

Research Article

A Study of Consumer Protection System in Indian Industries

Priyanka Sharma¹, Anshuman Sharma²

¹Research Scholar, ²Research Supervisor, Department of Commerce, SunRise University, Alwar, India.

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Corresponding Author:

Priyanka Sharma, Department of Commerce, SunRise University, Alwar, India.

E-mail Id:

parisharma853@gmail.com

Orcid Id:

<https://orcid.org/0000-0002-8576-6229>

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A B S T R A C T

Consumer Protection Division is mandated to implement the Consumer Protection Act, 2019 and Rules/ Regulations made under the ibid Act. It is entrusted with the framing of policy related to the protection of interests of the consumers particularly those grievances arising in the post-sale of goods and services.

It provides for the establishment of three-tier quasi-judicial consumer disputes redressal machinery at the District, State, and National levels commonly known as "Consumer Commissions" to render simple, inexpensive, and speedy justice to consumers. These redressal agencies have the jurisdiction to adjudicate the complaints received from consumers against any defect in the goods purchased or deficiencies in the services availed or any unfair/ restrictive trade practices, etc. adopted by any trader or person. Apart from the quasi-judicial mechanism, National Consumer Helpline and Zonal Consumer Helplines also address consumer grievances under the supervision of this Division.

Mainly three schemes i.e., ICGRS (Integrated Consumer Grievance Resolution System), SCC (Strengthening of Consumer Commission), and CONFONET are being implemented in the Consumer Protection Unit (CPU) Division for the protection of consumer rights in the country.

The CPU looks after the establishment and functioning of the Central Consumer Protection Authority (CCPA) and National Consumer Disputes Redressal Commission (NCDRC), the apex consumer court. Also, the constitution of the Central Consumer Protection Council is done by Consumer Protection Division.

Keywords: SSC, CCPA, NCDRC, ICGRS

Introduction

Consumer Protection Laws in India

Consumer Protection Act is one of the main laws that provide protection to consumers in India. The Act was introduced in the year 1986 and then amended in the year 2002 through the Consumer Protection Amendment Act, 2002. In this article, we look at the protection afforded to the consumers through the Act.

Objectives of the Consumer Protection Act

The main objective of the Consumer Protection Act is to provide better protection for consumers and establish a strong mechanism for the settlement of consumer disputes. The Consumer Protection Act seeks the right to:

1. Protect against the marketing of goods that are hazardous to life and property.
2. Inform about the quality, quantity, potency, purity,

standard, and price of goods to protect the consumer against unfair trade practices.

3. Assure, wherever possible, access to an authority of goods at competitive prices.
4. Hear and to assure that consumers' interests will receive due consideration at appropriate forums.
5. Seek redressal against unfair trade practices or unscrupulous exploitation of consumers.
6. Consumer education.

Consumer Definition

The Consumer Protection Act defines a consumer as a person who buys goods or services for consideration (NOT for resale). Also, a consumer is one who uses the goods and services with the permission of the buyer who purchases the goods or services. The Act covers all goods and services including banking, e-commerce, telecom, insurance, electricity, and transportation in the private and public sectors.

How and When to Complain?

Under the Consumer Protection Act, the customer can raise a complaint in writing if:

- Any trader or service provider adopts any unfair trade practices or restrictive trade practices
- The goods bought by him or agreed to be bought by him suffer from one or more defects
- The services hired or availed of or agreed to be hired or availed of by him suffer from a deficiency in any respect
- Trader or the service provider has charged for the goods or for the services mentioned in the complaint, a price more than the price:
 1. Fixed by or under any law for the time being in force.
 2. Displayed on the goods or any package containing such goods.
 3. Displayed on the price list exhibited by him by or under any law for the time being in force.
 4. Agreed between the parties.
- Goods that will be hazardous to life and safety when used are offered for sale to the public
- Services that will be hazardous to life and safety of the public when used are offered

Note: Such service given by the service provider are the person who could have known with due diligence to be injurious to life and safety.

Procedure to File Consumer Case

Any consumer complaint relating to a good or service must be filed in writing with a District Forum by the consumer along with the fee. On receipt of a complaint, the District Forum may reject or approve the complaint, usually within 21 days from the date of complaint. On the other hand,

a copy of the complaint will reach the opposite party for approval to be made within 45 days.

An effort is taken to hear all consumer cases as expeditiously as possible. Further, it is endeavoured to take a decision regarding the complaint within a period of three months from the date of receipt of notice by the opposite party. Hence, if during the proceedings, the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint about default or take a decision on merits.

On July 20th, 2020, the new Consumer Protection Act, 2019 came into force in India, replacing the previous enactment of 1986. The new Act overhauls the administration and settlement of consumer disputes in India. It provides for strict penalties, including jail terms for adulteration and for misleading advertisements. More importantly, it now prescribes rules for the sale of goods through e-commerce. The consumer is now truly the king!

Here are Some of the Highlights

An aggrieved consumer can file complaints about a defect in goods or deficiency in services from where she lives, instead of the place of business or residence of the seller or service provider. The new law provides for e-filing of consumer complaints as well.

No fees are required to be paid if the claim is within INR 5 lakhs (approximately 3500 USD).

A consumer can conduct his/ her own case via video conferencing. Engaging a lawyer is optional.

A concept of product liability has been introduced by the new law, thereby allowing aggrieved consumers to claim significant compensation as a relief due to the negligence of the manufacturer or service provider.

A group of aggrieved consumers can join hands and file a class action suit (like in the US) to reduce costs and improve chances of redressal or settlement.

Producers of spurious goods may be punished with imprisonment.

Misleading advertisements may be punished with imprisonment. Celebrities endorsing a product may not be punished but can be barred from endorsing if the advertisement is misleading.

E-commerce is now tightly regulated, and e-commerce companies are now expected to disclose all relevant product information, including country of origin, and respond to the grievance of consumers within prescribed timelines.

Settlement of consumer disputes through mediation i.e., with the help of a neutral intermediary outside the consumer court is encouraged under the new law, thus

saving time and resources of disputing parties that would otherwise have been spent on dispute resolution through a formal mechanism.

Consumers now have several protected rights, including the right to safety, information, choice, redressal as well as the right to be heard, to be educated as a consumer, and to a mediated settlement.

Corporate's entities that cater to consumers will have to exercise greater care and caution in terms of quality, quantity, and product safety. The boards of corporates that manufacture or trade consumer goods must create a Consumer Affairs Committee to periodically review consumer complaints and address the need to proactively offer mediated settlements by holding online mediation and save themselves the expenses of defending a matter in Consumer Courts, in some remote part of India besides incurring the collateral damage to reputation.

What is an 'Unfair Trade Practice' under the 2019 Act?

Section 2(47) of the Consumer Protection Act, 2019 defines 'unfair trade practice'. The definition of 'unfair trade practice' has been broadened to include practices such as:

- Manufacturing or offering spurious goods for sale or adopting deceptive practices for providing service
- Not issuing proper cash memo or bill for the services rendered and the goods sold
- Refusing to withdraw, take back or discontinue defective goods and services and refund the consideration taken thereof within the time stipulated in the bill or within 30 days if there is no such provision in the bill
- Disclosing personal information of the consumer to any other person not in accordance with the prevailing laws

The repealed Act of 1986 did not include online misleading advertisements in the definition of unfair trade practices that were added in the 2019 Act.

Concept of Unfair Contract

The 2019 Act has also introduced the concept of an unfair contract. 'Unfair Contract' is defined under Section 2(46), and it refers to any contract between a consumer and a manufacturer or service provider or trader whose terms bring about a significant change in the consumer rights under the Act. These terms are as follows:

1. Requirement of excessive security deposits by the consumer for facilitating the performance of obligations under the contract.
2. Imposing penalty for breach of contract on the consumer which is not in proportion with the loss suffered due to such breach.
3. Not accepting early debt repayment along with the applicable penalty.
4. Allowing one of the parties to terminate the contract

- without any reasonable cause or unilaterally
5. Entitling one party to assign the contract to the detriment of the consumer and without his consent
6. Imposing unreasonable conditions, obligations or charges on the consumer that put him in a disadvantageous position.

Consumer Rights

Under the Act, consumers have six main rights, which are listed as follows:

The right to be protected against the marketing of goods, products, or services which are hazardous to life and property.

The right to be informed about the quality, quantity, potency, purity, standard, and price of goods, products, or services to protect the consumer against unfair trade practices.

1. The right to be assured, wherever possible, access to a variety of goods, products, or services at competitive prices.
2. The right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora.
3. The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers.
4. the right to consumer awareness.¹

Establishment of Central Consumer Protection Authority

Under the Act of 2019, a Central Consumer Protection Authority (CCPA) was established with a view to regulate matters involving violation of consumer rights, misleading or false advertisements, unfair trade practices and enforcement of consumer rights. The Central Government will appoint the members of CCPA. The authority will consist of a Chief Commissioner along with other such prescribed members.

The 2019 Act specifies the functions of the CCPA and who will appoint its members. However, there is ambiguity as to how the CCPA will perform its functions and what methods will it adopt to achieve its functions. There is also no specification of qualification for the recruitment of the members of the CCPA. Further, the appointment of members of the CCPA by the Central Government will affect the independence of the authority. The consumer may be at a disadvantage in a dispute where the government has provided deficient services.

Penalties for Misleading Advertisement

Misleading and false advertisements is one of the many aspects that were introduced in the 2019 Act. The repealed Act did not deal with the concept of misleading and false

advertisements. Misleading advertisement is defined under Section 2(28) of the Act and includes any advertisement, which gives a false description of a product or service, gives false guarantee misleading the consumers, conveys express representation constituting unfair trade practice and deliberately not revealing essential information about the product.

Under Section 21(4) of the Act, any person who publishes false and misleading advertisements may be punished with imprisonment or a penalty that may extend up to ten lakh rupees. Further, Section 21 (3) states that the CCPA can prevent the endorser of any such misleading and false advertisements from endorsing any other products or services for a period of one year. The issuer of any misleading advertisements shall also be liable to neutralise the effect of such advertisements.

Product Liability

Product liability is one of the remarkable and significant steps incorporated in the 2019 Act. An entire chapter under the Act is dedicated to deal with this concept.

A complainant can bring a product liability action against any product manufacturer or service provider or seller, in case any harm is suffered by him due to a defective product or service.

1. A product manufacturer will be held liable under Section 84 of the Act in case the product has a manufacturing defect, defect in design, does not follow the manufacturing specifications, does not conform to the implied warranty, and does not contain adequate instructions for proper usage of the product.
2. Section 85 of the Act discusses the liability of the service provider in a product liability action. To be liable under this section, the service provided shall be deficient, faulty, inadequate, or imperfect, an act or negligence withholding any information responsible for the harm caused, without adequate warnings and instructions and without conformation to express warranty or contractual terms.
3. A product seller will be liable in a product liability action if there is exercise of substantial control over manufacturing, testing, designing, labelling, or packaging of the product, there was substantial alteration or modification responsible for the harm caused, the product seller made an express warranty that does not conform to the warranty made by the manufacturer, and/ or the product seller failed to take reasonable care in maintaining, assembling, or inspecting the product.

Exceptions

There are certain exceptions to product liability action as well. These exceptions are discussed in Section 87 of the

2019 Act. Any consumer who himself misuses, alters, or modifies the product and suffers harm as a result, cannot file a product liability claim. A consumer cannot bring product liability action in case the product manufacturer has given adequate warnings for use of the product, the product purchased was used as a part of another product and the end use caused damage, the product was supposed to be used under an expert's supervision or the product was used under alcohol influence. A product manufacturer will not be liable for not warning about any danger that is commonly known or obvious.

Consumer Dispute Redressal Forums

Jurisdiction

1. Territorial Jurisdiction: A complainant can now file a complaint where he resides or works. The repealed Act only allowed the complainant to file a complaint where the opposite party carries out business or resides. This caused a lot of difficulties to the complainants.
2. Pecuniary Jurisdiction: The pecuniary jurisdiction will now be determined based on the consideration paid for the value of goods purchased and services availed, rather than the compensation claimed as per the repealed Act of 1986. The pecuniary jurisdiction limit has also been increased for various commissions under the 2019 Act. The District Commission will now deal with cases of up to Rs. 1 Crore, up from Rs. 20 lakhs as per the repealed Act. The State Commission's pecuniary jurisdiction limit has been fixed between Rs. 1 Crore to Rs. 10 Crores, and the National Commission will deal with cases with a pecuniary limit of Rs. 10 Crores or more.

Alternate Dispute Resolution

If it appears to the Consumer Dispute Redressal Forum that the consumer dispute can be settled by way of mediation, it may refer the parties to mediation with their consent. The State Government shall establish a consumer mediation cell for each District Commission and State Commission for mediation. The Central Government shall establish a consumer mediation cell attached to the National Commission. The consumer mediation cell will be responsible for maintaining a list of empanelled mediators, cases handled by the cell, record of proceedings, and other information by specified regulations. The cell also must submit a quarterly report to the commission it is attached to.

E-Complaints

Section 17 of the Act states that a complaint regarding unfair trade practice, violation of consumer rights, or misleading and false advertisements can be filed in electronic mode also to the District Collector, the Regional Office Commissioner, or the Central Authority.

Despite certain lacunas in the Act, the Consumer Protection Act, 2019 is a positive step towards the development and reformation of consumer laws in the country.

Conclusion

The present article discusses the consumer protection regime currently in force in India. By exploring the archetypal challenges of the New Act and by providing suggestions to mitigate those challenges, this article presents a constructive critique of consumer protection in India. Specifically, this article highlights the issues pertaining to the functioning of the Central Consumer Protection Authority, the doubts regarding the inclusion/ exclusion of 'legal services' from the Act, and the lack of emphasis on duties of/ as consumers in the Act. Suggestions to help mitigate the three issues are explicated in detail.

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