

**ANALYSIS OF UNFAIR TRADE PRACTISES IN SERVICE SECTOR
IN GOA: A STUDY OF DECISIONS OF GOA STATE CONSUMER
DISPUTES REDRESSAL COMMISSION**

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Abstract

The Service sector is growing at fast pace in Indian Economy. It contributes for 55.6 percent of gross value added. The growth of insurance, telecom , banking , travel and tourism companies have contributed for the development of the economy. However, the unfair trade practices adopted by the service practice is hitting the consumer confidence. The existing regulatory framework has failed to ensure tight control over the unscrupulous elements. In Goa also, the consumers are fleeced by the service providers. But, very few knock the doors of the consumer forums and much less get justice for deficiency in service. To study the unfair trade practices prevailing in Goa, the researchers have analysed the decisions of the Goa State Consumer Disputes Redressal Commission to examine the exploitation the consumer by the service providers. The researchers also examined whether consumers are aware of the consequences of their submissions and the procedural requirements while entering into agreement with the service providers.

Keywords: unfair trade practice, regulatory framework, deficiency in service, consumer

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1.1 Introduction

The service sector in India is growing fast and it contributes to 55.6 percent of India's gross value added and employs 28 percent of the population. The growth of any sector depends on genuineness of the business activities and the satisfaction of the consumers. But, the greed of the service providers spawned a web of unfair trade practices. The laws have failed to catch up with the unfair trade practices. The service providers are taking advantage of lack of proper regulatory mechanism and delay in getting the redressal of consumer complaints.

The unfair trade practices not only affect the quality and price of the services and goods, but consumers are gravitated towards a single company. The consequences range from having a steady base of consumers with assured income affecting competition between the companies. The loyalty of consumers may tend the companies to dilute the quality and indulge in appropriating more profits. In such cases, the companies adopt deceptive and fraudulent practices, re-package their goods and services to exploit consumers .

The technological advancement coupled with globalization has provided scope for the service providers and the manufacturers to exploit the consumers. This includes dumping of hazardous products, anti-competitive agreements, products sold at higher price by deceptive advertisements, hiring ingenious salesmen, offering poor quality goods and services. The unfair practices adopted by online goods and service providers have increased manifold as they do not have to deal with the consumer face to face.

1.2 Laws relating to Unfair Trade practices

The Monopolies and Restrictive Trade Practices Act 1969 , did not have provision regarding unfair trade practices. Hence, in 1984 government appointed a committee and amended the law defining unfair trade practices. The provision of this law are no longer in vogue. The Section 2(r) of the Consumer Protection Act 1986 defines unfair trade practices as: "A trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice, including any of the following practices, namely:—

1. making any statement, whether orally or in writing or by visible representation which: i. falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
2. falsely represents that the services are of a particular standard, quality or grade;

3. falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
4. represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
5. represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
6. makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services; gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof”
7. Makes to the public a representation in a form that purports to be – (i) a warranty or guarantee of a product or of any goods or services; or (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result. if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
8. Materially misleading the public concerning the price at which a product or like products or goods or services, have been, or are, Ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;
9. Gives false or misleading facts disparaging the goods, services or trade of another person.
10. Permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.
- 11 . Permits – (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole. (b) the conduct of any contest, lottery, game of chance or skill, for

the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest

12. Permits the sale or supply of goods intended to be used, or are of a kind likely to be used by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, Composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

13. Permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale, or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

1.3 Unfair trade practices in India

In India in almost all the sector, the following kind of unfair trade practices including misleading advertisements, labeling / Misbranding, Adulteration, Misrepresentation, False/unfair/ Misleading information, Hoarding, Starting an offer without the intention to comply, Tied Sales are commonly experienced. The e-commerce ventures are also involved in such practices.

1.4 Unfair trade practice in Goa

Tourism and mining is the backbone of Goa's economy. The real estate is also booming along with the transport services. Due to the economic activity, the insurance business has also grown over the years. The unfair trade practices adopted by the tourist taxi providers are common. The looting of tourist by the taxi operators continues unabated with the blessings of the local politicians. The media also features the plight of the patients, who are fleeced by the medical professionals. The insurance agents also have their share in misguiding the customers by giving them market linked policies under the garb of life insurance. In Goa, there are two district consumer forums and Goa State Consumer Disputes Redressal Commission (GSCDRC) to decide on complaints filed by the consumers.

1.5 Objective of the Study

- a) To examine the unfair trade practices adopted by service providers in Goa
- b) To study the consumer's approach while entering into agreement with service provider
- c) To study the decisions of the Goa State Consumer Disputes Redressal Commission pertaining to service sector

- d) To propose suggestions for curbing the unfair trade practises

1.6 Hypothesis

- a) Settlement of genuine insurance claims are affected due to Unfair Trade Practices
b) Absence of proper regulatory framework service sectors gives scope for exploitation of consumers
c) Consumers are aware of finer nuances of laws while entering into agreement

1.7 Data Collection

For the present study, the researchers collected data through secondary method including the judgments of the GSCRDC. The researchers also relied on the bare Acts, reports, and internet websites as secondary source.

1.8 Scope and Limitations of The Study

- a) The study is based on the decisions of the Goa State Consumer Disputes Redressal Commission in appeals filed before it from the Consumer Forums
b) The study is limited to the unfair trade practices in select service sectors and mistakes committed by the consumers while entering into agreement

1.9 Analysis of decisions of GSCRDC

For the present study, the researchers examined the decisions of the Goa State Consumer Disputes Redressal Commission from October 1, 2016 to October 1, 2018. To study the unfair trade practices prevailing in service sector in Goa the researchers analyzed 25 judgments of the commission decided in its appellate jurisdiction. The study covers cases in real estate sector, insurance, telecom, travel and tour operators and banking.

Insurance

Suppression of fact

In the insurance sector, the insurance companies deny the claim on the ground suppression of fact by the complainants. In two cases, it was found that the companies denied the claim after the consumer underwent surgeries on the ground of pre-existing disease. In one case there was no relation to the new ailment caused after undergoing knee-cap surgery. But, the insurance company denied the claim for 'Bi Partite Patella' surgery stating that the patient had concealed the medical record of knee-cap surgery done few years back.. The doctors certified that the new ailment had no relation to the previous ailment.. The new disease was three month old. The commission ordered the insurance company to pay 93,327 towards surgery, compensation of Rs. 25,000 and Rs.

10,000 towards costs. In another case, the company denied the claim stating that pre-existing disease of diabetes had caused cancer. The existence of diabetes was not disclosed. However, the commission relied on doctors opinion held that the new disease of cancer was not due to diabetes.

. In a case of claim for spine surgery, the insurance company paid only half the amount by stating that the medical bills were tempered with. The doctors had to depose in the case during the proceedings to prove that they had received the money from the patient. The commission ordered the company to pay remaining amount of Rs. 48,000 plus interest and Rs. 30,000 by way of damages, Rs. 50,000 as compensation and Rs. 10,000 as costs.

The judgments also reveal that in one case, the insurance company declined to pay Rs. 14 lakh following loss of goods claimed by the shop owner, whose premises gutted in fire. The company defended its action as the complainant had not produced the bills. The consumer stated that the bills were also destroyed in fire. But, he had produced the statement of five year purchase of goods from cloth sellers in Gujarat. The commission ordered compensation of Rs.10 lakh by reducing the value of furniture destroyed in fire. The commission also granted Rs. 25,000 for the mental tension and harassment to him. In another case, a vehicle met with accident and loss claimed by the complainant was to the tune of Rs. 6.29 lakh. The company rejected the claim as the driver was charge-sheeted for drunken driving. Even after his acquittal by court, the company declined to settle the claim. The commission was of the view that the consumer was entitled for the claim as he was acquitted. The commission remanded the matter back to the forum for its decision as the case of the complainant was dismissed at the admission stage. In yet another case, After assessing the loss of 4.15 lakh, insurance company paid only Rs. 1.68 lakh towards repair of mechanized trawler. The company claimed that the defect had occurred due to the fault in not properly servicing the trawler. The commission noted that the assessors of the insurance company had assessed the damages of Rs. 4.15 lakh and denied the claim..The surveyors had reported that mishap appeared to be accidental and fortuitous in nature. The commission remarked that if the mishap was accidental and fortuitous in nature, then why the surveyors at all considered the claim partly to the extent of Rs. 2, 09,199. The commission ordered the remaining amount to be paid including compensation of Rs. 25,000 to be paid and Rs. 10,000 as costs.

Consumer's Approach

The approach of consumer has also affected their claims and resulted in denial of their dues to them. The wrong benefit taken by the consumers regarding no 'bonus claim' has also affected them financially. It is found that consumers have a casual approach in taking discount under 'No Bonus Claim' of 20-25 percent when they are not entitled to it. They take this discount while switching from existing insurance company to a new insurance company. The discount of Rs 2000- Rs. 3,000 taken on policy by making false statement has cost the three consumers for more than 5 lakh after their vehicle was totally damaged. The commission has held that claiming discount under "No Claim Bonus" when they are not entitled to it amount to fundamental breach of policy. The commission has held that insurance companies were justified in rejecting the claims of the consumers in such cases.

Real Estate

In real estate sector, mostly the cases related to non-execution of sale deed and delay in possession of the flat and the consumers have been awarded appropriate compensation. However, it is seen that the builders through brochure offer several facilities in the building complex, but at the time of signing the agreement, the brochure is not made part of the agreement. But, in view of the Real Estate Regulation Act, the existing unfair trade practices are likely to be eliminated.

Travel and Tour operators

In a case decided by commission, it is revealed that consumers are required to be aware about the jurisdiction of the consumer forum and about the other evidence to be submitted to the forum while filing the cases. A consumer had booked two flight tickets online from Bombay to Diu after doing the transaction in Goa. The website company that accepted the booking for two tickets of the flight was based not based in Goa. Only one ticket was finally allotted at Mumbai airport. The consumer filed case in Goa for refund of ticket amount of Rs. 11,000 and compensation. However, the commission held that Goa consumer forum did not have jurisdiction to decide the case regarding the transaction that was done for purchasing tickets between Mumbai to Diu. The consumer also did not provide the evidence regarding the place from where he had paid the money, the commission pointed out. So, he lost the case.

In another case involving online purchase of tickets from rebus.in, the consumer filed case against Konduskar- Fernandes Travels to recover his loss of foreign currency and other luggage amounting to Rs. 2.10 lakh due to the negligence of the bus driver and the conductor. The complainant's bag kept in the bus was given by the conductor to some

other persons during the night. The complainant filed case against Fernandes travels manager, who proved that they are not in any way connected with the bus service. The consumer did not made redbus.in as party. The commission rejected the claim of the consumer. Consumer relied on the name of the bus service provider and filed the case.

In a case, the air passenger has lost claim of Rs. 3.14 lakh from AIR India as he was not allowed to travel to Australia from India as the Australian embassy website gave message of 'Do NO BOARD' as the passengers did not have transit visa. The passengers had booked air tickets to travel to some more countries after they reach Belgium during the vacation period. The consumer claimed that transit visa was required only when the airline plane is parked for more than 8 hours and the plane by which he wanted to travel stayed only for 6 hours and 15 minutes. The commission held that there is no fault on the part of the Air India as Australian government declined the passengers. In such cases, the consumers are required to be aware about the laws regarding the visa in foreign countries.

Telecom Companies

The commission directed Reliance infocom to pay compensation of Rs. 10,000 and costs of Rs. 5,000 as they promised the consumer that there will not be change in his tariff plan of Rs. 400 per month if he switches over from 2G to 4G plan. The consumer relied on the communication sent to him by the company. The company replied that there was a clause in the agreement that company has right to change the tariffs and hence he was sent bill of 1340 per month for three months. The commission directed the company not to attempt recovery of the outstanding bill claimed by them amounting to Rs. 3,422. The commission held that the consumer had acted on the basis of promise made by the company to switch over the plan.

In an interesting case, the Vodafone Company salesman gave a SIM card to a customer Later the card was taken back on the ground that it would not work in Mapusa. A new number with new SIM card was given to the customer. However, the bills were sent to the customer on both the SIM cards. The consumer was asked to pay monthly bill of Rs. 27,000 on SIM card, which he never used. The commission directed the company to pay him Rs. 50,000 as compensation with interest and costs of Rs. 10,000.

Gold Jewelers

The cases filed against the jewelers reveal that they only provide the estimates for the gold jewelry to be purchased instead of giving the bills. Before the consumer courts they

argue that the complainant has not produced the bill in case of impurity of jewelry established by the consumer.

In three cases, the consumers have proved with the help of independent assessors/ valuers that they were not provided with 22 karat gold jewellery as promised. The jewelry items were of 18-19 karat . The consumer found this discrepancy when they went to sell the jewelry. In another case, the jeweler paid advance of Rs.10,000 for making gold jewelry of Rs. 75,000. But later declined to pay Rs 10,000 back when the customer asked for refund as the gold smith had not delivered the jewelry on time as per the agreement . In this case, the consumer commission directed the jeweler to pay compensation of Rs. 5,000 and cost of Rs. 10,000 including the refund of Rs. 10,000.

Banking

The commission ordered compensation of Rs. 20,000 and costs of Rs. 10,000 against Bank of India for not remitting Rs.2200 to income tax department towards TDS on fixed deposit. The commission dismissed the argument of the Bank that the complainant could not file the complaint as the FD was in the name of the minor daughter of the complainant. In another case, the complainant got compensation of Rs. 10,000 and equal amount towards Costs from Andhra Bank for sending sms to the customer that a cheque of 7.5 lakh deposited by him was cleared by the drawee Bank. This cheque was paid by an accused to the complainant. When the complainant got the message that the amount of Rs. 7.5 lakh was credited to his Bank Account, he filed an application for withdrawal of criminal case against the accused on the same day at 12.30 p.m. and this was allowed by court at 1.05 p.m. on that day. After few hours, the amount of Rs. 7.5 lakh was debited by the bank account of the complainant on the ground that the drawee bank had not paid the amount. The commission found that the bank wrongly showed that the amount of Rs. 7,50,000 was credited to the account of the complainant and subsequently showed the said amount as debited from that account. This certainly caused inconvenience, mental trauma, harassment to the Complainant due to the said deficiency in service on the part of the Bank

Conclusion and Suggestions

The analysis of judgment reveals that in all these sectors some form of unfair trade practices are prevailing. The insurance companies are denying the claims on the basis of suppression of pre-existing disease without verifying whether the pre-existing disease has contributed for the new disease. Consumers wrongly claiming 'no claim bonus' reflects that they do not know that it amounts to fundamental breach of policy thereby

jeopardizing their claim in the event of accidental damage to their vehicle. In absence of clear cut guidelines regarding transactions to be done by online service providers, the consumers are facing hardship in filing the cases within the jurisdiction of the consumer forums. The consumers are not knowing the finer points of law to seek refund and compensation from the service providers. The misleading advertisement of no increase in tariff plan and then charging the consumer with new tariff plan by telecom companies is quite common. From the above discussion, it is clear that the insurance companies are not settling the genuine claims of consumers on flimsy ground. The absence of proper regulatory framework is giving lee-way to the service providers to exploit the consumers. However, the consumers are not aware about finer nuances of law before dealing with the service providers. In view of the stringent Real Estate Regulation Act (RERA) coming into force, the intensity of existing unfair trade practices will be curbed to a large extent in the construction sector. Depending on the complexity of transactions in each sector, sector specific legislations are required to be passed like RERA to bring uniformity in protection to the consumers

Suggestions

- The government hospital doctors opinion should be made compulsory for insurance company on whether non disclosed pre- existing disease has contributed to the fresh ailment before rejecting the claim of the insured in case of alleged suppression of fact
- The regulatory framework required to protect the interest of the consumers from jewelry sector. Government should give powers to private assessors to certify the purity of Gold before consumers forums
- The insurance companies should be asked to cross check with another insurance company about the 'no claim bonus' fact before issuing the policy . Sometimes, the consumer is influenced by agent to mention about 'no claim bonus' when he is not entitled to it.
- Severe action should be taken against telecom companies that indulge in misleading advertisement on tariff plans to fleece the consumers . Pan India investigation should be conducted by the government to curb the unfair trade practice considering the magnitude of cheating by such companies
- Amendment in law required so that in case of online booking of passenger tickets or availing other services so that the consumer can file case against the company in

the district forum or the state commission within whose jurisdiction he has used the online service for buying the tickets.

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