

# Expanding Horizons Consumer Rights Under Consumer Protection Act, 2019

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## Abstract:

We are all consumers in one form or another. But in the present socio-economic scenario, we find that the consumer is a victim of many unfair and unethical tactics adopted in the market place. The untrained consumer is no match for the businessman marketing goods and services on an organised basis and by trained professional. He is very often cheated in the quality, quantity and price of goods or services. The consumer who was once the 'King of the Market' has become the victim of it. He is not supplied adequate information as to the characteristics and performance of many consumer goods and suffers due to the unfairness of many one-sided standard forms of contracts. The modern economic, industrial and social developments have made the notion of 'freedom of contract' largely a matter of fiction and empty slogan so far as many consumers are concerned. The consumers need protection by law when goods fail to live up to their promises or indeed cause injury.

In this paper researchers want to highlight Consumer Protection in India, Consumer rights, Key features of the Consumer Protection Act, 2019 and by analysing new concept introduced by this act like CCPA, changes in the pecuniary jurisdiction, mediation, product liability and so on.

**Keywords:** Consumer, Consumer rights protection, expanding horizons, goods and services

## Introduction:

National Consumer Day is observed on 24 December every year. This day highlights the importance of the Consumer movement and need to make consumers more aware of their rights and responsibilities. With globalization and development in the international trade and commerce, there has been substantial increase of business and trade, which resulted in a variety of consumer goods and services to cater to the needs of the consumers. In present years, there has been a greater public concern over the consumer protection issues all over the world. Taking into account the interest and needs of consumers in all countries, particularly those in developing countries, the consumer protection measures should essentially be concerned with-(i) the protection from hazards to health and safety, (ii) the promotion and protection of economic interest, (iii) access to adequate information, (iv) control on misleading advertisements and deceptive representation, (v) consumer education, and (iv) effective consumer redress.<sup>1</sup>

The consumer deserves to get what he pays for in real quantity and true quality. In every society, consumer remains the centre of gravity of all business and industrial activity. He needs protection from the manufacturer, producer, supplier, wholesaler and retailer.<sup>2</sup>

<sup>1</sup> UN General Assembly, Consumer Protection, Resolution No.39/248, para 3, (April 9, 1985).

<sup>2</sup> Morgan Stanley Mutual Fund v. Kartick Das (1994) 4 SCC 255.

**Consumer Protection in India:**

As a developing country, India's biggest problem is that of perennial shortages taking place in various types of consumer goods and services, the pressure of population is high. A large part of the population is below the poverty line and of the remainder the vast majority is a long way from affluence.<sup>3</sup> There is ignorance of the consumer of his rights. The consumers have not yet organized themselves into a powerful movement. Consequently, sellers' market situation of a very safe haven for the traders and a position of frustration and uncertainty for the consumers.

Moreover, consequent upon Industrial Revolution and vast development and expansion in the field of international trade and commerce, variety of consumer goods entered the market to meet the needs of the consumers and most of services like insurance, transport, electricity, housing, entertainment, finance and banking have been made available to the consumers. Well organised sectors of manufacturers and traders with better energy and markets have emerged affecting relationship between the traders and consumers.<sup>4</sup> With the help and aid of media, both electric and print, the advertisements of goods and services in television, newspapers and magazines have created great impact and influence on the demand or deficiencies and shortcomings in the quality, quantity and the purity of the goods and deficiencies in the services rendered.<sup>5</sup>

Thus, it became necessary to protect the consumers from the exploitation and to save them from adulterated and substandard goods and deficiency in services and to safeguard their interest.

**Socio-economic Justice:**

In India, consumer justice is a part of social and economic justice as enunciated in the Constitution. Following the constitutional mandate, a number of legislations have been enacted in the field of consumer protection relation to standardisation, grading, packaging and branding, prevention of food adulteration, short weights and measures, hoarding, profiteering etc. But all these are scattered pieces of legislations. The litigations under these legislations are disproportionately costly and troublesome to the small consumer. The procedures are complex, cumbersome and time consuming and the remedies available are limited in scope.<sup>6</sup>

**Consumer Protection Act, 1986**

The Parliament, passed a potentially very important legislation, viz. the Consumer Protection Act, 1986 to provide better protection to the interests of the consumers. In fact, the Act met long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons had become illusory. The importance of the Act lied in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempted to remove the helplessness of a consumer.<sup>7</sup>

The Act provided a three tier quasi-judicial machinery at the National, State and District levels for redressing consumer grievances and also recognised the role of the consumer organisations in assisting the consumer in seeking justice.

<sup>3</sup> Monopolies Inquiry Commission Report (1965), p. 158.

<sup>4</sup> Secretary, Thirumurugan Cooperative Agricultural Credit Society v. M. Laliha (2004) 1 CPJ I (SC)

<sup>5</sup> Ibid.

<sup>6</sup> Dr. V.K. Agarwal, Consumer Protection (Law & Practice) 12 (Bharat Law House, New Delhi 8<sup>th</sup> edn., 2021)

<sup>7</sup> Dr. V.K. Agarwal, Consumer Protection (Law & Practice) 13 (Bharat Law House, New Delhi 8<sup>th</sup> edn., 2021)

The Act applied to all goods and services in private, public or the co-operative sector. Thus, the consumer could initiate an action under the Act against the defective goods or deficient services rendered even by the public sector or government undertakings such as Railway, Telephone, Airlines, Banks, State Electricity Boards, State Roadways, etc.

The Act was amended in 1991, 1993 and 2002. Despite these amendments, several shortcomings had been noticed while administering the Act. Further, the consumer markets had undergone drastic transformation after the said enactment. The Parliament instead of bringing an amendment in the 1986- Act preferred to enact altogether a new Consumer Protection Act, 2019, so as to provide greater protection to the consumers taking care of modern transactions such as online sales, teleshopping, direct selling and multilevel marketing in addition to the traditional methods.<sup>8</sup>

### **Background of the Consumer Protection Act, 2019**

The Consumer Protection Act, 1986 was enacted to provide for better protection of the interests of consumers and for the purpose of making provision for establishment of consumer protection councils and other authorities for the settlement of consumer disputes, etc. Although, the working of the consumer dispute redressal agencies has served the purpose to a considerable extent under the said Act, the disposal of cases has not been fast due to various constraints.<sup>9</sup>

The consumer markets for goods and services have undergone drastic transformation since the enactment of the Consumer Protection Act in 1986. The modern market place contains a plethora of products and services. The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices. Misleading advertisement, tele-marketing, multi-level marketing, direct selling and e-commerce pose new challenges to consumer protection. In view of this, it was proposed to repeal and re-enact the Act.

According, the Consumer Protection Bill, 2019 was introduced in Lok Sabha on July 8, 2019. It was passed by the Lok Sabha on July 30, 2019 and Rajya Sabha on August 6, 2019 and received the assent of the President of India on August 9, 2019. The new Act has replaced the more than three decades erstwhile Consumer Protection Act, 1986. The new Consumer Protection Act, 2019 while incorporating many new provisions, has retained certain old provisions of 1986-Act.<sup>10</sup>

### **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, as the case may be, so as to protect the consumer against unfair trade practices;
- the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;

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<sup>8</sup> Ibid.

<sup>9</sup> Statement of Objects and Reasons to the Consumer Protection Bill, 2019.

<sup>10</sup> Dr. V.K. Agarwal, Consumer Protection (Law & Practice) 14 (Bharat Law House, New Delhi, 8<sup>th</sup> edn., 2021)

- the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora;
- the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and
- the right to consumer awareness;

### **Salient Features of the Consumer Protection Act, 2019**

- The provisions have been made for the establishment of an executive agency to be known as the Central Consumer Protection Authority (CCPA) to<sup>11</sup>
  - (a) promote, protect and enforce the rights of consumers,
  - (b) make interventions when necessary to prevent consumer detriment arising from unfair trade practices, and
  - (c) to initiate class action including enforcing recall, refund and return of products, etc.
- CCPA fills an institutional void in the regulatory regime extant.
- The Act has introduced the concept of 'product liability'.
- The provisions for 'mediation' as an Alternate Dispute Resolution mechanism have also been made.
- The Act makes provisions for consumers to file complaints electronically, etc.
- The term 'consumer' has been widened to include offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.
- The scope of the definition of 'unfair trade practices' has been enlarged.
- The term 'misleading advertisement' has been specifically defined in the Act and the provisions have been made for punishment for such advertisements.
- The power of judicial review of its own order has been vested in the respective Consumer Commission.

### **Administration:**

The Act provides the formation of the Consumer Protection Councils at the Central, State and District levels. The main objects of the Councils are to render advice or promotion and protection of the rights of the consumers under the Act.

To provide simple, speedy and inexpensive redressal of consumer grievances, the Act envisages a three-tier quasi-judicial machinery at the district, State and National level. At the district level there will be 'District Commission' to entertain consumer complaints where the value of goods or services paid as consideration does not exceed rupees one crore, and at the State level there will be a 'State Commission' to deal with the complaints where the claim exceeds rupees one crore but does not exceed rupees ten crore and also to hear appeals against the orders of the District Commission. At national level there is a 'National Commission' for complaints where the amount exceeds rupees ten crore and also to entertain appeals against the orders of the State Commission.

### **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 the CCPA. The authority will consist of a Chief Commissioner along with other such prescribed members.

<sup>11</sup> Statement of Objects and Reasons to the Consumer Protection Bill, 2019.

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.<sup>12</sup>

### 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 a 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, defective in design, does not follow the manufacturing specifications, does not conform to 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 express warranty that does not conform to the warranty made by the manufacturer. The product seller failed to take reasonable care in maintaining, assembling or inspecting the product.

### Exceptions

#### Consumer Dispute Redressal Forums

##### Jurisdiction

**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.

**Pecuniary Jurisdiction:** The pecuniary jurisdiction will now be determined on the basis of 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 the 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 pecuniary limit of Rs. 10 Crores or more.<sup>14</sup>

<sup>12</sup> The Consumer Protection Act, 2019, Ss. 10-27.

<sup>14</sup> The Consumer Protection Act, 2019, Ss. 28-73.

### Amendment in 2021

Recently, in exercise of provisions under the Consumer Protection Act, 2019, the Central Government has notified the Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021.

Revised Pecuniary Jurisdiction:

50 lakhs (earlier less than 1 crore) for District Commissions, More than Rs. 50 lakhs to Rs. 2 Crore (earlier 1 crore to 10 crore) for State Commissions, More than Rs. 2 Crore (earlier more than 10 crore) for the National Commission.<sup>15</sup>

### Alternate Dispute Resolution (Mediation)

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. For the purpose of mediation, the State Government shall establish a **consumer mediation cell** for each District Commission and State Commission. The Central Government shall establish a consumer mediation cell attached to the National Commission.<sup>6</sup> The consumer mediation cell will be responsible for maintaining a list of empanelled mediators, cases handled by the cell, record of proceeding and other information by specified regulations.<sup>7</sup> The cell also has to submit a quarterly report to the commission it is attached to.<sup>16</sup>

### E-Complaints

Section 17 of the Act provides 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. In spite of certain lacunas in the Act, the Consumer Protection Act, 2019 is a positive step towards development and reformation of consumer laws in the country.<sup>17</sup>

### Role of Judiciary

Arun G.Krishnan v. Deepinder Goyal (Zomato)<sup>18</sup>

The complainant namely Arun G Krishnan, a final year law student at the Faculty of Law, University of Delhi, had filed a case under Section 12 of the Consumer Protection Act.

In 2019, the student placed two orders from a restaurant through Zomato. But the company neither delivered the food item to him nor refunded the amount paid against the order, even though the student demanded the same by making multiple communication to the representative of Zomato on the same day and later.

Before the Commission, the student alleged that he had experienced similar instances with the company earlier also when he was staying in New Delhi.

He apprised the court that for the non-delivery of the product, Zomato gave him the reason that they could not deliver the food due to an issue with the address of the student as he was unavailable to collect the food at the mentioned address.

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<sup>15</sup> The Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021 (December 30, 2021)

<sup>16</sup> The Consumer Protection Act, 2019, Ss. 74-81.

<sup>17</sup> The Consumer Protection Act, 2019, S. 17

<sup>18</sup> CC/161/2021

He alleged that as Zomato could not add delivery charges to his orders, they cancelled the order by giving him false contradictory explanations. He contended that Zomato's act would amount to deficiency in service and unfair trade practice.

The District Consumer Disputes Redressal Commission, Kollam (District Commission/ Commission) recently ordered online food delivery app Zomato to pay compensation of ₹8,362 to a law student after food orders worth ₹362 placed by him were not delivered and the amount was not refunded.

Vijay Gopal v. Swiggy.com<sup>19</sup>

Vijay Gopal, an anti-corruption and consumer rights' activist from Hyderabad, was charged an additional Rs 33 by Swiggy for his order from KFC, under "packing charges". In response, he filed a complaint in the consumer court.

on 30 May 2019, Vijay Gopal, a Hyderabad-based anti-corruption and consumer rights activist, placed an online order on Swiggy's app for two items from KFC — Smoky Red Rice Bowl and Pepsi, from KFC. This ideally should have amounted to Rs 216.66, including GST. Unfortunately, an additional Rs 33 was levied (plus GST). By the time payment was made, the bill amount came up to Rs 250. The extra Rs 33 he paid was for "packing charges".

Compared to the amount he would pay for the same items at the restaurant counter, Vijay claims the price he paid was about 15-20% higher. While consumers pay a higher price for the same product online, he believes that additionally including operating expenses to the bill is tantamount to unfair trade practices.

The district consumer court also ordered KFC to pay a fine of Rs 50,000 to the court, Rs 15,000 to the complainant for litigation charges and other inconveniences caused, and return the Rs 33.33 collected from him as packing charges with 9% interest per annum.

According to the recent cases it seems that consumer are more aware their rights.

### Conclusion:

We can say that Consumer Protect Act, 2019, the process of drafting was started in 2010 is one of the sincerest steps taken by the central government for enhancing consumer rights and speedy delivering of justice. The new Act touches on many aspects such as Mediation and E-commerce which the world was unaware in 1986. So, it was important to amend the act when digitalization has changed the way a consumer conduct online transactions and mode of shopping has shifted from offline to online. Certainly 2019 Act is a positive step towards reformation, development and enhancing consumer rights. Socio-economic developments are taking place every year and we can aspect new amendments to 2019 act as well. But the real implementation of 2019 Act will be seen in coming times by analysing how much relief it offers to the consumers.

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