other reason. In case of loss, railway authority is liable to pay compensation. The word loss has a wider meaning. It also includes the cases of non-delivery. When railway authority is unable to deliver booked goods to the consignee, it is presumed that the goods are lost in the custody of railway administration. To constitute the loss, there must have been lost by the carrier. If the goods are lost during the booking or under the control of the owner of goods, in that case, the railway is not responsible for that loss. To prove the responsibility of railways, goods must be lost from the control of railway administration after booking of goods or during the transit of goods. A loss means loss of goods by railways but does not mean a

⁸ H.K. Saharay, "The Railways Act, 1989", Eastern Law House, New Delhi, Ed. 2010, p.129.

⁹ Prakash Chandra & Mamta Jain, "Claims and Compensation under The Railways Act, 1989 and Consumer Protection Act, 1986", Bahri Brothers Publishers & Booksellers, Delhi, Ed, 2014, p.26.

¹⁰ (1992) 1 CPR 248 (Ori.).

¹¹ Ardhanari Chettair and Co. v. U.O.I, AIR 1956 Mad. 483.

financial loss to the consignor or owner of the goods. In a loss of goods, the goods which are booked for transit are not traceable and railway authority is not in the position to locate such goods. As long as the consignor or consignee or their agents do not receive the goods from railways, it should be taken as a loss of the goods. Loss of the goods also includes the loss arising due to the negligent act of railway administration.

Destruction

Destruction is something different from loss. When railway authority is not in the position to deliver the goods to consignee due to the condition of goods, authority is liable to pay compensation for destruction. When the destruction of goods is occurred due to fire and the entire goods are disappearing or part of them are burnt due to fire and the remaining goods may be available the railway authority is responsible for the destruction. Railway authority is fully liable towards a person who suffered a loss due to destruction by the negligent act of railway.

Damage

Damage includes partial deterioration and partial destruction which is occurred due to the negligent act of railways or due to any other act which is under the control of railway authority, the reason may be any such as rain, breakage, etc. Damage does not include complete destruction. Damage to goods is occurred by various reasons such as careless loading, unloading or overloading, etc. The railway administration is liable to pay compensation to consignor or consignee for loss which he has suffered. Railway administration during the monsoon season is taking monsoon precautions intending to avoid damages to the goods which are booked by the consignor. But when goods are found to be damaged by water at the destination due to the use of non-watertight wagons, the railway administration is responsible for damage and liable to pay compensation for such damage.

Deterioration

The term deterioration means the physical change in the goods and lowering or impairing the quality or value either by lack of caring during transit or due to abnormal delay in transit. In case of deterioration, railway authority is not in the position to deliver the goods in the same condition in which the railway authority has received at the time of booking. It is different from the loss due to the change in the market value. In the case of *UOI v. Ganesh Chandra Das*¹², a wagon of potatoes was detained without any requirement. The railway authority was aware of the nature of goods in the wagon. The potatoes were deteriorated due to the negligent act of the railways. It was held by the court that the railway is responsible for deterioration and they have to pay compensation to the claimant. When goods consigned by the railways are only deteriorated but not lost, the consignee is bound to take the delivery of those goods and after taking such delivery he can claim damages from railway authority.

Non-Delivery

The term non-delivery has not been defined in the Railways Act, 1989. It simply means that when goods have not been delivered it amounts to non-delivery. There are many reasons for which railway can be held liable for non-delivery e.g. when a railway servant has committed theft of goods and authority is not in the position to deliver the goods to the proper person. But there are some exceptional circumstances, where the railway authority has no responsibility. These circumstances are mentioned below

¹² AIR 1959 Cal. 337.

- Act of God
- Act of War
- Act of Public Enemies
- Arrest, Restraint or Seizure under Law
- As per the restriction of Central or State Government
- Act or Omission or Negligence of Consigner or Consignee
- Inherent defect of Goods
- Fire, Explosion or Any Unforeseen Risk
- Latent Defects

In above circumstances, railway administration will not responsible for any loss, destruction or non-delivery of goods but if negligence on the part of the railway is proved, the railway administration will be responsible for the loss, destruction, damage, deterioration, or non-delivery, etc. and then they have to pay compensation for their negligent act. The claimant has a right to move against railway authority before Railway Claims Tribunal. The burden of proof is on railways that they have discharged their duty with proper care and responsibility otherwise, railway authority will be liable to pay compensation for goods entrusted to them for carriage. If loss, destruction, damage, deterioration, or non-delivery, etc. is due to act of God, then railway authority is not responsible. Act of God is that occurrence which would not have been foreseen and which is unable to prevent, due to natural circumstances. The true meaning of the act of God is circumstances which restrict to perform the work due to nature. But every unexpected storm or wind does not operate as an excuse for railways to run from their liability. Railways must take appropriate steps to deliver goods to their consumers which were booked by them. Act of God includes natural calamities, which means those incidents which are due to nature such as earthquakes, floods, storms, pandemic, etc. In the case of *General Manager v. Aggarwal Traders*¹³, the court held that if there is a defense of Act of God then the burden of proof is on railways authority to prove their case beyond doubts. If an act is done by an enemy soldier during the war, the railway will be exonerated from liability. When a person is authorized by some competent authority to seizure or restrains any goods which are booked with a railway, the consignee has no right to file a claim against railway authority. Even in case of act or omission or negligence of the consignor/consignee, the railway will not liable for any destruction, damage, deterioration. The railway is not responsible when goods tend to develop physical natural, inherent defect or defectively packed.¹⁴ Under ordinary circumstances, railway authority is bound to deliver the goods to the consignee within a reasonable time but if there is delay by railways due to reasons which are beyond their control, railway administration has no liability.¹⁵ The Central Government has the power to make rules regarding the maximum amount payable by the railway administration for loss, destruction, damage, or non-delivery of goods.¹⁶

¹³ 2003 ACT 184(Karnataka).

¹⁴Section 98 of the Railways Act, 1989.

¹⁵Section 95 of the Railways Act, 1989.

¹⁶Section 112 of the Railways Act, 1989.

Responsibilities of Railways towards Consumers

New goods and products are coming in the market are of such nature, about which the consumer is completely ignorant. The consumer is left in the lurch, when the goods fail to give the desired results. Hence, he has to solely rely upon the seller or manufacturer. The same has happened in the service sector, where the service provider ignores the needs of persons, who are availing their services. The consumers are facing problems due to the inferior quality of products and deficient services. This situation is faced by railway consumers in service as most of the passengers travel through rail for various purposes. The biggest challenge facing Indian Railways today is its inability to meet the demands of its passenger. After purchasing the pass or ticket for a traveling person becomes a consumer of railways and afterward, railway authority has to provide quality services to its consumers. These services include different types of amenities not only at the stations and in the trains but also the outside of stations. But most of the time, the railway fails in performing their duties towards their consumers. Many railway stations and trains in India are not properly maintained. The interior and structure of railway stations and trains are in pathetic condition and Non-implementation of law in this issue would render the consumer protection under the railway laws a myth. In addition to that unawareness of railway, consumers are another big issue which is a barrier to the proper realization of railway services.

In the year 1986 the Consumer Protection Act enacted with the object of providing relief to the consumer in case of deficiency in service and of unfair trade practices or restrictive trade practices committed by a provider of such service.¹⁷ Railway Administration is a monopolistic Institution. It enjoys a monopoly on rail services. Railway officers and employees do not hesitate to gain an undue advantage of this status. Therefore, to check that monopolistic and indifferent attitude of railway administration and to compensate the railway users for sufferings on account of mental agony and loss sustained provisions were made. Apart from the quantum of investment, the quality of delivery is also an issue. More and more facilities are being provided to passengers traveling by the railways in India. Still, there can be cases of 'deficiency of services' being offered by Indian Railways. Cleanliness, punctuality of services, safety, quality of terminals, the capacity of trains, quality of food, the security of passengers, and ease of booking tickets are various issues needing urgent attention. The scenario reveals the exploitation of consumers in the context of goods and services in India. The consumer pays high fares for dirty railway compartments and dirtier toilets. To improve services to its consumerson the train (on-board) and on stations, (off-board) Railways have to take the various initiatives.

CONCLUSIONS

At last, it can be concluded that the Indian railway should strive to bring a pragmatic shift in its perception about consumers. To curb these problems, consumer protection laws should be framed in such a manner to augment the rights of consumers. For the effectiveness of such laws, recognition of rights alone is not satisfactory. This has to be done by promoting awareness among the general public about consumer rights. To achieve this end periodic survey should be conducted to ascertain the level of satisfaction among its consumers. Not only periodic surveys but also improvements for those areas are specifically required. These basic attempts will provide viable solutions and help eradicate consumer woes and improve their pathetic condition.

¹⁷R.M. Vats, "Consumer and Law", Universal Book Traders Delhi, Ed. 1994, p.47.

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