

## Exploring Contours of Railway Consumer Rights in India: A Study

**Arun Klair**

*Assistant professor, University Institute of Law  
Sant Baba Bhag Singh University, Jalandhar*

**Sarita**

*Assistant Professor of Law  
Himachal Pradesh National Law University, Shimla*

### ABSTRACT

There are three basic modes of transportation i.e. land, water and air. Since times when animals were the only medium to commute from one place to another, railway has emerged as major mode of transportation in India. It is a major development in transportation through land due to its high level of ubiquity and speed. The British introduced railways just with the intention to expand their economic and administrative policies. But it could not stop Indians from using Rail services. The important function of railway is transportation of passengers. This function has a great economic and social importance. Since 1925, there was an overall increase in all classes of railway travel. The basic reason for that are low rail fare, better mobility of people, growing, awareness, popularity and travelling habits of the people. There is no doubt, the railways were introduced in India as tool for exploitation of its natural wealth, but still it managed to become popular with the Indian masses. This popularity can be judged by the rise of number of passengers. Now Indian Railway is one of the biggest enterprises. It continuously improving and expanding amenities to the passengers. In this paper, the researcher has tried to have a look on various consumer rights of the passenger availing services of railways in India.

**Keywords:** Consumer, railway passengers, consumer rights, deficiency in service.

### 1. INTRODUCTION

Modern state has evolved the concept of welfare state. With the growth of industrialization, the welfare state has more responsibility to take care the interest of general public. Due to the industrial revolution in almost all countries of the world, consumer protection has assumed a great importance in modern jurisprudence for the purpose of raising standard of living of a common

man. Those days are gone when the needs of human beings were very few and they are fulfilled through exchange of goods and methods of self-reliance. But now with the growth of awareness, the public opinion has changed and the earlier concept of rural-based economy has become obsolete. Modern life has increased the dependence of human beings upon the industrial products and different services. Human has become dependent upon such products and facilities to the extent that they can't run without keeping in touch with the global developments and modern transportation facilities. The style of life has been changed totally. In the present day practice, the consumer is a victim of many unfair and unethical techniques which are adopted by service providers and sellers. The consumers are generally disorganized, illiterate and ignorant, hence, have become the victims of dishonesty in trade practices. The traders, the producers and service providers on the other hand are organized and united. They scientifically advertise their goods and services through print and electronic media to influence the consumers rather unduly in order to fulfill their selfish designs. Goods offered do not often conform to the standard prescribed for quality, quantity, potency and purity as required to be maintained by the law in force. And the services rendered to the consumer for consideration frequently suffer from fault, imperfection, shortcoming and inadequacy in quality. The trade-monopoly and market complexities have assumed such magnitude that in their whirlwind the consumer as a class is feeling worst suffocation.<sup>i</sup>

The consumer law deals not only with the defects of the goods, but also with the deficiency in service. The concept of the service assumed greater importance in present society as some of the services have become necessity in present time. Railway service is one among them. Indian Railways is the backbone of Indian economy and the line life of modern India. It is one of the largest railway networks in the world. Millions of people travel/commute every day across India through the railways and are directly and indirectly dependent on it and earn their livelihood. It is also one of the biggest employers in India. It provides cheap, convenient and easily available services to passengers. In the early days of Company owned railways, the basic motive of railway was profit making. It is observed that railway should not provide its services only on the basis of commercial venture with a view to make profits but should provide services for the convenience of general public while taking adequate measures for their safety<sup>ii</sup>.

## 2. INDIAN RAILWAYS: LEGAL PERSPECTIVE

The Indian Railway is a public utility as well as commercial concern. No doubt their nature of business is monopoly. They are providing services in two ways. One is to public for transportation from one place to other and secondly, transportation of goods from one place to another at fair rates. The Indian Railways Acts of 1853, 1854 and 1879 were the early enactments dealing with the law regulating railways in this country. After these legislations, Railways Act, 1890 was passed, fully loaded with the important provisions which were related to the railways. In 1921, there were some provisions which were added in this Act. Lastly, in 1989 Railway Act, 1989 was passed on 3<sup>rd</sup> June, 1989.<sup>iii</sup>

The Railway Act, 1989 was passed when mostly the railways in India was managed by private companies. The Government of India primarily played the role of coordinating and regulating authority in various matters such as movement of traffic, fixation of rates, responsibilities of railways towards their consumers. Now the railway is totally changed and it becomes the part of government sector.<sup>iv</sup> After that a number of amendments have been made in year 1994, 2003, 2005 and 2008 by which railway was given more liability towards its passengers. Railway being a commercial concern provides services in two ways, one is to public and other in relation to goods for their transportation from one place to other. There are many provisions for compensation of victims of accidents for loss of life, for injuries caused and also for loss of goods in case of train accidents since very beginning.

With the passage of time, consumer awareness was at peak. General notion of *caveat emptor* became obsolete and consumers' expectations relating to product quality, reliability and performance has increased. New types of products and services are launched in the society and results in increase of consumer claims in one or the other respect. As the problems are many, there emerges the desire to redress these problems via appropriate mechanism. The same is the situation with the Railway Passengers who are facing deficiency in one or the other way in daily life. Apart from accidents, there are a number of problems been faced by Railway consumers those are, unmanned railway crossings, delay in arrival and departure of trains, sanitation, overcrowding, non-availability of parking, foot over bridges, cases of dacoity, robbery, arson, violent attacks and safety concerns for women passengers etc. These issues have led to study the railway passengers on the perspective of consumers.

### **3. CONSUMER PROTECTION SAFEGUARDS: INTERNATIONAL PERSPECTIVE**

Consumer protection is linked to the idea of consumer rights and to help consumers make better choices in marketplace and pursue their complaints. A consumer is defined as someone who acquires goods or services. Consumer protection law regulates the areas of private relationships between individual consumers and businessmen who are providing services and selling goods. Many areas like product liability, privacy rights, fraud, unfair practices, misrepresentation etc. are within the purview of consumer protection. Many of the countries have their own legislations for consumer protection. Australian Competition and Consumer Commission has been established in Australia for consumer protection and regulation of their affairs.<sup>v</sup> Likewise, Brazil is also regulating the consumer affairs by the consumer Defense Code which was enforced after the commencement of their Constitution. Being member of EU, Germany was bound by the consumer protection directives by EU. A full-fledged portfolio is given to a federal minister who is responsible for whole consumer affairs and framing rules and regulations in this regard. Likewise, Nigeria, U.K and U.S.A are also having their separate legislations for consumer protection.<sup>vi</sup>

### **4. INDIAN PERSPECTIVE**

In India, consumer protection involves assurance against anti-consumer practices by the traders and producers which includes providing defective products, deficiency in services, adulterated products etc. Hence, for stopping such wrong practices and providing redressal to consumer, appropriate mechanism was need which was provided in the Consume Protection Act, 1986. This benevolent legislation provided for compensation to consumers through quasi-judicial authorities known as consumer courts or consumer forums. As the society develops, the market also witnesses a sea change in the market practices and consumer faces various challenges in the shape of online shopping and E-Commerce transactions. These all factors made position of a consumer more vulnerable.<sup>vii</sup> So the consumer protection Act, 1986 became outdated and there was need of new law to address the myriad constantly emerging vulnerabilities of consumers. Thus, the consumer Protection Act, 2019 came into force on 9<sup>th</sup> August 2019. It provides mechanism for making the consumer complaint system more robust. The new act is passed to give better protection of the

interest of consumers by enhancing the scope of protection to the consumers which includes advertising claims, endorsement and product liability.

The definition of consumer under the new act includes those who make purchases online.<sup>viii</sup> Another significant addition is introduction of product liability whereby manufacturers and sellers of product or services have been made responsible to make compensation for any harm caused to a consumer by defective products manufactured or sold or for deficiency in services<sup>ix</sup>. It also aims to protect consumers from unreasonable contracts which lean in favour of manufacturers or service provider. Deficiency has been defined under the new act as 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 and includes-

- i. Any act of negligence or omission or commission by such person which causes loss or injury to the consumer: and
- ii. Deliberate withholding of relevant information by such person to the consumer.<sup>x</sup>

## **5. RAILWAY PASSENGER VIS-À-VIS CONSUMER RIGHTS: A GLANCE**

There are three basic modes of transportation i.e. land, water and air.<sup>xi</sup> Since times when animals were the only medium to commute from one place to another, railway has emerged as major mode of transportation in India. It is a major development in transportation through land due to its high level of ubiquity and speed. The British introduced railways just with the intention to expand their economic and administrative policies. But it could not stop Indians from using Rail services. The important function of railway is transportation of passengers. This function has a great economic and social importance.<sup>xii</sup> Since 1925, there was an overall increase in all classes of railway travel. The basic reason for that are low rail fare, better mobility of people, growing awareness, popularity and travelling habits of the people. There is no doubt, the railways were introduced in India as tool for exploitation of its natural wealth, but still it managed to become popular with the Indian masses. This popularity can be judged by the rise of number of passengers. Now Indian Railway is one of the biggest enterprises. It continuously improving and expanding amenities to the passengers. Indian railway is largest and one of the old government organization. It operates

more than 23000 trains across its more than 66000 km route every day, which has more than 2.3 crore originating passengers and load more than 3 million tons of goods traffic daily.<sup>xiii</sup> It is providing many facilities to its passengers being major service provider. Railway passengers are its consumers and all the amenities which a consumer is required to be given, has to be provided by railway. Railway Passenger means a person travelling with a valid pass or ticket. A passenger is one who possesses valid ticket to travel by a train and therefore the statute mandates that unless a person possesses valid ticket to travel by a train, he will not be called as a passenger of the train. Compensation can be claimed only in respect of a person who was a bonafide passenger. Anybody having no ticket, valid pass or travel document cannot be held to be a bonafide passenger, burden of proof lies on claimant.<sup>xiv</sup> But in *Gatten Rajya Laxmi and others v. Union of India*<sup>xv</sup>, the court held that intention of legislation is not to extend the benefits provided under the Act to every victim irrespective of whether he possesses valid ticket or not. According to Railway Act 1989, the term passenger also includes a railway servant on duty. It says that if a person is not having a valid ticket but he is servant of railways, he will be covered under the term of passenger. *Union of India v. Lakshmann Rao and others*<sup>xvi</sup>, the court held that the legal heirs of servant of railways can claim compensation as per the guidelines which were issued for bonafide passengers. Intention of person while travelling by train is very important to prove him valid passenger. Being service provider, the primary duty of railway is to provide the best services to its consumers. But it has failed in one or the other areas to show its efficiency.

The relationship between railway and the consumer is very complex because of multi-tiers of functioning of railway administration. The services provided by railway include different amenities not only on the station but also in the trains. But most of the times 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 is in pathetic condition. There are number of reasons which leads to inconvenience for railway consumers. The service quality by railway is poor. Even foot-over bridges are not available on railway stations having more platforms to reach on them for boarding the train. There is no guarantee of continuous power supply even at train timings at night. Often platforms are changed at eleventh hour for whatsoever reason by railway administration resulting in heavy rush to board the train. Most of the trains are overcrowded and there is no check on unauthorized persons, hawkers or even

miscreants entering the compartments whether reserved or not for selling their items. Passengers are forced to travel on foot boards of the train. Chain snatching, theft, robbery, dacoity, arson, violent attacks are the happenings of the day. Till date, railway passengers are having very dissatisfactory experiences in trains and at the stations. The reason for that is railway administration is not paying any heed towards passengers' demands. Moreover, railway is not concerned about its passengers' opinion and is not conducting any opinion survey to get information about their grievance. If some of the surveys have been conducted, their demands have not given any materialistic shape.

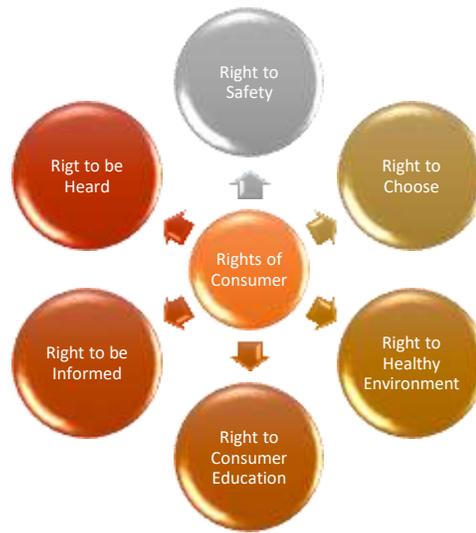
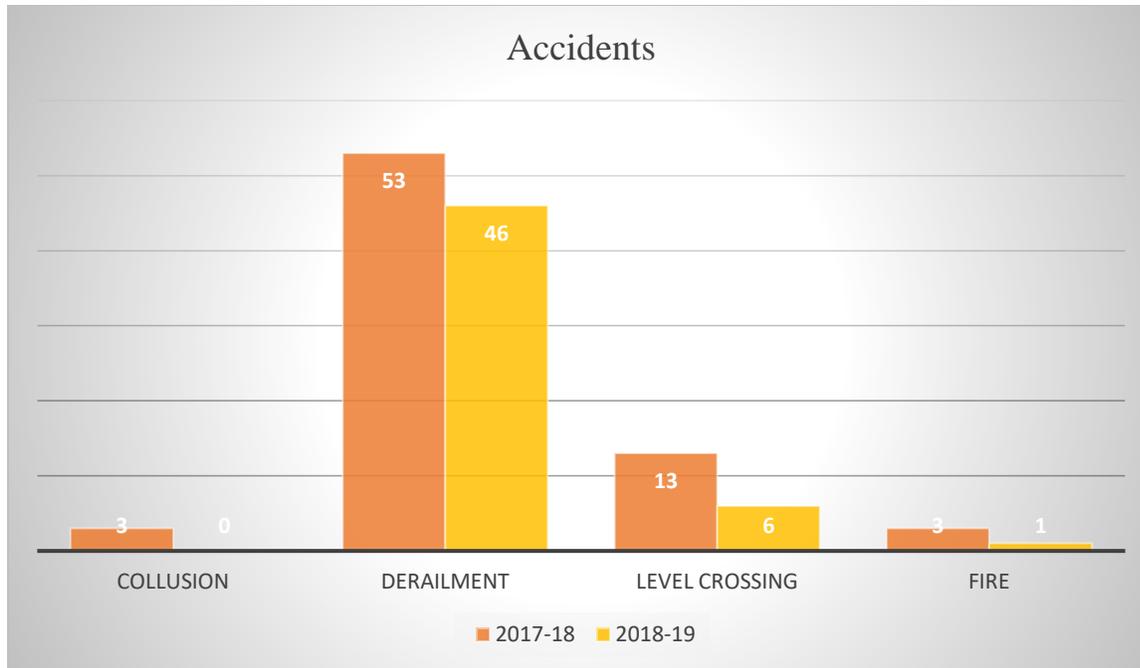


Figure 1: Consumer Rights

Security and safety is the foremost obligation to be provided to railway consumer. In a recent survey, it has been found that the major railway stations like, New Delhi, Old Delhi, Nizamuddin etc. are not safe for general public.<sup>xvii</sup> It is found that the parcel areas at stations are particularly vulnerable because the goods transported in passenger trains are not verified or scanned to ensure passenger security. Moreover, there are many unauthorized entries and exit points at several railway stations. X-ray scanners and CCTV cameras are not available at every station and where they are found either they are not working properly or there are no security personnel attached to observe the footage. Another drawback of railway is overworked tracks consequent to which there are incidences of derailments.



Source: Indian Railway Annual Report and Accounts, 2018-19.

As per the chart given above, it is seen that there were 59 train accidents in the year 2018-19. The numbers have been reduced in comparison to 2017-18, where there were 72 casualties. The causes of these accidents can be analyzed in two broad heading that is human failures and equipment failures. Under human failures like failure by railway staff and failure of persons other than railway staff were examined. In relation to former there were 42 instance in 2017-18 and in 2018-19 there were 41 instances, where there was fault on the side of railway staff. On the other hand, where there are failure by other than railway staff, 17 instances were recorded in 2017-18 and 9 in 2018-19. In relation to casualties also the following table is reflecting numbers.

| Casualties     |            |         |                   |         |         |         |
|----------------|------------|---------|-------------------|---------|---------|---------|
|                | Passengers |         | Railway Employees |         | Others  |         |
|                | 2017-18    | 2018-19 | 2017-18           | 2018-19 | 2017-18 | 2018-19 |
| <b>Killed</b>  | 28         | 16      | 3                 | 1       | 27      | 20      |
| <b>Injured</b> | 182        | 90      | 4                 | 2       | 13      | 20      |

Figure: 2

An amount of 641.15 lakh approx. was paid as compensation under section 124 of Indian Railway Act, 1989 in 2018-19 to kins/victims.<sup>xviii</sup> Moreover, there is no proper safety and security to railway consumers. There is either complete absence or very few facilities available for disabled, old aged and female passengers. and incidences of stampedes are also very common causing casualties.

The staff of the railway is also not humble and polite with the passengers. Many of the times the employees found misbehaving. The environment is also not very healthy owing to eve-teasing. There are number of instances of sexual harassment which remained ignored or unaddressed. The basic reason behind it is the behavior of its staff. Medical facilities of railways are pitiable. Reservation hall at railway stations are overcrowded. The quality of food is also poor and unhygienic. Moreover, passengers have to pay more on such poor quality of food. Ticketless travelling is also a big issue, passengers without ticket occupy the seats of reserved coaches and passengers find difficulty to occupy their reserved seats. These instances leads to unhealthy environment for railways.

Taking into consideration various the aspect of consumer education in India, it has been analysed that Indian consumer is mostly ignorant. They are not aware about the rights conferred by consumer legislation. Moreover, the attitude of the Indian consumer is ignoring the deficiencies at many occasions as there is a taboo attached to moving to the court.

## 6. CONCLUSION

At the end it can be said that there are many loopholes in the services provided by railways to its consumers and it has to work more to provide better facilities. It is necessary that railway should adopt various advanced techniques to improve its services which suits the Indian environment. Various measures provided by Annual Survey 2018-19, should be implemented urgently. It should also have the policy to decentralize the complaints and suggestions. The officials should have surprise visit periodically. Various means to ensure women safety and security like, separate coaches with RPF staff, CCTV cameras in such coaches and along with that special lady squad should also be provided. The RPF and special lady squad should be trained in such a way to tackle every situation. The persons with disability should be provided with more comfortable facilities. Humble behavior of railway staff towards them will definitely lessen their miseries. Vigilance

organization will play active role in curbing the corruption among railway staff. Along with that it will also control tout system. Lastly it can be concluded that, the Indian Railways is progressing towards achieving its best ends. But the policy formulation is quite essential to meet changes in the current scenario. The consumer rights are inalienable rights of its passengers also hence, all the rights should be provided to their best. The facets of consumers are changing and widening, its scope daily and the right approach should be adopted. The consumer is a king for its service provider and he and his rights should be protected.

---

<sup>i</sup> R. Ramanathan, *Indian Transport towards the New Millennium (Performance, Analysis and Policy)* Concept Publishing company, New Delhi, 2004.

<sup>ii</sup> P. Nella Thampy Thera V. Union of India, AIR 1984 SC 74.

<sup>iii</sup> Sanjiva Row, *Commentary on The Railway Act 1989* 15 (Lexis Nexis Butterworths Wadhwa Nagpur, 2011).

<sup>iv</sup> J.M Ovasdi, *Railway Administration and Management* 37( Deep and Deep Publication, New Delhi, 1990).

<sup>v</sup> R.M. Vats, *Consumer and the Law* 64. (Universal Book Traders, Delhi, 1994).

<sup>vi</sup> O.P Tiwari, *Consumer Protection Act* 71. (Allahabad law Agency, Haryana, 2011).

<sup>vii</sup> S. Ponnuswamy, *Railway Transportation Engineering, Operation and Management* 96. (Narasa Publication house ,New Delhi ,2016).

<sup>viii</sup> Section 3 of Consumer Protection Act, 1986 defines Consumer means any person who

1. 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
2. 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.

<sup>ix</sup> Section 2(o) of Consumer Protection Act, 1986 defines 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.

<sup>x</sup> The Consumer Protection Act, 2019, S. 2(11).

<sup>xi</sup> Shweta, *History of Indian Railways*, 29 Dec. 2018, available at [www.orientairailjourney.com](http://www.orientairailjourney.com). (12.02.2020).

<sup>xii</sup> [www.indianrailways.gov.in](http://www.indianrailways.gov.in) (27.02.2020).

<sup>xiii</sup> Indian Railways Vigilance Mannual (2018) p3.

<sup>xiv</sup> *Yoshada Devi v. Union of India*, AIR 1979 All 287.

<sup>xv</sup> AIR 2011 (NOC) 293 A.P.

<sup>xvi</sup> 2012 ACJ 1338 Madras.

<sup>xvii</sup> Retrieved from [securitytoday.in/](http://securitytoday.in/) security audit finds many loopholes in railway Stations, visited on 20.02.2020.