
CONSUMER PROTECTION: A DIVE INTO THE DILEMMA OF SERVICE CHARGE

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ABSTRACT

Consumer protection has long been a focal point of societal discourse, dating back to the inception of organized and regulated markets. Its significance cannot be overstated, as it rests fundamentally upon the renowned principle of *caveat venditor*, or "let the seller beware." As societal dynamics shift, so too must the laws that govern consumer rights, necessitating numerous amendments to ensure relevance and efficacy.

The Indian Justice System has admirably risen to this challenge, evolving over time to meet the changing needs of its citizens. Among the beneficiaries of such legal evolution, the hospitality industry stands out prominently. Within this sector, consumers face a myriad of taxes and charges, often without full knowledge of the protections afforded to them by law. Thus, it becomes imperative to raise awareness regarding these provisions.

This article endeavours to shed light on the prevalent indifference among citizens towards the policies governing service charges, as delineated by the Central Consumer Protection Authority (CCPA). Through this exploration, it seeks to underscore the importance of informed consumer advocacy and the enforcement of consumer protection laws within the hospitality industry.

Keywords: Consumer Protection, Service Charge, Central Consumer Protection Authority, National Restaurant Association of India, Societal Discourse, Consumer Advocacy.

I. INTRODUCTION

The Central Consumer Protection Authority stands as a stalwart institution dedicated to safeguarding the rights of consumers. Its relentless efforts extend beyond mere enforcement, as it actively engages in discerning and adapting to the evolving needs of society, particularly in response to technological advancements and societal shifts.

The contentious issue of service charges has loomed large over the hospitality sector since its meteoric rise in the Indian economy. While it is common practice for consumers to encounter service charges, many remain unaware that such payments are not compulsory; rather, they constitute a voluntary remuneration for the services rendered by restaurants or hotels.

"Service Charge" – these two words have, since time immemorial, perplexed and incensed consumers alike. The debate surrounding the imposition of service charges has reverberated through both mainstream and social media channels. On one side of the divide stand consumer organizations, often supported by select consumer departments, vehemently advocating against the imposition of such additional fees. Conversely, restaurant and hotel associations, representing the opposing camp, argue that service charges are both legal and transparently communicated through menu cards, contending that these fees directly contribute to the welfare and benefit of their staff.

In this landscape of contention and debate, the role of the Central Consumer Protection Authority becomes increasingly vital, serving as a beacon of clarity and advocacy for consumer rights amidst the complexities of modern commerce.

II. SERVICE CHARGE: WHY IS IT RELEVANT?

A service charge serves as a fee collected to cover the expenses associated with the primary product or service being procured. It is typically levied at the time of the transaction between the consumer and the company.

Service charges, in essence, represent gratuities that customers may opt to provide at their discretion following the receipt of a service. Various industries implement service charges, spanning from restaurants to banking and travel and tourism sectors. For instance, the delivery fee incurred for ordering room service at a hotel or the gratuity included in the bill for a large group dining at a restaurant exemplify instances of service charges.

Complications often arise as consumers misconstrue the concept of service tax with that of service charge, a confusion that some restaurants opportunistically exploit without correction. The notion of service charge emerged alongside the prevalence of tipping culture. Unlike tips, which predominantly benefit servers or individual staff members, service charges are intended to be distributed among all staff within a restaurant or hotel. This move towards standardization and fairness aimed to ensure equitable compensation for all service personnel.

However, the noble intention behind the introduction of service charges has been marred by the insidious influence of greed. Some restaurants have resorted to coercing customers into paying service charges under the false pretense of its mandatory nature, citing the inadequacy of compensation for service sector employees as justification.

In response to such practices, the law mandates that establishments collecting service charges must distribute them "completely and equally" among all covered employees, regardless of their position, designation, or employment status within the establishment. This directive underscores the principle of fairness and equity in compensating service personnel, aiming to curb exploitation and ensure just remuneration across the board.

When Service Charge is Levied in Violation to the Set Guidelines

- i. Request Removal of Service Charge:** Politely request the concerned hotel or restaurant to exclude the service charge from the bill amount. Clear communication regarding your stance on the matter is crucial in initiating this process.
- ii. Lodge Complaint via National Consumer Helpline (NCH):** Utilize the National Consumer Helpline (NCH) as an alternative dispute resolution mechanism before resorting to litigation. Lodge a complaint by dialing 1915 or through the NCH mobile app, outlining the details of the issue for prompt attention and resolution.
- iii. File Complaint against Unfair Trade Practice with Consumer Commission:** Initiate formal proceedings by filing a complaint against the unfair trade practice with the Consumer Commission. Utilize the electronic filing system available through the edaakhil portal (www.edaakhil.nic.in) for expedited and efficient redressal of grievances.

- iv. **Submit Complaint to District Collector or CCPA:** Directly address the issue by submitting a formal complaint to the District Collector of the relevant district for investigation and subsequent action by the Central Consumer Protection Authority (CCPA). Alternatively, forward the complaint directly to the CCPA via email at com-ccpa@nic.in, ensuring that pertinent details are provided for comprehensive review and resolution.

III. PRESENT STATE OF AFFAIRS

It is crucial to acknowledge the multifaceted nature of pricing in the hospitality industry, particularly concerning food and beverage offerings in restaurants or hotels. Within the price structure, there inherently exists a component allocated to service provision alongside the tangible goods. This amalgamation of goods and services constitutes the overall pricing strategy adopted by establishments. Importantly, there are no regulatory constraints imposed on hotels or restaurants regarding the setting of prices for their offerings. Consequently, when patrons place orders, they implicitly consent to pay the listed prices for food items as displayed on the menu, inclusive of applicable taxes. Any deviation from this transparent pricing structure would constitute a breach of fair trade practices under prevailing legislation.

Despite the clear delineation of pricing principles, the issue of service charges has stirred considerable debate and contention within the industry. While the Consumers Affairs Ministry has issued directives urging hotels and restaurant associations to refrain from mandating service charges, branding them as "illegal," the National Restaurant Association of India (NRAI) maintains that service charges retain their legality until the government promulgates a specific rule or legal framework to the contrary. This dichotomy of perspectives between regulatory bodies and industry stakeholders raises pertinent questions for consumers: namely, do they possess genuine autonomy in deciding whether to acquiesce to service charges during their dining experiences?

Upon conducting a comprehensive examination, it becomes evident that consumers often lack adequate awareness of the legal provisions surrounding the voluntary nature of service charges in restaurants. The intricacies of consumer rights vis-à-vis service charges are often overshadowed by the complexities of dining out. To address this informational gap, it is imperative to structure survey questions in a sequential manner, thereby enabling a systematic exploration of consumer perceptions and behaviours regarding service charges in the dining

landscape. Through methodical inquiry and analysis, a deeper understanding of consumer perspectives can be gleaned, facilitating informed decision-making, and advocating for transparency and fairness in the hospitality sector.

IV. PERCEPTION OF THE POPULACE

The legislation's failure to sufficiently emphasize to consumers that the payment of such charges is entirely voluntary contributes to an enduring cycle of indifference. This ongoing lack of clarity not only places an undue burden on consumers but also tarnishes the government's reputation. Consequently, consumers find themselves bearing the brunt of additional expenses for commodities, while the government's credibility suffers.

It is widely acknowledged that a tip or gratuity extends beyond the contractual minimum service agreed upon between the consumer and the hotel management. Rather, it represents a distinct expression of gratitude for exceptional hospitality received from the staff of the hotel or restaurant. This gratuity is bestowed at the sole discretion of the consumer, as they assess the quality of service and overall experience upon the conclusion of their meal.

The decision to leave a tip or gratuity is a considered one, influenced by factors such as attentiveness, friendliness, and the overall dining ambiance. It is not a predetermined obligation upon entering the restaurant or placing an order. Therefore, the inclusion of a service charge on the bill, without affording consumers the autonomy to determine whether they wish to pay such a charge, is not only unjust but also undermines the principles of consumer choice and fairness.

In the intricate landscape of India, characterized by vast diversity and a sprawling population, disseminating awareness on various topics and schemes presents a formidable challenge. It is incumbent upon the government and regulatory authorities to ensure that critical information reaches the masses effectively. However, there persists a notable gap in how well-informed consumers are about their rights and the protective provisions enshrined in the law to safeguard them and ensure equitable treatment.

Despite an overarching confidence among consumers that businesses will uphold fair practices and refrain from misleading or defrauding them, there remains a notable lack of trust, particularly towards private sellers of motor vehicles. While consumers generally place a high degree of trust in information provided by salespeople, a significant portion still seeks

additional validation, such as scrutinizing product labels or online reviews, to ascertain product claims and quality standards.

Interestingly, younger consumers exhibit a lower level of confidence in their knowledge of consumer rights compared to their older counterparts. Nevertheless, a substantial proportion of consumers have engaged in sales agreements or credit contracts in recent years, expressing confidence in the clarity and comprehensibility of the information provided, enabling informed decision-making. However, modern Indian consumers grapple with persistent challenges, including misleading advertisements across various media platforms, lack of transparency, convoluted terms and conditions, undisclosed fees and charges, and punitive measures, among others. These issues underscore the imperative for heightened consumer awareness and protection measures.

At the heart of low consumer awareness lies the overarching issue of inadequate education among the majority of the population. There exists an urgent need to instil knowledge of consumer rights from the grassroots level, beginning with school education. Without a fundamental understanding of these rights, individuals cannot effectively exercise them, nor appreciate the protections afforded by the Constitution.

There is high awareness of organisations that provide advice on consumer rights and problems. The Citizens Advice Bureau has the highest reported use of services in the past two years while nearly a quarter of consumers report they are not aware of Consumer Protection. Consumer Guidance Society's President, Divakar Babu believed;

*"...this apart our country lacks a consumer-friendly atmosphere. People are afraid of being tagged. These are the biggest barriers to achieve the goal of 100 per cent consumer satisfaction in India,"*¹

However, just under half of all consumers acknowledge that there is adequate access to services facilitating the resolution of disputes between consumers and businesses. Notably, younger consumers demonstrate a lower awareness of consumer agencies or dispute resolution services.

¹ National Consumer Survey, 2020

Among the third of consumers who refrain from taking action to resolve their issues, the prevailing reasons include uncertainty regarding the appropriate course of action and a lack of confidence in the efficacy of intervention. This hesitancy is particularly pronounced among younger consumers and individuals encountering problems related to motor vehicle repairs. Despite these challenges, the majority of consumers who do take action report successful resolution of their issues, with satisfaction levels generally high. However, it is important to note that only half of all reported problems are ultimately resolved.

Evidently, there exists a pervasive indifference towards consumer laws and their provisions, stemming from a variety of factors ranging from apprehension to outright ignorance. This indifference underscores the need for enhanced awareness campaigns and educational initiatives to empower consumers with the knowledge and confidence to assert their rights effectively.

V. RIGOR OF THE LAW

The establishment of the Central Consumer Protection Authority (CCPA) under the Consumer Protection Act, 2019 (hereafter referred to as 'the Act') signifies a pivotal step in regulating issues concerning consumer rights violations, unfair trade practices, and deceptive advertising detrimental to public welfare. The primary mandate of the CCPA is to uphold and enforce the collective rights of consumers.

Empowered by Section 18(2)(1) of the Act, the CCPA is authorized to issue essential guidelines aimed at preventing unfair trade practices and safeguarding the interests of consumers. Any instance where entry is restricted based on the collection of service charges constitutes a trade practice that imposes an unwarranted burden on customers. By mandating customers to pay service charges as a prerequisite for ordering food and beverages, such practices are categorized as restrictive trade practices under Section 2(41) of the Act.

Therefore, to prevent unfair trade practices and protect consumer interest with regard to levying of service charge, the CCPA issues the following guidelines:

- (i) No hotel or restaurant shall add service charge automatically or by default in the bill.
- (ii) Service charge shall not be collected from consumers by any other name.

- (iii) No hotel or restaurant shall force a consumer to pay service charge and shall clearly inform the consumer that service charge is voluntary, optional and at consumer's discretion.
- (iv) No restriction on entry or provision of services based on collection of service charge shall be imposed on consumers.
- (v) Service charge shall not be collected by adding it along with the food bill and levying GST on the total amount.

While a majority of consumers claim awareness of dispute resolution services, many facing issues cite a lack of familiarity with the process as a hindrance to utilizing these services effectively. Just over half (54%) of consumers unable to resolve their concerns directly with businesses admit to being unaware of a suitable dispute resolution service. Furthermore, seventeen percent expressed a willingness to pursue dispute resolution but cited time constraints as a limiting factor.

In the case of *Mrs. Ahuja v Pizza Express*², the respondent refuted the charges on the ground that it is an approved restaurant by the Department of Tourism, Ministry of Tourism, Government of India. In compliance to the stipulations and requirements laid down by the Department of Tourism, the restaurants duly displayed on menu card the rates charged by it. As required, it also indicated sales tax, service charges, etc. It levied service charges as duly approved by the Department of Tourism as is the case in most of the hotels/restaurants.

In a recent judgement of *National Restaurant Association of India v Union of India*³, the court held that, undeniably the restaurant in question along with serving food at the table has a facility of Carry away service for which no service charges are levied.

Normally understood, service charges are levied for the service of food at the table in the restaurant. The choice rests with the customer either to take food in the restaurant bearing the service charges, as-is also a practice in other restaurants, or to carry away the food avoiding the aforesaid levy, there could, however, be no tie or up between the sale of food and service of

² (2003) CPJ 57 MRT P

³ W.P.(C) 10683/2022, CM APPL. 31033/2022

it on the table as is in the present case. This goes along with it. These two cannot be separated. Thereof, the same cannot be covered under Clause (b) of Section 33(i) of the Act.

VI. RESTAURANTS' PROCEDURAL TRANSPARENCY

A significant number of restaurants and hotels prominently display signs indicating the automatic application of a service charge on the bill, a practice that often leads to consumer confusion regarding their obligation to pay the charge. Many hoteliers mistakenly believe that posting such notices legitimizes the imposition of service charges on patrons, disregarding legal stipulations that categorize such charges as voluntary tips or gratuities. According to the law, service charges cannot be mandatory and must be left to the discretion of the consumer, including the amount payable. Originally, the concept of service charges was introduced to promote the tradition of tipping, serving as a gesture by customers to express satisfaction with the service provided by waitstaff or serving personnel.

While nearly all consumers are aware of the existence of laws safeguarding basic consumer rights in India, only a small percentage claim to possess extensive knowledge about these rights. Awareness levels tend to be lower among Pacific and younger consumers, aged between 18 and 26. Interestingly, self-reported awareness and comprehension of the Consumer Guarantees Act (CGA) and the Fair-Trading Act (FTA) surpass that of the Credit Contracts and Consumer Finance Act (CCCFA). Consumers exhibit a higher degree of familiarity with the CGA and FTA compared to the CCCFA when evaluated on the practical application of these laws.

Consumers with a deeper understanding of relevant legislation exhibit greater confidence in the adequacy of India's consumer protection laws and feel more assured when making purchases. They are also more proactive in seeking information before making purchases and express greater confidence in their knowledge of their rights. Moreover, individuals with extensive knowledge of consumer legislation are more adept at identifying problems, reporting a higher incidence of issues over the past two years compared to those with limited knowledge. They are also more inclined to take action to address these problems and achieve resolution. This underscores the prevalent indifference and lack of awareness regarding consumer protection laws, which contributes to consumer confusion and potential exploitation by businesses. Addressing this issue requires comprehensive education and awareness campaigns to empower consumers and ensure that they understand their rights and responsibilities in

commercial transactions.

VII. CONCLUSION

The essence of a country is deeply intertwined with the well-being and satisfaction of its citizens, much like how the vitality of an economy hinges on the contentment and engagement of its consumers. When customers feel dissatisfied and perceive breaches of trust, the ramifications ripple throughout the sector, impacting growth rates and the overall economic landscape. In the context of the hospitality industry, which relies heavily on service payments often influenced by prevailing tipping customs, it becomes paramount to uphold principles of fairness and consumer choice.

Forcing patrons to pay a mandatory service charge runs counter to the ethos of consumer empowerment and fair business practices. It deprives consumers of the autonomy to assess the quality of service rendered and decide whether to reward it with a gratuity. The law unequivocally states that such charges are voluntary and should be left to the discretion of the consumer.

In light of this, the recently issued guidelines by the Department of Consumer Affairs signal a pivotal moment for consumer empowerment and rights protection. While these guidelines undoubtedly serve to bolster consumer confidence and reinforce the importance of quality service provision, they may pose challenges for the restaurant industry, necessitating a paradigm shift in operational strategies.

However, despite the existence of laws and regulatory frameworks, there remains a significant gap in consumer awareness and empowerment. Many consumers, while cognizant of their rights, often hesitate to assert them or take proactive measures to address grievances. This hesitancy underscores the need for concerted efforts by the government and relevant stakeholders to bridge the awareness gap and empower consumers with the knowledge and resources necessary to navigate situations where they are coerced into unjust payments.

By fostering a culture of informed consumerism and accountability, the government can play a pivotal role in ensuring a fair and transparent marketplace where consumers are empowered to make informed choices and businesses thrive on the basis of merit and quality of service. Through targeted educational campaigns, enhanced accessibility to dispute resolution

mechanisms, and robust enforcement of consumer protection laws, the government can pave the way for a more equitable and consumer-centric economic landscape.