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# **A Critical Analysis Consumer Protection Act 2019: A Comparative Study With USA & UK**

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## **Introduction: -**

Consumer protection is the practice of safeguarding buyers of goods and services against unfair practices in the market. It refers to the steps adopted for the protection of consumers from corrupt and unscrupulous malpractices by the sellers, manufacturers, service providers, etc. and to provide remedies in case their rights as a consumer have been violated.

The Consumer Protection Act of 2019 governs the administration of consumer rights protection in India. To replace the Consumer Protection Act of 1986, the Consumer Protection Act of 2019 was proposed. The new Act includes several provisions that consider the difficulties faced by contemporary, technologically dependent customers. The Act also includes several clauses aimed at advancing and defending consumer rights.

By establishing Consumer Protection Councils to resolve disputes should they occur and to give adequate compensation to consumers if their rights have been violated, the Act aims to better protect the rights and interests of consumers. Additionally, it offers quick and efficient handling of customer concerns through alternative dispute resolution procedures. The Act also encourages consumer education to inform consumers of their rights, obligations, and options for resolving complaints.

## **RESEARCH PROBLEM: -**

In the current consumer protection act 2019, mandatory services, water supply etc provided by state authorities are not covered in this act. This act only covers two clauses regarding supply of hazardous products. Consumer protection act don't empower consumer redressal.

## **RESEARCH QUESTION: -**

Whether there is a rift between judicial and non-judicial member of the consumer courts or not?

## **RESEARCH OBJECTIVE: -**

1. To determine the rights and responsibility of the consumer.
2. To critically analyze the consumer protection Act of 1986 and 2019.
3. To understand the changes incorporated in consumer protection act 2019.
4. To do a comparative study of laws of UK and US.

## **Objectives of Consumer Protection Act, 2019**

The main objective of the Act is to protect the interests of the consumers and to establish a stable and strong mechanism for the settlement of consumer disputes. The Act aims to:

- Protect against the marketing of products that are hazardous to life and property.
- Inform about the quality, potency, quantity, standard, purity, and price of goods to safeguard the consumers against unfair trade practices.
- Establish Consumer Protection Councils for protecting the rights and interests of the consumers.
- Assure, wherever possible, access to an authority of goods at competitive prices.
- Seek redressal against unfair trade practices or unscrupulous exploitation of consumers.
- Protect the consumers by appointing authorities for timely and sufficient administration and settlement of consumers' disputes.
- Lay down the penalties for offences committed under the Act.
- Hear and ensure that consumers' welfare will receive due consideration at appropriate forums in case any problem or dispute arises.
- Provide consumer education, so that the consumers can be aware of their rights.
- Provide speedy and effective disposal of consumer complaints through alternate dispute resolution mechanisms.

## **Changes Incorporated in Consumer Protection Act:**

The changes that were incorporated with the enactment of the Consumer Protection Act, 2019 are:

1. The District Commissions will have the jurisdiction to entertain complaints where the value of the goods, services or products paid as consideration to the seller does not exceed 50 lakh rupees.
2. State Commissions will have the jurisdiction to entertain complaints where the value of the goods, services or products paid as consideration to the seller exceeds 50 lakh rupees but does not exceed two crore rupees.
3. The National Commission will have the jurisdiction to entertain complaints where the value of the goods, services or products paid as consideration to the seller exceeds two crore rupees.
4. The Act further states that every complaint concerning consumer dispute shall be disposed of as expeditiously as possible. A complaint filed under this Act shall be decided within the period of three months from the date of receipt of notice by the opposite party in the cases the complaint does not require analysis or testing of the goods and services and within a period of 5 months, if it requires analysis or testing of the goods and services.
5. The Consumer Protection Act, 2019 also facilitates the consumers to file complaints online. In this regard, the Central Government has set up the E-Daakhil Portal, which provides a convenient, speedy and inexpensive facility to the consumers all over India so that they are able to approach the relevant consumer forums in case of any dispute arises.
6. The Act lays down the scope for e-commerce and direct selling.
7. The Consumer Protection Act, 2019 lays down provisions for mediation and alternative dispute resolution so that the parties are able to dispose of the case conveniently without going through the trouble of litigation.
8. The Consumer Protection Act, 2019 contains provisions for product liability, unfair contracts and it also includes three new unfair trade practices. In contrast, the old Act just stated six types of unfair trade practices.



9. The Act of 2019 acts as the advisory body for the promotion and protection of consumer rights.

10. Under the Consumer Protection Act, 2019 there is no scope for selection committees, the Act authorises the Central Government to appoint the members.

Therefore, with the changes in the digital era, the Indian Parliament enacted and brought the Consumer Protection Act, 2019 in force to include the provisions for e-commerce as digitalization has facilitated convenient payment mechanisms, variety of choices, improved services, etc.

## **MEDICAL NEGLIGENCE CONSUMER**

### **PROTECTION ACT, 2019**

Medical profession is considered to be a noble profession however, it has been time and again placed under scrutiny and so have all persons working in this profession. Medical negligence is considered to be one of the most crucial concerns not just in our country but throughout the world. The primary reason is that numerous cases have been reported where an under qualified medical professional has been taken under inquiry for not taking reasonable care during the time of operation, diagnosis, etc.

When a medical expert or hospital violates the proper standard of care and the patient suffers as a result, they are accountable for all actions performed against the patient. It is the complainant's responsibility to establish a case of carelessness. In order to proceed, they must first prove that the accused owed a duty of care and that this duty was broken.

However, the "ipsa loquitur" principle, which states that objects speak for themselves, is occasionally used by courts. In such a situation, it is assumed that the medical professional acted negligently by acting below the established level of care. According to this theory, it is assumed that the injury could not have resulted from anything else than the medical professional's negligence. In actuality, the judge's use of this concept would imply that negligence has already occurred. The onus here shifts to the doctor to establish the contrary. Examples include operating on the wrong patient or leaving an object within the patient's body.

## **CIVIL LIABILITY UNDER CONSUMER FORUM**

An individual who feels wronged may take the accused and the hospital to court in a case against them. Medical practitioners are regulated by the Consumer Protection Act of 1986, and the services they provide should be considered services under the Act's provisions under section 2(1)(o). As with the previous law, the new Consumer Protection Act of 2019 will include medical services within the scope of services listed in section 2(42) of the new Act. According to section 42(11) of the 2019 Consumer Protection Act, any instance of medical negligence on the part of the service provider is a deficit. Any aggrieved person can claim damages for medical negligence against a doctor or a hospital. Section 69(1) of the Consumer Protection Act, 2019 lays down the time limit within which a complaint for medical negligence must be filed as 2 years from the date of injury.

## **CONSUMER LAWS IN INDIA**

The 1986 Consumer Protection Bill in India was inspired by and made like the laws of several common law nations, including the United States of America, the United Kingdom, Australia, and New Zealand. It was based on the UN framework. The former Act from 1986 was replaced by the new Consumer Protection Act, 2019 when it went into effect in India on July 20th, 2020. The new Act revises how consumer complaints are handled and resolved in India. For adulteration and false advertising, there are severe penalties, including imprisonment. It now establishes guidelines for the sale of items via online commerce. Due to increased awareness and globalization, consumer needs and expectations have evolved in the modern day, making it crucial to preserve their rights.

The key difference between the Act of 1986 and 2019 are as follows:

- The Consumer Protection Act of 1986 had a more limited reach; it only addressed six different categories of unfair trade practices and deceptive practices, whereas the Consumer Protection Act of 2019 has a wider reach and adds more than three more unfair trade practices.
- There were no provisions for product liability in the Consumer Protection Act of 1986, but there are provisions for product liability in the current legislation.
- Unfair Contracts were not covered under the Consumer Protection Act of 1986, but they are now covered by the current act.

- E-commerce and direct selling were not covered by the previous act's requirements, but they are covered explicitly by the Consumer Protection Act 2019.
- When compared to the New Act of 2019, which has higher Pecuniary limits for District Forum up to 1 crore, State commission up to 10 crores, and National Commission above 10 crores, the Consumer Protection Act of 1986 had lower financial thresholds for District Forum up to 20 lakhs, State commission up to 1 crore, and National Commission above 1 crore.
- The responsibility of Central Protection Councils in the 1986 act was to promote and protect the rights of Consumers and the role of CPCs in the new act 2019 is to operate as advisory bodies for the promotion and protection of Consumer rights.
- There were no provisions for alternative dispute resolution procedures in the Consumer Protection Act of 1986. There are provisions for mediation and other forms of ADR in the New Consumer Protection Act 2019.
- In the previous legislation, there was no regulator; the new Act calls for the establishment of the Central Consumer Protection Authority.
- According to the CPA 1986, a person who fails to follow the Commission's directives may be sentenced to one month to three years in prison, a fine of Rs 2000 to Rs 10,000, or both. According to the CPA 2019, if someone refuses to follow the commission's directions, they could get a fine of up to one lakh rupees or a sentence of up to three years in prison.
- Different Committees were authorized in CPA 1986 for the selection of members in consumer dispute Redressal Commissions, however selection Committees are not included in CPA 2019. The members may be appointed by the central government.

## **Various Rights of a Consumer**

### **Right to Safety:-**

Means right to be protected against the marketing of goods and services, which are hazardous to life and property. The purchased goods and services availed of should not only meet their immediate needs, but also fulfil long term interests.

Before purchasing, consumers should insist on the quality of the products as well as on the guarantee of the products and services. They should preferably purchase quality marked products such as ISI, AGMARK, etc.

### **Right to be Informed: -**

Means right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices.

Consumer should insist on getting all the information about the product or service before making a choice or a decision. This will enable him to act wisely and responsibly and also enable him to desist from falling prey to high pressure selling techniques.

### **Right to Choose: -**

Means right to be assured, wherever possible of access to variety of goods and services at competitive price. In case of monopolies, it means right to be assured of satisfactory quality and service at a fair price. It also includes right to basic goods and services. This is because unrestricted right of the minority to choose can mean a denial for the majority of its fair share. This right can be better exercised in a competitive market where a variety of goods are available at competitive prices.

### **Right to be Heard: -**

Means that consumer's interests will receive due consideration at appropriate forums. It also includes right to be represented in various forums formed to consider the consumer's welfare. The Consumers should form non-political and non-commercial consumer organizations which can be given representation in various committees formed by the Government and other bodies in matters relating to consumers.

### **Right to Seek Redressal: -**

Means right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers. It also includes right to fair settlement of the genuine grievances of the consumer. Consumers must make complaint for their genuine grievances. Many a times their complaint may be of small value but its impact on the society as a whole may be very large. They can also take the help of consumer organisations in seeking redressal of their grievances.

### **Other Highlights are:**

Instead of the place of business or house of the seller or service provider, an irate customer may register complaints about a defect in goods or a lack of services from where she resides. If the claim is less than or equal to 5 lakh Indian rupees, no fees are payable. Through video

conferencing, a consumer can manage her own case; hiring counsel is optional. The new law has established the idea of product liability, enabling irate customers to seek sizeable compensation as restitution for the negligence of the manufacturer or service provider. To reduce costs and improve the likelihood of redress or settlement, a group of aggrieved customers can group together and file a class action lawsuit (as in the US). E-commerce businesses are now required to disclose all pertinent product information, including the country of origin, and address customer complaints within set time frames because the industry is now highly regulated.

Even after excluding state laws, the USA has more than 7 (seven) federal statutes that deal with consumer law, including the Federal Trade Commission Act, Gramm-Leach-Bliley Act, Truth in Lending Act, Consumer Product Safety Act, Dodd-Frank Wall Street Reform and Consumer Protection Act etc.

Most consumer legislation in the UK is contained in a single Act, the Consumer Rights Act of 2015. Aside from the Consumer Protection Act of 1987 and the General Product Safety Regulations of 2005, other laws such as the Consumer Protection from Unfair Trading Regulation of 2008 (which establishes a general obligation for traders not to engage in unfair trade) and the Consumer Contracts (Information, Cancellation, and Additional Charges) Regulations (which impose requirements on traders) also supplements.

Given the various of legislations in the USA, there are multiple consumer definitions. The Dodd Frank Act, for instance, defines a consumer as an individual or an agent, representative, or other person operating on an individual's behalf. The term & consumer in the Fair Credit Reporting Act merely refers to an individual.

According to the UK's Consumer Rights Act, a consumer is a natural person acting for purposes that are entirely or primarily unrelated to their trade, business, craft, or profession. The concept departs from conventional practice by including all people regardless of whether they are manufactured or natural. The definition's final clause includes a similar practice of excluding commercial transactions from the purview of consumer protection laws.

In the USA, several federal agencies enforce consumer protection legislation. This includes agencies like the Food and Drug Administration, the Consumer Financial Protection Bureau, and the Federal Trading Commission. Investigation and enforcement of these laws are also the responsibilities of various state attorneys. Given the distinct laws for each part of the USA,

there are many agencies and bodies in place to assure enforcement. The benefit of this system is that, given a narrower area of specialization, they become specialized and skilled in enforcing a particular sector.

UK, on the other hand, has two major enforcement agencies. These Trading Standard Services enforce at the local level, with the potential for regional or even national enforcement in some circumstances. The second is the Competition and Markets Authority, which oversees all aspects of UK competition law. Both organizations have successfully assigned duties to their various departments. Additionally, consumers can directly assert their rights through courts, just like in India.

### **UK**

The Consumer Rights Act of 2015 (the "CRA") contains the majority of the rights and safeguards available to UK consumers. The CRA, which went into effect on October 1, 2015, streamlined and consolidated different pieces of UK consumer protection law.

The Consumer Protection from Unfair Trading Regulations of 2008 (the "CPRs"), which contain a general responsibility on traders not to trade unfairly and forbid aggressive and misleading methods, are other important sources of consumer protection in the UK. These outline a "blacklist" of actions that are always prohibited as unfair and unethical.

The Consumer Contracts (Information, Cancellation, and Additional Charges) Regulations of 2013 impose different informational standards and other duties on merchants when selling to customers.

### **USA**

Consumer protection law is made up of a large patchwork of Federal and state laws governing everything from products like cosmetics and medicine to services like lending practices. Among them are the Federal Food, Drug, and Cosmetic Act, Fair Debt Collection Practices Act, the Fair Credit Reporting Act, Truth in Lending Act, Fair Credit Billing Act, and the Gramm–Leach–Bliley Act. Federal consumer protection laws are mainly enforced by the Federal Trade Commission, the Consumer Financial Protection Bureau, the Food and Drug Administration, and the U.S. Department of Justice. The Federal government oversees antitrust law and consumer protection through the Federal Trade Commission which inspects complaints of scams and fraud against businesses. States use a variety of agencies and statutes to enforce consumer protection, expanding on the Federal law in many areas.

At the state level, many states have adopted the Uniform Deceptive Trade Practices Act. The deceptive trade practices prohibited by the Uniform Act can be roughly subdivided into conduct involving either a) unfair or fraudulent business practice and b) untrue or misleading advertising. The Uniform Act contains a private remedy with attorney's fees for prevailing parties where the losing party & **wilfully engaged in the trade practice knowing it to be deceptive.** Most states have a Department of Consumer Affairs devoted to regulating certain industries and protecting consumers who use goods and services from those industries.

## **UNITED NATIONS GUIDELINES FOR** **CONSUMER PROTECTION**

The United Nations Guidelines for Consumer Protection (UNGCP) are "a valuable set of principles for setting out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems and for assisting interested Member States in formulating and enforcing domestic and regional laws, rules and regulations that are suitable to their own economic and social and environmental circumstances, as well as promoting international enforcement cooperation among Member States and encouraging the sharing of experiences in consumer protection." UNCTAD promotes the guidelines and encourages interested member States to create awareness of the many ways in which member States, businesses and civil society can promote consumer protection in the provision of public and private goods and services.

The Intergovernmental group of experts on consumer protection law and policy has been established to monitor the implementation of the guidelines, provide a forum for consultations, produce research and studies, provide technical assistance, undertake voluntary peer reviews, and periodically update the UNGCP. Its first session was held on 17 and 18 October 2016 in Geneva.

The UNGCP were adopted by consensus in 1985. This followed a long campaign by consumer associations in many countries, with Consumers International (then known as the International Organisation of Consumer Unions since its establishment in 1960 and granted general consultative status by the Economic & Social Committee in 1977) acting as interlocutor with the United Nations, having called upon the United Nations to prepare a 'Model Code for consumer protection' at its World congress in Sydney in 1975. This led, in 1977, to the Economic and Social Council (ECOSOC) directing the Secretary General to prepare a survey of national institutions and legislation in the area of consumer protection and in 1981, ECOSOC requested the Secretary

General 'to continue consultations on consumer protection with a view to elaborating a set of general guidelines for consumer protection, taking particularly into account the needs of the developing countries'. Draft guidelines were circulated to governments for comments in 1982, submitted to ECOSOC in 1983, drawing on many sources including the Organisation for Economic Co-operation and Development (OECD), the United States Consumer Bill of Rights and materials from national consumer protection agencies and consumer associations.

## **LANDMARK CASES: -**

### **Horlicks Ltd. v. Zydus Wellness Products Ltd. (2020)**

In this case, both parties are manufacturers of nutritional drinks, however, Zydus advertised a television commercial trivialising the products of Horlicks Ltd. The commercial was being telecasted in various languages including English, Tamil and Bengali. Therefore, the Delhi High Court relied on various judgments on misleading advertisements, disparagement and law governing the publication of advertisements on television and held that the advertisement is disparaging as it does not provide any concrete proof regarding the quality of the product. Further, electronic media leaves an impression on the minds of the viewers thus, these types of advertisements would not only be detrimental to the consumers but also the complainant would suffer irreparable damage. A famous judgement relied on by Delhi High Court while deciding this case is *Pepsi Co. Inc. v. Hindustan Coca Cola Ltd., 2003* where the Delhi High Court held that there are certain important factors that are to be kept in mind in case of disparagement which are; manner of the commercial, intent of the commercial and storyline of the commercial.

### **Veena Khanna v. Ansal Properties & Industries Ltd, NCDRC (2007)**

In this case, the complainant offered to purchase a flat from the respondent which the respondent agreed to deliver on 1.6.1999 through a letter. However, the flat was not constructed within the specified date and hence it was not delivered. For such deficiency in services, the complainant demanded the refund of the deposited amount with interest at the rate of 18% pa which was refused by the opposite party.

The National Commission observed that due to delays in construction and delivery of possession it is quite difficult for a consumer to purchase a flat at market price. The National Commission stated that it is the duty of the State Commission to direct the builders to deliver



the possession of the flat as soon as it is completed and the complainant should be awarded suitable compensation for the delay in construction. The complainant just claimed the refund amount before the State Commission, but the case was pending before the commission for five years and during that time there was a tremendous rise in the market prices of the immovable property. The National Commission further stated that it was the duty of the State Commission to direct the respondents to deliver the possession of the flat or any other flat of equivalent size to the complainant with appropriate compensation, due to the delay in delivering the possession within the specified time. Or, adequate compensation ought to have been provided to the complainant so that they could purchase a new flat of the same size at the prevailing market rate in that same locality.

## **CONCLUSION: -**

The updated Consumer Protection Act of 2019 provides consumers with a wide range of advantages and rights to safeguard them against unfair business practices, false or misleading advertising, etc. The Act gives customers the option to use mediation and other alternative dispute resolution processes so that the parties can choose a quick and efficient resolution of their issues. The Act's inclusion of e-complaints and e-consumers shows that certain members of the legislature were forward-thinking. Additionally, the Act added new concepts like "product responsibility" and "unfair contracts," broadening the extent of protection for consumers' rights and enabling them to complain when those rights have been infringed. Thus, the inclusion of the provisions in this fills up the lacunae in the Consumer Protection Act, 1986. The enactment of the Act was paramount and it changed the ambit of protecting the rights of consumers in the country.

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