

Comparative Analysis of Consumer Protection Act 1986 & 2019

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ABSTRACT

Consumer Protection is a Socio-economic activity that is to be carried out by government and business with a prime interest of consumer satisfaction. Consumer protection has been a part of the responsibilities of the rulers in India even before independence. But a formal consumer protection law, which purely focuses on consumer protection, was enacted in the year 1986. The digital age has led to a new era of commerce. Digitization has provided easy access, a large variety of choices, convenient payment mechanisms, improved services and shopping as per convenience etc. This led to the need for formulation of a new bill namely the consumer protection bill, 2018 which passed in the year 2019. The New Act 2019 seeks to replace old Consumer Protection Act, 1986. The new act eliminates the odds of old act and provides benefits like transparency of e-commerce companies, e-filing of complaints, e-commerce restrictions on misleading advertisements etc. This paper makes an attempt to compare both the 1986 as well as the 2019 acts,

Keywords: Consumer Protection, Consumer Protection Act 1986 & 2019, Consumer Movement

Introduction

The development of a nation is often measured by multiple parameters and economic well-being is a crucial parameter. With the rapid expansion in trade and commerce, the traders had an unfair upper hand over the consumers and this was a direct consequence of industrialisation. Consumers had little or no knowledge about the rights available to them and hence were pushed to a disadvantage. But, it was only in 1986 that the law-makers of the nation decided to structure and streamline the efforts made towards protecting consumers' interests and stressed for the need of welfare legislation in the form of the Consumer Protection Act, 1986.

It provided a multi-dimensional approach to promote consumer interests that included spreading of awareness and establishment of consumer councils & consumer courts. This provided a platform for the consumers to settle consumer disputes. It also facilitates a faster and efficient way for redressal.

During these 36 years, the way as well as choice of consumers has changed considerably. The old legislation did not provide the provisions for modern technology which is used by consumers and producers for purchasing and selling products. The new act eliminates the odds of old act and provides benefits like transparency of e-commerce companies, e-filing of complaints, e-commerce including restrictions on misleading advertisements. The new Consumer Protection Act, 2019 aims at delivering justice to consumers by giving them opportunity to not pay a single penny to claim the damages up to Rupees 5lakh. Speedy dispute resolution is also granted under this act. It also enacted to provide a simple and quick solution to consumers for their grievances against any deficiency in services or defect in goods. It protects the various rights of the consumers against the seller or service provider.

OBJECTIVES OF THE CONSUMER PROTECTION ACT, 1986:

The aim and objective along with the purpose for which the act was established, is explained under Section 6, 8 and 8B of the Consumer Protection Act, 1986.

1. To provide simple and speedy disposal of the cases by providing quasi-judicial machinery for the redressal of consumer disputes.
2. To promote and protect all the six rights of the consumers.
3. The act also strives to provide economical and simple procedures for addressing the grievances of the consumer.
4. A consumer dispute redressal forum called the state commission has been set up to settle the disputes of every consumer in all the states of the country.

Section 6 goes on to detail the rights which the act aims to protect and lists them as:

1. Right to safety of life and property from hazardous goods.
2. Right to information about the quality, quantity, potency, purity, standard and price of goods and services so as to protect consumers against unfair trade practices.
3. Right to choice as to variety of goods and services.
4. Right to be heard and representation and to be assured that consumer interests will receive due consideration at appropriated platform.
5. Right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers.
6. Right to consumer education.

JURISDICTION OF THE CONSUMER FORA UNDER THE ACT OF 1986

1. Jurisdiction of District Forum: Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs.

A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction:(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises.

2. Jurisdiction of State Commission: 1. The State Commission has appellate powers. Appeals from the District Forums lie at the State Commission. Parties who are aggrieved from the decisions of the State Commission can appeal to the National Commission.

2. It is a quasi-judicial authority, filled up by judicial and non-official members. District Consumer Forums are bound by the findings or decisions or orders of the National Commission. They have the power of precedent.

3. The State Commission shall have the working hours and working days just like as a State Government Department and a court.

3. Jurisdiction of National Commission: 1. The State Commissions and the District Consumer shall have to follow the decisions of the National Commission. National Commission exercises quasi-judicial authority and is comprised of judicial as well as non-judicial members. It functions as a court.

2. It is the highest authority in the Consumer Disputes Redressal Agencies. Appeals from the decisions of the District Forum and State Commission lie at the National Commission. The National Commission is also empowered to initiate Contempt of Court proceedings against any violation of the decisions passed by the National Commissions.

3. The National Commission shall have to work on all the working hours and working days as a Central Government Department Works.

DRAWBACKS OF THE CONSUMER PROTECTION ACT, 1986.

Besides the technological advancements, there were also a couple of drawbacks in the Consumer Protection Act, 1986. They were as follows:

- **Pendency of Suit** As per Section 13 (3A) of CPA, 1986 the time period mandated for disposal of cases was 3 months in normal cases and 5 months if there is a need for procedural testing of goods. But the fact be that due to heavy backlog of cases and arbitrary and frequent adjournments, these timelines are not observed seriously. This makes the process not only time consuming but also heavily draining people's pockets. This refrains the affected consumers from adopting the course of justice and instead they prefer bearing out the consequences if their rights are breached.

- **Ineffective Dispute Redressal mechanism** – Law is used to secure the interest of the citizen and the objective of the Act cannot be successfully achieved until proper implementing mechanism is available. There are provision under the act by which consumers can take their recourse to but due to ineffective implementation, they do not even bother to approach consumer court.

- **Lack of Infrastructure** –we, in our country infrastructure is that we do not have consumer forums with separate buildings, separate staff, lack adequate resources including human resources for translating programs and functions into effective actions and have follow up and lack of sufficient budgetary allocation. It has also been noticed that many district forums do not have required knowledge and skill to discharge their responsibilities.

- **Lack of Consumer Awareness** – The consumers do not have knowledge about their rights, and most of the consumers who suffer are from economically backward sections, and many consumers do not even know the legal resource which exists for the wrongs done to them.

- **Globalisation and Technological effect in Legislation**- Due to E-commerce industry, lot of complications have emerged, for which consumer protection legislation needs to amended to meet these exigencies.

Consumer Protection Act 2019

The Consumer Protection Act, 2019 comes into force on July 20, replacing the old Consumer Protection Act 1986. The new law aims to enforce and protect the rights of consumers, and provide an effective mechanism to address consumer grievances.

The Consumer Protection Bill, 2019 was introduced in the Upper House of Parliament by the Minister of Consumer Affairs, Food and Public Distribution, Ram Vilas Paswan, on July 8, 2019. It was passed by the Lok Sabha on July 30, 2019 and Rajya Sabha on August 6, 2019. The Bill was then signed into law by President Ram Nath Kovind on August 9.

The Consumer Protection Act 2019 will be more holistic and stringent after rules are framed to protect the interest of the consumers. The Act proposes the establishment of a Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of consumers, and make interventions in situations of unfair trade practices.

The Act provides for a simplified dispute resolution mechanism, with a provision for mediation and e-filing of cases. The consumers can file complaints at a district or state consumer commission closest to their residence, rather than the location where the service or products were sold. Consumers can drag manufacturers and sellers of adulterated and spurious products to court and claim compensation, as is applicable.

Under the aegis of the new Consumer Protection Act, 2019, a product manufacturer and seller will be liable to provide compensation for injury or damage caused by a defective product or service. The businesses will be penalized with up to 6 months in jail or a fine of up to Rs 1 lakh if the consumers do not suffer any injuries. In cases where the consumer is injured, the fine to the manufacturer, seller or distributor could go up to Rs 5 lakh and up to seven years in jail. In case of death of the consumer, the culprit will have to pay a minimum fine of Rs 10 lakh and spend seven years in jail, which can be extended to life imprisonment.

Enactment Date:	August 9, 2019
Act Title	The Consumer Protection Act, 2019
Description	An Act to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto
Ministry:	Ministry of Consumer Affairs, Food and Public Distribution
Department:	Department of Consumer Affairs

Rights of the consumers:

- Consumers have the right to information on various aspects of goods and services. This could be information about the quantity, quality, purity, potency, price, and standard of goods or services.
- To be protected from hazardous goods and services. Right to protection against goods and services that can be dangerous to life and property.
- To be protected from unfair or restrictive trade practices.
- Consumers have the right to access a variety of goods and services at competitive prices.
- Consumers should have the right to redressal.

RESEARCH METHODOLOGY**STATEMENT OF PROBLEM**

The Consumer Protection Act 2019 is a positive step towards reformation of consumer laws in the light of changing socio-economic developments. Over the years there have been challenges in the implementation of the 1986 Act due to increase trade in e-commerce industry by way of online shopping and multi level marketing. There have been various cases found where the consumers are often cheated through online market place. For instance a person ordered mobile through Amazon but he received a stone instead of the same, often quality of products is compromised than the mentioned description. The real estate business has also received many complaints for late delivery of flats by major brands. They promised the delivery of flat within 24months from the date of execution of the agreement and it was further agreed that failing of delivery of flat, he shall be liable to pay penalty per square feet per month for the period of delay.

The Consumer Protection Act 1986 was not sufficient enough to deal with grievances of globalised era like E-commerce grievances and hence the Parliament introduced Consumer Protection Act 2019. This paper aims to address the defects of the old statute & compare both the 1986 as well as the 2019 acts.

SCOPE OF THE STUDY

In India, the consumers are very disorganised and scattered across the country. Therefore, in case of fraud, cheating or any kind of mal practices, consumers are not able to come together as a unit to represent themselves. The e-commerce industry has developed to a large extent & consumers buy major goods through online platforms. In the offline market structure, hoarding, adulteration, misleading advertisements are often observed to be used by the sellers to exploit the consumers. In order to empower consumers with their rights the Consumer Protection Act 2019 was introduced to provide better protection to the consumers from exploitations. This act has introduced better provisions for establishments of Consumer Councils, redressal systems, new methods of settlements like Alternative Dispute Resolution, etc. The Consumer Protection Act 2019 has enlisted objectives which are similar to those of an old Act. But the question arises, as to whether aforesaid objects are achieved or consumer still remains the subject of exploitation in this globalised world.

OBJECTIVES

- To study the defects of Consumer Protection Act, 1986.
- To study the aim and scheme of the Consumer Protection Act 2019.

- To understand the new concepts of product liability, unfair trade practices and unfair contracts introduced in the new statute.
- To check the effectiveness of redressal mechanism institution under new statute in comparison with old statute.

Comparative Analysis of Consumer Protection Act: 1986 and 2019

Definition of Consumer:

According to the Consumer Protection Act, 1986 the definition of a consumer was limited and didn't include the concept of online transactions and teleshopping, etc. whereas the new Act of 2019 has provisions for all purchases or transactions done through any mode, either offline or online. The scope of the definition of a "consumer" has been widened in The Consumer Protection Act, 2019 with the addition of Goods or services obtained through online transactions utilising any electronic means, teleshopping, direct selling, and multi-level marketing in the "mediums of purchase".

2. Concept of Product Liability:

In Consumer Protection Act, 1986 there was no such provision for Product Liability. Whereas, it has been introduced in the "new act 2019", which gives the consumer the right to claim product liability for faults in goods and services against the product manufacturer, product service provider and the product seller. The interesting aspect of the provisions is that now the liability for the product is attached more towards the manufacturers than the seller and also compensation can be obtained by proving one of the several specified conditions given in the 2019 Act.

3. Establishment of an independent Regulator (Central Consumer Protection Authority)

Earlier, in 1986 there was no separate authority which could look up-to-the grievances of consumer. Whereas, as per Section 10(1) of the Act 2019, the Central Consumer Protection Authority was established. This authority was established to regulate matters relating to infringement of rights of consumers, and false or misleading of advertisements under the ambit of unfair trade practices, also to promote and enforce the interest of consumers as a class. The Central Consumer Protection Authority also enjoys various powers to take administrative steps such as issuing safety notices, passing orders to recall goods, preventing unfair trade practices, re-compensating purchase price paid, imposing penalties for false or misleading advertisements, and functions like, regulating, investigating, adjudicating simultaneously.

4. Change in Pecuniary Jurisdiction of Commissions:

In the Consumer Protection Act, 1986 there was a limit in Pecuniary jurisdiction for the District, State, and National Commissions. The pecuniary limit for the district commission was up to Rs 20 lakh, for State commission it was between Rs 20 lakh to Rs 1 crore and for a national commission, the limit was above Rs 1 crore.

In the Act of 2019, this Pecuniary limit of Commissions has increased. The limit for District commission is up to Rs. 1 crore, for State Commission it's between Rs 1 crore to Rs 10 crore and for National commission, it's above Rs 10 crore.

5. Alternate Dispute Redressal Mechanism introduced:

In the Consumer Protection Act, 1986 there was no such legal provision that could help consumers to settle down their disputes in a more time-effective manner. Whereas, in part V the Act of 2019, introduced a provision to ensure speedy resolution of disputes, where the court can refer for settlement through mediation. If both the parties give their written consent on the same objective then the dispute between them comes to an end. The act 2019 also emphasizes the need to build a consumer mediation cell in every district, state by the state government as well as a national commission by the union government.

6. Penalties for a misleading advertisement:

Earlier, if a person does not comply with orders of the Commissions, he may face imprisonment between one month and three years or a fine between Rs 2,000 to Rs 10,000 or both. Whereas now in the new act, 2019, he may face imprisonment up to three years, or a fine not less than Rs 25,000 extendable to Rs one lakh, or both.

7. Introduction of Unfair Contracts:

In the act of 1986, there were no provisions of unfair contracts stated whereas in the the new act, 2019 it introduced the concept of unfair contracts which includes contract as that causes an important change in consumer rights .

Furthermore, the new act, 2019 also introduces the concept of E-Commerce (like- direct selling, telecom, etc.), widened the scope of unfair trade practices, gave the power to commissions to review orders, and also gave the concept of E-complaints.

8.Filing of Complaint

The new Act allows the consumer to file a complaint at the place where he/she resides or at the place he/she works. The complaint can be filed by the consumer himself or the parents and legal guardian of the consumer. It can also be filed electronically and heard vial video conferencing in certain circumstances.

9.Mediation (Alternate dispute Resolution)

In the act of 1986, there were no provisions of Mediation (Alternate dispute Resolution) whereas in the new Act provides facility for mediation which shall be voluntary and not binding on the parties. Median shall make the process quicker, simpler and help with speedier resolution of disputes. The Consumer Mediation Cell (CMC) shall be attached to each district, state and national level which is itself a tedious and lengthy task owing to the funding that courts get and

the lack of infrastructural facilities especially at the district level.

Suggestions

The Consumer Protection Act, 2019 was passed after 33 years of the old Act being passed. Technology has progressed a lot in these years and while the older act tried to keep updated with small amendments. The repeal of the older act and the establishment of the 2019 act was much needed. The Act has successfully kept pace with the evolving times as it has included E-commerce and technology together. But there are some serious concerns which should be addressed and here are the solutions to the same.

- The Consumer Redressal Forum should be vested with powers to issue interim injunctions restraining an undertaking or person from carrying on any unfair trade practice as defined in Act. This defect was also found in the old statute due to which often the damage was suffered by the large masses of the consumers as no action was taken against the seller, trader or manufacturer till the case was decided. Hence, it is the need of the hour for the court to be provided the power of issuing interim injunctions at their discretion.
- India gives to its celebrities, whether they are film stars, cricketers, etc. imposes a tinge of responsibility to watch what they say rather than act merely as a carriers of information. Hence, a celebrity cannot be expected to know the details of the product/services as to how harmful they are to the consumers. Therefore, some relaxations should be provided to the celebrities with respect to this provision.
- The lawyers should not be made part of all the matters. The court after hearing the matter at first instance decide if the engagement of lawyer is necessary so as to avoid the stretching of the matter at length in trivial issues also. And if the complainant engages the lawyer, he should give the reason for the same to the forum. Further, adjournment should be given only in exceptional cases and not made a regular habit by the forum. The copy of the order should be made available online to the parties immediately after final hearing so that no time is wasted in filing the appeal.
- In the E commerce and globalised world, there should be scope of online hearing of matters through video conferencing so that lot of time and money is saved for both the parties and small matters are also disposed of at the earliest.
- The Act should be amended to empower Consumer Courts to publish the names of manufacturers, traders and dealers whose goods are found to be hazardous to public safety. This empowerment would work as a deterrent to the erring business community.
- The Commissions are intended to be quasi-judicial bodies, while the government is part of the executive. There may be instances where the government is a party to a dispute relating to deficiency in service provided by a government enterprise, for e.g., the Railways. In such a case, there would be a conflict of interest as the government would be a party to the dispute before the Commissions and will also have the power to appoint members to the Commission.
- Another shortcoming of the Act is that it has not given any provision with respect to medical negligence faced by the consumers. But the same was provided in the old Act, hence the old provision should be reinstated in the New Act.
- Consumer rights should be made compulsory as part of the Social Science in schools as the consumers are largely exploited due to unawareness of their rights and children could be source of information to their parents.
- The Consumer Forums should also be given directions by the Parliaments with respect to their subject matter jurisdiction as it has been often observed that there is confusion with respect to matters which forums can decide because often the forums deny their jurisdiction stating that matters lies within the civil jurisdictions but the issue is not so.

CONCLUSION

As is evident, CPA 2019 has made several changes to the erstwhile CPA 1986. CPA 2019 has widened the reach of consumer protection regime in India. The changes made vide CPA 2019 seem to further empower consumers by leveraging responsibilities not only on their counterparts, i.e., the sellers, manufacturers, service providers, but also the endorsers of such products. It also attempts to address the issues that were not comprehensively touched upon by CPA 1986, such interests of consumers as a class, etc. CPA 2019 has also attempted to ease and fasten the process of consumer disputes resolution by increasing the pecuniary jurisdiction of the commissions, attaching mediation cells, increasing the members of the commissions, imposing higher penalties etc.

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