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ABOUT US

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2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

Comparison of Indian Consumer Law with International Standards Provided by UN

ABSTRACT

This paper attempts to present the state of affairs of consumer protection in India by inspecting the current status with respect to UN guidelines for consumer protection. The paper throws light on the present scenario by conferring some data and headlining the problems. It inspects that the legal and policy framework in India is adequately good as per the measures stated by UN guidelines (Consumers International), but when it comes to implementation, the scenario is not up to the mark. It concludes with some recommendations that might further improve the consumer protection in India.

GAYATRI SURAJ CHAWLA
MODERN LAW COLLEGE RESEARCH PAPER

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INTRODUCTION

Need for consumer protection is a global issue and different states tackle it through various legislations. The nature of these statutes is essentially the same but have differences to accommodate state ideology, different ways of conducting businesses, consumer awareness levels, etc. But one thing which is undeniable is that they root from the same origin principle of protecting consumer rights and that they are influenced by each other.

In India for instance Consumer Protection Bill, 1986 was based on UN framework and is admittedly influenced by and made parallels to the laws of multiple common law countries like the United States of America, United Kingdom, Australia and New Zealand.

Analysis of such consumer protection laws provides a greater insight into how consumer rights are defended among different countries and helps with identifying the shortcomings and finding possible remedies from other legislations. Comparative analysis with other state laws helps to reflect how different states with different demographics tackle these obstructions differently.

OBJECTIVE

The objective of this paper is to present the plight of Consumer Protection Act by analysing its current status with reference to Consumers International or as per UN guidelines. It states the major deviations between the consumer protection framework and its application, their drawbacks and the reasons behind it. It also highlights the need of Consumer Education and the urgency of initiating the Consumer Movements to combat consumer exploitation. The upcoming concept of industrialisation coupled with globalisation, liberalisation across the nations has empowered the consumers to realise their role in governance and society. An

analysis of marketing management has made it clear that consumer is the king pin of the market. The producer should produce goods keeping in mind the requirements of the consumer and satisfy the consumer needs. In a developing country like India where the prevalence of poverty and unemployment is very high and level of literacy is very low, because of which people have to go through bulk of problems, notably in consumer related issues. Unlike in the developed world, consumer such countries lack in promotion of development process. As we all know, the basic purpose of economic planning is to allocate resources for maximum satisfaction of consumer needs. Ultimately the goods and services produced in any economy are meant for the king of the market i.e. the consumer. In a rational economy, there is this logical, political, and moral force in the proposal that the consumers themselves should have the right to take and make decisions for fulfilling their needs with wise use of resources being allocated. Realising this, the international organisation of consumer unions, now known as Consumers International took the action and under its consistent persuasion, the UN adopted a set of guidelines for the Consumer Protection on April 9, 1985 which were amended in 1999. These guidelines address the consumers keeping in view their needs and interest worldwide by promoting consumer protection and administer the legal framework for government stressing on development and newly independent countries by embellishing and strengthening consumer protection policies and legislation. Consumer protection is very wide. It includes various rights and various remedies which are available to consumers.

DEFINITION OF CONSUMER

In India a consumer has been defined as any person who buys any goods or hires or avails of any service for a consideration which has been paid or promised. The Act 2019, expressly includes offline or online transactions through electronic means. However, excludes any person who obtains such goods for resale or for any commercial purpose. The definition mainly pivots on point of “consideration”. The definition is wide enough to include most persons concerned by grievances.

In USA given there are various legislations there are varied definitions of consumer. For instance, the Dodd-Frank Act defines consumer as an individual or an agent, or representative acting on behalf of an individual. Under the Fair Credit Reporting Act, ‘consumer’ simply means an individual.

Consumer Rights Act of UK defines consumer as an individual which is a natural person rather than legal incorporation acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession. The definition takes a turn from usual practice of including all person irrespective of being artificial person or natural. The latter part of the definition incorporates a similar practice of excluding commercial transactions from the scope of Consumer Protection law.

In Australia a rather interesting definition has been adopted. According to ACL, a person is a 'consumer' if they acquire goods or services that are priced at less than \$40,000. A person is also a 'consumer' if they acquire good or services that are priced at more than \$40,000 but they are 'of a kind ordinarily acquired for personal, domestic or household use or consumption'. The intent is to exclude commercial transactions above an amount so that the legislation stays centric towards consumers of personal needs. Similar parallel can be drawn to Indian law where the definition expressly excludes commercial transactions absolutely regardless of amount. In fact, even as per the European Union Directive on Consumer Rights a 'consumer' means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession

COMPLIANCE AND ENFORCEMENT

Who are required to comply with these laws?

In India, as per the new Act, product liability is affixed to a product manufacturer, product service provider and product seller. The recent expansion to include such manufacturers too has been well received as the liability for the faulty product or service can be attached to its source now. Similarly, in Australia all businesses and corporations engaged in trade and commerce are required to comply with ACL which means both suppliers and manufacturers are included. In UK the term "Trader" is used. As per the law all traders are required to adhere with Consumer Rights Act. Here a trader means any person including natural person, and incorporations acting for purposes relating to person's trade, business, craft or profession. In regard to application most legislation agrees to similar application like Federal Trade Commission Act of USA applies it to "persons, partnerships, or corporations except banks, savings and loan institutions,

etc. ...”. In regard to affixing responsibility of adhering to consumer protection laws, all legislations adhere to similar principles, attaching it to same entities.

Enforcement Agencies for consumer protection.

Certain agencies or bodies are normally introduced by legislations to ensure enforcement of consumer protection law. Their role ranges from investigation to filing of complaint and in general to ensure the compliance of consumer protection law in their respective jurisdictions.

The Central Consumer Protection Authority (CCPA) has a wide range of powers to investigate malpractices against consumers. The Act also establishes an Investigation Wing. To further delegate the powers, District Collectors have also been given power under the Act to investigate complaints. The authority has the power to search and seize, to recall products, file complaints and to penalize offenders. Search and Seizure powers given to the Investigation Wing are similar to those of a Civil Court as under the Code of Criminal Procedure.

In USA various federal agencies enforce consumer protection law. This includes the Federal Trading Commission, the Consumer Financial Protection Bureau, the Food and Drug Administration, etc. Different state attorneys also bear the responsibility for investigation and enforcement of these laws. What difference can be seen is given the specific acts for different sections in USA, different agencies and bodies exist to ensure enforcement. The advantage of this system is that they get specialized and adept at enforcing a particular sector given smaller area of focus.

UK on the other hand has two primary agencies for enforcement. These are Trading Standard Services which enforce at a local level and in some cases the responsibility might widen to regional or even national level. The other is Competition and Markets Authority which acts as the apex competition law regulation body in UK. Prima facie both organizations have well delegated responsibilities and have been largely successful. Along with them consumers like in India can also enforce their rights directly through courts.

In Australia the Australian Consumer Law is enforced by Australian Competition and Consumer Commission at center level and state and Territory consumer protection agencies at respective levels. The one Commission at center level is almost similar with that of India. This ensures one authority for all matters but also one suffers the burden of all responsibilities.

Japan on the other hand has taken an interesting approach with a center authority known as Consumer Affairs Agency (CAA) which is responsible for enforcing most of the consumer protection laws and has various specific bodies mainly under different Ministries that enforce specific laws. For instance, the Ministry of Economy, Trade and Industry governs the Installment Sales Act (for credit transactions, etc.).

QUALITY CHECKS ON GOODS AND SERVICES

One of the important aspects of consumer protection laws is to assure that the goods or services provided in the market are up to certain standards. Different legislations tackle this differently to ensure that certain level of quality is maintained and is expected out of the traders in default of which certain action can be taken by the aggrieved consumer.

In India, provisions for product liability have been recently added in this regard. Chapter VI of the Act allows actions for harm caused by defective products. “Defect” has been defined^[5] as anything with shortcoming in quality. Similarly, “deficiency” also includes any inadequacy in quality. Product manufacturers and service providers can be made liable if the quality of the product is not up to standards. What such standards will be is not defined and is left for judicial discretion, subjective case to case.

The system in USA for such administration is also varied on federal and state levels. Certain aspects like foods and drugs are regulated on central level (similar to India) and the rest are usually regulated by a Uniform Commercial Code. The administration on the central level is very strong in USA. Such agencies have been found adept at their functions.

In Japan the approach is to have certain different acts governing different aspects. These are in the form of Households Goods Quality Labelling Act, Food Labelling Act, etc. These Acts set certain specific standards and respective redressal in case of breach.

Australia and UK in this regard have well defined standard universal terms which are to be included in every transaction. For example, the Australian Consumer Law has the concept of “consumer guarantees” i.e., certain terms with regard to the quality of goods and services that automatically apply to every supply to a consumer. Such definite ‘guarantee’ assures a certain level of quality with every good and service a consumer gets and sets proper standard and redressal in case of breach. The suppliers hence must assure that goods are fit for proper use and free from defects. Similarly, in UK the Consumer Rights Act (CRA) provides statutory protections which are deemed included in contracts, such as– goods must be of satisfactory quality^[6], they must be fit for their purpose etc. Similarly, traders are required to provide certain information with regard to goods when coming into sale. The nature of provisions in UK seems clearly to be focused to put duties on Traders rather than rights of consumers. This approach doesn’t allow the traders to use irregular defenses in court to avoid liability.

The strict approach of Australia and UK with singular central Act is admirable as it leaves little to no room for traders to escape liability. This approach can very easily be adopted in India with regard to Product Liability sections recently introduced. Proper compliance and subsequent amendments by the legislature can make certain standards with regard to quality of goods and services deemed mandatorily or automatically deployed. Such would ensure a minimum standard of service expected out of a trader.

Basic Needs

Every citizen has a right to fulfil the basic needs to survive and have dignified living. The basic needs include food, clothing, health care, drinking water, sanitation, shelter, education, energy and transportation. The UN guideline indirectly mentions the right to make basic needs for government to take adequate measures so that consumers can easily access the “basic needs for goods and services.” There are 2 goods and 6 services included in the basic needs. Right to Food in India, the central government for ensuring food security (Right to Food) introduced Public Distribution System (PDS). Surveys show that on an average 25% of poor are availing

the advantages of PDS. The minor failures of PDS relate to the factors such as low margins of Fair Price Shop owners, which lead to corruption, transportation bottlenecks, timings of the opening of shops are not convenient.

a) Right to basic need It is an essential need and therefore it comes under „Right to basic need. “ In India the Textile policy, 1981 was introduced for establishing infrastructure for distribution of cloth to weaker sections of the society. The Textile Regulation, 1988 also highlights some of these issues. De-licensing of sector in August 1991 is yet another measure which was taken.

b) Right to Health National Health Policy and Drug Policy give the synopsis of Right to Health. Since independence, life expectancy at birth has more than doubled, in 1947 it was 30 years and in 1992-96 it was 60 years. The infant mortality rate declined from 134 per 1000 live births to 72 infants per 1000 in 1998.

c) Right to Shelter in 1988, the government of India approved the National Housing & Habitat Policy to ensure the Right to Shelter. This policy conceptualized a major shift in government rule from provider to facilitator. Currently the housing scenario is such that 25-50% of urban population is living in throw-away settlements or slums. In rural areas 75% of the constructions are semi-permanent in nature.

a) Right to Education as per the chapter mentioned in Directive Principle of State Policy in the constitution of India. The 83rd Constitutional (Amendment) Act 2000 has made elementary education a fundamental right. Basic and elementary education is compulsory for all children upto 14 years of age and also Adult Education is being promoted.

b) Right to Energy The Indian Electricity Act 1910 and Electricity (supply) Act 1948 have been amended to conduct in a new legal administrative and financial environment. State electricity boards have been reorganized and the Central Electricity Regulation Commission and State Regulatory Commission have been set up. Census 1991 states that only about 42% of household had access to electricity in their households as against 26% in 1981. The rural urban ratio is quite noticeable. In 1991 3/4th of rural population had access to electricity.

c) Transport. There is an urgent need to adopt a well-integrated transport policy covering roads, railways and water transport.

PREVAILING STATUTES

The Consumer Protection Act serves as a comprehensive guide for consumer redressed. Some countries with Federal system particularly USA and Canada have various legislations passed at different levels. This can be seen creating a bit of overlapping and multiplicity as there exist different legislations to cater to different sector. For instance, even after leaving out state legislations, USA has more than 7 (seven) federal statutes which cover consumer law like Federal Trade Commission Act, Dodd-Frank Wall Street Reform and Consumer Protection Act, Gramm-Leach Bliley Act, Truth in Lending Act, Consumer Product Safety Act, etc. On the other hand, Australia's approach is somewhat similar to that of India with some specific Acts but Australian Consumer Law (ACL) comprising of Competition and Consumer Act, 2010 being the primary statute. UK has a single Act for most of its consumer laws i.e., Consumer Rights Act 2015. Other legislations also supplement it like Consumer Protection from Unfair Trading Regulation, 2008 (General duty of traders not to trade unfairly), Consumer Contracts (Information, Cancellation and Additional Charges) Regulations (impose requirements on traders) and Consumer Protection Act, 1987 and General Product Safety Regulations, 2005. By far UK and Australia have the most similar Consumer Protection laws with India with a central act for major redressed and other supporting statutes.

CONCLUSION

Despite USA's consumer law being somewhat cumbersome, what can be drawn from them is the division of consumer disputes into different sectors. The Federal Trade Commission has eight divisions like enforcement, consumer response and operations, advertising practices, etc. Such bifurcation allows more specialization and more focused effort towards some areas. Same could be introduced in India.

Another point that comes up while analyzing the Act 2019 is that CCPA was a welcome decision. A need has been felt for a regulatory and investigating authority from the very start and has been pointed out the same by the court in some decisions too. The composition and powers given to CCPA prima facie seem well equipped to fulfil its functions. What remains to be seen is the actual functioning of it. One point of concern is that the CCPA has been given regulatory, investigative and adjudicatory functions simultaneously. On the face of it, it seems that the authority is over burdened with functions from various aspects. In regard to adjudicatory functions, it can be debated that the commissions which are adjudicating authorities should have been entrusted with such functions as they are better equipped to deal with it. Even a special wing or department under such commissions could have been created to adjudicate such new matters. Such specialization would ensure that the authority remains a proper regulatory and investigative body and focuses on that and at the same time commissions which are specialized in dealing with adjudication are one stop judicial body for all matters under the Act.

As pointed above with regards to setting standards of quality for goods and services, approach of UK and Australia can be adopted to include certain provisions which mandate certain level of quality in every sale of goods or services which sellers have to comply with.

A positive to be taken is that the 2019 Act introduces provisions for complaint of Unfair Trade Practices and penalizing misleading advertising. This particular element was found to be missing earlier. Almost all legislation in developed countries had some provisions in relation to it.

One of the factors which is not reflected on comparison of legislatures but is very important is enforcement. According to a comprehensive survey^[8] conducted by Consumers International Organization among respondents from various countries it was found that the level of enforcement in India was not at par with the others. From comparing and analyzing the Indian Statute with those of various developed nations it is evident that except minor shortcomings the Act 2019 now is actually robust and well equipped to handle all consumer grievances. However, the area in lacking is the enforcement of the Act 2019. It will have the authority to investigate, search and seize, in general ensure compliance of COPRA Act. Given the introduction is somewhat recent it is to be seen if it will be able to succeed in its role.

It can be said that the Act 2019 is actually well equipped but what remains to be seen is proper enforcement of it.

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