

CONSUMER PROTECTION UNDER INDIAN LEGAL FRAMEWORK

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1. Introduction

The growth in independence of world economy and international character of business practices has contributed to universal pressure on consumer rights, protection, and promotion and consumer awareness. It is one among the important legislations in history of socio economic legislations. This comprehensive piece is enacted for protection of consumers and to safeguard their interests.

The intention of the act is to provide for simple, speedy and inexpensive redressal for consumers grievances and relief in specific nature and awarding compensation for appropriate consumer. The act was amended to extend and cover its scope therefore judiciary too plays an important character in enhancing the powers of redressal machinery for protection of rights of consumers.

In this era of consumer protection is the greatest concern of the world. The globalisation is defined as converting national market into international one. The consumers should be provided with best quality products and services. The consumer protection act is developed as recognition of rights of the consumer protected against abuse and exploitation by service providers. The idea of consumer protection exists in every judicial and social mechanism whether modern or primitive.¹ In India there is rapid increase of consumer services, goods and distribution.

Industrial revolution has brought a big change in the human life. Regarding the products used by them daily in the society of Laissez Faire, State used to intervene in lives of citizens rarely. There were no good laws to exercise the rights of seller and buyer. There was the principle of "Caveat Emptor" that is let the buyer beware was the rule in those days. The consumers were exploited and abused by traders for making of profit at every point. In 1985 a resolution was passed by UN General Assembly focussing on need for educating the consumers. It laid various guidelines for betterment of consumers. Such guidelines were stimulating legislation framework for all the countries.

In India, it is the Consumer Protection Act of 1986. The result of the enactment could be traced by identification of consumer rights, giving cost effective and speedy redressal.² The basic aim of the act is to protect interests of consumers. To help address the new set of

¹ S.K Verma & M. Afzal wani, in treatises on consumer protection laws, 3, ILI New Delhi

² . Inaugural speech of justice Ashok bhan ed. 25 years of consumer protection act, challenges and way forward

challenges faced by consumers in the digital age, the Indian Parliament passed the landmark Consumer Protection Act, 2019 which aims to provide timely and effective administration and settlement of consumer disputes.

2. Consumer Protection Laws in India

In India we have consumer protection in various administrative activity of local authorities. Along with growth and strengthening of the movement, special laws in this area began in 1980s.it was followed by enactment of an act known as Consumer Protection Act, 1986.it comprises a wide area of legislation with specified boundaries and parameters. The enactment includes no. of legislations dealing to consumer protection.

2.1 Constitutional Law-

In it no explicit law is given but many provisions are given which directs the provisions towards consumers' interests. Generally they are DPSP. Under sub clause (g) of article 19 freedom of profession, trade etc is ensured by state and a citizen cannot be prevented. But anyhow under article 19(2) no such right could be enforced in case where business is illegal or dangerous .Regarding licence and permits to carry a business, granting licence cannot depend on absolute discretion of administration and policies have to be laid to discretion and have to be exercised judicially.

In *Dr. Shivaramo Shantaram Wagle and Others v. Union of India and Others*³, the Supreme Court followed the same principle when it was invited to issue direction to the government to forbear from releasing Irish butter for human consumption, which had been imported into India under the EEC Grant-in-Aid for Operation Food Programme, on the ground of contamination by Chernobyl nuclear fallout. In the matter the Supreme Court appointed a Committee of Experts to give its opinion on the question whether milk and dairy products and other food products containing man made radio nucleus within permissible levels fixed by Atomic Energy Regulatory Board on 27th August, 1987, are safe and/or, harmless for human consumption". When the Committee found the butter in question to be safe and harmless for human consumption, the Supreme Court declined to issue the restrictive orders regarding it release for human consumption.

The Supreme Court followed in case of *Vincent v. Union of India*⁴ directions were imposed for banning of import export of, manufacture, sale and distributing some drugs which had been recommend to ban by the Drugs Consultative Committee. Supreme Court held that having regard to the magnitude, complexity and technical nature of the injury involved in the matter and keeping in view implications of the total ban on certain medicines it is clearly indicated that a mere judicial proceeding is not sufficient on determination of such a matter.

³ (1998) 2 SCC 115

⁴ (1997) 2 SCC 165

The distribution of concepts related to product and service between state and centre are placed under Concurrent List.

The entries in them are-

- (a) The products of any industry where the control of such industry is under the Union and is Declared by Parliament and by law to be expedient in the public interest, and imported goods of same kind of product
- (b) Food stuffs, including edible oil seeds
- (c) Cattle fodder, including oil cakes and other materials
- (d) Raw cotton, whether ginned or unginned and cotton seed
- (e) Raw jute.
- (f)Weights and measures
- (g)Price control
- (h) Electricity
- (i) Newspapers, books and printing presses.

2.2 Criminal Law-

Section 264 to 267 of IPC, 1860 makes punishable the fraudulent use of weights and measures and its punishment could be one year imprisonment with fine. Section 272 to 273 of IPC deals with offences related to public health regarding food adulteration and making and selling noxious food or drink with punishment of same sentence as previous.

The Supreme Court in case of *Sumant Prasad v. Sheojanam*⁵ held that he committed offence under both as false property as well as selling goods with counterfeit property mark on them. Chapter 19 of IPC deals with offences of criminal breach of contract of service making it especially punishable to attend and supply of wants in relevance to consumer's safety. Who is incapable to do something because of either unsoundness of mind, youth or disease suffering or bodily weakness? Section- 153 of Cr. Pc, 1973 gives officer who is in charge of police station to enter without any sort of warrant in any place within limits of police station for inspecting or searching weights, used for measuring is kept and have reason to believe that they are kept for some false purpose and to send that information to magistrate along with all the seized objects.⁶

⁵ 1972 AIR 2488

⁶ Saraf D.N, 1990 in his concept "Law of consumer protection in India",by N.M Tripathi at 21

2.3 Contract Act-

It is an important provision and scope of the act is limited due to privity of contract. So third party cannot seek redressal the judicial approach could be reflected by English cases like *Carlil v. Carbolic smoke bait Co*⁷ In it the plaintiff on seeing advertisement bout carbolic smoke Ball a remedy against influenza, purchased it and used according to directions given by defendant. But he still caught influenza and claimed award offered by the company.

Applying fundamental breach of contract of interests' court protects the weaker parties with unequal power succeeding the exemption clauses. Non contractual liabilities have been given due place by the court. Section 27 of the act declares agreements restraining trade is void and serves consumer interest by promoting competition and restricting monopolists. Section 73 and 74 deals with any sort of loss or damage for breach of contract. Alternate remedies are available under Specific Relief Act, 1963

2.4 Drugs and Cosmetics Act, 1940 -

The act was enacted to regulate import, export, distribution and sale of drugs and to defend the cause and reason of consumer in that area. The pharmaceutical enquiry committee empowers the Central Government for controlling the drug manufacturers, appointment of inspectors and taking samples. It provides minimum punishment of one year imprisonment and fine for misbranded drugs and two year imprisonment with fine for other subsequent offences. The provision of this act doesn't apply to medicines especially ayurvedic or unani medicines. Further the act prohibits drugs and cosmetic manufactures where the risk of therapeutic justification is involved in favour of public interest.

2.5 The Prevention Food Adulteration Act, 1954 -

The Prevention of Food Adulteration Act was enacted and came into force in 1954.the adulteration of food stuff is evil and menace. It has gone very deep in nation's economy. It is so rampant that no changes in the bill can stop such crime. The amendment in the act in 1964 provides for enforcement of provisions of the act by central government to appoint food inspectors.

The State government make food inspectors from local authority. The act provide broadly-

- ✦ The interest of consumer
- ✦ Central committee for food standards
- ✦ Central food laboratory
- ✦ Prohibition on importing specific food articles Sea custom law

⁷ (1893) 1QB 256

- ✦ Powers to custom officers
- ✦ Prohibition on importing certain food articles

2.6 Monopolistic and Restrictive Trade Practices (MRTP) Act, 1969-

The MRTP (Amendment) Act, come into force from 1st August 1984 which opened new areas for the victims of unfair trade practices. It reflects the Union Government's consciousness of the widespread fear of the evil aspect which flow from monopoly.

It is the concentration of economic power in the hands of a few. The monopolistic trade oppresses -

- ✦ individual traders,
- ✦ injures the public,
- ✦ threatens competition,
- ✦ promotes price control at the will of producers and manufacturers ▪Dampens individual initiative.

Therefore, the enactment to curb the monopolies and restrictive trade practices is a good attempt to promote consumerism in India.

2. 7 The Consumer Protection Act, 1986-

This legislation widens the scope of seeking redressal grievances without affecting common law remedies. This act is available to government as well as private sectors including administration, business, judicial and society. it provides for adoption of measures to promote and protect consumers interests against marketing of hazardous goods affecting life and property. The consumers have right to be informed about goods quality, quantity price, standard and services. The Act also provides for the establishment of separate machinery for the settlement of disputes in a speedier and effective manner. The machinery is based on Consumer Disputes Redressal Forum (District level), Consumer Disputes Redressal Commission (State Commissions) and the National Consumer Disputes Redressal Commission (National Commission).

The principles of consumer jurisprudence have been evolved timely to empower consumers to stand against exploitation by business houses that seek protection from defective goods as well as deficiency in service.

A bill was drafted and discussed on January, 1986. The Act promotes and protects the rights of consumers like -

- a) Right to be protected against marketing of goods who are hazardous to life and property;

- b) Right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;
- c) Right to be assured, wherever possible, access to an authority of goods by competitive prices
- d) Right to be heard and to be assured that consumer' interests will receive due consideration in forum;
- e) Right to seek redressal against victim of unfair trade practices or unscrupulous exploitation of consumers
- f) right of consumer to get education.

For achieving quicker disposal and widening of scope consumer protection act was amended in 1991 and 2002 which provided for-

- Creation of benches at national & state commission
- Prescribing period of complaints admission notice issuing and appeals to be decided
- Restriction of adjournments
- Increasing pecuniary jurisdiction at consumer forums
- Fees charging for complaints before consumer dispute redressal agencies
- Deposition of fifty percent of amount as compensation or fine before admission of appeal
- Excluding the availed services for commercial purpose in consumer dispute redressal agencies
- Prescribe qualifications of members of agencies
- Re appointment of president and member in district and national commission for another term
- Extending provisions of the act for whom indulging in unfair trade or restrictive practices which could be harmful
- Recovering the amount of order paid to consumer redressal system as arrears of revenue of land and interim order issued considered necessary
- Substitution of legal heir and representative of the party in case of death of either party to the suit
- Establishing consumer councils at district, state and national level
- Development of the act in natural phases along with evolution and scope.⁸

2.7.1 Mechanism under Consumer Redressal System

The government has made 80 changes in the bill which replaced Consumer Protection Bill in Parliament in the year 2015 based on recommendations given by Parliamentary Standing Committee. They among other things recommended for stringent

⁸ Uppal,R.K. and Kaur, Kimpi, *Consumer protection through mass awareness 34* (MHP, New Delhi 2007).

provisions for tackling misleading advertisements and to fix some liabilities on endorsers and celebrity.

The central introduced several policies for improving economic climate of the country so that it can attract investors. Introduction to GST is a recent change in the measures. The consumers are the backbone of the country and economy and their interests should be safeguarded.⁹

2.7.2. Constitutionality of Consumer Protection Act, 1986

One of the basic questions in appeals and writs petitions is the constitutionality of this act which is filed by Vishwabharti House Building Cooperative Society through a judgment and orders passed by division bench by high court of Karnataka holding the virus in consumer protection act, 1986.

The State of Karnataka filed an appeal against judgment and order given by Karnataka high court which questioned certain observations, and in regards of interpreting section 25 of the act, and other filed for a writ petition under Article 32 of the Constitution of India questioning the acts constitutionality before the Hon'ble Supreme Court in the case *State of Karnataka v. Vishwabharti house Building Cooperative Society*¹⁰. The court also held that by virtue of the article 246 clause 2, the parliament has power to make such laws with due respect to constitution of organisation of all courts except for Supreme Court and High Court.

The legislature took precaution in not only defining the concept of complaint, who is a complaint, or a consumer. In the case of *Spring Meadows Hospital v. Harjol Ahluwalia*¹¹ a question for consideration was raised in Supreme Court. In this case a minor child who was a patient was admitted to hospital for treatment. So the parents of the child could be said to be consumers in this case who can claim compensation under the provision of consumer protection Act. Another question was that whether commission under the act can award compensation to parents for mental agony under section -14 of the act and does the term child and his parents comes under the definition of consumers in the act or not? It was held that a person who purchases goods for resale or commercial purpose is excluded from consumers definitions.

The Supreme Court in the case of *Laxmi Engineering Works v. P.S.G Industrial Institute*¹² discussed the meaning of the term commercial purpose and observed that in cases of resale it separately refers to it, it covers all the cases other than the resale ones of the goods concerned.

⁹ Available at <http://www.thehindubusinessline.com/opinion/issues-regarding-consumer-protection-in-india/article9786478>.

10. AIR 2003 SC 1043

11. AIR 1998 SC 1801

¹² AIR 1995 SC 1428

The word commercial purpose is wide enough to consider all including goods generated for profits. The Parliament's intention was to exclude the expression 'consumer' as any person who purchases goods for the purpose of being used in an activity on a large scale for profit making.

It is very much obvious that Parliament wanted to exclude from the scope of definition those who purchase goods for profit-making activity. The Parliament also intends to restrict the benefit of the act to just ordinary consumers who are purchasing goods either for their own or for use in small ventures to be used in making a living which is very much different from large-scale manufacturing or processing activity for carrying out profit.

The term contract of service and contract for service or contract for personal service were excluded terms from the definition of service.

The Supreme Court differentiated the terms 'contract of service' and 'contract for service'. In *Dharangadhara Chemicals works ltd. v. State of Saurashtra*¹³ by saying that 'a contract for service' implies that one party should undertake the services rendered either technical or professional to or others in performance of which he is subjected to a detailed direction by practicing his personal or professional skills and also using his own knowledge along with discretion. A contract of service implicates a relationship between a master and servant. It also involves an obligation for obeying orders in the work which is to be performed by him and also along with mode of performance and manner to performance for the action which is going to be performed by him.¹⁴

2.8 The Competition Act, 2002

The Competition Act, 2002 is a law that governs commercial competition in India. It replaced the erstwhile Monopolies and Restrictive Trade Practices Act, 1969. The Competition Act aims to prevent activities that have an adverse effect on competition in India.

The Monopolies Inquiry Commission was established in April 1964 under Justice KC Das Gupta, a Supreme Court judge. The objective of the commission was to inquire about the effect and extent of monopolistic and restrictive trade practices in important sectors of the Indian economy. The Monopolies and Restrictive Practices Act of 1969 was enacted to limit the concentration of wealth in a few hands and limit monopolistic practices, but it was too archaic in its definitions of what is a 'monopolistic practice'. Thus, it was decided that a new law governing competition in India was required.

The Competition Act was passed in 2002 and went into effect on January 13, 2003. The act's objectives are stated in its preamble, which states that the act will establish a Commission

¹³ AIR 1957 SC 264

¹⁴ <https://hpconsumercommission.nic.in/juris.htm>

(the Competition Commission of India) to prevent anti-competitive practices, promote and sustain competition in the market, protect consumers, and ensure the freedom of trade carried on by other market participants. Anti-competitive agreements, abuse of dominant position, and mergers and acquisitions are among the three anti-competitive practises regulated by the Act (Combinations).

The key criterion for anti-competitive practises regulation is that they should not have a significant negative impact on competition within India. Section 3 of the Act defines anti-competitive agreements and divides them into two categories: horizontal agreements and vertical agreements. It stipulates that all anti-competitive agreements that have the potential to have a significant adverse effect on competition in India are void, subject to the exceptions set out in section 3(5). Section 4 discusses issues of abuse of dominant position and provides a list of activities that may be considered abuse of dominant position.¹⁵

3. Consumer Protection Act, 2019

The Consumer Protection Bill, 2019 was introduced in Lok Sabha by the Minister of Consumer Affairs, Food and Public Distribution, Mr. Ram Vilas Paswan on July 8, 2019. The Bill replaced the Consumer Protection Act, 1986. It comes into force from 20th July 2020.¹⁶

Key features of the Bill included:

Definition of consumer: A consumer is defined as a person who buys any good or avails a service for a consideration. It does not include a person who obtains a good for resale or a good or service for commercial purpose. It covers transactions through all modes including offline, and online through electronic means, teleshopping, multi-level marketing or direct selling.

Rights of consumers: Six consumer rights have been defined in the Bill, including the right to: (i) be protected against marketing of goods and services which are hazardous to life and property; (ii) be informed of the quality, quantity, potency, purity, standard and price of goods or services; (iii) be assured of access to a variety of goods or services at competitive prices; and (iv) seek redressal against unfair or restrictive trade practices.

Central Consumer Protection Authority: The central government will set up a Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of consumers. It will regulate matters related to violation of consumer rights, unfair trade practices, and misleading advertisements. The CCPA will have an investigation wing, headed by a Director-General, which may conduct inquiry or investigation into such violations.

¹⁵ <https://www.legalraasta.com/blog/competition-act-2002/>

¹⁶ <https://pib.gov.in/PressReleasePage.aspx?PRID=1639925>

CCPA will carry out the following functions, including: (i) inquiring into violations of consumer rights, investigating and launching prosecution at the appropriate forum; (ii) passing orders to recall goods or withdraw services that are hazardous, reimbursement of the price paid, and discontinuation of the unfair trade practices, as defined in the Bill; (iii) issuing directions to the concerned trader/ manufacturer/ endorser/ advertiser/ publisher to either discontinue a false or misleading advertisement, or modify it; (iv) imposing penalties, and; (v) issuing safety notices to consumers against unsafe goods and services.

Penalties for misleading advertisement: The CCPA may impose a penalty on a manufacturer or an endorser of up to Rs 10 lakh and imprisonment for up to two years for a false or misleading advertisement. In case of a subsequent offence, the fine may extend to Rs 50 lakh and imprisonment of up to five years.

CCPA can also prohibit the endorser of a misleading advertisement from endorsing that particular product or service for a period of up to one year. For every subsequent offence, the period of prohibition may extend to three years. However, there are certain exceptions when an endorser will not be held liable for such a penalty.

Consumer Disputes Redressal Commission: Consumer Disputes Redressal Commissions (CDRCs) will be set up at the district, state, and national levels. A consumer can file a complaint with CDRCs in relation to: (i) unfair or restrictive trade practices; (ii) defective goods or services; (iii) overcharging or deceptive charging; and (iv) the offering of goods or services for sale which may be hazardous to life and safety. Complaints against an unfair contract can be filed with only the State and National Appeals from a District CDRC will be heard by the State CDRC. Appeals from the State CDRC will be heard by the National CDRC. Final appeal will lie before the Supreme Court.¹⁷

Jurisdiction of CDRCs: The District CDRC will entertain complaints where value of goods and services does not exceed Rs one crore. The State CDRC will entertain complaints when the value is more than Rs one crore but does not exceed Rs 10 crore. Complaints with value of goods and services over Rs 10 crore will be entertained by the National CDRC.

Product liability: Product liability means the liability of a product manufacturer, service provider or seller to compensate a consumer for any harm or injury caused by a defective good or deficient service. To claim compensation, a consumer has to prove any one of the conditions for defect or deficiency, as given in the Act.¹⁸

¹⁷ <https://hpconsumercommission.nic.in/cpa2019.pdf>-hp consumer protection act 2019 -

¹⁸ <https://prsindia.org/billtrack/the-consumer-protection-Act1-2019>

4. Conclusion

The consumer Protection Act, 2019 describes a series of all the consumer rights established by consumer council at national, state and district level for guiding the state in giving justice to all consumers but enforcements of consumer rights have been far away from understanding.

According to the Indian constitution all fundamental rights in IIIrd and IVth part of constitution providing social and economic justice for poor and SC/ST but still all this people and being exploited in consumer services. The act contains various rules for protection of consumer rights through interpreting various laws and provisions of legislation and judicial decisions. The court by interpreting consumer laws and powers develop the district forum and commissions as basic tool in bringing social change and protecting the rights. But for redressing almost remedial measures would have attracted public. The perception of consumers about the legal system is that it is a time taking process. So it discourages them from redressing by judicial process and consumer protecting mechanism. People find it easier to compromise. Even there are many people who don't know its procedure.

Some legislation on issues relating to consumers of electronic goods should be formulated and updated through provisions of all the consumer laws. It was hoped that consumer protection Act of 2019 covered a wide area than the act of consumer protection act of 1986 in accordance to protection of all consumer rights.